

CHAPTER NO. 578,

HOUSE BILL NO. 803

INTRODUCED BY ANDERSON, GESEK, PAVLOVICH, FEDA,
HAYNE, ROTH, JENSEN, NATHE

IN THE HOUSE

February 14, 1979	Introduced and referred to Committee on Judiciary.
February 20, 1979	Committee recommend bill do pass. Report adopted.
February 21, 1979	Second reading, do pass as amended.
February 22, 1979	Correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Judiciary.
March 21, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1979	Second reading, concurred in as amended.
March 27, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 28, 1979	Returned from second house. Concurred in as amended.
March 31, 1979	Second reading, amendments adopted.
April 2, 1979	Third reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

1 ~~HOUSE~~ BILL NO. 803
 2 INTRODUCED BY ~~ANALYST~~ *GOSK* *Richard*
 3 *Hayne* *Roth* *NATHAN*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE CONFIDENTIAL
 5 HEALTH CARE INFORMATION; PROVIDING FOR DISCLOSURE OF THE
 6 INFORMATION IN CERTAIN CASES; AND PROVIDING PENALTIES FOR
 7 VIOLATION."

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

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

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

15 (1) "Health care provider" means a person,
 16 corporation, facility, or institution licensed by this state
 17 to provide health care 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 health care history, diagnosis,
 23 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 that is operated pursuant to written bylaws approved by the
 3 governing board of the hospital or other health care
 4 facility or approved by an organization of health care
 5 providers and formed pursuant to state or federal law and
 6 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 person" means a person whose training
 11 and experience is appropriate to the nature and level of
 12 work in which he is engaged and who, when working as part of
 13 an organization, is performing the work with published and
 14 adequate administrative safeguards against unauthorized
 15 disclosures.

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

19 Section 3. Confidential health care information. (1)
 20 Except as provided in subsection (2) or as otherwise
 21 specifically provided by law or the Montana Rules of Civil
 22 Procedure, confidential health care information relating to
 23 a person may not be released or transferred without the
 24 written consent of the person or his authorized
 25 representative.

1 (2) Consent is not required for release or transfer of
2 confidential health care information:

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

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

9 (c) to qualified persons for the purpose of conducting
10 scientific research, management audits, financial audits,
11 program evaluations, or similar studies. However, qualified
12 persons may not directly or indirectly identify an
13 individual patient in a research report, audit, or
14 evaluation or disclose a patient's identity in any manner.

15 (d) by a health care provider:

16 (i) as may be reasonably necessary to provide health
17 care services; or

18 (ii) in the administration of the office, practice, or
19 operation;

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

23 (f) when a person's insurance coverage obligates more
24 than one insurer with respect to a claim or benefit.

25 Section 4. Conditions of transfer -- right to request

1 modification. (1) A third party who has performed an adverse
2 action defined in subsection (2) may transfer confidential
3 health care information to a designated physician when the
4 third party receives a written request signed by the
5 affected person or his authorized representative.

6 (2) The adverse action referred to in subsection (1)
7 may include but is not limited to:

8 (a) denial of an application for an insurance policy;

9 (b) issuance of an insurance policy with other than
10 standard and uniform restrictions;

11 (c) rejection in whole or in part of any claim for
12 insurance benefits;

13 (d) denial of an employment application or termination
14 of employment when such denial or termination is for health
15 reasons.

16 (3) Prior to making a transfer, a third party may
17 require payment of actual expenses incurred in the
18 retrieval, duplication, and forwarding of such information.

19 (4) A physician receiving confidential health care
20 information pursuant to subsection (1) may review and
21 interpret the information. Thereafter, the physician may, in
22 his discretion, disclose to the affected person as much of
23 the transferred information as he believes is in the best
24 interest of the affected person to know.

25 (5) After reviewing confidential health care

1 information received pursuant to subsection (4), an affected
 2 person or his authorized representative may request a third
 3 party to amend or expunge any part of the information that
 4 he believes is in error or request the addition of relevant
 5 information. Upon receiving such a request, the third party
 6 shall notify the health care provider who initially
 7 forwarded the information to the third party. If the health
 8 care provider concurs with the modification requested by the
 9 affected person, the third party shall modify the
 10 information in accordance with the request.

11 (6) Modification of confidential health care
 12 information may be required by court order upon action
 13 brought by the requestor.

14 (7) After reviewing confidential health care
 15 information received pursuant to subsection (4), a person
 16 has the right to place into the confidential file a personal
 17 statement of reasonable length regarding the correctness or
 18 relevance of existing information or regarding the addition
 19 of new information. The statement or a copy thereof shall
 20 at all times accompany that part of the information to which
 21 it relates.

22 Section 5. Privileged information -- exemption from
 23 compulsory legal process. (1) Except as provided in
 24 subsection (2), confidential health care information is not
 25 subject to compulsory legal process in any type of

1 proceeding, including any pretrial or other preliminary
 2 proceedings, and a person or his authorized representative
 3 may refuse to disclose and may prevent a witness from
 4 disclosing confidential health care information in any
 5 proceeding.

6 (2) The exemption or privilege provided in subsection
 7 (1) does not apply:

8 (a) when compulsory process is otherwise authorized by
 9 law;

10 (b) when the individual's physical or mental condition
 11 is relevant regarding the execution or witnessing of a will
 12 or other document;

13 (c) when the physical or mental condition of an
 14 individual is introduced by a party claiming or defending as
 15 a successor or beneficiary of the individual;

16 (d) when an individual makes communications to a
 17 psychiatrist in the course of a court-ordered psychiatric
 18 examination after having been informed that the
 19 communications are admissible only as to issues involving
 20 the individual's mental condition;

21 (e) to an action pursuant to [section 7].

22 Section 6. No limitation on licensing board. [This
 23 act] does not limit the authority, otherwise provided by
 24 law, of a licensing or disciplinary board of this state to
 25 require a peer review committee to report to it concerning

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1 any disciplinary actions or recommendations of the committee
 2 or to transfer to it records of the committee's proceedings
 3 or actions, including confidential information. [This act]
 4 does not limit the authority of such board to restrict or
 5 revoke a license to practice. However, personally
 6 identifiable portions of a person's confidential health care
 7 information may not be used in any legal action without the
 8 written consent of the person or his authorized
 9 representative, except upon court order.

10 Section 7. Remedies — civil and criminal —
 11 exceptions. (1) A person who knowingly violates [this act]
 12 is guilty of a misdemeanor.

13 (2) A person who violates [this act] may be held
 14 liable for compensatory damages caused by the violation.
 15 Punitive damages may also be awarded.

16 (3) A person who obtains confidential health care
 17 information by criminal means is subject to the liabilities
 18 and penalties provided in subsections (1) and (2) in
 19 addition to any other penalty imposed by law for such
 20 criminal actions.

21 (4) The release or transfer of confidential medical
 22 information pursuant to [subsection (2) of section 3] may
 23 not be the basis for a civil or criminal liability and is
 24 not a violation of [this act].

25 (5) No disciplinary or punitive action may be taken

1 against an employee or agent who brings evidence of
 2 violation of [this act] to the attention of a person or
 3 entity.

4 Section 8. Attorney's fees and costs. Attorney's fees
 5 and reasonable costs may be awarded at the discretion of a
 6 court to a successful party in any action brought under the
 7 provisions of [this act].

8 Section 9. No waiver of act. An agreement purporting
 9 to waive the provisions of [this act] is invalid.

10 Section 10. Exemptions. (1) [This act] does not apply
 11 to the press.

12 (2) [This act] may not be construed to limit the
 13 reporting obligations provided by Title 37, chapter 3, part
 14 4, or any other statute which requires information to be
 15 reported to a government agency.

-End-

HOUSE BILL NO. 803

INTRODUCED BY ANDERSON, GESEK, PAVLOVICH, FEDA,

HAYNE, ROTH, JENSEN, NATHE

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE CONFIDENTIAL HEALTH CARE INFORMATION; PROVIDING FOR DISCLOSURE OF THE INFORMATION IN CERTAIN CASES; AND PROVIDING PENALTIES FOR VIOLATION."

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

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

Section 2. Definitions. As used in [this act], the following definitions apply:

(1) "Health care provider" means a person, corporation, facility, or institution licensed by this state to provide health care services.

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

(3) "Confidential health care information" means information OBTAINED BY A HEALTH CARE PROVIDER relating to health care history, diagnosis, condition, treatment, or evaluation.

(4) "Peer review committee" means a committee of a state or local professional medical society or of a medical staff of a licensed hospital or other health care facility that is operated pursuant to written bylaws approved by the governing board of the hospital or other health care facility or approved by an organization of health care providers and formed pursuant to state or federal law and authorized by law to evaluate health care services.

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

(6) "Qualified person" means a person whose training and experience is appropriate to the nature and level of work in which he is engaged and who, when working as part of an organization, is performing the work with published and adequate administrative safeguards against unauthorized disclosures.

(7) "Administration" includes but is not limited to accreditation, reimbursement, liability risk management, appraisal, and defense or prosecution of legal actions.

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1 written consent of the person or his authorized
2 representative.

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4 confidential health care information:

5 (a) to a physician, dentist, or other medical person
6 for diagnosis or treatment of an individual in a medical or
7 dental emergency;

8 (b) to a peer review committee if the information
9 concerns matters within the scope of the licensed
10 professional practice of the committee members;

11 (c) to qualified persons for the purpose of conducting
12 scientific research, management audits, financial audits,
13 program evaluations, or similar studies. However, qualified
14 persons may not directly or indirectly identify an
15 individual patient in a research report, audit, or
16 evaluation or disclose a patient's identity in any manner.

17 (d) by a health care provider:

18 (i) as may be reasonably necessary to provide health
19 care services; or

20 (ii) in the administration of the office, practice, or
21 operation;

22 (e) by an employer as may be reasonably necessary in
23 the administration of a group insurance plan or workers'
24 compensation plan;

25 (f) when a person's insurance coverage obligates more

1 than one insurer with respect to a claim or benefit.

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3 modification. (1) A third party who has performed an adverse
4 action defined in subsection (2) may transfer confidential
5 health care information to a designated physician when the
6 third party receives a written request signed by the
7 affected person or his authorized representative.

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9 may include but is not limited to:

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12 standard and uniform restrictions;

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14 insurance benefits;

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16 of employment when such denial or termination is for health
17 reasons.

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24 his discretion, disclose to the affected person as much of
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1 interest of the affected person to know.

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23 it relates.

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14 or other document;

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19 psychiatrist in the course of a court-ordered psychiatric
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22 the individual's mental condition;

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 16 ~~liable for compensatory damages caused by the violation.~~
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 9 ~~provisions of [this act].~~

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 11 ~~to waive the provisions of [this act] is invalid.~~

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 16 ~~4, or any other statute which requires information to be~~
 17 ~~reported to a government agency.~~

18 SECTION 7. THERE IS A NEW MCA SECTION THAT READS:
 19 No disciplinary or punitive action. No disciplinary or
 20 punitive action may be taken against an employee or agent
 21 who brings evidence of violation of [this act] to the
 22 attention of a person or entity.

23 SECTION 8. THERE IS A NEW MCA SECTION THAT READS:
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 25 be construed to limit the reporting obligations provided by

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11 (c) to qualified persons for the purpose of conducting
12 scientific research, management audits, financial audits,
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19 care services IQ THE INDIVIDUAL ABOUT WHOM THE INFORMATION
20 RELATES; or

21 (ii) in the administration of the office, practice, or
22 operation IN CONNECTION WITH THE PROVIDING OF HEALTH CARE
23 SERVICES TO THE INDIVIDUAL ABOUT WHOM THE INFORMATION
24 RELATES;

25 (e) by IQ an employer as may be reasonably necessary

1 in the administration of a group insurance plan or IQ A
2 workers' compensation plan INSURER, THE DIVISION OF WORKERS'
3 COMPENSATION, OR THE WORKERS' COMPENSATION JUDGE, AS IS
4 NECESSARY IN THE ADMINISTRATION OF TITLE 39, CHAPTERS 71 AND
5 72;

6 (f) when a person's insurance coverage obligates more
7 than one insurer with respect to a claim or benefit;

8 IGI TO A STATE INSURANCE DEPARTMENT FOR THE PURPOSE OF
9 REVIEWING AN INSURANCE CLAIM OR COMPLAINT MADE TO SUCH
10 DEPARTMENT BY AN INSURED OR HIS AUTHORIZED REPRESENTATIVE OR
11 BY A BENEFICIARY OR HIS AUTHORIZED REPRESENTATIVE OF A
12 DECEASED INSURED.

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17 third party receives a written request signed by the
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20 may include but is not limited to:

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23 standard and uniform restrictions;

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25 insurance benefits;

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 2 of employment when such denial or termination is for health
 3 reasons.

4 (3) Prior to making a transfer, a third party may
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 17 disclosing confidential health care information in any
 18 proceeding.

19 (2) The exemption or privilege provided in subsection
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 22 ~~law~~

23 (b) ~~(1)~~ when the individual's physical or mental
 24 condition is relevant regarding the execution or witnessing
 25 of a will or other document;

1 ~~(c)(B)~~ when the physical or mental condition of an
2 individual is introduced by a party claiming or defending as
3 a successor or beneficiary of the individual;

4 ~~(d)(C)~~ when an individual makes communications to a
5 psychiatrist in the course of a court-ordered psychiatric
6 examination after having been informed that the
7 communications are admissible only as to issues involving
8 the individual's mental condition;

9 ~~(e)(D)~~ to an action pursuant to ~~[section 7]~~ **WHEN**
10 **REQUIRED BY RULE 35, MAR. CIV. P., OR OTHERWISE ORDERED BY A**
11 **COURT.**

12 Section 6. No limitation on licensing board. [This
13 act] does not limit the authority, otherwise provided by
14 law, of a licensing or disciplinary board of this state to
15 require a peer review committee to report to it concerning
16 any disciplinary actions or recommendations of the committee
17 or to transfer to it records of the committee's proceedings
18 or actions, including confidential information. [This act]
19 does not limit the authority of such board to restrict or
20 revoke a license to practice. However, personally
21 identifiable portions of a person's confidential health care
22 information may not be used in any legal action without the
23 written consent of the person or his authorized
24 representative, except upon court order.

25 Section 7. Remedies-----civil-----and-----criminal-----

1 exceptions--(1)--A person who knowingly violates [this act]
2 is guilty of a misdemeanor.

3 (2)--A person who violates [this act] may be held
4 liable for compensatory damages caused by the violation.
5 Punitive damages may also be awarded.

6 (3)--A person who obtains confidential health care
7 information by criminal means is subject to the liabilities
8 and penalties provided in subsections (1) and (2) in
9 addition to any other penalty imposed by law for such
10 criminal actions.

11 (4)--The release or transfer of confidential medical
12 information pursuant to [subsection (2) of section 3] may
13 not be the basis for a civil or criminal liability and is
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20 and reasonable costs may be awarded at the discretion of a
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22 provisions of [this act].

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24 to waive the provisions of [this act] is invalid.

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1 to-the-press

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4 ~~4, or any other statute which requires information to be~~
5 ~~reported to a government agency.~~

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8 punitive action may be taken against an employee or agent
9 who brings evidence of violation of [this act] to the
10 attention of a person or entity.

11 SECTION 8. THERE IS A NEW MCA SECTION THAT READS:

12 Reporting obligations not limited. [This act] may not
13 be construed to limit the reporting obligations provided by
14 Title 37, chapter 3, part 4, or any other statute which
15 requires information to be reported to a government agency.

-End-

March 21, 1979

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 803, third reading bill, be amended as follows:

1. Page 3, line 17.

Following: "(d)"

Strike: "by"

Insert: "to"

2. Page 3, line 22.

Following: "(e)"

Strike: "by"

Insert: "to"

3. Page 3, line 23.

Following: "or"

Insert: "to a"

4. Page 3, line 24.

Following: "compensation"

Strike: "plan"

Insert: "insurer, the division of workers' compensation, or
the workers' compensation judge, as is necessary in the
administration of Title 39, chapters 71 and 72"

5. Page 6, lines 10 and 11.

Strike: subsection (a) in its entirety

Renumber: subsequent subsections

6. Page 6, line 23.

Following: "(e)"

Strike: "to an action pursuant to [section 7]"

Insert: "when required by Rule 35, M.R.Civ.P., or otherwise
ordered by a court"

March 23, 1979

SENATE COMMITTEE OF THE WHOLE

That House Bill No. 803, third reading bill, be amended as follows:

1. Page 3, line 19.

Following: "services"

Insert: "to the individual about whom the information relates"

2. Page 3, line 21.

Following: "operation"

Insert: "in connection with the providing of health care services to the individual about whom the information relates"

3. Page 4.

Following: line 1

Insert: "(d) to a State Insurance Department for the purpose of reviewing an insurance claim or complaint made to such department by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured."