

1 Senate BILL NO. 427
 2 INTRODUCED BY Lensrud

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING CONFIDENTIAL
 5 HEALTH INFORMATION AND PROVIDING FOR THE DISCLOSURE OF
 6 INFORMATION IN CERTAIN INSTANCES."

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Purpose. The purpose of this act is to
 10 establish safeguards for maintaining the integrity of
 11 confidential health care information.

12 Section 2. Definitions. As used in this act, the
 13 following definitions apply:

14 (1) "Health care provider" means a person,
 15 corporation, facility, or institution licensed by the state
 16 to provide or otherwise lawfully providing health care
 17 services.

18 (2) "Health care services" means diagnosis, treatment,
 19 medical evaluation, advice, or other activities permitted
 20 under the health care licensing statutes of this state.

21 (3) "Confidential health care information" means
 22 information relating to a person's health care history,
 23 diagnosis, condition, treatment, or evaluation.

24 (4) "Peer review committee" means a committee of a
 25 state or local professional medical society or of a medical

1 staff of a licensed hospital or other health care facility,
 2 which medical staff operates pursuant to written bylaws
 3 approved by the governing board of the hospital or other
 4 health care facility or approved by an organization of
 5 health care providers, formed pursuant to state or federal
 6 law and authorized by law to evaluate health care services.

7 (5) "Third party" means a person or entity other than
 8 the person to whom the confidential health care information
 9 relates and other than a health care provider.

10 (6) "Qualified personnel" means persons whose training
 11 and experience are appropriate to the nature and level of
 12 work in which they are engaged and who, when working as part
 13 of an organization, are performing such work with published
 14 and adequate administrative safeguards against unauthorized
 15 disclosures.

16 (7) "Administration" includes but is not limited to
 17 accreditation, reimbursement, liability risk management, or
 18 appraisal. It also includes defense or prosecution of legal
 19 actions.

20 Section 3. Confidential health care information. (1)
 21 Except as provided in subsection (2) or as otherwise
 22 specifically provided by law or the Montana rules of civil
 23 procedure, a person's confidential health care information
 24 may not be released or transferred without the written
 25 consent of the individual or his authorized representative.

1 (2) No consent is required for release or transfer of
2 confidential health care information;

3 (a) to a physician, dentist, or other medical
4 personnel for diagnosis or treatment of such individual in a
5 medical or dental emergency;

6 (b) to peer review committees if the information
7 concerns matters within the scope of the licensed
8 professional practice of the committee members;

9 (c) to qualified personnel for the purpose of
10 conducting scientific research, management audits, financial
11 audits, program evaluations, or similar studies, but such
12 personnel may not identify, directly or indirectly, an
13 individual patient in any report of research, audit, or
14 evaluation or otherwise disclose patient identities in any
15 manner;

16 (d) by a health care provider as reasonably necessary
17 in the provision of health care services to a person or in
18 the administration of the office, practice, or operation of
19 a health care provider;

20 (e) by an employer as reasonably necessary in the
21 administration of a group insurance or workers' compensation
22 plan; or

23 (f) upon the filing of a claim which involves two or
24 more third party insurers and requires a determination as to
25 their relative rights and obligations concerning the

1 person's entitlement or the amount or kind of insurance
2 benefits whenever the person's insurance coverage provides
3 for obligations by more than one insurer with respect to a
4 claim or benefits.

5 (3) The release or transfer of confidential medical
6 information under subsection (2) may not be the basis for
7 any legal liability, civil or criminal and is not a
8 violation of this act.

9 (4) Third parties receiving and retaining an
10 individual's confidential health care information shall
11 establish at least the following security procedures:

12 (a) limitation of authorized access to personally
13 identifiable confidential health care information to persons
14 having a bona fide need for access to such information.
15 Additional employees or agents may have access to such
16 information which does not contain information from which an
17 individual can be identified;

18 (b) designation of an individual or individuals to
19 have responsibility for maintaining security procedures for
20 confidential health care information;

21 (c) provision of a written statement to each employee
22 or agent as to the necessity of maintaining the security of
23 confidential health care information and of the penalties
24 provided for in this act for the unauthorized release, use,
25 or disclosures of such information. Receipt of the statement

1 shall be acknowledged by signature of the employee or agent
 2 on the statement. The principal shall furnish his employee
 3 or agent with a copy of the signed statement and shall
 4 retain the original thereof.

5 (d) provide that no disciplinary or punitive action
 6 may be taken against any employee or agent who brings
 7 evidence of violation of this act to the attention of any
 8 person or entity.

9 Section 4. Conditions of transfer -- right to request
 10 modification. (1) A third party may transfer all of a
 11 person's confidential health care information in its
 12 possession to a physician designated in a written request
 13 signed by the person, his authorized representative, or, if
 14 deceased, by his heirs, devisees, or the personal
 15 representative of his estate, whenever a third party does an
 16 action which is based in whole or in part on such person's
 17 confidential health care information and which adversely
 18 affects him.

19 (2) The action referred to in subsection (1) may
 20 include but is not limited to one or more of the following:

21 (a) denial of an application for an insurance policy;
 22 (b) issuance of an insurance policy with other than
 23 standard and uniform restrictions;

24 (c) rejection in whole or in part of any claim for
 25 insurance benefits;

1 (d) denial of an employment application or termination
 2 of employment when such denial or termination is for health
 3 reasons.

4 (3) Prior to making a transfer, a third party may
 5 require payment of its actual expenses incurred in the
 6 retrieval, duplication, and forwarding of such information.

7 (4) A physician receiving confidential health care
 8 information pursuant to subsection (1) may review and
 9 interpret the information. He may thereafter disclose to the
 10 person at whose request the information was transferred so
 11 much of the information the disclosure of which he, in his
 12 professional judgment, finds to be in the best interests of
 13 the person to whom the information relates.

14 (5) After reviewing confidential health care
 15 information received pursuant to this section, a person or
 16 his authorized representative may request the third party to
 17 amend or expunge any part he believes is in error or request
 18 the addition of any recent relevant information. Upon
 19 receiving such a request, the third party shall notify the
 20 health care provider who initially forwarded the information
 21 to the third party. If the health care provider concurs with
 22 such request, the third party shall modify the information
 23 in accordance with the request. The modification may be
 24 required by court order on an action brought by the
 25 requestor.

1 (6) A person after requesting and reviewing his
 2 confidential health care information has the right to place
 3 into the file containing the information a statement of
 4 reasonable length of his view regarding the correctness or
 5 relevance of existing information or regarding the addition
 6 of new information. The statement or a copy thereof shall
 7 at all times accompany that part of the information to which
 8 it relates.

9 Section 5. Privileged information -- exemption from
 10 compulsory legal process. (1) Except as provided in
 11 subsection (2), confidential health care information is not
 12 subject to compulsory legal process in any type of
 13 proceeding, including any pretrial or other preliminary
 14 proceedings and a person or his authorized representative
 15 may refuse to disclose and may prevent a witness from
 16 disclosing his confidential health care information in any
 17 proceeding.

18 (2) The exemption or privilege provided in subsection
 19 (1) does not apply:

20 (a) when compulsory process is otherwise authorized by
 21 law;

22 (b) when the individual's physical or mental condition
 23 is relevant regarding the execution or witnessing of a will
 24 or other document;

25 (c) when the physical or mental condition of an

1 individual is introduced by a party claiming or defending as
 2 a successor or beneficiary of the individual;

3 (d) when an individual makes communications to a
 4 psychiatrist in the course of a court ordered psychiatric
 5 examination after having been informed that the
 6 communications would not be privileged. However, the
 7 communications are admissible only as to issues involving
 8 the individual's mental condition.

9 (e) in any action by an individual pursuant [to
 10 section 8].

11 Section 6. Discovery and testimony limited. (1) Except
 12 as otherwise provided in this section, the proceedings and
 13 records of peer review committees are not subject to
 14 discovery or introduction into evidence. No person who was
 15 in attendance at a meeting of the committee is permitted or
 16 required to testify about matters presented during the
 17 proceedings of the committee or about the findings,
 18 recommendations, evaluations, opinions, or other actions of
 19 the committee or members thereof.

20 (2) Confidential health care information otherwise
 21 discoverable or admissible from original sources is not
 22 immune from discovery or use in a proceeding merely because
 23 the information was presented during proceedings before the
 24 committee. Further, a member of the committee or other
 25 person appearing before it may not be prevented from

1 testifying, consistent with other provisions of this act, as
 2 to his knowledge gained from sources other than committee
 3 proceedings, but he may not be questioned about his
 4 testimony, about any proceedings before the committee or
 5 about opinions formed by him as a result of committee
 6 proceedings.

7 (3) The provisions of subsection (1) limiting
 8 discovery or testimony do not apply in any legal action
 9 brought by a peer review committee to restrict or revoke a
 10 physician's or dentist's hospital staff privileges or to
 11 cases where a member of the peer review committee or the
 12 legal entity which formed the committee or within which the
 13 committee operates is sued for actions taken by the
 14 committee. However, personally identifiable portions of a
 15 person's confidential health care information may not be
 16 used in any legal action without written consent of the
 17 person or his authorized representative, except upon court
 18 order.

19 Section 7. No limitation on licensing board. This act
 20 does not limit the authority, otherwise provided by law, of
 21 a licensing or disciplinary board of this state to require a
 22 peer review committee to report to it concerning any
 23 disciplinary actions or recommendations of the committee or
 24 to transfer to it records of the committee's proceedings or
 25 actions, including confidential information. This act does

1 not limit the authority of such board to restrict or revoke
 2 a license to practice. However, personally identifiable
 3 portions of a person's confidential health care information
 4 may not be used in any legal action without the written
 5 consent of the person or his authorized representative,
 6 except upon court order.

7 Section 8. Penalties. (1) A person who violates this
 8 act may be held liable for special and general damages
 9 caused by the violation. Punitive damages may also be
 10 awarded.

11 (2) A person who knowingly violates this act is guilty
 12 of a misdemeanor.

13 (3) A person who obtains confidential health care
 14 information by any criminal means is subject to the
 15 liabilities and penalties provided in subsections (1) and
 16 (2) in addition to other penalties imposed by law for the
 17 use of such means.

18 Section 9. Attorney's fees and costs. Attorney's fees
 19 and reasonable costs may be awarded at the discretion of the
 20 court to the successful party in any action brought under
 21 this act.

22 Section 10. No waiver of act. An agreement purporting
 23 to waive the provisions of this act is invalid.

24 Section 11. Severability. If a part of this act is
 25 invalid, all valid parts that are severable from the invalid

LC 1346/01

1 part remain in effect. If a part of this act is invalid in
2 one or more of its applications, the part remains in effect
3 in all valid applications that are severable from the
4 invalid applications.

-End-