

1 SENATE BILL NO. 4

2 INTRODUCED BY J. GROSS

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

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND
6 HUMAN SERVICES TO PROVIDE REPORTS OF ALLEGED ABUSE AND NEGLECT AT THE MONTANA
7 STATE HOSPITAL TO THE STATE PROTECTION AND ADVOCACY PROGRAM; AMENDING SECTIONS
8 53-21-107, 53-21-166, AND 53-21-169, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11
12 **Section 1.** Section 53-21-107, MCA, is amended to read:

13 **"53-21-107. Abuse and neglect of persons admitted to mental health facility prohibited --**
14 **reporting – investigations.** (1) Any form of abuse or neglect of a person admitted to a mental health facility is
15 prohibited.

16 (2) Each mental health facility shall publish policies and procedures that define the facility's
17 guidelines for detecting, reporting, investigating, determining the validity, and resolving allegations of abuse or
18 neglect.

19 (3) Each allegation of abuse or neglect must be reported as follows:

20 (a) Any employee of the mental health facility with knowledge of the allegation shall immediately
21 report the allegation to the professional person in charge of the facility.

22 (b) The professional person in charge of the mental health facility shall report the allegation by the
23 end of the next business day, in writing, to the board.

24 (c) When the allegation of abuse or neglect may constitute a criminal act, the professional person
25 in charge of the mental health facility shall immediately report the allegation to the appropriate law enforcement
26 authority.

27 (4) Each mental health facility shall provide a mechanism for reporting allegations of abuse or
28 neglect that in no way deters or discourages an individual from reporting the allegations.

1 (5) Investigations of allegations of abuse or neglect must be initiated by the professional person in
2 charge of the facility as soon as possible after the initial report of the incident, but not later than by the end of
3 the next business day. Initiation of each investigation may not be delayed in any way that adversely affects the
4 efficacy of the investigation. However, the investigation must be initiated immediately when there is a report of
5 an alleged criminal act.

6 (6) The investigation of each allegation of abuse or neglect must be concluded within the minimum
7 period of time necessary to gather the information relative to each allegation and to come to a conclusion
8 following the initial report of the allegation.

9 (7) Each mental health facility shall document the following in writing regarding each allegation of
10 abuse or neglect:

11 (a) details of each allegation of abuse or neglect, including the names of any facility staff against
12 whom the allegation is made;

13 (b) a description of the rationale for conducting the investigation with either in-house or outside
14 personnel;

15 (c) details of the process of the investigation of each allegation of abuse or neglect;

16 (d) details of the conclusions of the investigation; and

17 (e) details of corrective action taken.

18 (8) Mental health facilities shall provide a copy of the written report described in subsections (7)(a)
19 through (7)(e) within 5 working days of the completion of each investigation to the director of the department
20 and to the board.

21 (9) (a) For each allegation of abuse or neglect involving the Montana state hospital, the director of
22 the department shall report the following information to the state protection and advocacy program for
23 individuals with mental illness authorized under 42 U.S.C. 10805(b)(2) to investigate reports of abuse and
24 neglect:

25 (i) within 5 working days of the incident, the details of the reported allegation; and

26 (ii) within 5 working days of the completion of the investigation into the report, the written record
27 created pursuant to subsection (7).

28 (b) The director may not redact any information provided pursuant to this subsection (9)."

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2 **Section 2.** Section 53-21-166, MCA, is amended to read:

3 **"53-21-166. Records to be confidential -- exceptions.** All information obtained and records
4 prepared in the course of providing any services under this part to individuals under any provision of this part
5 are confidential and privileged matter and must remain confidential and privileged after the individual is
6 discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be
7 disclosed only:

8 (1) in communications between qualified professionals in the provision of services or appropriate
9 referrals;

10 (2) when the recipient of services designates persons to whom information or records may be
11 released or if a recipient of services is a ward and the recipient's guardian or conservator designates in writing
12 persons to whom records or information may be disclosed. However, this section may not be construed to
13 compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal
14 information that has been given to the physician, psychologist, social worker, nurse, attorney, or other
15 professional person in confidence by members of a patient's family.

16 (3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical
17 assistance to which a recipient may be entitled;

18 (4) for research if the department has promulgated rules for the conduct of research. Rules must
19 include but are not limited to the requirement that all researchers shall sign an oath of confidentiality.

20 (5) to the courts as necessary for the administration of justice;

21 (6) to persons authorized by an order of court, after notice and opportunity for hearing to the
22 person to whom the record or information pertains and the custodian of the record or information pursuant to
23 the rules of civil procedure;

24 (7) to members of the mental disabilities board of visitors or their agents when necessary to
25 perform their functions as set out in 53-21-104; ~~and~~

26 (8) to the state protection and advocacy program for individuals with mental illness when
27 necessary to comply with 53-21-107(9); and

28 ~~(8)(9)~~ to the mental health ombudsman when necessary to perform the ombudsman functions as

1 provided in 2-15-210."

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3 **Section 3.** Section 53-21-169, MCA, is amended to read:

4 **"53-21-169. Protection and advocacy system -- designation and authority.** (1) A protection and
5 advocacy system for individuals with a significant mental illness or emotional impairment is designated by the
6 governor and may be administered in the state under the provisions of 42 U.S.C. 10801 through 10851. An
7 eligible mental health protection and advocacy system under the provisions of 42 U.S.C. 10801 through 10851
8 must have as its primary goals:

9 (a) the protection and advocacy of the rights of mentally ill individuals who are defined in 42 U.S.C.
10 10802 as individuals with a significant mental illness or emotional impairment; and

11 (b) the investigation of incidents of abuse and neglect, as defined in 42 U.S.C. 10802, of mentally
12 ill individuals.

13 (2) Pursuant to 42 U.S.C. 10801 and 10802, the protection and advocacy system may:

14 (a) investigate incidents of abuse and neglect of mentally ill individuals;

15 (b) pursue administrative, legal, and other appropriate remedies to ensure the protection of
16 mentally ill individuals who are residents of the state and are receiving care or treatment in the state;

17 (c) have access to all mentally ill individuals and all facilities, wards, and living quarters as
18 necessary to fulfill the goals described in subsection (1); and

19 (d) pursuant to 42 U.S.C. 10801 through 10851 and Title 50, chapter 16, part 5, have access to
20 records, including:

21 (i) reports prepared by the staff of a mental health care and treatment facility;

22 (ii) reports prepared by an agency investigating reports of abuse, neglect, and injury occurring at a
23 facility and that describe the incidents and the steps taken to investigate the reports; ~~and~~

24 (iii) reports provided by the director of the department pursuant to 53-21-107(9); and

25 ~~(iii)~~(iv) discharge planning records.

26 (3) All information obtained under this section must be kept confidential pursuant to 42 U.S.C.
27 10806.

28 (4) The protection and advocacy system described in this section is independent of any public or

1 private agency that provides treatment or services to the mentally ill."

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3 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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