

1 SENATE BILL NO. 282

2 INTRODUCED BY T. MANZELLA

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE RIGHT OF
5 PARENTS TO DIRECT, CONTROL, AND REMAIN INFORMED ABOUT A MINOR CHILD'S HEALTH CARE;
6 RESTRICTING THE ABILITY OF A MINOR TO CONSENT TO HEALTH SERVICES; MANDATING THE
7 RELEASE OF RECORDS AND INFORMATION ABOUT A MINOR'S MEDICAL TREATMENT TO THE
8 MINOR'S PARENTS; LIMITING THE ABILITY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
9 SERVICES AND LOCAL BOARDS OF HEALTH TO REMOVE MINOR CHILDREN FROM THE HOME FOR
10 THE PURPOSE OF QUARANTINE AND ISOLATION; PROVIDING A PROCESS FOR APPEAL OF THE
11 DECISION TO TERMINATE LIFE-SUSTAINING TREATMENT OF A MINOR CHILD; AND AMENDING
12 SECTIONS 41-1-402, 41-1-403, 41-1-404, 41-7-102, 50-1-204, AND 50-2-118, MCA."
13

14 WHEREAS, parents who have legal custody of any minor child or children have the fundamental right
15 and duty to make decisions concerning their health care without unnecessary interference or restriction; and

16 WHEREAS, the decision of whether or not to continue life-sustaining treatment for a minor child is a
17 desperate and difficult decision for a parent, and the consequences of the decision is an interest far more
18 precious than any property right and equals or exceeds the detriment of criminal sanctions; and

19 WHEREAS, when a decision is made to terminate life-sustaining treatment of a minor child against the
20 wishes of a parent, the parent should have the right to fundamental due process; and

21 WHEREAS, while government has a strong interest in controlling communicable diseases, especially in
22 an epidemic or pandemic, this interest does not eliminate a parent's right and interest in decisionmaking
23 regarding the quarantine and isolation of minor children.
24

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
26

27 **Section 1.** Section 41-1-402, MCA, is amended to read:

28 **"41-1-402. Validity of consent of minor for health services.** (1) Except as provided in subsections

1 (2) through (5) and unless parental rights have been terminated, a health professional, health care facility, or
 2 other person or entity shall obtain written or oral consent from the parent, custodian, or guardian prior to
 3 performing health services on a minor, including but not limited to:

4 (a) physical examination;

5 (b) surgical procedures;

6 (c) prescription of pharmaceuticals; or

7 (d) mental health evaluation or treatment in a clinical or nonclinical setting; OR

8 (E) VACCINATION ADMINISTRATION.

9 ~~(4)(2)~~ This part does not limit the right of an emancipated minor to consent to the provision of health
 10 services or to control access to protected health care information under applicable law.

11 ~~(2) The consent to the provision of health services and to control access to protected health care~~
 12 ~~information by a health care facility or to the performance of health services by a health professional may be~~
 13 ~~given by a minor who professes or is found to meet any of the following descriptions:~~

14 ~~(a) a minor who professes to be or to have been married or to have had a child or graduated from~~
 15 ~~high school;~~

16 ~~(b) a minor who professes to be or is found to be separated from the minor's parent, parents, or legal~~
 17 ~~guardian for whatever reason and is providing self-support by whatever means;~~

18 ~~(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable~~
 19 ~~disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-~~
 20 ~~consent applies only to the prevention, diagnosis, and treatment of those conditions specified in this subsection.~~

21 ~~The self-consent in the case of pregnancy, a sexually transmitted disease, or drug and substance abuse also~~
 22 ~~obliges the health professional, if the health professional accepts the responsibility for treatment, to counsel the~~
 23 ~~minor or to refer the minor to another health professional for counseling.~~

24 ~~(d) a minor who needs emergency care, including transfusions, without which the minor's health will~~
 25 ~~be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian must be informed as soon~~
 26 ~~as practical except under the circumstances mentioned in this subsection (2).~~

27 (3) Subsection (1) does not apply when it has been determined by a physician that an emergency
 28 exists and that it is necessary to perform health services as described in subsection (1) for the treatment of an

1 injury or drug abuse, to save the minor's life, to prevent serious injury, or when a parent, custodian, or guardian
 2 cannot be contacted after a reasonably diligent effort.

3 (4) Subsection (1) does not apply to abortion, which is governed by Title 50, chapter 20, part 5.

4 ~~(3)(5)~~ A minor who has had a child may give effective consent to health service for the child.

5 ~~(4)(6)~~ A minor may give consent for health care for the minor's spouse if the spouse is unable to give
 6 consent by reason of physical or mental incapacity.

7 (7) If parental consent is given through telemedicine, the health professional shall verify the identity of
 8 the parent at the site where the consent is given.

9 (8) A person convicted of violating this section is guilty of a misdemeanor punishable by a fine not to
 10 exceed \$1,000 or imprisonment in the county jail for a term not to exceed 1 year, or both."

11

12 **Section 2.** Section 41-1-403, MCA, is amended to read:

13 **"41-1-403. Release of information by health professional.** (1) Except with regard to an
 14 emancipated minor, a health professional ~~may~~shall inform the parent, custodian, or guardian of a minor in the
 15 circumstances enumerated in 41-1-402~~(3)~~ of any treatment given or needed ~~when:~~

16 ~~(a) in the judgment of the health professional, severe complications are present or anticipated;~~

17 ~~(b) major surgery or prolonged hospitalization is needed;~~

18 ~~(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and~~
 19 ~~health of the minor patient, younger siblings, or the public;~~

20 ~~(d) informing them would benefit the minor's physical and mental health and family harmony; or~~

21 ~~(e) the health professional or health care facility providing treatment desires a third party commitment~~
 22 ~~to pay for services rendered or to be rendered.~~

23 (2) Notification or disclosure to the parent, parents, custodian, or legal guardian by the health
 24 professional may not constitute libel or slander, a violation of the right of privacy, a violation of the rule of
 25 privileged communication, or any other legal basis of liability. ~~If the minor is found not to be pregnant or not~~
 26 ~~afflicted with a sexually transmitted disease or not suffering from drug abuse or substance abuse, including~~
 27 ~~alcohol, then information with respect to any appointment, examination, test, or other health procedure may not~~
 28 ~~be given to the parent, parents, or legal guardian, if they have not already been informed as permitted in this~~

1 part, without the consent of the minor."

2

3 **Section 3.** Section 41-1-404, MCA, is amended to read:

4 **"41-1-404. Financial responsibility of minor.** Consent of the minor ~~shall not~~may be subject to later
5 disaffirmance or revocation because of minority if obtained in violation of 41-1-402. The spouse, parent,
6 parents, custodian, or legal guardian of a consenting minor ~~shall not be~~is not liable for payment for ~~such a~~
7 service unless the spouse, parent, parents, custodian, or legal guardian have expressly agreed to pay for ~~such~~
8 the care. ~~Minors so consenting for such health services shall thereby assume financial responsibility for the cost~~
9 ~~of said services, except those who are proven unable to pay and who receive the services in public institutions.~~
10 If the minor is covered by health insurance, payment may be applied for services rendered."
11

11

12 **Section 4.** Section 41-7-102, MCA, is amended to read:

13 **"41-7-102. Policy and guiding principles.** (1) It is the policy of the state of Montana to support and
14 preserve the family as the single most powerful influence for ensuring the healthy social development and
15 mental and physical well-being of Montana's children.

16 (2) Unless parental rights have been terminated, parents of any minor child or children have the
17 fundamental right and duty to make decisions concerning their health care without unnecessary interference or
18 restriction. This includes the right to access and review all medical records of the minor child unless the parent
19 is the subject of an investigation of a crime committed against the minor child and a law enforcement official
20 requests that the information not be released. This also includes the right to be immediately informed of the
21 location in which the child is receiving medical treatment, and the right to visit the child at the facility.

22 ~~(2)(3)~~ (3) The following principles must guide the actions of state government, state agencies, and agents
23 of the state that serve children and families:

24 (a) Family support and preservation must be guiding philosophies when the state, state agencies, or
25 agents of the state plan or implement services for children or families. The state shall promote the
26 establishment of a range of services to children and families, including the following components:

27 (i) supporting families toward healthy development by providing a community network that offers a
28 range of family support services, activities, and programs designed to promote family well-being, with services

1 that include prenatal care, parenting education, parent aides, and visiting nurses; early childhood screening and
 2 developmental services; child care; and family recreation;

3 (ii) assisting vulnerable families before crises emerge by providing specialized services to strengthen
 4 and preserve families experiencing problems before they become acute and by providing early intervention and
 5 family support services, such as respite care, health and mental health services, and home-based rehabilitation
 6 services linked to services in subsection (2)(a)(i); and

7 (iii) protecting and caring for children in crisis by providing intensive services to protect children who
 8 have suffered or are at risk of suffering serious harm from child abuse and neglect, by providing care for
 9 children at risk of out-of-home placement for emotional disturbances or behavior problems, and by providing
 10 family support services to ensure that reasonable efforts are made to safely maintain children in their own
 11 homes or to provide temporary or permanent care for children who are removed from their families. These
 12 services include family-based services to avoid removal from the home whenever possible and to provide out-
 13 of-home care, reunification services, adoption services, and long-term substitute care.

14 (b) To maximize resources and establish a range of services driven by the needs of families rather
 15 than by a predetermined array of categorical services, the state, state agencies, and agents of the state shall
 16 work toward a system of comprehensive and coordinated services to children and families through joint agency
 17 planning, joint financing, joint service delivery, common intake and assessment, and other arrangements that
 18 promote more effective support for families.

19 (c) Needed services to children and families should be provided as close as possible to the home
 20 community. The state, state agencies, and agents of the state shall encourage community planning and
 21 collaboration. State agencies shall cooperate to support collaborative programs.

22 (d) The state encourages all sectors of society to participate in building the community capacity to
 23 meet the needs of children and families.

24 ~~(3)(4)~~ The family policy objectives described in this section are intended to guide the state's efforts to
 25 provide services to children and families. This section may not be construed to require a service or a particular
 26 level of service or to grant a right of action to enforce this section or other law."

27

28 **Section 5.** Section 50-1-204, MCA, is amended to read:

1 **"50-1-204. Quarantine and isolation measures -- limitations on department authority --**

2 **penalties.** ~~The~~ (1) Except as provided in subsection (2), the department may adopt and enforce quarantine or
3 isolation measures to prevent the spread of communicable disease.

4 (2) (a) The department shall offer a household the option to quarantine together within the home
5 rather than removing a minor child from the home for quarantine.

6 (b) The department shall not adopt or enforce quarantine measures that:

7 (i) remove a minor child from the child's home for the purpose of quarantine unless the parent
8 consents or the household refuses to participate in a household quarantine; or

9 (ii) remove a minor child from the child's home for the purpose of quarantine if the removal decision is
10 based solely on the size of the home or the number of bathrooms in the home.

11 (c) If a parent consents to a child being removed from the home for the purpose of quarantine under
12 subsection (2)(b)(i), the department shall:

13 (i) inform the parent of the child's location at all times and provide opportunities for safe visitation and
14 communication; and

15 (ii) avoid interviews with the minor child except to the extent necessary to facilitate the child's care in
16 the facility.

17 (3) A person who does not comply with quarantine measures shall, on conviction, be fined not less
18 than \$10 or more than \$100. Receipts from fines, except justice's court fines, must be deposited in the state
19 general fund."

20
21 **Section 6.** Section 50-2-118, MCA, is amended to read:

22 **"50-2-118. Powers and duties of local health officers.** In order to carry out the purpose of the
23 public health system, in collaboration with federal, state, and local partners, local health officers or their
24 authorized representatives shall:

25 (1) make inspections for conditions of public health importance and issue written orders for
26 compliance or for correction, destruction, or removal of the condition;

27 (2) take steps to limit contact between people in order to protect the public health from imminent
28 threats, including but not limited to ordering the closure of buildings or facilities where people congregate and

1 canceling events;

2 (3) report communicable diseases to the department as required by rule;

3 (4) establish and maintain quarantine and isolation measures as adopted by the local board of health,

4 provided that:

5 (a) a household must be offered the option to quarantine together within the home rather than having
6 a minor child removed from the home for quarantine;

7 (b) no quarantine and isolation measures may be adopted that:

8 (i) remove a minor child from the child's home for the purpose of quarantine unless the parent
9 consents or the household refuses to participate in a household quarantine; or

10 (ii) remove a minor child from the child's home for the purpose of quarantine if the removal decision is
11 based solely on the size of the home or the number of bathrooms in the home; and

12 (c) if a parent consents to a child being removed from the home for the purpose of quarantine under
13 subsection (4)(b)(i), the local health officers shall:

14 (i) inform the parent of the child's location at all times and provide opportunities for safe visitation and
15 communication; and

16 (ii) avoid interviews with the minor child except to the extent necessary to facilitate the child's care in
17 the facility; and

18 (5) pursue action with the appropriate court if this chapter or rules adopted by the local board or
19 department under this chapter are violated."

20

21 **NEW SECTION. Section 7. Purpose and definition.** (1) The purpose of [sections 7 and 8] is to
22 provide protections and an appeal procedure for a parent with a minor child receiving life-sustaining treatment
23 in the event that the child's licensed health care provider or providers decides to terminate the life-sustaining
24 medical treatment against the parent's wishes.

25 (2) As used in [sections 7 and 8], "life-sustaining treatment" means any medical procedure or
26 intervention that, when administered to a patient, serves only to prolong the dying process.

27

28 **NEW SECTION. Section 8. Termination of life-sustaining treatment -- preliminary injunction --**

1 **right to hearing.** (1) If a licensed health care professional determines that it is appropriate to terminate life-
2 sustaining treatment and a parent objects, the life-sustaining treatment must be continued until the following
3 can be completed under reasonably diligent efforts:

4 (a) consultation with an independent licensed health care professional to obtain a second opinion as
5 to whether life-sustaining treatment should continue; and

6 (b) a hearing before a court of competent jurisdiction.

7 (2) A court hearing a case pursuant to subsection (1)(b) shall expedite the proceeding to the
8 maximum extent possible.

9
10 **NEW SECTION. Section 9. Codification instruction.** [Sections 7 and 8] are intended to be codified
11 as a new part in Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [sections 7 and 8].

12
13 **NEW SECTION. Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are
14 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
15 the part remains in effect in all valid applications that are severable from the invalid applications.

16 - END -