HOUSE BILL NO. 416

INTRODUCED BY H. KLOCK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR QUALITY ASSURANCE ACTIVITIES BY MEDICAL PRACTICE GROUPS; PROVIDING FOR CONFIDENTIALITY OF THE PROCEEDINGS OF QUALITY ASSURANCE COMMITTEES; PROVIDING EXCEPTIONS; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a quality assurance committee that are used exclusively in connection with quality assessment or improvement activities, including but not limited to the professional training, supervision, or discipline of a medical practitioner by a medical practice group.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident report" or "occurrence report" means the written business record of a medical practice group created in response to an untoward event, including but not limited to a patient injury, adverse outcome, or interventional error, for the purpose of ensuring a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event by a quality assurance committee that was conducted in response to an incident report or occurrence report.

(4) "Medical practice group" means a group of two or more medical practitioners practicing medicine in a professional corporation, professional limited liability company, partnership, sole proprietorship, or associations of these entities.

(5) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice

of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202 or licensed as a physician assistant pursuant to 37-20-203.

(6) "Quality assurance committee" means a duly appointed committee within a medical practice group that administers a quality assurance program and may be called by another name within the medical practice group, including but not limited to a utilization review, peer review, medical ethics review, professional standards review, quality assurance, or quality improvement committee.

(7) "Quality assurance program" means a comprehensive, ongoing system of mechanisms established by a medical practice group for monitoring and evaluating the quality and appropriateness of the care provided to patients in order to:

(a) identify and take steps to correct any significant problems and trends in the delivery of care; and

(b) take advantage of opportunities to improve care.

(8) (a) "Records" means records of interviews, internal reviews and investigations, and all reports, statements, minutes, memoranda, charts, statistics, and other documentation generated during the activities of a quality assurance program.

(b) The term does not mean original medical records or other records kept relative to any patient in the course of the business of operating as a medical practice group.

NEW SECTION. **Section 2. Quality assurance program activities.** A quality assurance program may include but is not limited to the following activities:

(1) review of pending malpractice claims;

(2) review of quality assurance issues;

(3) identification of areas in need of improvement related to quality and appropriateness of patient care;

(4) promotion and evaluation of best practices;

(5) review and analysis of risk management issues;

(6) oversight of medical event management processes;

(7) prioritization of risk management activities;

(8) tracking of information and of trends identified by data;

(9) investigation of incidents related to quality;

(10) development of risk management strategies, education, and training;

(11) development and implementation of remedial solutions related to quality and appropriateness of

patient care for all licensed professionals and other staff affiliated with the medical practice group;

(12) review of information and trends related to claims; and

(13) peer review and oversight of medical practitioners.

NEW SECTION. **Section 3. Quality assurance committee access to information.** (1) It is in the interest of public health and patient medical care that quality assurance committees have access to medical records and other health care information relating to the condition and treatment of the patients of medical practice groups in order to:

(a) evaluate matters relating to the care and treatment of patients for research purposes;

(b) reduce morbidity or mortality; and

(c) obtain statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries.

(2) To carry out these purposes, a medical practice group and its agents and employees may provide medical records or other health care information relating to the condition and treatment of any patient of the medical practice group to any quality assurance committee of the medical practice group.

NEW SECTION. **Section 4. Medical practice group quality assurance -- confidentiality -- exception -- liability of members.** (1) Except as provided in subsection (6), the proceedings of a quality assurance committee of a medical practice group, the data it produces, and the material it considers:

(a) must be confidential;

(b) may not be considered to be a public record; and

(c) may not be subject to discovery or introduction into evidence in any civil action against a health care facility or an individual employed by or under contract with a health care facility or a medical practice group that results from matters that are the subject of evaluation and review by the quality assurance committee.

(2) A person who was in attendance at a meeting of the quality assurance committee may not be required to testify in any civil action about:

(a) the information and materials produced or presented during the proceedings of the quality assurance committee; or

(b) the findings, recommendations, evaluations, opinions, or other actions of the quality assurance committee or its members.

(3) Information otherwise available is not immune from discovery or use in a civil action merely because the information was presented during proceedings of the quality assurance committee. Nothing in this section may prevent a medical practitioner from using otherwise available information in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges, or employment of the medical practitioner.

(4) A member of the quality assurance committee or a person who provides information orally or in writing to a quality assurance committee may be subpoenaed and required to testify in a civil action regarding events about which the person has knowledge independent of the quality assurance program. The member or person may not be asked:

(a) for impeachment or other purposes, about the information the person provided to the quality assurance committee; or

(b) about any opinions formed as a result of the quality assurance committee proceeding.

(5) All data relating to quality assurance committee activities compiled under [sections 1 through 6] must be maintained in a confidential location separate from patient medical records.

(6) The governing body of a medical practice group may waive privileges under this section and release information or present data of the quality assurance program by discovery, subpoena, or admission into evidence in any judicial or administrative proceeding. Without waiving privileges under this section, the governing body of a medical practice group may voluntarily release information or present data to a health care facility quality assurance committee established under 50-16-202. The information or records must be subject to the privileges and immunities provided for in 50-16-202.

(7) A duly appointed member of a quality assurance committee who acts without malice or fraud may not be subject to liability for damages in any civil action because of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the quality assurance committee.

NEW SECTION. **Section 5. Quality assurance guidelines -- reviews -- contracts.** (1) Reviews of medical practitioners conducted by a quality assurance committee under [sections 1 through 6] must comply with the following guidelines:

(a) A random review is a review of at least 10 randomly selected patient charts, which must be reviewed by a quality assurance committee. The quality assurance committee may gather data from any source for purposes of the review. The quality assurance committee shall submit an evaluation report to the medical practice

group outlining the review findings and recommending changes if changes are determined necessary.

(b) A focused review is a review intended for specific clinical and quality improvement purposes, such as:

(i) reviewing patient medical records relating to a certain disease or procedural category for purposes of comparing documented treatment to available and current standards of medical care;

(ii) assessing the efficacy and efficiency of an office procedure or process related to clinical care; or

(iii) reviewing office and clinical practices prompted by an analysis and results of incident reports.

(c) An incident review is for purposes of gathering data, investigating, conducting analysis, coordinating all responses, and recommending and initiating corrective action, as necessary, connected with a specific incident involving the delivery of medical care to a patient of the medical practice group.

(2) (a) A review of a medical practitioner conducted by a quality assurance committee under [sections 1 through 6] must be based on appropriateness, medical necessity, adequacy of documentation, and efficiency of services.

(b) The medical practitioner being reviewed must be immediately advised of the findings of the quality assurance committee in order to further the educational process for the physician.

(c) As a result of a review of a medical practitioner conducted under [sections 1 through 6], the medical practice group is responsible for documenting:

(i) any corrective action that is taken;

(ii) any policies, procedures, or clinical processes that are changed;

(iii) the person responsible for implementing the changes; and

(iv) how the medical practice group will ensure that the changes are made.

(3) A medical practice group may contract with a group or organization composed of medical practitioners or with a nonprofit corporation engaged in performing the functions of a quality assurance committee for purposes of conducting any review allowed under [sections 1 through 6].

NEW SECTION. **Section 6. Restrictions on use or publication of information.** (1) A quality assurance committee may use or publish health care information only for the purpose of evaluating matters of medical care, therapy, and treatment and for research and statistical purposes.

(2) In any report or publication of findings and conclusions of a quality assurance committee, the committee or the members, agents, or employees of the committee may not disclose the name or identity of any

patient whose medical records or other protected health information have been studied.

(3) A quality assurance committee and its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and may not disclose or reveal the name of any patient of a medical practice group .

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 50, chapter 16, and the provisions of Title 50, chapter 16, apply to [sections 1 through 6].

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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