

HOUSE BILL NO. 589

INTRODUCED BY M. CAFERRO

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MORTALITY REVIEW COMMISSION FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; PROVIDING CONFIDENTIALITY; AMENDING SECTIONS 44-5-303, 50-16-522, 50-16-525, 50-16-804, 50-16-805, AND 52-3-813, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Mortality review commission for individuals with developmental disabilities.** (1) There is a mortality review commission for individuals with developmental disabilities attached for administrative purposes only to the department of public health and human services to carry out the duties described in [section 2].

(2) The certification bureau chief for the quality assurance division of the department shall appoint the following members to the commission:

- (a) a representative of the developmental services division of the department;
- (b) a representative of the adult protective services function provided by the department;
- (c) a representative of the state protection and advocacy program for individuals with developmental disabilities, as authorized by 42 U.S.C. 15043;
- (d) a representative of the licensure bureau of the department;
- (e) a provider of developmental disabilities services; and
- (f) a family member of an individual with a developmental disability.

(3) The members shall serve without compensation by the commission but may be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. Members who are full-time salaried officers or employees of the state or of any political subdivision of the state are entitled to their regular compensation.

NEW SECTION. **Section 2. Mortality review commission -- duties -- confidentiality.** (1) The mortality review commission for individuals with developmental disabilities established in [section 1] shall review the deaths of individuals with developmental disabilities that occurred while under the care of a health care facility, as defined



1 in 50-5-101, or while receiving community-based services to:

2 (a) examine relevant records, discuss what occurred, and determine whether the situation was handled
3 properly. If a majority of the commission determines that a situation was handled improperly, the commission
4 shall provide written recommendations suggesting alternative practices to the division administrator of the quality
5 assurance division of the department and any other appropriate person, as determined by the commission;

6 (b) identify trends, help direct training and education, and provide information to providers regarding the
7 prevention of deaths and best practices; and

8 (c) make recommendations regarding systemic issues, trends, and training needs.

9 (2) The commission members may determine the frequency with which the commission meets, but the
10 commission shall meet at least once a year. The commission may meet in person or by telephone.

11 (3) On written request from the commission, a person who possesses records relevant to a review being
12 conducted under this section shall, as soon as practicable, provide the commission with the records.

13 (4) The meetings and proceedings of the commission are confidential and are exempt from the
14 provisions of Title 2, chapter 3.

15 (5) (a) The records of the commission are confidential and exempt from the provisions of Title 2, chapter
16 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action
17 unless the records are reviewed by a district court judge in camera and ordered to be provided to the person
18 seeking access.

19 (b) The commission shall disclose conclusions and recommendations on request but may not disclose
20 records that are otherwise confidential.

21 (c) The commission may not use the records for purposes other than those allowed under subsection
22 (1).

23

24 **Section 3.** Section 44-5-303, MCA, is amended to read:

25 **"44-5-303. (Temporary) Dissemination of confidential criminal justice information -- procedure**
26 **for dissemination through court.** (1) Except as provided in subsections (2) through (4), dissemination of
27 confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to
28 receive it, and to those authorized to receive it by a district court upon a written finding that the demands of
29 individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential
30 criminal justice information under this subsection includes receiving investigative information from and sharing

1 investigative information with a chief of a governmental fire agency organized under Title 7, chapter 33, or fire
2 marshal concerning the criminal investigation of a fire.

3 (2) If the prosecutor determines that dissemination of confidential criminal justice information would not
4 jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim
5 of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the
6 prosecutor.

7 (3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential
8 criminal justice information assumes equal responsibility for the security of the information with the originating
9 agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

10 (4) The county attorney or the county attorney's designee is authorized to receive confidential criminal
11 justice information for the purpose of cooperating with the child abuse and neglect review commission established
12 in 2-15-2019, the mortality review commission for individuals with developmental disabilities established in
13 [section 1], and local fetal, infant, child, and maternal mortality review teams. The county attorney or the county
14 attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of
15 the review ~~commission~~ commissions or the review team. The review ~~commission~~ commissions, the review team,
16 and the county attorney or the county attorney's designee shall maintain the confidentiality of the information.

17 (5) (a) If a prosecutor receives a written request for release of confidential criminal justice information
18 relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal
19 prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a
20 declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory
21 Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

22 (i) file the action in the name of the city or county that the prosecutor represents and describe the city's
23 or county's interest;

24 (ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice
25 information and anyone affected by release of the information;

26 (iii) request that the prosecutor be allowed to deposit the investigative file and any edited version of the
27 file with the court pursuant to the provisions of Title 27, chapter 8;

28 (iv) request the court to:

29 (A) conduct an in camera review of the confidential criminal justice information to determine whether the
30 demands of individual privacy do not clearly exceed the merits of public disclosure; and

1 (B) order the release to the requesting party defendant of whatever portion of the investigative
2 information or edited version of the information the court determines appropriate.

3 (b) In making an order authorizing the release of information under subsection (5)(a), the court shall
4 make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure
5 and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited
6 or complete confidential criminal justice information to persons who request the information.

7 (c) In an action filed for the court-ordered release of confidential criminal justice information under
8 subsection (5)(a), the parties shall bear their respective costs and attorney fees.

9 (6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may
10 file any action for dissemination of information that the person or organization considers appropriate and
11 permissible. (Terminates September 30, 2021--sec. 12, Ch. 235, L. 2017.)

12 **44-5-303. (Effective October 1, 2021) Dissemination of confidential criminal justice information**
13 **-- procedure for dissemination through court.** (1) Except as provided in subsections (2) through (4),
14 dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those
15 authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that
16 the demands of individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination
17 of confidential criminal justice information under this subsection includes receiving investigative information from
18 and sharing investigative information with a chief of a governmental fire agency organized under Title 7, chapter
19 33, or fire marshal concerning the criminal investigation of a fire.

20 (2) If the prosecutor determines that dissemination of confidential criminal justice information would not
21 jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim
22 of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the
23 prosecutor.

24 (3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential
25 criminal justice information assumes equal responsibility for the security of the information with the originating
26 agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

27 (4) The county attorney or the county attorney's designee is authorized to receive confidential criminal
28 justice information for the purpose of cooperating with the mortality review commission for individuals with
29 developmental disabilities established in [section 1] or the local fetal, infant, child, and maternal mortality review
30 teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose

1 information determined necessary to the goals of the review commission or review team. The review commission,
2 the review team, and the county attorney or the designee shall maintain the confidentiality of the information.

3 (5) (a) If a prosecutor receives a written request for release of confidential criminal justice information
4 relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal
5 prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a
6 declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory
7 Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

8 (i) file the action in the name of the city or county that the prosecutor represents and describe the city's
9 or county's interest;

10 (ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice
11 information and anyone affected by release of the information;

12 (iii) request that the prosecutor be allowed to deposit the investigative file and any edited version of the
13 file with the court pursuant to the provisions of Title 27, chapter 8;

14 (iv) request the court to:

15 (A) conduct an in camera review of the confidential criminal justice information to determine whether the
16 demands of individual privacy do not clearly exceed the merits of public disclosure; and

17 (B) order the release to the requesting party defendant of whatever portion of the investigative
18 information or edited version of the information the court determines appropriate.

19 (b) In making an order authorizing the release of information under subsection (5)(a), the court shall
20 make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure
21 and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited
22 or complete confidential criminal justice information to persons who request the information.

23 (c) In an action filed for the court-ordered release of confidential criminal justice information under
24 subsection (5)(a), the parties shall bear their respective costs and attorney fees.

25 (6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may
26 file any action for dissemination of information that the person or organization considers appropriate and
27 permissible."

28

29 **Section 4.** Section 50-16-522, MCA, is amended to read:

30 **"50-16-522. Representative of deceased patient.** Except as provided in [41-3-123 and] 50-19-402 and

1 [section 2], a personal representative of a deceased patient may exercise all of the deceased patient's rights
2 under this part. If there is no personal representative or upon discharge of the personal representative, a
3 deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an
4 adult sibling, or any other person who is authorized by law to act for the deceased patient. (Bracketed language
5 terminates September 30, 2021--sec. 12, Ch. 235, L. 2017.)"

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7 **Section 5.** Section 50-16-525, MCA, is amended to read:

8 **"50-16-525. Disclosure by health care provider.** (1) Except as authorized in [41-3-123,] 50-16-529,
9 50-16-530, ~~and 50-19-402,~~ and [section 2] or as otherwise specifically provided by law or the Montana Rules of
10 Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health
11 care, or an agent or employee of a health care provider may not disclose health care information about a patient
12 to any other person without the patient's written authorization. A disclosure made under a patient's written
13 authorization must conform to the authorization.

14 (2) A health care provider shall maintain, in conjunction with a patient's recorded health care information,
15 a record of each person who has received or examined, in whole or in part, the recorded health care information
16 during the preceding 3 years, except for a person who has examined the recorded health care information under
17 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any,
18 of each person receiving or examining the recorded health care information, the date of the receipt or
19 examination, and to the extent practicable a description of the information disclosed. (Bracketed language in
20 subsection (1) terminates September 30, 2021--sec. 12, Ch. 235, L. 2017.)"

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22 **Section 6.** Section 50-16-804, MCA, is amended to read:

23 **"50-16-804. Representative of deceased patient's estate.** Except as provided in [41-3-123 and]
24 50-19-402 and [section 2], a personal representative of a deceased patient's estate may exercise all of the
25 deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal
26 representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent,
27 an adult child, an adult sibling, or any other person who is authorized by law to act for the deceased person.
28 (Bracketed language terminates September 30, 2021--sec. 12, Ch. 235, L. 2017.)"

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30 **Section 7.** Section 50-16-805, MCA, is amended to read:

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

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

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

7 (b) a law enforcement officer about the general physical condition of a patient being treated in a health
 8 care facility if the patient was injured by the possible criminal act of another.

9 (3) A health care provider may disclose health care information to:

10 (a) a fetal, infant, child, and maternal mortality review team for the purposes of 50-19-402; ~~and~~

11 (b) the child abuse and neglect review commission established in 2-15-2019; and

12 (c) the mortality review commission for individuals with developmental disabilities established in [section
 13 1]. (Terminates September 30, 2021--sec. 12, Ch. 235, L. 2017.)

14 **50-16-805. (Effective October 1, 2021) Disclosure of information allowed for certain purposes.** (1)
 15 To the extent provided in 39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational
 16 disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the
 17 health care provider.

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

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

21 (b) a law enforcement officer about the general physical condition of a patient being treated in a health
 22 care facility if the patient was injured by the possible criminal act of another.

23 (3) A health care provider may disclose health care information to a fetal, infant, child, and maternal
 24 mortality review team for the purposes of 50-19-402 or to the mortality review commission for individuals with
 25 developmental disabilities established in [section 1]."

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27 **Section 8.** Section 52-3-813, MCA, is amended to read:

28 **"52-3-813. Confidentiality.** (1) The case records of the department, its local affiliate, the county attorney,
 29 and the court concerning actions taken under this part and all reports made pursuant to 52-3-811 must be kept
 30 confidential except as provided by this section. For the purposes of this section, the term "case records" includes

1 records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.

2 (2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon
3 request, to the following persons or entities in this or any other state:

4 (a) a physician who is caring for an older person or a person with a developmental disability who the
5 physician reasonably believes was abused, sexually abused, neglected, or exploited;

6 (b) a legal guardian or conservator of the older person or the person with a developmental disability if
7 the identity of the person who made the report is protected and the legal guardian or conservator is not the person
8 suspected of the abuse, sexual abuse, neglect, or exploitation;

9 (c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited
10 if that person is not legally incompetent;

11 (d) any person engaged in bona fide research if the person alleged in the report to have committed the
12 abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse,
13 neglect, or exploitation and if the identity of the older person or the person with a developmental disability who
14 is the subject of the report is not disclosed to the researcher;

15 (e) an adult protective service team. Members of the team are required to keep information about the
16 subject individuals confidential.

17 (f) an authorized representative of a provider of services to a person alleged to be an abused, sexually
18 abused, neglected, or exploited older person or person with a developmental disability if:

19 (i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4,
20 part 6, resulting from action by the department adverse to the license of the provider and if information contained
21 in the records or reports of the department is relevant to the case;

22 (ii) disclosure to the provider is determined by the department to be necessary to protect an interest of
23 a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a
24 developmental disability; or

25 (iii) the person is carrying out background screening or employment-related or volunteer-related
26 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
27 an older person or a person with a developmental disability through employment or volunteer activities if the
28 disclosure is limited to information that indicates a risk to an older person or a person with a developmental
29 disability posed by the employee or volunteer, as determined by the department. A request for information under
30 this subsection must be made in writing.

1 (g) an employee of the department if disclosure of the record or report is necessary for administration
2 of a program designed to benefit a person alleged to be an abused, sexually abused, neglected, or exploited older
3 person or person with a developmental disability;

4 (h) an authorized representative of a guardianship program approved by the department if the
5 department determines that disclosure to the program or to a person designated by the program is necessary
6 for the proper provision of guardianship services to a person alleged to be an abused, sexually abused,
7 neglected, or exploited older person or person with a developmental disability;

8 (i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, 42 U.S.C.
9 10805, and 42 U.S.C. 15043;

10 (j) the news media if disclosure is limited to confirmation of factual information regarding how the case
11 was handled and does not violate the privacy rights of the older person, person with a developmental disability,
12 or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;

13 (k) a coroner or medical examiner who is determining the cause of death of an older person or a person
14 with a developmental disability;

15 (l) a person about whom a report has been made and that person's attorney with respect to relevant
16 records pertaining to that person only without disclosing the identity of the person who made the report or any
17 other person whose safety might be endangered through disclosure;

18 (m) an agency, including a probation or parole agency, that is legally responsible for the supervision of
19 an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a
20 developmental disability; ~~and~~

21 (n) a department, agency, or organization, including a federal agency, military reservation, or tribal
22 organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect,
23 or exploitation of an older person or a person with a developmental disability and that meets the disclosure criteria
24 contained in this section; and

25 (o) the mortality review commission for individuals with developmental disabilities established in [section
26 1].

27 (3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon
28 request, to the following persons or entities in this or any other state:

29 (a) a county attorney or other law enforcement official who requires the information in connection with
30 an investigation of a violation of this part;

1 (b) a court that has determined, in camera, that public disclosure of the report, data, information, or
2 record is necessary for the determination of an issue before it;

3 (c) a grand jury upon its determination that the report, data, information, or record is necessary in the
4 conduct of its official business.

5 (4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older
6 person or a person with a developmental disability is the holder of a license, permit, or certificate issued by the
7 department of labor and industry under the provisions of Title 37 or issued by any other entity of state
8 government, the report may be submitted to the entity that issued the license, permit, or certificate."

9

10 **NEW SECTION. Section 9. Codification instruction.** (1) [Section 1] is intended to be codified as an
11 integral part of Title 2, chapter 15, part 22, and the provisions of Title 2, chapter 15, part 22, apply to [section 1].

12 (2) [Section 2] is intended to be codified as an integral part of Title 53, chapter 20, part 1, and the
13 provisions of Title 53, chapter 20, part 1, apply to [section 2].

14

15 **NEW SECTION. Section 10. Effective date.** [This act] is effective on passage and approval.

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17 **NEW SECTION. Section 11. Applicability.** [This act] applies to deaths of individuals with
18 developmental disabilities occurring on or after [the effective date of this act].

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- END -