

HOUSE JOINT RESOLUTION NO. 19
INTRODUCED BY P. MORGAN

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING MEDICAL AND MENTAL HEALTH CARE PROVIDERS TO ASSIST PERSONS WITH A CHRONIC ILLNESS AND THEIR FAMILIES TO FACILITATE METHODS OF ACCESS TO HEALTH CARE INFORMATION OR TO BRING A STATE LAW THAT PREVENTS ACCESS TO THE ATTENTION OF THE LEGISLATURE, THE GOVERNOR, OR THE ATTORNEY GENERAL.

WHEREAS, persons who are receiving or in need of treatment for chronic illness need the support of their families and their medical providers; and

WHEREAS, the U.S. Department of Health and Human Services issued the Privacy Rule to implement the privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and Privacy Rule standards address the use and disclosure of individuals' health information, called "protected health information", by organizations subject to the Privacy Rule, called "covered entities", such as medical providers and health care insurers, and address individuals' privacy rights, including the right to understand and control how their health information is used; and

WHEREAS, if a state law is contrary to the Privacy Rule, a state has the ability to seek a HIPAA exception to the general rule of federal preemption in which the Secretary of the U.S. Department of Health and Human Services may make a determination that a contrary provision of state law will not be preempted by HIPAA when the intrusion into privacy is warranted when balanced against the need to be served; and

WHEREAS, there are other steps that individuals may take to share their protected health information with family members, such as by agreement or by designating a personal representative through a health care or general power of attorney, legal guardianship, or advanced health care directive; and

WHEREAS, there are provisions for medical care providers to share information with family when it is in the best interest of the individual and when the family member is involved with or responsible for their family member's care; and

WHEREAS, protected health information may be used or disclosed to assist in the notification of a family member of the individual's location or general condition; and

WHEREAS, professional organizations for health care providers and third-party payors have developed sophisticated systems to share information between entities for medical and payment purposes but have not

concentrated on efforts to assist persons with chronic illness and their families in sharing information and participating in the persons' care.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That medical and mental health professionals, advocates, associations, and the Department of Public Health and Human Services endeavor to understand the provisions of HIPAA, to assist persons with chronic illness and their families to understand the provisions, and to encourage, facilitate, and make available to them the information that would allow them to create and use methods to support persons with chronic illness with their treatment and provide respect for their privacy rights and independence.

BE IT FURTHER RESOLVED, that if there are provisions of state law that persons with chronic illness, family members, or medical and mental health care professionals believe to be contrary to HIPAA and worthy of an exception, they bring it to the attention of the Legislature, the Governor, or the Attorney General to seek an exception to the general rule of federal preemption.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to all of the Divisions of the Department of Public Health and Human Services, the Montana chapter of the National Alliance on Mental Illness, the Montana Advocacy Program, the Montana Medical Association, the Montana Psychological Association, the Montana Nurses' Association, the Montana Psychiatric Association, the Montana Primary Care Association, community health centers and clinics, community mental health centers, the National Association of Social Workers - Montana chapter, the Montana Children's Initiative Provider Association, and MHA - An Association of Montana Health Care Providers.

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