

SENATE BILL NO. 9

INTRODUCED BY R. WEBB

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING HEALTH CARE PROVIDERS TO REPORT CERTAIN INFORMATION TO LAW ENFORCEMENT; PROVIDING IMMUNITY; AND AMENDING SECTIONS 50-16-530, 50-16-531, ~~50-16-805~~, AND 50-16-817, MCA."

WHEREAS, IT IS IN THE INTEREST OF ALL MONTANANS TO ADDRESS PRESCRIPTION DRUG ABUSE AND DIVERSION; AND

WHEREAS, HEALTH CARE PROVIDERS WHO ARE SUBJECT TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT ARE PERMITTED TO DISCLOSE HEALTH CARE INFORMATION FOR LAW ENFORCEMENT PURPOSES, INCLUDING THE PURPOSES OF NOTIFYING AUTHORITIES OF SUSPECTED CRIMINAL CONDUCT THAT HAS OCCURRED ON A PROVIDER'S PREMISES AND REPORTING INFORMATION TO LESSEN A SERIOUS AND IMMINENT THREAT TO THE HEALTH OR SAFETY OF A PATIENT OR THE PUBLIC; AND

WHEREAS, MONTANA'S UNIFORM HEALTH CARE INFORMATION ACT IS UNCLEAR ON WHETHER THESE PROVISIONS SIMILARLY APPLY TO HEALTH CARE PROVIDERS WHO ARE NOT SUBJECT TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT; AND

WHEREAS, IT IS IN THE INTEREST OF ALL MONTANANS FOR HEALTH CARE PROVIDERS TO REPORT THESE ACTIVITIES TO LAW ENFORCEMENT TO ADDRESS, AMONG OTHER MATTERS, PRESCRIPTION DRUG ABUSE AND DIVERSION AND TO ENSURE THE SAFETY OF MONTANA COMMUNITIES; AND

WHEREAS, THE GRANTING OF IMMUNITY TO HEALTH CARE PROVIDERS FOR REPORTING THESE ACTIVITIES WOULD ENCOURAGE REPORTING.

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

**Section 1.** Section 50-16-530, MCA, is amended to read:

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

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

1 disclosure;

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

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

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

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

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

9 (7) pursuant to 50-16-712; ~~or~~

10 (8) to federal, state, or local law enforcement authorities to:

11 (a) notify the authorities of an activity that the provider in good faith believes constitutes evidence of  
12 criminal conduct that occurred on the provider's premises; or

13 (b) prevent or lessen a serious and imminent threat to the health or safety of a person or the public; or

14 ~~(8)(9)~~ to the state medical examiner or a county coroner for use in determining cause of death. The  
15 information is required to be held confidential as provided by law."

16

17 **Section 2.** Section 50-16-531, MCA, is amended to read:

18 **"50-16-531. Immunity of health care providers pursuant to written authorization -- form required.**

19 (1) (a) A health care provider who discloses health care information as allowed under 50-16-530(8) is immune  
20 from any liability, civil or criminal, that might otherwise result from the disclosure if the disclosure was made in  
21 good faith and in accordance with the provisions of the Health Insurance Portability and Accountability Act of 1996  
22 and 45 CFR, part 164.

23 ~~(b) The civil immunity provisions of this subsection (1) do not apply to a person employed by or an entity~~  
24 ~~operated by the state or a political subdivision of the state.~~

25 (2) A health care provider who discloses health care information within the possession of the provider,  
26 including health care information from another provider, is immune from any civil cause of action by the patient  
27 or the patient's heirs or successors in interest that is based upon delivery to the patient or the patient's designee  
28 of health care information concerning the patient that is contained in the health care provider's patient file if the  
29 information is disclosed in accordance with a written authorization using the following language:

30 "All health care information in your possession, whether generated by you or by any other source, may

1 be released to me or to .....(named person) for .....(purpose of the disclosure). This release is subject  
2 to revocation at any time. The revocation is effective from the time it is communicated to the health care provider.  
3 If not revoked, the release terminates in accordance with 50-16-527.

4 .....  
5 (Signature of patient)""  
6

7 ~~Section 3.~~ Section 50-16-805, MCA, is amended to read:

8 ~~"50-16-805. Disclosure of information allowed for certain purposes. (1) To the extent provided in~~  
9 ~~39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational disease benefits authorizes~~  
10 ~~disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider.~~

11 ~~(2) A health care provider may disclose health care information about an individual for law enforcement~~  
12 ~~purposes if the disclosure is to:~~

13 ~~(a) federal, state, or local law enforcement authorities to the extent required by law; or~~

14 ~~(b) a law enforcement officer about the general physical condition of a patient being treated in a health~~  
15 ~~care facility if the patient was injured by the possible criminal act of another; or~~

16 ~~(c) federal, state, or local law enforcement authorities to:~~

17 ~~(i) notify the authorities of an activity that the provider in good faith believes constitutes evidence of~~  
18 ~~criminal conduct that occurred on the provider's premises; or~~

19 ~~(ii) prevent or lessen a serious and imminent threat to the health or safety of a person or the public.~~

20 ~~(3) A health care provider may disclose health care information to a fetal, infant, child, and maternal~~  
21 ~~mortality review team for the purposes of 50-19-402 [and to the Montana suicide review team for the purposes~~  
22 ~~of 53-21-1105 through 53-21-1110]. (Bracketed language terminates June 30, 2016--sec. 16, Ch. 353, L. 2013.)"~~

23

24 **Section 3.** Section 50-16-817, MCA, is amended to read:

25 **"50-16-817. Civil remedies -- immunity.** (1) Except as provided in subsection (8), a person aggrieved  
26 by a violation of this part may maintain an action for relief as provided in this section.

27 (2) The court may order the health care provider or other person to comply with this part and may order  
28 any other appropriate relief.

29 (3) A disciplinary or punitive action may not be taken against a health care provider or the provider's  
30 employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate

1 authority.

2 (4) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover  
3 damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from  
4 willful or grossly negligent conduct, the aggrieved person may recover not in excess of \$5,000, exclusive of any  
5 pecuniary loss.

6 (5) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses  
7 reasonably incurred in the litigation.

8 (6) An action under this part is barred unless the action is commenced within 3 years after the cause of  
9 action accrues.

10 (7) A health care provider who relies in good faith upon certification pursuant to 50-16-812 is considered  
11 to have received reasonable assurances and is not liable for disclosures made in reliance on that certification.

12 (8) (a) A health care provider who discloses health care information TO FEDERAL, STATE, OR LOCAL LAW  
13 ENFORCEMENT AUTHORITIES as allowed under 50-16-805(2)(c) is immune from any liability, civil or criminal, that  
14 might otherwise result from the disclosure if the disclosure was:

15 (A) made in good faith and;

16 (B) in accordance with the provisions of the Health Insurance Portability and Accountability Act of 1996  
17 and 45 CFR, part 164; AND

18 (C) TO NOTIFY THE AUTHORITIES OF AN ACTIVITY THAT THE PROVIDER IN GOOD FAITH BELIEVED CONSTITUTED  
19 EVIDENCE OF CRIMINAL CONDUCT THAT OCCURRED ON THE PROVIDER'S PREMISES OR TO PREVENT OR LESSEN A SERIOUS  
20 AND IMMINENT THREAT TO THE HEALTH OR SAFETY OF A PERSON OR THE PUBLIC.

21 (b) The civil immunity provisions of this subsection (8) do not apply to a person employed by or an entity  
22 operated by the state or a political subdivision of the state."

23  
24 **NEW SECTION. SECTION 4. TWO-THIRDS VOTE REQUIRED. BECAUSE [SECTION 2 AND SECTION 3] LIMIT**  
25 **GOVERNMENTAL LIABILITY, ARTICLE II, SECTION 18, OF THE MONTANA CONSTITUTION REQUIRES A VOTE OF TWO-THIRDS**  
26 **OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE FOR PASSAGE.**

27 - END -