

1 SENATE BILL NO. 292

2 INTRODUCED BY B. TUTVEDT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MEDICAL PEER REVIEW LAWS TO CLARIFY THE
5 MEANING OF THE TERMS "DATA" AND "INCIDENT REPORT" OR "OCCURRENCE REPORT"; AND
6 AMENDING SECTIONS 37-2-401 AND 50-16-201, MCA."

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8 WHEREAS, the Montana Legislature adopted Montana's peer review statutes over 50 years ago, noting
9 that peer review is in the interest of the public health; and

10 WHEREAS, in *Sistok v. Kalispell Regional Hospital*, 251 Mont. 38, 823 P.2d 251 (1991), the Montana
11 Supreme Court held that Montana's peer review statutes confer a privilege on data created by or at the request
12 of a medical review committee; and

13 WHEREAS, in *Sistok v. Kalispell Regional Hospital*, the Montana Supreme Court also observed that the
14 statute providing for confidentiality was developed and the privilege was conferred by the Legislature as a matter
15 of public policy to encourage health care providers to join medical review committees in an effort to ensure the
16 responsive and full discourse among the professionals involved and to promote an atmosphere free of
17 apprehension so that constructive criticism could occur; and

18 WHEREAS, in *Huether v. District Court*, 2000 MT 158, 300 Mont. 212, 4 P.3d 1193, the Montana
19 Supreme Court found that Montana's peer review statutes are typical of the statutes adopted by various states
20 to encourage candor in medical review committees that review and evaluate the quality of medical care provided
21 in their hospitals; and

22 WHEREAS, in *Huether v. District Court*, the Montana Supreme Court also noted that the goal of
23 Montana's peer review statutes is to promote continuous improvement in the quality of health care delivery
24 through review of standardized health care operations and the performance of doctors and staff; and

25 WHEREAS, the Legislature finds that the continuous review and improvement of health care is in the
26 interest of all Montanans; and

27 WHEREAS, the Legislature finds it appropriate to revise certain definitions in order to clarify which
28 information is privileged and which information is not privileged under Montana's peer review statutes.

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

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Section 1. Section 37-2-401, MCA, is amended to read:

"37-2-401. Definitions. As used in this part, 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 may be shared with a medical practitioner, including the medical practitioner being reviewed, and 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. The term includes all subsequent evaluations and analysis of an untoward event, including any opinions or conclusions of a reviewer.

(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 that:

(i) may be but is not required to be created by the staff involved 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; and

(ii) is a factual rendition of the event.

(b) The terms do not include any subsequent evaluation of the event by a quality assurance committee, that regardless of whether or not the subsequent evaluation of the event occurred was conducted in response to an incident report or occurrence report. The creation of an incident report or occurrence report is not a condition precedent for a subsequent evaluation of an event, and any subsequent evaluation of an event remains privileged and confidential pursuant to this part, regardless of the creation of 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

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

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

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

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

11 (b) take advantage of opportunities to improve care.

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

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

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18 **Section 2.** Section 50-16-201, MCA, is amended to read:

19 **"50-16-201. Definitions.** As used in this part, the following definitions apply:

20 (1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at
21 the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement
22 committee of a health care facility that may be shared with a medical practitioner, including the medical
23 practitioner being reviewed, and that are used exclusively in connection with quality assessment or improvement
24 activities, including the professional training, supervision, or discipline of a medical practitioner by a health care
25 facility. The term includes all subsequent evaluations and analysis of an untoward event, including any opinions
26 or conclusions of a reviewer.

27 (b) The term does not include:

28 (i) incident reports or occurrence reports; or

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

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

2 (3) (a) "Incident ~~reports report~~" or "occurrence ~~reports report~~" means a written business record of a
3 health care facility; that:

4 (i) may be but is not required to be created by the staff involved in response to an untoward event, such
5 as a patient injury, adverse outcome, or interventional error, for the purpose of ensuring a prompt evaluation of
6 the event; and

7 (ii) is a factual rendition of the event.

8 (b) The terms do not include any subsequent evaluation of the event created by or at the request of a
9 utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee,
10 regardless of whether or not the subsequent evaluation of the event occurred in response to an incident report
11 or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality
12 improvement committee. The creation of an incident report or occurrence report is not a condition precedent for
13 a subsequent evaluation of an event, and any subsequent evaluation of an event remains privileged and
14 confidential pursuant to this part, regardless of the creation of an incident report or occurrence report.

15 (4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice
16 of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202 or licensed as a
17 physician assistant pursuant to 37-20-203."

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