



IN THE HOUSE

MARCH 25, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

MARCH 26, 1987

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 8, 1987

ON MOTION, CONFERENCE COMMITTEE  
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 9, 1987

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 15, 1987

FREE CONFERENCE COMMITTEE REPORTED.

APRIL 16, 1987

ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.

IN THE SENATE

APRIL 17, 1987

FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 20, 1987

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

APRIL 21, 1987

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

SENT TO ENROLLING.

1 INTRODUCED BY House BILL NO. 752  
2 Winters

3  
4 A BILL FOR AN ACT ENTITLED: "THE UNIFORM HEALTH CARE  
5 INFORMATION ACT; AMENDING SECTIONS 50-5-106, 50-15-704, AND  
6 53-24-306, MCA; AND REPEALING SECTIONS 50-16-301 THROUGH  
7 50-16-305 AND 50-16-311 THROUGH 50-16-314, MCA."

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

10 NEW SECTION. Section 1. Short title. [Sections 1  
11 through 25] may be cited as the "Uniform Health Care  
12 Information Act".

13 NEW SECTION. Section 2. Legislative findings. The  
14 legislature finds that:

15 (1) health care information is personal and sensitive  
16 information that if improperly used or released may do  
17 significant harm to a patient's interests in privacy and  
18 health care or other interests;

19 (2) patients need access to their own health care  
20 information as a matter of fairness, to enable them to make  
21 informed decisions about their health care and to correct  
22 inaccurate or incomplete information about themselves;

23 (3) in order to retain the full trust and confidence  
24 of patients, health care providers have an interest in  
25 assuring that health care information is not improperly

1 disclosed and in having clear and certain rules for the  
2 disclosure of health care information;

3 (4) persons other than health care providers obtain,  
4 use, and disclose health record information in many  
5 different contexts and for many different purposes. It is  
6 the public policy of this state that a patient's interest in  
7 the proper use and disclosure of his health care information  
8 survives even when the information is held by persons other  
9 than health care providers.

10 (5) the movement of patients and their health care  
11 information across state lines, access to and exchange of  
12 health care information from automated data banks, and the  
13 emergence of multistate health care providers creates a  
14 compelling need for uniform law, rules, and procedures  
15 governing the use and disclosure of health care information.

16 NEW SECTION. Section 3. Uniformity of application and  
17 construction. [Sections 1 through 25] must be applied and  
18 construed to effectuate their general purpose to make  
19 uniform the laws with respect to the treatment of health  
20 care information among states enacting them.

21 NEW SECTION. Section 4. Definitions. As used in  
22 [sections 1 through 25], unless the context indicates  
23 otherwise, the following definitions apply:

24 (1) "Audit" means an assessment, evaluation,  
25 determination, or investigation of a health care provider by

1 a person not employed by or affiliated with the provider, to  
2 determine compliance with:

3 (a) statutory, regulatory, fiscal, medical, or  
4 scientific standards;

5 (b) a private or public program of payments to a  
6 health care provider; or

7 (c) requirements for licensing, accreditation, or  
8 certification.

9 (2) "Directory information" means information  
10 disclosing the presence and the general health condition of  
11 a patient who is an inpatient in a health care facility or  
12 who is receiving emergency health care in a health care  
13 facility.

14 (3) "General health condition" means the patient's  
15 health status described in terms of critical, poor, fair,  
16 good, excellent, or terms denoting similar conditions.

17 (4) "Health care" means any care, service, or  
18 procedure provided by a health care provider:

19 (a) to diagnose, treat, or maintain a patient's  
20 physical or mental condition; or

21 (b) that affects the structure or any function of the  
22 human body.

23 (5) "Health care facility" means a hospital, clinic,  
24 nursing home, laboratory, office, or similar place where a  
25 health care provider provides health care to patients.

1 (6) "Health care information" means any information,  
2 whether oral or recorded in any form or medium, that  
3 identifies or can readily be associated with the identity of  
4 a patient and relates to the patient's health care. The term  
5 includes any record of disclosures of health care  
6 information.

7 (7) "Health care provider" means a person who is  
8 licensed, certified, or otherwise authorized by the laws of  
9 this state to provide health care in the ordinary course of  
10 business or practice of a profession. The term does not  
11 include a person who provides health care solely through the  
12 sale or dispensing of drugs or medical devices.

13 (8) "Institutional review board" means a board,  
14 committee, or other group formally designated by an  
15 institution or authorized under federal or state law to  
16 review, approve the initiation of, or conduct periodic  
17 review of research programs to assure the protection of the  
18 rights and welfare of human research subjects.

19 (9) "Maintain", as related to health care information,  
20 means to hold, possess, preserve, retain, store, or control  
21 that information.

22 (10) "Patient" means an individual who receives or has  
23 received health care. The term includes a deceased  
24 individual who has received health care.

25 (11) "Person" means an individual, corporation,

1 business trust, estate, trust, partnership, association,  
2 joint venture, government, governmental subdivision or  
3 agency, or other legal or commercial entity.

4 NEW SECTION. Section 5. Disclosure by health care  
5 provider. (1) Except as authorized in [sections 9 and 10] or  
6 as otherwise specifically provided by law or the Montana  
7 Rules of Civil Procedure, a health care provider, an  
8 individual who assists a health care provider in the  
9 delivery of health care, or an agent or employee of a health  
10 care provider may not disclose health care information about  
11 a patient to any other person without the patient's written  
12 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  
15 conjunction with a patient's recorded health care  
16 information, a record of each person who has received or  
17 examined, in whole or in part, the recorded health care  
18 information during the preceding 3 years, except for a  
19 person who has examined the recorded health care information  
20 under [section 9(1) or (2)]. The record of disclosure must  
21 include the name, address, and institutional affiliation, if  
22 any, of each person receiving or examining the recorded  
23 health care information, the date of the receipt or  
24 examination, and to the extent practicable a description of  
25 the information disclosed.

1 NEW SECTION. Section 6. Patient authorization to  
2 health care provider for disclosure. (1) A patient may  
3 authorize a health care provider to disclose the patient's  
4 health care information. A health care provider shall honor  
5 an authorization and, if requested, provide a copy of the  
6 recorded health care information unless the health care  
7 provider denies the patient access to health care  
8 information under [section 14].

9 (2) A health care provider may charge a reasonable  
10 fee, not to exceed his actual cost for providing the health  
11 care information, and is not required to honor an  
12 authorization until the fee is paid.

13 (3) To be valid, a disclosure authorization to a  
14 health care provider must:

- 15 (a) be in writing, dated, and signed by the patient;
- 16 (b) identify the nature of the information to be  
17 disclosed; and
- 18 (c) identify the person to whom the information is to  
19 be disclosed.

20 (4) Except as provided by [sections 1 through 25], the  
21 signing of an authorization by a patient is not a waiver of  
22 any rights a patient has under other statutes, the Montana  
23 Rules of Evidence, or common law.

24 NEW SECTION. Section 7. Patient authorization --  
25 retention -- effective period. (1) A health care provider

1 shall retain each authorization or revocation in conjunction  
2 with any health care information from which disclosures are  
3 made.

4 (2) Except for authorizations to provide information  
5 to third-party health care payors, an authorization may not  
6 permit the release of health care information relating to  
7 health care that the patient receives more than 6 months  
8 after the authorization was signed.

9 (3) An authorization in effect on [the effective date  
10 of sections 1 through 25] remains valid for 30 months after  
11 [the effective date of sections 1 through 25] unless an  
12 earlier date is specified or it is revoked under [section  
13 8]. Health care information disclosed under such an  
14 authorization is otherwise subject to [sections 1 through  
15 25]. An authorization written after [the effective date of  
16 sections 1 through 25] becomes invalid after the expiration  
17 date contained in the authorization, which may not exceed 30  
18 months. If the authorization does not contain an expiration  
19 date, it expires 6 months after it is signed.

20 NEW SECTION. Section 8. Patient's revocation of  
21 authorization for disclosure. A patient may revoke a  
22 disclosure authorization to a health care provider at any  
23 time unless disclosure is required to effectuate payments  
24 for health care that has been provided or other substantial  
25 action has been taken in reliance on the authorization. A

1 patient may not maintain an action against the health care  
2 provider for disclosures made in good-faith reliance on an  
3 authorization if the health care provider had no notice of  
4 the revocation of the authorization.

5 NEW SECTION. Section 9. Disclosure without patient's  
6 authorization based on need to know. A health care provider  
7 may disclose health care information about a patient without  
8 the patient's authorization, to the extent a recipient needs  
9 to know the information, if the disclosure is:

10 (1) to a person who is providing health care to the  
11 patient;

12 (2) to any other person who requires health care  
13 information for health care education; to provide planning,  
14 quality assurance, peer review, or administrative, legal,  
15 financial, or actuarial services to the health care  
16 provider; or for assisting the health care provider in the  
17 delivery of health care and if the health care provider  
18 reasonably believes that the person will:

19 (a) not use or disclose the health care information  
20 for any other purpose; and

21 (b) take appropriate steps to protect the health care  
22 information;

23 (3) to any other health care provider who has  
24 previously provided health care to the patient, to the  
25 extent necessary to provide health care to the patient,

1 unless the patient has instructed the health care provider  
2 not to make the disclosure;

3 (4) to any person if the health care provider  
4 reasonably believes that disclosure will avoid or minimize  
5 an imminent danger to the health or safety of the patient or  
6 any other individual;

7 (5) to immediate family members of the patient or any  
8 other individual with whom the patient is known to have a  
9 close personal relationship, if made in accordance with the  
10 laws of the state and good medical or other professional  
11 practice, unless the patient has instructed the health care  
12 provider not to make the disclosure;

13 (6) to a health care provider who is the successor in  
14 interest to the health care provider maintaining the health  
15 care information;

16 (7) for use in a research project that an  
17 institutional review board has determined:

18 (a) is of sufficient importance to outweigh the  
19 intrusion into the privacy of the patient that would result  
20 from the disclosure;

21 (b) is impracticable without the use or disclosure of  
22 the health care information in individually identifiable  
23 form;

24 (c) contains reasonable safeguards to protect the  
25 information from redisclosure;

1 (d) contains reasonable safeguards to protect against  
2 directly or indirectly identifying any patient in any report  
3 of the research project; and

4 (e) contains procedures to remove or destroy at the  
5 earliest opportunity, consistent with the purposes of the  
6 project, information that would enable the patient to be  
7 identified, unless an institutional review board authorizes  
8 retention of identifying information for purposes of another  
9 research project;

10 (8) to a person who obtains information for purposes  
11 of an audit, if that person agrees in writing to:

12 (a) remove or destroy, at the earliest opportunity  
13 consistent with the purpose of the audit, information that  
14 would enable the patient to be identified; and

15 (b) not disclose the information further, except to  
16 accomplish the audit or to report unlawful or improper  
17 conduct involving fraud in payment for health care by a  
18 health care provider or patient or other unlawful conduct by  
19 a health care provider; and

20 (9) to an official of a penal or other custodial  
21 institution in which the patient is detained.

22 NEW SECTION. Section 10. Disclosure without patient's  
23 authorization -- other bases. A health care provider may  
24 disclose health care information about a patient without the  
25 patient's authorization if the disclosure is:



1 (1) directory information, unless the patient has  
2 instructed the health care provider not to make the  
3 disclosure;

4 (2) to federal, state, or local public health  
5 authorities, to the extent the health care provider is  
6 required by law to report health care information or when  
7 needed to protect the public health;

8 (3) to federal, state, or local law enforcement  
9 authorities to the extent required by law; and

10 (4) pursuant to compulsory process in accordance with  
11 [sections 11 and 12].

12 NEW SECTION. Section 11. When health care information  
13 available by compulsory process. Health care information may  
14 not be disclosed by a health care provider pursuant to  
15 compulsory legal process or discovery in any judicial,  
16 legislative, or administrative proceeding unless:

17 (1) the patient has consented in writing to the  
18 release of the health care information in response to  
19 compulsory process or a discovery request;

20 (2) the patient has waived the right to claim  
21 confidentiality for the health care information sought;

22 (3) the patient is a party to the proceeding and has  
23 placed his physical or mental condition in issue;

24 (4) the patient's physical or mental condition is  
25 relevant to the execution or witnessing of a will;

1 (5) the physical or mental condition of a deceased  
2 patient is placed in issue by any person claiming or  
3 defending through or as a beneficiary of the patient;

4 (6) a patient's health care information is to be used  
5 in the patient's commitment proceeding;

6 (7) the health care information is for use in any law  
7 enforcement proceeding or investigation in which a health  
8 care provider is the subject or a party, except that health  
9 care information so obtained may not be used in any  
10 proceeding against the patient unless the matter relates to  
11 payment for his health care or unless authorized under  
12 subsection (9);

13 (8) the health care information is relevant to a  
14 proceeding brought under [sections 23 through 25]; or

15 (9) a court has determined that particular health care  
16 information is subject to compulsory legal process or  
17 discovery because the party seeking the information has  
18 demonstrated that there is a compelling state interest that  
19 outweighs the patient's privacy interest.

20 NEW SECTION. Section 12. Method of compulsory  
21 process. (1) Unless the court for good cause shown  
22 determines that the notification should be waived or  
23 modified, if health care information is sought under  
24 subsection (2), (4), or (5) of [section 11] or in a civil  
25 proceeding or investigation under subsection (9) of [section

1 11], the person seeking discovery or compulsory process  
 2 shall mail a notice by first-class mail to the patient or  
 3 the patient's attorney of record of the compulsory process  
 4 or discovery request at least 10 days before presenting the  
 5 certificate required under subsection (2) to the health care  
 6 provider.

7 (2) Service of compulsory process or discovery  
 8 requests upon a health care provider must be accompanied by  
 9 a written certification, signed by the person seeking to  
 10 obtain health care information or his authorized  
 11 representative, identifying at least one subsection of  
 12 [section 11] under which compulsory process or discovery is  
 13 being sought. The certification must also state, in the case  
 14 of information sought under subsection (2), (4), or (5) of  
 15 [section 11] or in a civil proceeding under subsection (9)  
 16 of [section 11], that the requirements of subsection (1) for  
 17 notice have been met. A person may sign the certification  
 18 only if the person reasonably believes that the subsection  
 19 of [section 11] identified in the certification provides an  
 20 appropriate basis for the use of discovery or compulsory  
 21 process. Unless otherwise ordered by the court, the health  
 22 care provider shall maintain a copy of the process and the  
 23 written certification as a permanent part of the patient's  
 24 health care information.

25 (3) Production of health care information under

1 [section 11] and this section does not in itself constitute  
 2 a waiver of any privilege, objection, or defense existing  
 3 under other law or rule of evidence or procedure.

4 NEW SECTION. Section 13. Requirements and procedures  
 5 for patient's examination and copying. (1) Upon receipt of a  
 6 written request from a patient to examine or copy all or  
 7 part of his recorded health care information, a health care  
 8 provider, as promptly as required under the circumstances  
 9 but no later than 10 days after receiving the request,  
 10 shall:

11 (a) make the information available to the patient for  
 12 examination during regular business hours and provide a  
 13 copy, if requested, to the patient;

14 (b) inform the patient if the information does not  
 15 exist or cannot be found;

16 (c) if the health care provider does not maintain a  
 17 record of the information, inform the patient and provide  
 18 the name and address, if known, of the health care provider  
 19 who maintains the record;

20 (d) if the information is in use or unusual  
 21 circumstances have delayed handling the request, inform the  
 22 patient and specify in writing the reasons for the delay and  
 23 the earliest date, not later than 21 days after receiving  
 24 the request, when the information will be available for  
 25 examination or copying or when the request will be otherwise

1 disposed of; or  
 2 (e) deny the request in whole or in part under  
 3 [section 14] and inform the patient.  
 4 (2) Upon request, the health care provider shall  
 5 provide an explanation of any code or abbreviation used in  
 6 the health care information. If a record of the particular  
 7 health care information requested is not maintained by the  
 8 health care provider in the requested form, he is not  
 9 required to create a new record or reformulate an existing  
 10 record to make the information available in the requested  
 11 form. The health care provider may charge a reasonable fee,  
 12 not to exceed the health care provider's actual cost, for  
 13 providing the health care information and is not required to  
 14 permit examination or copying until the fee is paid.  
 15 NEW SECTION. Section 14. Denial of examination and  
 16 copying. (1) A health care provider may deny access to  
 17 health care information by a patient if the health care  
 18 provider reasonably concludes that:  
 19 (a) knowledge of the health care information would be  
 20 injurious to the health of the patient;  
 21 (b) knowledge of the health care information could  
 22 reasonably be expected to lead to the patient's  
 23 identification of an individual who provided the information  
 24 in confidence and under circumstances in which  
 25 confidentiality was appropriate;

1 (c) knowledge of the health care information could  
 2 reasonably be expected to cause danger to the life or safety  
 3 of any individual;  
 4 (d) the health care information was compiled and is  
 5 used solely for litigation, quality assurance, peer review,  
 6 or administrative purposes; or  
 7 (e) access to the health care information is otherwise  
 8 prohibited by law.  
 9 (2) If a health care provider denies a request for  
 10 examination and copying under this section, the provider, to  
 11 the extent possible, shall segregate health care information  
 12 for which access has been denied under subsection (1) from  
 13 information for which access cannot be denied and permit the  
 14 patient to examine or copy the disclosable information.  
 15 (3) If a health care provider denies a patient's  
 16 request for examination and copying, in whole or in part,  
 17 under subsection (1)(a) or (1)(c), he shall permit  
 18 examination and copying of the record by another health care  
 19 provider, selected by the patient, who is licensed,  
 20 certified, or otherwise authorized under the laws of this  
 21 state to treat the patient for the same condition as the  
 22 health care provider denying the request. The health care  
 23 provider denying the request shall inform the patient of the  
 24 patient's right to select another health care provider under  
 25 this subsection.

1        NEW SECTION. Section 15. Request for correction or  
 2 amendment. (1) For purposes of accuracy or completeness, a  
 3 patient may request in writing that a health care provider  
 4 correct or amend its record of the patient's health care  
 5 information to which he has access under [section 13].

6        (2) As promptly as required under the circumstances  
 7 but no later than 10 days after receiving a request from a  
 8 patient to correct or amend its record of the patient's  
 9 health care information, the health care provider shall:

10        (a) make the requested correction or amendment and  
 11 inform the patient of the action and of the patient's right  
 12 to have the correction or amendment sent to previous  
 13 recipients of the health care information in question;

14        (b) inform the patient if the record no longer exists  
 15 or cannot be found;

16        (c) if the health care provider does not maintain the  
 17 record, inform the patient and provide him with the name and  
 18 address, if known, of the person who maintains the record;

19        (d) if the record is in use or unusual circumstances  
 20 have delayed the handling of the correction or amendment  
 21 request, inform the patient and specify in writing the  
 22 earliest date, not later than 21 days after receiving the  
 23 request, when the correction or amendment will be made or  
 24 when the request will otherwise be disposed of; or

25        (e) inform the patient in writing of the provider's

1 refusal to correct or amend the record as requested, the  
 2 reason for the refusal, and the patient's right to add a  
 3 statement of disagreement and to have that statement sent to  
 4 previous recipients of the disputed health care information.

5        NEW SECTION. Section 16. Procedure for adding  
 6 correction, amendment, or statement of disagreement. (1) In  
 7 making a correction or amendment, the health care provider  
 8 shall:

9        (a) add the amending information as a part of the  
 10 health record; and

11        (b) mark the challenged entries as corrected or  
 12 amended entries and indicate the place in the record where  
 13 the corrected or amended information is located, in a manner  
 14 practicable under the circumstances.

15        (2) If the health care provider maintaining the record  
 16 of the patient's health care information refuses to make the  
 17 patient's proposed correction or amendment, the provider  
 18 shall:

19        (a) permit the patient to file as a part of the record  
 20 of his health care information a concise statement of the  
 21 correction or amendment requested and the reasons therefor;  
 22 and

23        (b) mark the challenged entry to indicate that the  
 24 patient claims the entry is inaccurate or incomplete and  
 25 indicate the place in the record where the statement of

1 disagreement is located, in a manner practicable under the  
2 circumstances.

3 NEW SECTION. Section 17. Dissemination of corrected  
4 or amended information or statement of disagreement. (1) A  
5 health care provider, upon request of a patient, shall take  
6 reasonable steps to provide copies of corrected or amended  
7 information or of a statement of disagreement to all persons  
8 designated by the patient and identified in the health care  
9 information as having examined or received copies of the  
10 information sought to be corrected or amended.

11 (2) A health care provider may charge the patient a  
12 reasonable fee, not exceeding the provider's actual cost,  
13 for distributing corrected or amended information or the  
14 statement of disagreement, unless the provider's error  
15 necessitated the correction or amendment.

16 NEW SECTION. Section 18. Content and dissemination of  
17 notice. (1) A health care provider who provides health care  
18 at a health care facility that the provider operates and who  
19 maintains a record of a patient's health care information  
20 shall create a notice of information practices, in  
21 substantially the following form:

22 NOTICE

23 "We keep a record of the health care services we  
24 provide for you. You may ask us to see and copy that record.  
25 You may also ask us to correct that record. We will not

1 disclose your record to others unless you direct us to do so  
2 or unless the law authorizes or compels us to do so. You may  
3 see your record or get more information about it at  
4 \_\_\_\_\_."

5 (2) The health care provider shall post a copy of the  
6 notice of information practices in a conspicuous place in  
7 the health care facility and upon request provide patients  
8 or prospective patients with a copy of the notice.

9 NEW SECTION. Section 19. Health care representatives.  
10 (1) A person authorized to consent to health care for  
11 another may exercise the rights of that person under  
12 [sections 1 through 25] to the extent necessary to  
13 effectuate the terms or purposes of the grant of authority.  
14 If the patient is a minor and is authorized under 41-1-402  
15 to consent to health care without parental consent, only the  
16 minor may exclusively exercise the rights of a patient under  
17 [sections 1 through 25] as to information pertaining to  
18 health care to which the minor lawfully consented.

19 (2) A person authorized to act for a patient shall act  
20 in good faith to represent the best interests of the  
21 patient.

22 NEW SECTION. Section 20. Representative of deceased  
23 patient. A personal representative of a deceased patient may  
24 exercise all of the deceased patient's rights under  
25 [sections 1 through 25]. If there is no personal

1 representative or upon discharge of the personal  
2 representative, a deceased patient's rights under [sections  
3 1 through 25] may be exercised by persons who are authorized  
4 by law to act for him.

5 NEW SECTION. Section 21. Duty to adopt security  
6 safeguards. A health care provider shall effect reasonable  
7 safeguards for the security of all health care information  
8 it maintains.

9 NEW SECTION. Section 22. Retention of record. A  
10 health care provider shall maintain a record of existing  
11 health care information for at least 1 year following  
12 receipt of an authorization to disclose that health care  
13 information under [section 6] and during the pendency of a  
14 request for examination and copying under [section 13] or a  
15 request for correction or amendment under [section 15].

16 NEW SECTION. Section 23. Criminal penalty. (1) A  
17 person who purposely discloses health care information in  
18 violation of [sections 1 through 25] and who knew or should  
19 have known that disclosure is prohibited is guilty of a  
20 misdemeanor and upon conviction is punishable by a fine not  
21 exceeding \$10,000 or imprisonment for a period not exceeding  
22 1 year, or both.

23 (2) A person who by means of bribery, theft, or  
24 misrepresentation of identity, purpose of use, or  
25 entitlement to the information examines or obtains, in

1 violation of [sections 1 through 25], health care  
2 information maintained by a health care provider is guilty  
3 of a misdemeanor and upon conviction is punishable by a fine  
4 not exceeding \$10,000 or imprisonment for a period not  
5 exceeding 1 year, or both.

6 (3) A person who, knowing that a certification under  
7 [section 12(2)] or a disclosure authorization under  
8 [sections 6 and 7] is false, purposely presents the  
9 certification or disclosure authorization to a health care  
10 provider is guilty of a misdemeanor and upon conviction is  
11 punishable by a fine not exceeding \$10,000 or imprisonment  
12 for a period not exceeding 1 year, or both.

13 NEW SECTION. Section 24. Civil enforcement. The  
14 attorney general or appropriate county attorney may maintain  
15 a civil action to enforce [sections 1 through 25]. The court  
16 may order any relief authorized by [section 25].

17 NEW SECTION. Section 25. Civil remedies. (1) A person  
18 aggrieved by a violation of [sections 1 through 25] may  
19 maintain an action for relief as provided in this section.

20 (2) The court may order the health care provider or  
21 other person to comply with [sections 1 through 25] and may  
22 order any other appropriate relief.

23 (3) A health care provider who relies in good faith  
24 upon a certification, pursuant to [section 12(2)], is not  
25 liable for disclosures made in reliance on that

1 certification.

2 (4) In an action by a patient alleging that health  
3 care information was improperly withheld under [sections 13  
4 and 14], the burden of proof is on the health care provider  
5 to establish that the information was properly withheld.

6 (5) If the court determines that there is a violation  
7 of [sections 1 through 25], the aggrieved person is entitled  
8 to recover damages for pecuniary losses sustained as a  
9 result of the violation and, in addition, if the violation  
10 results from willful or grossly negligent conduct, the  
11 aggrieved person may recover not in excess of \$5,000,  
12 exclusive of any pecuniary loss.

13 (6) If a plaintiff prevails, the court may assess  
14 reasonable attorney fees and all other expenses reasonably  
15 incurred in the litigation.

16 (7) An action under [sections 1 through 25] is barred  
17 unless the action is commenced within 3 years after the  
18 cause of action accrues.

19 Section 26. Section 50-5-106, MCA, is amended to read:

20 50-5-106. Records and reports required of health care  
21 facilities -- confidentiality. Health care facilities shall  
22 keep records and make reports as required by the department.  
23 Before February 1 of each year, every licensed health care  
24 facility shall submit an annual report for the preceding  
25 calendar year to the department. The report shall be on

1 forms and contain information specified by the department.  
2 Information received by the department or board through  
3 reports, inspections, or provisions of parts 1 and 2 may not  
4 be disclosed in a way which would identify patients. A  
5 department employee who discloses information which would  
6 identify a patient shall be dismissed from employment and  
7 subject to the provisions of 45-7-401 and [section 23],  
8 unless the disclosure was authorized in writing by the  
9 patient, his guardian, or his agent in accordance with  
10 [sections 1 through 25]. Information and statistical reports  
11 from health care facilities which are considered necessary  
12 by the department for health planning and resource  
13 development activities will be made available to the public  
14 and the health planning agencies within the state."

15 Section 27. Section 50-15-704, MCA, is amended to  
16 read:

17 "50-15-704. Confidentiality. Information received by  
18 the department pursuant to this part may not be released  
19 unless:

- 20 (1) it is in statistical, nonidentifiable form;  
21 (2) the provisions of ~~50-16-311~~ [sections 1 through  
22 25] are satisfied;  
23 (3) the release or transfer is to a person or  
24 organization that is qualified to perform data processing or  
25 data analysis and that has safeguards against unauthorized

1 disclosure of that information; or

2 (4) the release or transfer is to a central tumor  
3 registry of another state and is of information concerning a  
4 person who is residing in that state."

5 Section 28. Section 53-24-306, MCA, is amended to  
6 read:

7 "53-24-306. Records of chemically dependent persons,  
8 intoxicated persons, and family members. (1) The  
9 registration and other records of treatment facilities shall  
10 remain confidential and are privileged to the patient.

11 (2) Notwithstanding subsection (1), the department may  
12 make available in accordance with [sections 1 through 25]  
13 information from patients' records for purposes of research  
14 into the causes and treatment of chemical dependency.  
15 Information under this subsection shall not be published in  
16 a way that discloses patients' names or other identifying  
17 information."

18 NEW SECTION. Section 29. Severability. If a part of  
19 this act is invalid, all valid parts that are severable from  
20 the invalid part remain in effect. If a part of this act is  
21 invalid in one or more of its applications, the part remains  
22 in effect in all valid applications that are severable from  
23 the invalid applications.

24 NEW SECTION. Section 30. Repealer. Sections 50-16-301  
25 through 50-16-305 and 50-16-311 through 50-16-314, MCA, are

1 repealed.

-End-



APPROVED BY COMM. ON HUMAN SERVICES AND AGING

1 INTRODUCED BY House BILL NO. 752

2 A BILL FOR AN ACT ENTITLED: "THE UNIFORM HEALTH CARE  
3 INFORMATION ACT; AMENDING SECTIONS 50-5-106, 50-15-704, AND  
4 53-24-306, MCA; AND REPEALING SECTIONS 50-16-301 THROUGH  
5 50-16-305 AND 50-16-311 THROUGH 50-16-314, MCA."

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

7 NEW SECTION. Section 1. Short title. [Sections 1  
8 through 25] may be cited as the "Uniform Health Care  
9 Information Act".

10 NEW SECTION. Section 2. Legislative findings. The  
11 legislature finds that:

12 (1) health care information is personal and sensitive  
13 information that if improperly used or released may do  
14 significant harm to a patient's interests in privacy and  
15 health care or other interests;

16 (2) patients need access to their own health care  
17 information as a matter of fairness, to enable them to make  
18 informed decisions about their health care and to correct  
19 inaccurate or incomplete information about themselves;

20 (3) in order to retain the full trust and confidence  
21 of patients, health care providers have an interest in  
22 assuring that health care information is not improperly  
23

1 disclosed and in having clear and certain rules for the  
2 disclosure of health care information;

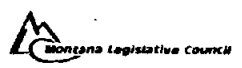
3 (4) persons other than health care providers obtain,  
4 use, and disclose health record information in many  
5 different contexts and for many different purposes. It is  
6 the public policy of this state that a patient's interest in  
7 the proper use and disclosure of his health care information  
8 survives even when the information is held by persons other  
9 than health care providers.

10 (5) the movement of patients and their health care  
11 information across state lines, access to and exchange of  
12 health care information from automated data banks, and the  
13 emergence of multistate health care providers creates a  
14 compelling need for uniform law, rules, and procedures  
15 governing the use and disclosure of health care information.

16 NEW SECTION. Section 3. Uniformity of application and  
17 construction. [Sections 1 through 25] must be applied and  
18 construed to effectuate their general purpose to make  
19 uniform the laws with respect to the treatment of health  
20 care information among states enacting them.

21 NEW SECTION. Section 4. Definitions. As used in  
22 [sections 1 through 25], unless the context indicates  
23 otherwise, the following definitions apply:

24 (1) "Audit" means an assessment, evaluation,  
25 determination, or investigation of a health care provider by



-2- SECOND READING HB - 752

1 a person not employed by or affiliated with the provider, to  
2 determine compliance with:

3 (a) statutory, regulatory, fiscal, medical, or  
4 scientific standards;

5 (b) a private or public program of payments to a  
6 health care provider; or

7 (c) requirements for licensing, accreditation, or  
8 certification.

9 (2) "Directory information" means information  
10 disclosing the presence and the general health condition of  
11 a patient who is an inpatient in a health care facility or  
12 who is receiving emergency health care in a health care  
13 facility.

14 (3) "General health condition" means the patient's  
15 health status described in terms of critical, poor, fair,  
16 good, excellent, or terms denoting similar conditions.

17 (4) "Health care" means any care, service, or  
18 procedure provided by a health care provider:

19 (a) to diagnose, treat, or maintain a patient's  
20 physical or mental condition; or

21 (b) that affects the structure or any function of the  
22 human body.

23 (5) "Health care facility" means a hospital, clinic,  
24 nursing home, laboratory, office, or similar place where a  
25 health care provider provides health care to patients.

1 (6) "Health care information" means any information,  
2 whether oral or recorded in any form or medium, that  
3 identifies or can readily be associated with the identity of  
4 a patient and relates to the patient's health care. The term  
5 includes any record of disclosures of health care  
6 information.

7 (7) "Health care provider" means a person who is  
8 licensed, certified, or otherwise authorized by the laws of  
9 this state to provide health care in the ordinary course of  
10 business or practice of a profession. The term does not  
11 include a person who provides health care solely through the  
12 sale or dispensing of drugs or medical devices.

13 (8) "Institutional review board" means a board,  
14 committee, or other group formally designated by an  
15 institution or authorized under federal or state law to  
16 review, approve the initiation of, or conduct periodic  
17 review of research programs to assure the protection of the  
18 rights and welfare of human research subjects.

19 (9) "Maintain", as related to health care information,  
20 means to hold, possess, preserve, retain, store, or control  
21 that information.

22 (10) "Patient" means an individual who receives or has  
23 received health care. The term includes a deceased  
24 individual who has received health care.

25 (11) "Person" means an individual, corporation,

1 business trust, estate, trust, partnership, association,  
2 joint venture, government, governmental subdivision or  
3 agency, or other legal or commercial entity.

4 NEW SECTION. Section 5. Disclosure by health care  
5 provider. (1) Except as authorized in [sections 9 and 10] or  
6 as otherwise specifically provided by law or the Montana  
7 Rules of Civil Procedure, a health care provider, an  
8 individual who assists a health care provider in the  
9 delivery of health care, or an agent or employee of a health  
10 care provider may not disclose health care information about  
11 a patient to any other person without the patient's written  
12 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  
15 conjunction with a patient's recorded health care  
16 information, a record of each person who has received or  
17 examined, in whole or in part, the recorded health care  
18 information during the preceding 3 years, except for a  
19 person who has examined the recorded health care information  
20 under [section 9(1) or (2)]. The record of disclosure must  
21 include the name, address, and institutional affiliation, if  
22 any, of each person receiving or examining the recorded  
23 health care information, the date of the receipt or  
24 examination, and to the extent practicable a description of  
25 the information disclosed.

1 NEW SECTION. Section 6. Patient authorization to  
2 health care provider for disclosure. (1) A patient may  
3 authorize a health care provider to disclose the patient's  
4 health care information. A health care provider shall honor  
5 an authorization and, if requested, provide a copy of the  
6 recorded health care information unless the health care  
7 provider denies the patient access to health care  
8 information under [section 14].

9 (2) A health care provider may charge a reasonable  
10 fee, not to exceed his actual cost for providing the health  
11 care information, and is not required to honor an  
12 authorization until the fee is paid.

13 (3) To be valid, a disclosure authorization to a  
14 health care provider must:

15 (a) be in writing, dated, and signed by the patient;

16 (b) identify the nature of the information to be  
17 disclosed; and

18 (c) identify the person to whom the information is to  
19 be disclosed.

20 (4) Except as provided by [sections 1 through 25], the  
21 signing of an authorization by a patient is not a waiver of  
22 any rights a patient has under other statutes, the Montana  
23 Rules of Evidence, or common law.

24 NEW SECTION. Section 7. Patient authorization --  
25 retention -- effective period. (1) A health care provider

1 shall retain each authorization or revocation in conjunction  
2 with any health care information from which disclosures are  
3 made.

4 (2) Except for authorizations to provide information  
5 to third-party health care payors, an authorization may not  
6 permit the release of health care information relating to  
7 health care that the patient receives more than 6 months  
8 after the authorization was signed.

9 (3) An authorization in effect on [the effective date  
10 of sections 1 through 25] remains valid for 30 months after  
11 [the effective date of sections 1 through 25] unless an  
12 earlier date is specified or it is revoked under [section  
13 8]. Health care information disclosed under such an  
14 authorization is otherwise subject to [sections 1 through  
15 25]. An authorization written after [the effective date of  
16 sections 1 through 25] becomes invalid after the expiration  
17 date contained in the authorization, which may not exceed 30  
18 months. If the authorization does not contain an expiration  
19 date, it expires 6 months after it is signed.

20 NEW SECTION. Section 8. Patient's revocation of  
21 authorization for disclosure. A patient may revoke a  
22 disclosure authorization to a health care provider at any  
23 time unless disclosure is required to effectuate payments  
24 for health care that has been provided or other substantial  
25 action has been taken in reliance on the authorization. A

1 patient may not maintain an action against the health care  
2 provider for disclosures made in good-faith reliance on an  
3 authorization if the health care provider had no notice of  
4 the revocation of the authorization.

5 NEW SECTION. Section 9. Disclosure without patient's  
6 authorization based on need to know. A health care provider  
7 may disclose health care information about a patient without  
8 the patient's authorization, to the extent a recipient needs  
9 to know the information, if the disclosure is:

10 (1) to a person who is providing health care to the  
11 patient;

12 (2) to any other person who requires health care  
13 information for health care education; to provide planning,  
14 quality assurance, peer review, or administrative, legal,  
15 financial, or actuarial services to the health care  
16 provider; or for assisting the health care provider in the  
17 delivery of health care and if the health care provider  
18 reasonably believes that the person will:

19 (a) not use or disclose the health care information  
20 for any other purpose; and

21 (b) take appropriate steps to protect the health care  
22 information;

23 (3) to any other health care provider who has  
24 previously provided health care to the patient, to the  
25 extent necessary to provide health care to the patient,

1 unless the patient has instructed the health care provider  
2 not to make the disclosure;

3 (4) to any person if the health care provider  
4 reasonably believes that disclosure will avoid or minimize  
5 an imminent danger to the health or safety of the patient or  
6 any other individual;

7 (5) to immediate family members of the patient or any  
8 other individual with whom the patient is known to have a  
9 close personal relationship, if made in accordance with the  
10 laws of the state and good medical or other professional  
11 practice, unless the patient has instructed the health care  
12 provider not to make the disclosure;

13 (6) to a health care provider who is the successor in  
14 interest to the health care provider maintaining the health  
15 care information;

16 (7) for use in a research project that an  
17 institutional review board has determined:

18 (a) is of sufficient importance to outweigh the  
19 intrusion into the privacy of the patient that would result  
20 from the disclosure;

21 (b) is impracticable without the use or disclosure of  
22 the health care information in individually identifiable  
23 form;

24 (c) contains reasonable safeguards to protect the  
25 information from redisclosure;

1 (d) contains reasonable safeguards to protect against  
2 directly or indirectly identifying any patient in any report  
3 of the research project; and

4 (e) contains procedures to remove or destroy at the  
5 earliest opportunity, consistent with the purposes of the  
6 project, information that would enable the patient to be  
7 identified, unless an institutional review board authorizes  
8 retention of identifying information for purposes of another  
9 research project;

10 (8) to a person who obtains information for purposes  
11 of an audit, if that person agrees in writing to:

12 (a) remove or destroy, at the earliest opportunity  
13 consistent with the purpose of the audit, information that  
14 would enable the patient to be identified; and

15 (b) not disclose the information further, except to  
16 accomplish the audit or to report unlawful or improper  
17 conduct involving fraud in payment for health care by a  
18 health care provider or patient or other unlawful conduct by  
19 a health care provider; and

20 (9) to an official of a penal or other custodial  
21 institution in which the patient is detained.

22 NEW SECTION. Section 10. Disclosure without patient's  
23 authorization -- other bases. A health care provider may  
24 disclose health care information about a patient without the  
25 patient's authorization if the disclosure is:

1 (1) directory information, unless the patient has  
2 instructed the health care provider not to make the  
3 disclosure;

4 (2) to federal, state, or local public health  
5 authorities, to the extent the health care provider is  
6 required by law to report health care information or when  
7 needed to protect the public health;

8 (3) to federal, state, or local law enforcement  
9 authorities to the extent required by law; and

10 (4) pursuant to compulsory process in accordance with  
11 [sections 11 and 12].

12 NEW SECTION. Section 11. When health care information  
13 available by compulsory process. Health care information may  
14 not be disclosed by a health care provider pursuant to  
15 compulsory legal process or discovery in any judicial,  
16 legislative, or administrative proceeding unless:

17 (1) the patient has consented in writing to the  
18 release of the health care information in response to  
19 compulsory process or a discovery request;

20 (2) the patient has waived the right to claim  
21 confidentiality for the health care information sought;

22 (3) the patient is a party to the proceeding and has  
23 placed his physical or mental condition in issue;

24 (4) the patient's physical or mental condition is  
25 relevant to the execution or witnessing of a will;

1 (5) the physical or mental condition of a deceased  
2 patient is placed in issue by any person claiming or  
3 defending through or as a beneficiary of the patient;

4 (6) a patient's health care information is to be used  
5 in the patient's commitment proceeding;

6 (7) the health care information is for use in any law  
7 enforcement proceeding or investigation in which a health  
8 care provider is the subject or a party, except that health  
9 care information so obtained may not be used in any  
10 proceeding against the patient unless the matter relates to  
11 payment for his health care or unless authorized under  
12 subsection (9);

13 (8) the health care information is relevant to a  
14 proceeding brought under [sections 23 through 25]; or

15 (9) a court has determined that particular health care  
16 information is subject to compulsory legal process or  
17 discovery because the party seeking the information has  
18 demonstrated that there is a compelling state interest that  
19 outweighs the patient's privacy interest.

20 NEW SECTION. Section 12. Method of compulsory  
21 process. (1) Unless the court for good cause shown  
22 determines that the notification should be waived or  
23 modified, if health care information is sought under  
24 subsection (2), (4), or (5) of [section 11] or in a civil  
25 proceeding or investigation under subsection (9) of [section

1 11], the person seeking discovery or compulsory process  
 2 shall mail a notice by first-class mail to the patient or  
 3 the patient's attorney of record of the compulsory process  
 4 or discovery request at least 10 days before presenting the  
 5 certificate required under subsection (2) to the health care  
 6 provider.

7 (2) Service of compulsory process or discovery  
 8 requests upon a health care provider must be accompanied by  
 9 a written certification, signed by the person seeking to  
 10 obtain health care information or his authorized  
 11 representative, identifying at least one subsection of  
 12 [section 11] under which compulsory process or discovery is  
 13 being sought. The certification must also state, in the case  
 14 of information sought under subsection (2), (4), or (5) of  
 15 [section 11] or in a civil proceeding under subsection (9)  
 16 of [section 11], that the requirements of subsection (1) for  
 17 notice have been met. A person may sign the certification  
 18 only if the person reasonably believes that the subsection  
 19 of [section 11] identified in the certification provides an  
 20 appropriate basis for the use of discovery or compulsory  
 21 process. Unless otherwise ordered by the court, the health  
 22 care provider shall maintain a copy of the process and the  
 23 written certification as a permanent part of the patient's  
 24 health care information.

25 (3) Production of health care information under

1 [section 11] and this section does not in itself constitute  
 2 a waiver of any privilege, objection, or defense existing  
 3 under other law or rule of evidence or procedure.

4 NEW SECTION. Section 13. Requirements and procedures  
 5 for patient's examination and copying. (1) Upon receipt of a  
 6 written request from a patient to examine or copy all or  
 7 part of his recorded health care information, a health care  
 8 provider, as promptly as required under the circumstances  
 9 but no later than 10 days after receiving the request,  
 10 shall:

11 (a) make the information available to the patient for  
 12 examination during regular business hours and provide a  
 13 copy, if requested, to the patient;

14 (b) inform the patient if the information does not  
 15 exist or cannot be found;

16 (c) if the health care provider does not maintain a  
 17 record of the information, inform the patient and provide  
 18 the name and address, if known, of the health care provider  
 19 who maintains the record;

20 (d) if the information is in use or unusual  
 21 circumstances have delayed handling the request, inform the  
 22 patient and specify in writing the reasons for the delay and  
 23 the earliest date, not later than 21 days after receiving  
 24 the request, when the information will be available for  
 25 examination or copying or when the request will be otherwise

1 disposed of; or  
 2 (e) deny the request in whole or in part under  
 3 [section 14] and inform the patient.

4 (2) Upon request, the health care provider shall  
 5 provide an explanation of any code or abbreviation used in  
 6 the health care information. If a record of the particular  
 7 health care information requested is not maintained by the  
 8 health care provider in the requested form, he is not  
 9 required to create a new record or reformulate an existing  
 10 record to make the information available in the requested  
 11 form. The health care provider may charge a reasonable fee,  
 12 not to exceed the health care provider's actual cost, for  
 13 providing the health care information and is not required to  
 14 permit examination or copying until the fee is paid.

15 NEW SECTION. Section 14. Denial of examination and  
 16 copying. (1) A health care provider may deny access to  
 17 health care information by a patient if the health care  
 18 provider reasonably concludes that:

19 (a) knowledge of the health care information would be  
 20 injurious to the health of the patient;

21 (b) knowledge of the health care information could  
 22 reasonably be expected to lead to the patient's  
 23 identification of an individual who provided the information  
 24 in confidence and under circumstances in which  
 25 confidentiality was appropriate;

1 (c) knowledge of the health care information could  
 2 reasonably be expected to cause danger to the life or safety  
 3 of any individual;

4 (d) the health care information was compiled and is  
 5 used solely for litigation, quality assurance, peer review,  
 6 or administrative purposes; or

7 (e) access to the health care information is otherwise  
 8 prohibited by law.

9 (2) If a health care provider denies a request for  
 10 examination and copying under this section, the provider, to  
 11 the extent possible, shall segregate health care information  
 12 for which access has been denied under subsection (1) from  
 13 information for which access cannot be denied and permit the  
 14 patient to examine or copy the disclosable information.

15 (3) If a health care provider denies a patient's  
 16 request for examination and copying, in whole or in part,  
 17 under subsection (1)(a) or (1)(c), he shall permit  
 18 examination and copying of the record by another health care  
 19 provider, selected by the patient, who is licensed,  
 20 certified, or otherwise authorized under the laws of this  
 21 state to treat the patient for the same condition as the  
 22 health care provider denying the request. The health care  
 23 provider denying the request shall inform the patient of the  
 24 patient's right to select another health care provider under  
 25 this subsection.



1        NEW SECTION. Section 15. Request for correction or  
 2 amendment. (1) For purposes of accuracy or completeness, a  
 3 patient may request in writing that a health care provider  
 4 correct or amend its record of the patient's health care  
 5 information to which he has access under [section 13].

6        (2) As promptly as required under the circumstances  
 7 but no later than 10 days after receiving a request from a  
 8 patient to correct or amend its record of the patient's  
 9 health care information, the health care provider shall:

10        (a) make the requested correction or amendment and  
 11 inform the patient of the action and of the patient's right  
 12 to have the correction or amendment sent to previous  
 13 recipients of the health care information in question;

14        (b) inform the patient if the record no longer exists  
 15 or cannot be found;

16        (c) if the health care provider does not maintain the  
 17 record, inform the patient and provide him with the name and  
 18 address, if known, of the person who maintains the record;

19        (d) if the record is in use or unusual circumstances  
 20 have delayed the handling of the correction or amendment  
 21 request, inform the patient and specify in writing the  
 22 earliest date, not later than 21 days after receiving the  
 23 request, when the correction or amendment will be made or  
 24 when the request will otherwise be disposed of; or

25        (e) inform the patient in writing of the provider's

1 refusal to correct or amend the record as requested, the  
 2 reason for the refusal, and the patient's right to add a  
 3 statement of disagreement and to have that statement sent to  
 4 previous recipients of the disputed health care information.

5        NEW SECTION. Section 16. Procedure for adding  
 6 correction, amendment, or statement of disagreement. (1) In  
 7 making a correction or amendment, the health care provider  
 8 shall:

9        (a) add the amending information as a part of the  
 10 health record; and

11        (b) mark the challenged entries as corrected or  
 12 amended entries and indicate the place in the record where  
 13 the corrected or amended information is located, in a manner  
 14 practicable under the circumstances.

15        (2) If the health care provider maintaining the record  
 16 of the patient's health care information refuses to make the  
 17 patient's proposed correction or amendment, the provider  
 18 shall:

19        (a) permit the patient to file as a part of the record  
 20 of his health care information a concise statement of the  
 21 correction or amendment requested and the reasons therefor;  
 22 and

23        (b) mark the challenged entry to indicate that the  
 24 patient claims the entry is inaccurate or incomplete and  
 25 indicate the place in the record where the statement of

1 disagreement is located, in a manner practicable under the  
2 circumstances.

3 NEW SECTION. Section 17. Dissemination of corrected  
4 or amended information or statement of disagreement. (1) A  
5 health care provider, upon request of a patient, shall take  
6 reasonable steps to provide copies of corrected or amended  
7 information or of a statement of disagreement to all persons  
8 designated by the patient and identified in the health care  
9 information as having examined or received copies of the  
10 information sought to be corrected or amended.

11 (2) A health care provider may charge the patient a  
12 reasonable fee, not exceeding the provider's actual cost,  
13 for distributing corrected or amended information or the  
14 statement of disagreement, unless the provider's error  
15 necessitated the correction or amendment.

16 NEW SECTION. Section 18. Content and dissemination of  
17 notice. (1) A health care provider who provides health care  
18 at a health care facility that the provider operates and who  
19 maintains a record of a patient's health care information  
20 shall create a notice of information practices, in  
21 substantially the following form:

22 NOTICE

23 "We keep a record of the health care services we  
24 provide for you. You may ask us to see and copy that record.  
25 You may also ask us to correct that record. We will not

1 disclose your record to others unless you direct us to do so  
2 or unless the law authorizes or compels us to do so. You may  
3 see your record or get more information about it at  
4 \_\_\_\_\_."

5 (2) The health care provider shall post a copy of the  
6 notice of information practices in a conspicuous place in  
7 the health care facility and upon request provide patients  
8 or prospective patients with a copy of the notice.

9 NEW SECTION. Section 19. Health care representatives.  
10 (1) A person authorized to consent to health care for  
11 another may exercise the rights of that person under  
12 [sections 1 through 25] to the extent necessary to  
13 effectuate the terms or purposes of the grant of authority.  
14 If the patient is a minor and is authorized under 41-1-402  
15 to consent to health care without parental consent, only the  
16 minor may exclusively exercise the rights of a patient under  
17 [sections 1 through 25] as to information pertaining to  
18 health care to which the minor lawfully consented.

19 (2) A person authorized to act for a patient shall act  
20 in good faith to represent the best interests of the  
21 patient.

22 NEW SECTION. Section 20. Representative of deceased  
23 patient. A personal representative of a deceased patient may  
24 exercise all of the deceased patient's rights under  
25 [sections 1 through 25]. If there is no personal

1 representative or upon discharge of the personal  
2 representative, a deceased patient's rights under [sections  
3 1 through 25] may be exercised by persons who are authorized  
4 by law to act for him.

5 NEW SECTION. Section 21. Duty to adopt security  
6 safeguards. A health care provider shall effect reasonable  
7 safeguards for the security of all health care information  
8 it maintains.

9 NEW SECTION. Section 22. Retention of record. A  
10 health care provider shall maintain a record of existing  
11 health care information for at least 1 year following  
12 receipt of an authorization to disclose that health care  
13 information under [section 6] and during the pendency of a  
14 request for examination and copying under [section 13] or a  
15 request for correction or amendment under [section 15].

16 NEW SECTION. Section 23. Criminal penalty. (1) A  
17 person who purposely discloses health care information in  
18 violation of [sections 1 through 25] and who knew or should  
19 have known that disclosure is prohibited is guilty of a  
20 misdemeanor and upon conviction is punishable by a fine not  
21 exceeding \$10,000 or imprisonment for a period not exceeding  
22 1 year, or both.

23 (2) A person who by means of bribery, theft, or  
24 misrepresentation of identity, purpose of use, or  
25 entitlement to the information examines or obtains, in

1 violation of [sections 1 through 25], health care  
2 information maintained by a health care provider is guilty  
3 of a misdemeanor and upon conviction is punishable by a fine  
4 not exceeding \$10,000 or imprisonment for a period not  
5 exceeding 1 year, or both.

6 (3) A person who, knowing that a certification under  
7 [section 12(2)] or a disclosure authorization under  
8 [sections 6 and 7] is false, purposely presents the  
9 certification or disclosure authorization to a health care  
10 provider is guilty of a misdemeanor and upon conviction is  
11 punishable by a fine not exceeding \$10,000 or imprisonment  
12 for a period not exceeding 1 year, or both.

13 NEW SECTION. Section 24. Civil enforcement. The  
14 attorney general or appropriate county attorney may maintain  
15 a civil action to enforce [sections 1 through 25]. The court  
16 may order any relief authorized by [section 25].

17 NEW SECTION. Section 25. Civil remedies. (1) A person  
18 aggrieved by a violation of [sections 1 through 25] may  
19 maintain an action for relief as provided in this section.

20 (2) The court may order the health care provider or  
21 other person to comply with [sections 1 through 25] and may  
22 order any other appropriate relief.

23 (3) A health care provider who relies in good faith  
24 upon a certification, pursuant to [section 12(2)], is not  
25 liable for disclosures made in reliance on that

1 certification.

2 (4) In an action by a patient alleging that health  
3 care information was improperly withheld under [sections 13  
4 and 14], the burden of proof is on the health care provider  
5 to establish that the information was properly withheld.

6 (5) If the court determines that there is a violation  
7 of [sections 1 through 25], the aggrieved person is entitled  
8 to recover damages for pecuniary losses sustained as a  
9 result of the violation and, in addition, if the violation  
10 results from willful or grossly negligent conduct, the  
11 aggrieved person may recover not in excess of \$5,000,  
12 exclusive of any pecuniary loss.

13 (6) If a plaintiff prevails, the court may assess  
14 reasonable attorney fees and all other expenses reasonably  
15 incurred in the litigation.

16 (7) An action under [sections 1 through 25] is barred  
17 unless the action is commenced within 3 years after the  
18 cause of action accrues.

19 Section 26. Section 50-5-106, MCA, is amended to read:

20 50-5-106. Records and reports required of health care  
21 facilities -- confidentiality. Health care facilities shall  
22 keep records and make reports as required by the department.  
23 Before February 1 of each year, every licensed health care  
24 facility shall submit an annual report for the preceding  
25 calendar year to the department. The report shall be on

1 forms and contain information specified by the department.  
2 Information received by the department or board through  
3 reports, inspections, or provisions of parts 1 and 2 may not  
4 be disclosed in a way which would identify patients. A  
5 department employee who discloses information which would  
6 identify a patient shall be dismissed from employment and  
7 subject to the provisions of 45-7-401 and [section 23],  
8 unless the disclosure was authorized in writing by the  
9 patient, his guardian, or his agent in accordance with  
10 [sections 1 through 25]. Information and statistical reports  
11 from health care facilities which are considered necessary  
12 by the department for health planning and resource  
13 development activities will be made available to the public  
14 and the health planning agencies within the state."

15 Section 27. Section 50-15-704, MCA, is amended to  
16 read:

17 "50-15-704. Confidentiality. Information received by  
18 the department pursuant to this part may not be released  
19 unless:

- 20 (1) it is in statistical, nonidentifiable form;  
21 (2) the provisions of ~~50-16-311~~ [sections 1 through  
22 25] are satisfied;  
23 (3) the release or transfer is to a person or  
24 organization that is qualified to perform data processing or  
25 data analysis and that has safeguards against unauthorized

1 disclosure of that information; or

2 (4) the release or transfer is to a central tumor  
3 registry of another state and is of information concerning a  
4 person who is residing in that state."

5 Section 28. Section 53-24-306, MCA, is amended to  
6 read:

7 "53-24-306. Records of chemically dependent persons,  
8 intoxicated persons, and family members. (1) The  
9 registration and other records of treatment facilities shall  
10 remain confidential and are privileged to the patient.

11 (2) Notwithstanding subsection (1), the department may  
12 make available in accordance with [sections 1 through 25]  
13 information from patients' records for purposes of research  
14 into the causes and treatment of chemical dependency.  
15 Information under this subsection shall not be published in  
16 a way that discloses patients' names or other identifying  
17 information."

18 NEW SECTION. Section 29. Severability. If a part of  
19 this act is invalid, all valid parts that are severable from  
20 the invalid part remain in effect. If a part of this act is  
21 invalid in one or more of its applications, the part remains  
22 in effect in all valid applications that are severable from  
23 the invalid applications.

24 NEW SECTION. Section 30. Repealer. Sections 50-16-301  
25 through 50-16-305 and 50-16-311 through 50-16-314, MCA, are

1 repealed.

-End-

1 House BILL NO. 752  
2 INTRODUCED BY W. ...

3  
4 A BILL FOR AN ACT ENTITLED: "THE UNIFORM HEALTH CARE  
5 INFORMATION ACT; AMENDING SECTIONS 50-5-106, 50-15-704, AND  
6 53-24-306, MCA; AND REPEALING SECTIONS 50-16-301 THROUGH  
7 50-16-305 AND 50-16-311 THROUGH 50-16-314, MCA."

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

10 NEW SECTION. Section 1. Short title. [Sections 1  
11 through 25] may be cited as the "Uniform Health Care  
12 Information Act".

13 NEW SECTION. Section 2. Legislative findings. The  
14 legislature finds that:

15 (1) health care information is personal and sensitive  
16 information that if improperly used or released may do  
17 significant harm to a patient's interests in privacy and  
18 health care or other interests;

19 (2) patients need access to their own health care  
20 information as a matter of fairness, to enable them to make  
21 informed decisions about their health care and to correct  
22 inaccurate or incomplete information about themselves;

23 (3) in order to retain the full trust and confidence  
24 of patients, health care providers have an interest in  
25 assuring that health care information is not improperly

THERE ARE NO CHANGES IN HB 752 AND DUE  
TO LENGTH WILL NOT BE RE-RUN. PLEASE  
REFER TO SECOND READING (YELLOW) COPY  
FOR COMPLETE TEXT.



THIRD READING  
HB 752

HOUSE BILL NO. 752  
INTRODUCED BY WINSLOW

A BILL FOR AN ACT ENTITLED: "THE UNIFORM HEALTH CARE INFORMATION ACT; AMENDING SECTIONS 50-5-106, 50-15-704, 53-21-166, AND 53-24-306, MCA; AND REPEALING SECTIONS 50-16-301 THROUGH 50-16-305 AND 50-16-311 THROUGH 50-16-314, MCA."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 25] may be cited as the "Uniform Health Care Information Act".

NEW SECTION. Section 2. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in

assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of his health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

NEW SECTION. Section 3. Uniformity of application and construction. [Sections 1 through 25] must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

NEW SECTION. Section 4. Definitions. As used in [sections 1 through 25], unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation,



1 determination, or investigation of a health care provider by  
 2 a person not employed by or affiliated with the provider, to  
 3 determine compliance with:

4 (a) statutory, regulatory, fiscal, medical, or  
 5 scientific standards;

6 (b) a private or public program of payments to a  
 7 health care provider; or

8 (c) requirements for licensing, accreditation, or  
 9 certification.

10 (2) "Directory information" means information  
 11 disclosing the presence and the general health condition of  
 12 a patient who is an inpatient in a health care facility or  
 13 who is receiving emergency health care in a health care  
 14 facility.

15 (3) "General health condition" means the patient's  
 16 health status described in terms of critical, poor, fair,  
 17 good, excellent, or terms denoting similar conditions.

18 (4) "Health care" means any care, service, or  
 19 procedure provided by a health care provider:

20 (a) to diagnose, treat, or maintain a patient's  
 21 physical or mental condition; or

22 (b) that affects the structure or any function of the  
 23 human body.

24 (5) "Health care facility" means a hospital, clinic,  
 25 nursing home, laboratory, office, or similar place where a

1 health care provider provides health care to patients.

2 (6) "Health care information" means any information,  
 3 whether oral or recorded in any form or medium, that  
 4 identifies or can readily be associated with the identity of  
 5 a patient and relates to the patient's health care. The term  
 6 includes any record of disclosures of health care  
 7 information.

8 (7) "Health care provider" means a person who is  
 9 licensed, certified, or otherwise authorized by the laws of  
 10 this state to provide health care in the ordinary course of  
 11 business or practice of a profession. The term does not  
 12 include a person who provides health care solely through the  
 13 sale or dispensing of drugs or medical devices.

14 (8) "Institutional review board" means a board,  
 15 committee, or other group formally designated by an  
 16 institution or authorized under federal or state law to  
 17 review, approve the initiation of, or conduct periodic  
 18 review of research programs to assure the protection of the  
 19 rights and welfare of human research subjects.

20 (9) "Maintain", as related to health care information,  
 21 means to hold, possess, preserve, retain, store, or control  
 22 that information.

23 (10) "Patient" means an individual who receives or has  
 24 received health care. The term includes a deceased  
 25 individual who has received health care.



1 (11) "Person" means an individual, corporation,  
 2 business trust, estate, trust, partnership, association,  
 3 joint venture, government, governmental subdivision or  
 4 agency, or other legal or commercial entity.

5 NEW SECTION. Section 5. Disclosure by health care  
 6 provider. (1) Except as authorized in [sections 9 and 10] or  
 7 as otherwise specifically provided by law or the Montana  
 8 Rules of Civil Procedure, a health care provider, an  
 9 individual who assists a health care provider in the  
 10 delivery of health care, or an agent or employee of a health  
 11 care provider may not disclose health care information about  
 12 a patient to any other person without the patient's written  
 13 authorization. A disclosure made under a patient's written  
 14 authorization must conform to the authorization.

15 (2) A health care provider shall maintain, in  
 16 conjunction with a patient's recorded health care  
 17 information, a record of each person who has received or  
 18 examined, in whole or in part, the recorded health care  
 19 information during the preceding 3 years, ~~except for a~~  
 20 ~~person who has examined the recorded health care information~~  
 21 ~~under {section 9} or {2}~~. The record of disclosure must  
 22 include the name, address, and institutional affiliation, if  
 23 any, of each person receiving or examining the recorded  
 24 health care information, the date of the receipt or  
 25 examination, and to the extent practicable a description of

1 the information disclosed.

2 NEW SECTION. Section 6. Patient authorization to  
 3 health care provider for disclosure. (1) A patient may  
 4 authorize a health care provider to disclose the patient's  
 5 health care information. A health care provider shall honor  
 6 an authorization and, if requested, provide a copy of the  
 7 recorded health care information unless the health care  
 8 provider denies the patient access to health care  
 9 information under [section 14].

10 (2) A health care provider may charge a reasonable  
 11 fee, not to exceed his actual cost for providing the health  
 12 care information, and is not required to honor an  
 13 authorization until the fee is paid.

14 (3) To be valid, a disclosure authorization to a  
 15 health care provider must:

16 (a) be in writing, dated, and signed by the patient;

17 (b) identify the nature of the information to be  
 18 disclosed; and

19 (c) identify the person to whom the information is to  
 20 be disclosed.

21 (4) Except as provided by [sections 1 through 25], the  
 22 signing of an authorization by a patient is not a waiver of  
 23 any rights a patient has under other statutes, the Montana  
 24 Rules of Evidence, or common law.

25 NEW SECTION. Section 7. Patient authorization --

1 retention -- effective period. (1) A health care provider  
2 shall retain each authorization or revocation in conjunction  
3 with any health care information from which disclosures are  
4 made.

5 (2) Except for authorizations to provide information  
6 to third-party health care payors, an authorization may not  
7 permit the release of health care information relating to  
8 health care that the patient receives more than 6 months  
9 after the authorization was signed.

10 (3) An authorization in effect on [the effective date  
11 of sections 1 through 25] remains valid for 30 months after  
12 [the effective date of sections 1 through 25] unless an  
13 earlier date is specified or it is revoked under [section  
14 8]. Health care information disclosed under such an  
15 authorization is otherwise subject to [sections 1 through  
16 25]. An authorization written after [the effective date of  
17 sections 1 through 25] becomes invalid after the expiration  
18 date contained in the authorization, which may not exceed 30  
19 months. If the authorization does not contain an expiration  
20 date, it expires 6 months after it is signed.

21 NEW SECTION. Section 8. Patient's revocation of  
22 authorization for disclosure. A patient may revoke a  
23 disclosure authorization to a health care provider at any  
24 time unless disclosure is required to effectuate payments  
25 for health care that has been provided or other substantial

1 action has been taken in reliance on the authorization. A  
2 patient may not maintain an action against the health care  
3 provider for disclosures made in good-faith reliance on an  
4 authorization if the health care provider had no notice of  
5 the revocation of the authorization.

6 NEW SECTION. Section 9. Disclosure without patient's  
7 authorization based on need to know. A health care provider  
8 may disclose health care information about a patient without  
9 the patient's authorization, to the extent a recipient needs  
10 to know the information, if the disclosure is:

11 (1) to a person who is providing health care to the  
12 patient;

13 (2) to any other person who HAS PROVIDED A WRITTEN  
14 ASSURANCE THAT THE INFORMATION OBTAINED WILL NOT BE  
15 IMPROPERLY DISCLOSED AND WHO requires health care  
16 information for health care education; to provide planning,  
17 quality assurance, peer review, or administrative, legal,  
18 financial, or actuarial services to the health care  
19 provider; or for assisting the health care provider in the  
20 delivery of health care and if the health care provider  
21 reasonably believes that the person will:

22 (a) not use or disclose the health care information  
23 for any other purpose; and

24 (b) take appropriate steps to protect the health care  
25 information;

1 (3) to any other health care provider who has  
 2 previously provided health care to the patient, to the  
 3 extent necessary to provide health care to the patient,  
 4 unless IF the patient has instructed the health care  
 5 provider not to make the disclosure;

6 ~~{4}--to--any--person--if--the--health---care---provider~~  
 7 ~~reasonably--believes--that-disclosure-will-avoid-or-minimize~~  
 8 ~~an-imminent-danger-to-the-health-or-safety-of-the-patient-or~~  
 9 ~~any-other-individual;~~

10 {5}{4} to immediate family members of the patient or  
 11 any other individual with whom the patient is known to have  
 12 a close personal relationship, if made in accordance with  
 13 the laws of the state and good medical or other professional  
 14 practice, unless IF the patient has instructed the health  
 15 care provider not to make the disclosure;

16 {6}{5} to a health care provider who is the successor  
 17 in interest to the health care provider maintaining the  
 18 health care information;

19 {7}{6} for use in a research project that an  
 20 institutional review board has determined:

21 (a) is of sufficient importance to outweigh the  
 22 intrusion into the privacy of the patient that would result  
 23 from the disclosure;

24 (b) is impracticable without the use or disclosure of  
 25 the health care information in individually identifiable

1 form;

2 (c) contains reasonable safeguards to protect the  
 3 information from redisclosure IMPROPER DISCLOSURE;

4 (d) contains reasonable safeguards to protect against  
 5 directly or indirectly identifying any patient in any report  
 6 of the research project; and

7 (e) contains procedures to remove or destroy at the  
 8 earliest opportunity, consistent with the purposes of the  
 9 project, information that would enable the patient to be  
 10 identified, unless an institutional review board authorizes  
 11 retention of identifying information for purposes of another  
 12 research project;

13 {8}{7} to a person who obtains information for  
 14 purposes of an audit, if that person agrees in writing to:

15 (a) remove or destroy, at the earliest opportunity  
 16 consistent with the purpose of the audit, information that  
 17 would enable the patient to be identified; and

18 (b) not disclose the information further, except to  
 19 accomplish the audit or to report unlawful or improper  
 20 conduct involving fraud in payment for health care by a  
 21 health care provider or patient or other unlawful conduct by  
 22 a health care provider; and

23 {9}{8} to an official of a penal or other custodial  
 24 institution in which the patient is detained.

25 NEW SECTION. Section 10. Disclosure without patient's

1 authorization -- other bases. A health care provider may  
 2 disclose health care information about a patient without the  
 3 patient's authorization if the disclosure is:

4 (1) directory information, unless IF the patient has  
 5 instructed the health care provider not to make the  
 6 disclosure;

7 (2) to federal, state, or local public health  
 8 authorities, to the extent the health care provider is  
 9 required by law to report health care information or when  
 10 needed to protect the public health;

11 (3) to federal, state, or local law enforcement  
 12 authorities to the extent required by law; and

13 (4) pursuant to compulsory process in accordance with  
 14 [sections 11 and 12].

15 NEW SECTION. Section 11. When health care information  
 16 available by compulsory process. Health care information may  
 17 not be disclosed by a health care provider pursuant to  
 18 compulsory legal process or discovery in any judicial,  
 19 legislative, or administrative proceeding unless:

20 (1) the patient has consented in writing to the  
 21 release of the health care information in response to  
 22 compulsory process or a discovery request;

23 (2) the patient has waived the right to claim  
 24 confidentiality for the health care information sought;

25 (3) the patient is a party to the proceeding and has

1 placed his physical or mental condition in issue;

2 (4) the patient's physical or mental condition is  
 3 relevant to the execution or witnessing of a will;

4 (5) the physical or mental condition of a deceased  
 5 patient is placed in issue by any person claiming or  
 6 defending through or as a beneficiary of the patient;

7 (6) a patient's health care information is to be used  
 8 in the patient's commitment proceeding;

9 (7) the health care information is for use in any law  
 10 enforcement proceeding or investigation in which a health  
 11 care provider is the subject or a party, except that health  
 12 care information so obtained may not be used in any  
 13 proceeding against the patient unless the matter relates to  
 14 payment for his health care or unless authorized under  
 15 subsection (9);

16 (8) the health care information is relevant to a  
 17 proceeding brought under [sections 23 through 25]; or

18 (9) a court has determined that particular health care  
 19 information is subject to compulsory legal process or  
 20 discovery because the party seeking the information has  
 21 demonstrated that there is a compelling state interest that  
 22 outweighs the patient's privacy interest.

23 NEW SECTION. Section 12. Method of compulsory  
 24 process. (1) Unless the court for good cause shown  
 25 determines that the notification should be waived or

1 modified, if health care information is sought under  
 2 subsection (2), (4), or (5) of [section 11] or in a civil  
 3 proceeding or investigation under subsection (9) of [section  
 4 11], the person seeking discovery or compulsory process  
 5 shall mail a notice by first-class mail to the patient or  
 6 the patient's attorney of record of the compulsory process  
 7 or discovery request at least 10 days before presenting the  
 8 certificate required under subsection (2) to the health care  
 9 provider.

10 (2) Service of compulsory process or discovery  
 11 requests upon a health care provider must be accompanied by  
 12 a written certification, signed by the person seeking to  
 13 obtain health care information or his authorized  
 14 representative, identifying at least one subsection of  
 15 [section 11] under which compulsory process or discovery is  
 16 being sought. The certification must also state, in the case  
 17 of information sought under subsection (2), (4), or (5) of  
 18 [section 11] or in a civil proceeding under subsection (9)  
 19 of [section 11], that the requirements of subsection (1) for  
 20 notice have been met. A person may sign the certification  
 21 only if the person reasonably believes that the subsection  
 22 of [section 11] identified in the certification provides an  
 23 appropriate basis for the use of discovery or compulsory  
 24 process. Unless otherwise ordered by the court, the health  
 25 care provider shall maintain a copy of the process and the

1 written certification as a permanent part of the patient's  
 2 health care information.

3 (3) Production of health care information under  
 4 [section 11] and this section does not in itself constitute  
 5 a waiver of any privilege, objection, or defense existing  
 6 under other law or rule of evidence or procedure.

7 NEW SECTION. Section 13. Requirements and procedures  
 8 for patient's examination and copying. (1) Upon receipt of a  
 9 written request from a patient to examine or copy all or  
 10 part of his recorded health care information, a health care  
 11 provider, as promptly as required under the circumstances  
 12 but no later than 10 days after receiving the request,  
 13 shall:

14 (a) make the information available to the patient for  
 15 examination during regular business hours and OR provide a  
 16 copy, if requested, to the patient;

17 (b) inform the patient if the information does not  
 18 exist or cannot be found;

19 (c) if the health care provider does not maintain a  
 20 record of the information, inform the patient and provide  
 21 the name and address, if known, of the health care provider  
 22 who maintains the record;

23 (d) if the information is in use or unusual  
 24 circumstances have delayed handling the request, inform the  
 25 patient and specify in writing the reasons for the delay and

1 the earliest date, not later than 21 days after receiving  
 2 the request, when the information will be available for  
 3 examination or copying or when the request will be otherwise  
 4 disposed of; or

5 (e) deny the request in whole or in part under  
 6 [section 14] and inform the patient.

7 (2) Upon request, the health care provider shall  
 8 provide an explanation of any code or abbreviation used in  
 9 the health care information. If a record of the particular  
 10 health care information requested is not maintained by the  
 11 health care provider in the requested form, he is not  
 12 required to create a new record or reformulate an existing  
 13 record to make the information available in the requested  
 14 form. The health care provider may charge a reasonable fee,  
 15 not to exceed the health care provider's actual cost, for  
 16 providing the health care information and is not required to  
 17 permit examination or copying until the fee is paid.

18 NEW SECTION. Section 14. Denial of examination and  
 19 copying. (1) A health care provider may deny access to  
 20 health care information by a patient if the health care  
 21 provider reasonably concludes that:

22 (a) knowledge of the health care information would be  
 23 injurious to the health of the patient;

24 (b) knowledge of the health care information could  
 25 reasonably be expected to lead to the patient's

1 identification of an individual who provided the information  
 2 in confidence and under circumstances in which  
 3 confidentiality was appropriate;

4 (c) knowledge of the health care information could  
 5 reasonably be expected to cause danger to the life or safety  
 6 of any individual;

7 (d) the health care information was compiled and is  
 8 used solely for litigation, quality assurance, peer review,  
 9 or administrative purposes; or

10 (e) access to the health care information is otherwise  
 11 prohibited by law.

12 (2) If a health care provider denies a request for  
 13 examination and copying under this section, the provider, to  
 14 the extent possible, shall segregate health care information  
 15 for which access has been denied under subsection (1) from  
 16 information for which access cannot be denied and permit the  
 17 patient to examine or copy the disclosable information.

18 (3) If a health care provider denies a patient's  
 19 request for examination and copying, in whole or in part,  
 20 under subsection (1)(a) or (1)(c), he shall permit  
 21 examination and copying of the record by another health care  
 22 provider, selected by the patient, who is licensed,  
 23 certified, or otherwise authorized under the laws of this  
 24 state to treat the patient for the same condition as the  
 25 health care provider denying the request. The health care

1 provider denying the request shall inform the patient of the  
 2 patient's right to select another health care provider under  
 3 this subsection.

4 NEW SECTION. Section 15. Request for correction or  
 5 amendment. (1) For purposes of accuracy or completeness, a  
 6 patient may request in writing that a health care provider  
 7 correct or amend its record of the patient's health care  
 8 information to which he has access under [section 13].

9 (2) As promptly as required under the circumstances  
 10 but no later than 10 days after receiving a request from a  
 11 patient to correct or amend its record of the patient's  
 12 health care information, the health care provider shall:

13 (a) make the requested correction or amendment and  
 14 inform the patient of the action and of the patient's right  
 15 to have the correction or amendment sent to previous  
 16 recipients of the health care information in question;

17 (b) inform the patient if the record no longer exists  
 18 or cannot be found;

19 (c) if the health care provider does not maintain the  
 20 record, inform the patient and provide him with the name and  
 21 address, if known, of the person who maintains the record;

22 (d) if the record is in use or unusual circumstances  
 23 have delayed the handling of the correction or amendment  
 24 request, inform the patient and specify in writing the  
 25 earliest date, not later than 21 days after receiving the

1 request, when the correction or amendment will be made or  
 2 when the request will otherwise be disposed of; or

3 (e) inform the patient in writing of the provider's  
 4 refusal to correct or amend the record as requested, the  
 5 reason for the refusal, and the patient's right to add a  
 6 statement of disagreement and to have that statement sent to  
 7 previous recipients of the disputed health care information.

8 NEW SECTION. Section 16. Procedure for adding  
 9 correction, amendment, or statement of disagreement. (1) In  
 10 making a correction or amendment, the health care provider  
 11 shall:

12 (a) add the amending information as a part of the  
 13 health record; and

14 (b) mark the challenged entries as corrected or  
 15 amended entries and indicate the place in the record where  
 16 the corrected or amended information is located, in a manner  
 17 practicable under the circumstances.

18 (2) If the health care provider maintaining the record  
 19 of the patient's health care information refuses to make the  
 20 patient's proposed correction or amendment, the provider  
 21 shall:

22 (a) permit the patient to file as a part of the record  
 23 of his health care information a concise statement of the  
 24 correction or amendment requested and the reasons therefor;  
 25 and

1 (b) mark the challenged entry to indicate that the  
2 patient claims the entry is inaccurate or incomplete and  
3 indicate the place in the record where the statement of  
4 disagreement is located, in a manner practicable under the  
5 circumstances.

6 NEW SECTION. Section 17. Dissemination of corrected  
7 or amended information or statement of disagreement. (1) A  
8 health care provider, upon request of a patient, shall take  
9 reasonable steps to provide copies of corrected or amended  
10 information or of a statement of disagreement to all persons  
11 designated by the patient and identified in the health care  
12 information as having examined or received copies of the  
13 information sought to be corrected or amended.

14 (2) A health care provider may charge the patient a  
15 reasonable fee, not exceeding the provider's actual cost,  
16 for distributing corrected or amended information or the  
17 statement of disagreement, unless the provider's error  
18 necessitated the correction or amendment.

19 NEW SECTION. Section 18. Content and dissemination of  
20 notice. (1) A health care provider who provides health care  
21 at a health care facility that the provider operates and who  
22 maintains a record of a patient's health care information  
23 shall create a notice of information practices, in  
24 substantially the following form:

25 NOTICE

1 "We keep a record of the health care services we  
2 provide for you. You may ask us to see and copy that record.  
3 You may also ask us to correct that record. We will not  
4 disclose your record to others unless you direct us to do so  
5 or unless the law authorizes or compels us to do so. You may  
6 see your record or get more information about it at  
7 \_\_\_\_\_."

8 (2) The health care provider shall post a copy of the  
9 notice of information practices in a conspicuous place in  
10 the health care facility and upon request provide patients  
11 or prospective patients with a copy of the notice.

12 NEW SECTION. Section 19. Health care representatives.  
13 (1) A person authorized to consent to health care for  
14 another may exercise the rights of that person under  
15 [sections 1 through 25] to the extent necessary to  
16 effectuate the terms or purposes of the grant of authority.  
17 If the patient is a minor and is authorized under 41-1-402  
18 to consent to health care without parental consent, only the  
19 minor may exclusively exercise the rights of a patient under  
20 [sections 1 through 25] as to information pertaining to  
21 health care to which the minor lawfully consented.

22 (2) A person authorized to act for a patient shall act  
23 in good faith to represent the best interests of the  
24 patient.

25 NEW SECTION. Section 20. Representative of deceased



1 patient. A personal representative of a deceased patient may  
 2 exercise all of the deceased patient's rights under  
 3 [sections 1 through 25]. If there is no personal  
 4 representative or upon discharge of the personal  
 5 representative, a deceased patient's rights under [sections  
 6 1 through 25] may be exercised by persons who are authorized  
 7 by law to act for him.

8 NEW SECTION. Section 21. Duty to adopt security  
 9 safeguards. A health care provider shall effect reasonable  
 10 safeguards for the security of all health care information  
 11 it maintains.

12 NEW SECTION. Section 22. Retention of record. A  
 13 health care provider shall maintain a record of existing  
 14 health care information for at least 1 year following  
 15 receipt of an authorization to disclose that health care  
 16 information under [section 6] and during the pendency of a  
 17 request for examination and copying under [section 13] or a  
 18 request for correction or amendment under [section 15].

19 NEW SECTION. Section 23. Criminal penalty. ~~{1}--A~~  
 20 ~~person--who--purposely--discloses--health--care--information--in~~  
 21 ~~violation--of--{sections--1--through--25}--and--who--knew--or--should~~  
 22 ~~have--known--that--disclosure--is--prohibited--is--guilty--of--a~~  
 23 ~~misdemeanor--and--upon--conviction--is--punishable--by--a--fine--not~~  
 24 ~~exceeding--\$10,000--or--imprisonment--for--a--period--not--exceeding~~  
 25 ~~1--year--or--both.~~

1 ~~{2}(1)~~ A person who by means of bribery, theft, or  
 2 misrepresentation of identity, purpose of use, or  
 3 entitlement to the information examines or obtains, in  
 4 violation of [sections 1 through 25], health care  
 5 information maintained by a health care provider is guilty  
 6 of a misdemeanor and upon conviction is punishable by a fine  
 7 not exceeding \$10,000 or imprisonment for a period not  
 8 exceeding 1 year, or both.

9 ~~{3}(2)~~ A person who, knowing that a certification  
 10 under [section 12(2)] or a disclosure authorization under  
 11 [sections 6 and 7] is false, purposely presents the  
 12 certification or disclosure authorization to a health care  
 13 provider is guilty of a misdemeanor and upon conviction is  
 14 punishable by a fine not exceeding \$10,000 or imprisonment  
 15 for a period not exceeding 1 year, or both.

16 NEW SECTION. Section 24. Civil enforcement. The  
 17 attorney general or appropriate county attorney may maintain  
 18 a civil action to enforce [sections 1 through 25]. The court  
 19 may order any relief authorized by [section 25].

20 NEW SECTION. Section 25. Civil remedies. (1) A person  
 21 aggrieved by a violation of [sections 1 through 25] may  
 22 maintain an action for relief as provided in this section.

23 (2) The court may order the health care provider or  
 24 other person to comply with [sections 1 through 25] and may  
 25 order any other appropriate relief.

1 (3) A health care provider who relies in good faith  
2 upon a certification, pursuant to [section 12(2)], is not  
3 liable for disclosures made in reliance on that  
4 certification.

5 (4) In an action by a patient alleging that health  
6 care information was improperly withheld under [sections 13  
7 and 14], the burden of proof is on the health care provider  
8 to establish that the information was properly withheld.

9 (5) If the court determines that there is a violation  
10 of [sections 1 through 25], the aggrieved person is entitled  
11 to recover damages for pecuniary losses sustained as a  
12 result of the violation and, in addition, if the violation  
13 results from willful or grossly negligent conduct, the  
14 aggrieved person may recover not in excess of \$5,000,  
15 exclusive of any pecuniary loss.

16 (6) If a plaintiff prevails, the court may assess  
17 reasonable attorney fees and all other expenses reasonably  
18 incurred in the litigation.

19 (7) An action under [sections 1 through 25] is barred  
20 unless the action is commenced within 3 years after the  
21 cause of action accrues.

22 Section 26. Section 50-5-106, MCA, is amended to read:

23 "50-5-106. Records and reports required of health care  
24 facilities -- confidentiality. Health care facilities shall  
25 keep records and make reports as required by the department.

1 Before February 1 of each year, every licensed health care  
2 facility shall submit an annual report for the preceding  
3 calendar year to the department. The report shall be on  
4 forms and contain information specified by the department.  
5 Information received by the department or board through  
6 reports, inspections, or provisions of parts 1 and 2 may not  
7 be disclosed in a way which would identify patients. A  
8 department employee who discloses information which would  
9 identify a patient shall be dismissed from employment and  
10 subject to the provisions of 45-7-401 and [section 23],  
11 unless the disclosure was authorized in writing by the  
12 patient, his guardian, or his agent in accordance with  
13 [sections 1 through 25]. Information and statistical reports  
14 from health care facilities which are considered necessary  
15 by the department for health planning and resource  
16 development activities will be made available to the public  
17 and the health planning agencies within the state."

18 Section 27. Section 50-15-704, MCA, is amended to  
19 read:

20 "50-15-704. Confidentiality. Information received by  
21 the department pursuant to this part may not be released  
22 unless:

- 23 (1) it is in statistical, nonidentifiable form;  
24 (2) the provisions of ~~50-16-311~~ [sections 1 through  
25 25] are satisfied;

1 (3) the release or transfer is to a person or  
2 organization that is qualified to perform data processing or  
3 data analysis and that has safeguards against unauthorized  
4 disclosure of that information; or

5 (4) the release or transfer is to a central tumor  
6 registry of another state and is of information concerning a  
7 person who is residing in that state."

8 SECTION 28. SECTION 53-21-166, MCA, IS AMENDED TO  
9 READ:

10 "53-21-166. Records to be confidential -- exceptions.  
11 All information obtained and records prepared in the course  
12 of providing any services under this part to individuals  
13 under any provision of this part shall be confidential and  
14 privileged matter. Such Except as provided in [sections 1  
15 through 25], information and records may be disclosed only:

16 (1) in communications between qualified professional  
17 persons in the provision of services or appropriate  
18 referrals;

19 (2) when the recipient of services designates persons  
20 to whom information or records may be released, provided  
21 that if a recipient of services is a ward and his guardian  
22 or conservator designates in writing persons to whom records  
23 or information may be disclosed, such designation shall be  
24 valid in lieu of the designation by the recipient; except  
25 that nothing in this section shall be construed to compel a

1 physician, psychologist, social worker, nurse, attorney, or  
2 other professional person to reveal information which has  
3 been given to him in confidence by members of a patient's  
4 family;

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

8 (4) for research if the department has promulgated  
9 rules for the conduct of research; such rules shall include  
10 but not be limited to the requirement that all researchers  
11 must sign an oath of confidentiality;

12 (5) to the courts as necessary to the administration  
13 of justice;

14 (6) to persons authorized by an order of court, after  
15 notice and opportunity for hearing to the person to whom the  
16 record or information pertains and the custodian of the  
17 record or information pursuant to the rules of civil  
18 procedure;

19 (7) to members of the mental disabilities board of  
20 visitors or their agents when necessary to perform their  
21 functions as set out in 53-21-104."

22 Section 29. Section 53-24-306, MCA, is amended to  
23 read:

24 "53-24-306. Records of chemically dependent persons,  
25 intoxicated persons, and family members. (1) The

1 registration and other records of treatment facilities shall  
2 remain confidential and are privileged to the patient.

3 (2) Notwithstanding subsection (1), the department may  
4 make available in accordance with [sections 1 through 25]  
5 information from patients' records for purposes of research  
6 into the causes and treatment of chemical dependency.  
7 Information under this subsection shall not be published in  
8 a way that discloses patients' names or other identifying  
9 information."

10 NEW SECTION. Section 30. Severability. If a part of  
11 this act is invalid, all valid parts that are severable from  
12 the invalid part remain in effect. If a part of this act is  
13 invalid in one or more of its applications, the part remains  
14 in effect in all valid applications that are severable from  
15 the invalid applications.

16 NEW SECTION. Section 31. Repealer. Sections 50-16-301  
17 through 50-16-305 and 50-16-311 through 50-16-314, MCA, are  
18 repealed.

-End-

STANDING COMMITTEE REPORT

SCRHB752.SCR

Page 2 of 3  
HB 752

SENATE

SCRhb752

March 9, 1987

March 7, 1987

MR. PRESIDENT

Public Health, Welfare, and Safety

We, your committee on.....

House Bill 752

having had under consideration..... No.....

third reading copy (blue) color

UNIFORM HEALTH CARE INFORMATION ACT

WINSLOW (McLane)

Respectfully report as follows: That..... House Bill..... No. 752.....

BE AMENDED AS FOLLOWS:

- 1. Title, line 5. Following: "50-15-704," Insert: "53-21-166,"
2. Page 5, lines 18 through 20. Following: "years" Strike: remainder of line 18 through "(2)]" on line 20
3. Page 8, line 12. Following: "who" Insert: "has provided a written assurance that the information obtained will not be improperly disclosed and who"
4. Page 9, line 1. Strike: "unless" Insert: "if"
5. Page 9, following line 1. Strike: "not"
6. Page 9, lines 3 through 6. Strike: subsection (4) in its entirety Renumber: subsequent subsections

- 7. Page 9, line 11. Following: "practice," Strike: "unless" Insert: "if"
8. Page 9, line 12. Following: "provider" Strike: "not"
9. Page 9, line 25. Following: "from" Strike: "redisclosure" Insert: "improper disclosure"
10. Page 11, line 1. Following: "information," Strike: "unless" Insert: "if"
11. Page 11, line 2. Following: "provider" Strike: "not"
12. Page 14, line 12. Following: "hours" Strike: "and" Insert: "or"
13. Page 21, lines 16 through 22. Strike: subsection (1) in its entirety Renumber: subsequent subsections

14. Page 25, following line 4. Insert: "Section 28. Section 53-21-166, MCA," is amended to read:

"53-21-166. Records to be confidential -- exceptions. All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part shall be confidential and privileged matter. Such Except as provided in [sections 1 through 25] information and records may be disclosed only: (1) in communications between qualified professional persons in the provision of services or appropriate referrals;

XXXXXX  
XXXXXX

CONTINUED

Chairman.

CONTINUED

March 9, 1987

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his guardian or conservator designates in writing persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

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

(4) for research if the department has promulgated rules for the conduct of research; such rules shall include but not be limited to the requirement that all researchers must sign an oath of confidentiality;

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

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

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104."

Renumber: subsequent sections

BE CONCURRED IN AS AMENDED

*Dorothy Eck*

Senator Eck

3-10-87  
K  
16

43

# CONFERENCE COMMITTEE REPORT

Report No. ....One.....

Pg 1 of 4

April 10 19 87

MR. SPEAKER

We, your Free Conference Committee on

on House Bill 752

met and considered Senate Committee on Public Health, Welfare, and

Safety amendments to the third reading copy, dated

March 7, 1987.

We recommend as follows:

That House Bill 752, reference copy, be amended as indicated in the instructions.

And that this Conference Committee report be adopted.

FOR THE SENATE

*Dorothy Eck*

DOROTHY ECK

*Tom Rasmussen*

TOM RASMUSSEN

*Tom Hager*

TOM HAGER

FOR THE HOUSE

*Bob Gilbert*

BOB GILBERT

*Cal Winslow*

CAL WINSLOW

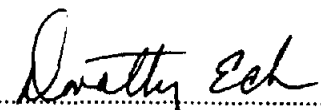
*Tom Bulger*

TOM BULGER

ADOPT REJECT

## INSTRUCTIONS

1. Page 3, lines 19 through 22.  
Following: "provider"  
Strike: remainder of line 19 through "affects" on line 22  
Insert: ", including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect"
2. Page 4, following line 25.  
Insert: "(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:  
    (a) authorized by law to evaluate health care services; and  
    (b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers."  
Renumber: subsequent subsection
3. Page 5, line 21.  
Following: "~~{section 9(1)-or-9(2)}~~"  
Insert: "except for an agent or employee of the health care provider or a person who has examined the recorded health care information under [section 9(2)]."
4. Page 8, lines 13 through 15.  
Following: "who" on line 13  
Strike: remainder of line 13 through "WHO" on line 15
5. Page 9, line 4.  
Following: "~~unless~~"  
Strike: "IF"  
Insert: "unless"
6. Page 9, line 5.  
Following: "~~not~~"  
Insert: "not"
7. Page 9, line 14.  
Following: "~~unless~~"  
Strike: "IF"  
Insert: "unless"
8. Page 9, line 15.  
Following: "~~not~~"  
Insert: "not"

.....  


.....  
 Chairman.



April 10

19 87

9. Page 11, line 4.

Following: "unless"

Strike: "IF"

Insert: "unless"

10. Page 11, line 5.

Following: "not"

Insert: "not"

11. Page 11, line 12.

Following: "law;"

Strike: "and"

Insert: "(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility, if the patient was injured on a public roadway, or was injured by the possible criminal act of another; or"

Renumber: subsequent subsection

12. Page 12, line 3.

Following: "will"

Insert: "or other document"

13. Page 16, line 9.

Following: "purposes;"

Strike: "or"

Insert: "(e) the health care provider obtained the information from a person other than the patient; or"

Renumber: subsequent subsection

14. Page 16, following line 11.

Insert: "(2) Except as provided in [section 19], a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian have not authorized the health care provider to disclose the patient's health care information."

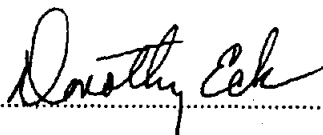
Renumber: subsequent subsections

15. Page 16, lines 22 through 24.

Following: "provider"

Strike: ", selected by the patient, who is licensed, certified, or otherwise authorized under the laws of this state to treat"

Insert: "who is providing health care services to"



16. Page 23, following line 4.

Insert: "(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of [sections 1 through 25] to the attention of the patient or an appropriate authority."

Renumber: subsequent subsections

17. Page 25, lines 16 and 17.

Following: "qualified"

Strike: "professional persons"

Insert: "professionals"

~~HB 752.txt~~

*Donath Eck*

1 HOUSE BILL NO. 752  
 2 INTRODUCED BY WINSLOW  
 3  
 4 A BILL FOR AN ACT ENTITLED: "THE UNIFORM HEALTH CARE  
 5 INFORMATION ACT; AMENDING SECTIONS 50-5-106, 50-15-704,  
 6 53-21-166, AND 53-24-306, MCA; AND REPEALING SECTIONS  
 7 50-16-301 THROUGH 50-16-305 AND 50-16-311 THROUGH 50-16-314,  
 8 MCA."  
 9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11 NEW SECTION. Section 1. Short title. [Sections 1  
 12 through 25] may be cited as the "Uniform Health Care  
 13 Information Act".

14 NEW SECTION. Section 2. Legislative findings. The  
 15 legislature finds that:

16 (1) health care information is personal and sensitive  
 17 information that if improperly used or released may do  
 18 significant harm to a patient's interests in privacy and  
 19 health care or other interests;

20 (2) patients need access to their own health care  
 21 information as a matter of fairness, to enable them to make  
 22 informed decisions about their health care and to correct  
 23 inaccurate or incomplete information about themselves;

24 (3) in order to retain the full trust and confidence  
 25 of patients, health care providers have an interest in

1 assuring that health care information is not improperly  
 2 disclosed and in having clear and certain rules for the  
 3 disclosure of health care information;

4 (4) persons other than health care providers obtain,  
 5 use, and disclose health record information in many  
 6 different contexts and for many different purposes. It is  
 7 the public policy of this state that a patient's interest in  
 8 the proper use and disclosure of his health care information  
 9 survives even when the information is held by persons other  
 10 than health care providers.

11 (5) the movement of patients and their health care  
 12 information across state lines, access to and exchange of  
 13 health care information from automated data banks, and the  
 14 emergence of multistate health care providers creates a  
 15 compelling need for uniform law, rules, and procedures  
 16 governing the use and disclosure of health care information.

17 NEW SECTION. Section 3. Uniformity of application and  
 18 construction. [Sections 1 through 25] must be applied and  
 19 construed to effectuate their general purpose to make  
 20 uniform the laws with respect to the treatment of health  
 21 care information among states enacting them.

22 NEW SECTION. Section 4. Definitions. As used in  
 23 [sections 1 through 25], unless the context indicates  
 24 otherwise, the following definitions apply:

25 (1) "Audit" means an assessment, evaluation,



1 determination, or investigation of a health care provider by  
2 a person not employed by or affiliated with the provider, to  
3 determine compliance with:

4 (a) statutory, regulatory, fiscal, medical, or  
5 scientific standards;

6 (b) a private or public program of payments to a  
7 health care provider; or

8 (c) requirements for licensing, accreditation, or  
9 certification.

10 (2) "Directory information" means information  
11 disclosing the presence and the general health condition of  
12 a patient who is an inpatient in a health care facility or  
13 who is receiving emergency health care in a health care  
14 facility.

15 (3) "General health condition" means the patient's  
16 health status described in terms of critical, poor, fair,  
17 good, excellent, or terms denoting similar conditions.

18 (4) "Health care" means any care, service, or  
19 procedure provided by a health care provider:

20 ~~(a) to diagnose, treat, or maintain a patient's~~  
21 ~~physical or mental condition; or~~

22 ~~(b) that affects, INCLUDING MEDICAL OR PSYCHOLOGICAL~~  
23 ~~DIAGNOSIS, TREATMENT, EVALUATION, ADVICE, OR OTHER SERVICES~~  
24 ~~THAT AFFECT~~ the structure or any function of the human body.

25 (5) "Health care facility" means a hospital, clinic,

1 nursing home, laboratory, office, or similar place where a  
2 health care provider provides health care to patients.

3 (6) "Health care information" means any information,  
4 whether oral or recorded in any form or medium, that  
5 identifies or can readily be associated with the identity of  
6 a patient and relates to the patient's health care. The term  
7 includes any record of disclosures of health care  
8 information.

9 (7) "Health care provider" means a person who is  
10 licensed, certified, or otherwise authorized by the laws of  
11 this state to provide health care in the ordinary course of  
12 business or practice of a profession. The term does not  
13 include a person who provides health care solely through the  
14 sale or dispensing of drugs or medical devices.

15 (8) "Institutional review board" means a board,  
16 committee, or other group formally designated by an  
17 institution or authorized under federal or state law to  
18 review, approve the initiation of, or conduct periodic  
19 review of research programs to assure the protection of the  
20 rights and welfare of human research subjects.

21 (9) "Maintain", as related to health care information,  
22 means to hold, possess, preserve, retain, store, or control  
23 that information.

24 (10) "Patient" means an individual who receives or has  
25 received health care. The term includes a deceased

1 individual who has received health care.

2 (11) "PEER REVIEW" MEANS AN EVALUATION OF HEALTH CARE  
3 SERVICES BY A COMMITTEE OF A STATE OR LOCAL PROFESSIONAL  
4 ORGANIZATION OF HEALTH CARE PROVIDERS OR A COMMITTEE OF  
5 MEDICAL STAFF OF A LICENSED HEALTH CARE FACILITY. THE  
6 COMMITTEE MUST BE:

7 (A) AUTHORIZED BY LAW TO EVALUATE HEALTH CARE  
8 SERVICES; AND

9 (B) GOVERNED BY WRITTEN BYLAWS APPROVED BY THE  
10 GOVERNING BOARD OF THE HEALTH CARE FACILITY OR AN  
11 ORGANIZATION OF HEALTH CARE PROVIDERS.

12 ~~{11}~~{12} "Person" means an individual, corporation,  
13 business trust, estate, trust, partnership, association,  
14 joint venture, government, governmental subdivision or  
15 agency, or other legal or commercial entity.

16 NEW SECTION. Section 5. Disclosure by health care  
17 provider. (1) Except as authorized in [sections 9 and 10] or  
18 as otherwise specifically provided by law or the Montana  
19 Rules of Civil Procedure, a health care provider, an  
20 individual who assists a health care provider in the  
21 delivery of health care, or an agent or employee of a health  
22 care provider may not disclose health care information about  
23 a patient to any other person without the patient's written  
24 authorization. A disclosure made under a patient's written  
25 authorization must conform to the authorization.

1 (2) A health care provider shall maintain, in  
2 conjunction with a patient's recorded health care  
3 information, a record of each person who has received or  
4 examined, in whole or in part, the recorded health care  
5 information during the preceding 3 years~~7--except-for-a~~  
6 ~~person-who-has-examined-the-recorded-health-care-information~~  
7 ~~under-fsection-9(1)-or-(2)~~ EXCEPT FOR AN AGENT OR EMPLOYEE  
8 OF THE HEALTH CARE PROVIDER OR A PERSON WHO HAS EXAMINED THE  
9 RECORDED HEALTH CARE INFORMATION UNDER [SECTION 9(2)]. The  
10 record of disclosure must include the name, address, and  
11 institutional affiliation, if any, of each person receiving  
12 or examining the recorded health care information, the date  
13 of the receipt or examination, and to the extent practicable  
14 a description of the information disclosed.

15 NEW SECTION. Section 6. Patient authorization to  
16 health care provider for disclosure. (1) A patient may  
17 authorize a health care provider to disclose the patient's  
18 health care information. A health care provider shall honor  
19 an authorization and, if requested, provide a copy of the  
20 recorded health care information unless the health care  
21 provider denies the patient access to health care  
22 information under [section 14].

23 (2) A health care provider may charge a reasonable  
24 fee, not to exceed his actual cost for providing the health  
25 care information, and is not required to honor an

1 authorization until the fee is paid.

2 (3) To be valid, a disclosure authorization to a  
3 health care provider must:

4 (a) be in writing, dated, and signed by the patient;

5 (b) identify the nature of the information to be  
6 disclosed; and

7 (c) identify the person to whom the information is to  
8 be disclosed.

9 (4) Except as provided by [sections 1 through 25], the  
10 signing of an authorization by a patient is not a waiver of  
11 any rights a patient has under other statutes, the Montana  
12 Rules of Evidence, or common law.

13 NEW SECTION. Section 7. Patient authorization --  
14 retention -- effective period. (1) A health care provider  
15 shall retain each authorization or revocation in conjunction  
16 with any health care information from which disclosures are  
17 made.

18 (2) Except for authorizations to provide information  
19 to third-party health care payors, an authorization may not  
20 permit the release of health care information relating to  
21 health care that the patient receives more than 6 months  
22 after the authorization was signed.

23 (3) An authorization in effect on [the effective date  
24 of sections 1 through 25] remains valid for 30 months after  
25 [the effective date of sections 1 through 25] unless an

1 earlier date is specified or it is revoked under [section  
2 8]. Health care information disclosed under such an  
3 authorization is otherwise subject to [sections 1 through  
4 25]. An authorization written after [the effective date of  
5 sections 1 through 25] becomes invalid after the expiration  
6 date contained in the authorization, which may not exceed 30  
7 months. If the authorization does not contain an expiration  
8 date, it expires 6 months after it is signed.

9 NEW SECTION. Section 8. Patient's revocation of  
10 authorization for disclosure. A patient may revoke a  
11 disclosure authorization to a health care provider at any  
12 time unless disclosure is required to effectuate payments  
13 for health care that has been provided or other substantial  
14 action has been taken in reliance on the authorization. A  
15 patient may not maintain an action against the health care  
16 provider for disclosures made in good-faith reliance on an  
17 authorization if the health care provider had no notice of  
18 the revocation of the authorization.

19 NEW SECTION. Section 9. Disclosure without patient's  
20 authorization based on need to know. A health care provider  
21 may disclose health care information about a patient without  
22 the patient's authorization, to the extent a recipient needs  
23 to know the information, if the disclosure is:

24 (1) to a person who is providing health care to the  
25 patient;

1 (2) to any other person who ~~HAS PROVIDED A WRITTEN~~  
 2 ~~ASSURANCE THAT THE INFORMATION OBTAINED WILL NOT BE~~  
 3 ~~IMPROPERLY DISCLOSED AND WHO~~ requires health care  
 4 information for health care education; to provide planning,  
 5 quality assurance, peer review, or administrative, legal,  
 6 financial, or actuarial services to the health care  
 7 provider; or for assisting the health care provider in the  
 8 delivery of health care and if the health care provider  
 9 reasonably believes that the person will:

10 (a) not use or disclose the health care information  
 11 for any other purpose; and

12 (b) take appropriate steps to protect the health care  
 13 information;

14 (3) to any other health care provider who has  
 15 previously provided health care to the patient, to the  
 16 extent necessary to provide health care to the patient,  
 17 unless IF UNLESS the patient has instructed the health care  
 18 provider not NOT to make the disclosure;

19 ~~{4} to any person if the health care provider~~  
 20 ~~reasonably believes that disclosure will avoid or minimize~~  
 21 ~~an imminent danger to the health or safety of the patient or~~  
 22 ~~any other individual;~~

23 ~~{5}~~ (4) to immediate family members of the patient or  
 24 any other individual with whom the patient is known to have  
 25 a close personal relationship, if made in accordance with

1 the laws of the state and good medical or other professional  
 2 practice, unless IF UNLESS the patient has instructed the  
 3 health care provider not NOT to make the disclosure;

4 ~~{6}~~ (5) to a health care provider who is the successor  
 5 in interest to the health care provider maintaining the  
 6 health care information;

7 ~~{7}~~ (6) for use in a research project that an  
 8 institutional review board has determined:

9 (a) is of sufficient importance to outweigh the  
 10 intrusion into the privacy of the patient that would result  
 11 from the disclosure;

12 (b) is impracticable without the use or disclosure of  
 13 the health care information in individually identifiable  
 14 form;

15 (c) contains reasonable safeguards to protect the  
 16 information from redisclosure IMPROPER DISCLOSURE;

17 (d) contains reasonable safeguards to protect against  
 18 directly or indirectly identifying any patient in any report  
 19 of the research project; and

20 (e) contains procedures to remove or destroy at the  
 21 earliest opportunity, consistent with the purposes of the  
 22 project, information that would enable the patient to be  
 23 identified, unless an institutional review board authorizes  
 24 retention of identifying information for purposes of another  
 25 research project;

1       ~~(6)~~(7) to a person who obtains information for  
2 purposes of an audit, if that person agrees in writing to:

3       (a) remove or destroy, at the earliest opportunity  
4 consistent with the purpose of the audit, information that  
5 would enable the patient to be identified; and

6       (b) not disclose the information further, except to  
7 accomplish the audit or to report unlawful or improper  
8 conduct involving fraud in payment for health care by a  
9 health care provider or patient or other unlawful conduct by  
10 a health care provider; and

11       ~~(9)~~(8) to an official of a penal or other custodial  
12 institution in which the patient is detained.

13       NEW SECTION. Section 10. Disclosure without patient's  
14 authorization -- other bases. A health care provider may  
15 disclose health care information about a patient without the  
16 patient's authorization if the disclosure is:

17       (1) directory information, unless IF UNLESS the  
18 patient has instructed the health care provider not NOT to  
19 make the disclosure;

20       (2) to federal, state, or local public health  
21 authorities, to the extent the health care provider is  
22 required by law to report health care information or when  
23 needed to protect the public health;

24       (3) to federal, state, or local law enforcement  
25 authorities to the extent required by law; and

1       ~~(4)~~ TO A LAW ENFORCEMENT OFFICER ABOUT THE GENERAL  
2 PHYSICAL CONDITION OF A PATIENT BEING TREATED IN A HEALTH  
3 CARE FACILITY, IF THE PATIENT WAS INJURED ON A PUBLIC  
4 ROADWAY, OR WAS INJURED BY THE POSSIBLE CRIMINAL ACT OF  
5 ANOTHER; OR

6       ~~(4)~~(5) pursuant to compulsory process in accordance  
7 with [sections 11 and 12].

8       NEW SECTION. Section 11. When health care information  
9 available by compulsory process. Health care information may  
10 not be disclosed by a health care provider pursuant to  
11 compulsory legal process or discovery in any judicial,  
12 legislative, or administrative proceeding unless:

13       (1) the patient has consented in writing to the  
14 release of the health care information in response to  
15 compulsory process or a discovery request;

16       (2) the patient has waived the right to claim  
17 confidentiality for the health care information sought;

18       (3) the patient is a party to the proceeding and has  
19 placed his physical or mental condition in issue;

20       (4) the patient's physical or mental condition is  
21 relevant to the execution or witnessing of a will OR OTHER  
22 DOCUMENT;

23       (5) the physical or mental condition of a deceased  
24 patient is placed in issue by any person claiming or  
25 defending through or as a beneficiary of the patient;



1 (6) a patient's health care information is to be used  
2 in the patient's commitment proceeding;

3 (7) the health care information is for use in any law  
4 enforcement proceeding or investigation in which a health  
5 care provider is the subject or a party, except that health  
6 care information so obtained may not be used in any  
7 proceeding against the patient unless the matter relates to  
8 payment for his health care or unless authorized under  
9 subsection (9);

10 (8) the health care information is relevant to a  
11 proceeding brought under [sections 23 through 25]; or

12 (9) a court has determined that particular health care  
13 information is subject to compulsory legal process or  
14 discovery because the party seeking the information has  
15 demonstrated that there is a compelling state interest that  
16 outweighs the patient's privacy interest.

17 NEW SECTION. Section 12. Method of compulsory  
18 process. (1) Unless the court for good cause shown  
19 determines that the notification should be waived or  
20 modified, if health care information is sought under  
21 subsection (2), (4), or (5) of [section 11] or in a civil  
22 proceeding or investigation under subsection (9) of [section  
23 11], the person seeking discovery or compulsory process  
24 shall mail a notice by first-class mail to the patient or  
25 the patient's attorney of record of the compulsory process

1 or discovery request at least 10 days before presenting the  
2 certificate required under subsection (2) to the health care  
3 provider.

4 (2) Service of compulsory process or discovery  
5 requests upon a health care provider must be accompanied by  
6 a written certification, signed by the person seeking to  
7 obtain health care information or his authorized  
8 representative, identifying at least one subsection of  
9 [section 11] under which compulsory process or discovery is  
10 being sought. The certification must also state, in the case  
11 of information sought under subsection (2), (4), or (5) of  
12 [section 11] or in a civil proceeding under subsection (9)  
13 of [section 11], that the requirements of subsection (1) for  
14 notice have been met. A person may sign the certification  
15 only if the person reasonably believes that the subsection  
16 of [section 11] identified in the certification provides an  
17 appropriate basis for the use of discovery or compulsory  
18 process. Unless otherwise ordered by the court, the health  
19 care provider shall maintain a copy of the process and the  
20 written certification as a permanent part of the patient's  
21 health care information.

22 (3) Production of health care information under  
23 [section 11] and this section does not in itself constitute  
24 a waiver of any privilege, objection, or defense existing  
25 under other law or rule of evidence or procedure.

1        NEW SECTION. Section 13. Requirements and procedures  
 2 for patient's examination and copying. (1) Upon receipt of a  
 3 written request from a patient to examine or copy all or  
 4 part of his recorded health care information, a health care  
 5 provider, as promptly as required under the circumstances  
 6 but no later than 10 days after receiving the request,  
 7 shall:

8        (a) make the information available to the patient for  
 9 examination during regular business hours and OR provide a  
 10 copy, if requested, to the patient;

11        (b) inform the patient if the information does not  
 12 exist or cannot be found;

13        (c) if the health care provider does not maintain a  
 14 record of the information, inform the patient and provide  
 15 the name and address, if known, of the health care provider  
 16 who maintains the record;

17        (d) if the information is in use or unusual  
 18 circumstances have delayed handling the request, inform the  
 19 patient and specify in writing the reasons for the delay and  
 20 the earliest date, not later than 21 days after receiving  
 21 the request, when the information will be available for  
 22 examination or copying or when the request will be otherwise  
 23 disposed of; or

24        (e) deny the request in whole or in part under  
 25 [section 14] and inform the patient.

1        (2) Upon request, the health care provider shall  
 2 provide an explanation of any code or abbreviation used in  
 3 the health care information. If a record of the particular  
 4 health care information requested is not maintained by the  
 5 health care provider in the requested form, he is not  
 6 required to create a new record or reformulate an existing  
 7 record to make the information available in the requested  
 8 form. The health care provider may charge a reasonable fee,  
 9 not to exceed the health care provider's actual cost, for  
 10 providing the health care information and is not required to  
 11 permit examination or copying until the fee is paid.

12        NEW SECTION. Section 14. Denial of examination and  
 13 copying. (1) A health care provider may deny access to  
 14 health care information by a patient if the health care  
 15 provider reasonably concludes that:

16        (a) knowledge of the health care information would be  
 17 injurious to the health of the patient;

18        (b) knowledge of the health care information could  
 19 reasonably be expected to lead to the patient's  
 20 identification of an individual who provided the information  
 21 in confidence and under circumstances in which  
 22 confidentiality was appropriate;

23        (c) knowledge of the health care information could  
 24 reasonably be expected to cause danger to the life or safety  
 25 of any individual;

1 (d) the health care information was compiled and is  
2 used solely for litigation, quality assurance, peer review,  
3 or administrative purposes; or

4 (E) THE HEALTH CARE PROVIDER OBTAINED THE INFORMATION  
5 FROM A PERSON OTHER THAN THE PATIENT; OR

6 ~~(F)~~ access to the health care information is  
7 otherwise prohibited by law.

8 (2) EXCEPT AS PROVIDED IN [SECTION 19], A HEALTH CARE  
9 PROVIDER MAY DENY ACCESS TO HEALTH CARE INFORMATION BY A  
10 PATIENT WHO IS A MINOR IF:

11 (A) THE PATIENT IS COMMITTED TO A MENTAL HEALTH  
12 FACILITY; OR

13 (B) THE PATIENT'S PARENTS OR GUARDIAN HAVE NOT  
14 AUTHORIZED THE HEALTH CARE PROVIDER TO DISCLOSE THE  
15 PATIENT'S HEALTH CARE INFORMATION.

16 ~~(3)~~ If a health care provider denies a request for  
17 examination and copying under this section, the provider, to  
18 the extent possible, shall segregate health care information  
19 for which access has been denied under subsection (1) from  
20 information for which access cannot be denied and permit the  
21 patient to examine or copy the disclosable information.

22 ~~(4)~~ If a health care provider denies a patient's  
23 request for examination and copying, in whole or in part,  
24 under subsection (1)(a) or (1)(c), he shall permit  
25 examination and copying of the record by another health care

1 provider, ~~selected by the patient, who is licensed,~~  
2 ~~certified, or otherwise authorized under the laws of this~~  
3 ~~state to treat~~ WHO IS PROVIDING HEALTH CARE SERVICES TO the  
4 patient for the same condition as the health care provider  
5 denying the request. The health care provider denying the  
6 request shall inform the patient of the patient's right to  
7 select another health care provider under this subsection.

8 NEW SECTION. Section 15. Request for correction or  
9 amendment. (1) For purposes of accuracy or completeness, a  
10 patient may request in writing that a health care provider  
11 correct or amend its record of the patient's health care  
12 information to which he has access under [section 13].

13 (2) As promptly as required under the circumstances  
14 but no later than 10 days after receiving a request from a  
15 patient to correct or amend its record of the patient's  
16 health care information, the health care provider shall:

17 (a) make the requested correction or amendment and  
18 inform the patient of the action and of the patient's right  
19 to have the correction or amendment sent to previous  
20 recipients of the health care information in question;

21 (b) inform the patient if the record no longer exists  
22 or cannot be found;

23 (c) if the health care provider does not maintain the  
24 record, inform the patient and provide him with the name and  
25 address, if known, of the person who maintains the record;

1 (d) if the record is in use or unusual circumstances  
 2 have delayed the handling of the correction or amendment  
 3 request, inform the patient and specify in writing the  
 4 earliest date, not later than 21 days after receiving the  
 5 request, when the correction or amendment will be made or  
 6 when the request will otherwise be disposed of; or

7 (e) inform the patient in writing of the provider's  
 8 refusal to correct or amend the record as requested, the  
 9 reason for the refusal, and the patient's right to add a  
 10 statement of disagreement and to have that statement sent to  
 11 previous recipients of the disputed health care information.

12 NEW SECTION. Section 16. Procedure for adding  
 13 correction, amendment, or statement of disagreement. (1) In  
 14 making a correction or amendment, the health care provider  
 15 shall:

16 (a) add the amending information as a part of the  
 17 health record; and

18 (b) mark the challenged entries as corrected or  
 19 amended entries and indicate the place in the record where  
 20 the corrected or amended information is located, in a manner  
 21 practicable under the circumstances.

22 (2) If the health care provider maintaining the record  
 23 of the patient's health care information refuses to make the  
 24 patient's proposed correction or amendment, the provider  
 25 shall:

1 (a) permit the patient to file as a part of the record  
 2 of his health care information a concise statement of the  
 3 correction or amendment requested and the reasons therefor;  
 4 and

5 (b) mark the challenged entry to indicate that the  
 6 patient claims the entry is inaccurate or incomplete and  
 7 indicate the place in the record where the statement of  
 8 disagreement is located, in a manner practicable under the  
 9 circumstances.

10 NEW SECTION. Section 17. Dissemination of corrected  
 11 or amended information or statement of disagreement. (1) A  
 12 health care provider, upon request of a patient, shall take  
 13 reasonable steps to provide copies of corrected or amended  
 14 information or of a statement of disagreement to all persons  
 15 designated by the patient and identified in the health care  
 16 information as having examined or received copies of the  
 17 information sought to be corrected or amended.

18 (2) A health care provider may charge the patient a  
 19 reasonable fee, not exceeding the provider's actual cost,  
 20 for distributing corrected or amended information or the  
 21 statement of disagreement, unless the provider's error  
 22 necessitated the correction or amendment.

23 NEW SECTION. Section 18. Content and dissemination of  
 24 notice. (1) A health care provider who provides health care  
 25 at a health care facility that the provider operates and who

1 maintains a record of a patient's health care information  
 2 shall create a notice of information practices, in  
 3 substantially the following form:

4 NOTICE

5 "We keep a record of the health care services we  
 6 provide for you. You may ask us to see and copy that record.  
 7 You may also ask us to correct that record. We will not  
 8 disclose your record to others unless you direct us to do so  
 9 or unless the law authorizes or compels us to do so. You may  
 10 see your record or get more information about it at  
 11 \_\_\_\_\_."

12 (2) The health care provider shall post a copy of the  
 13 notice of information practices in a conspicuous place in  
 14 the health care facility and upon request provide patients  
 15 or prospective patients with a copy of the notice.

16 NEW SECTION. Section 19. Health care representatives.

17 (1) A person authorized to consent to health care for  
 18 another may exercise the rights of that person under  
 19 [sections 1 through 25] to the extent necessary to  
 20 effectuate the terms or purposes of the grant of authority.  
 21 If the patient is a minor and is authorized under 41-1-402  
 22 to consent to health care without parental consent, only the  
 23 minor may exclusively exercise the rights of a patient under  
 24 [sections 1 through 25] as to information pertaining to  
 25 health care to which the minor lawfully consented.

1 (2) A person authorized to act for a patient shall act  
 2 in good faith to represent the best interests of the  
 3 patient.

4 NEW SECTION. Section 20. Representative of deceased  
 5 patient. A personal representative of a deceased patient may  
 6 exercise all of the deceased patient's rights under  
 7 [sections 1 through 25]. If there is no personal  
 8 representative or upon discharge of the personal  
 9 representative, a deceased patient's rights under [sections  
 10 1 through 25] may be exercised by persons who are authorized  
 11 by law to act for him.

12 NEW SECTION. Section 21. Duty to adopt security  
 13 safeguards. A health care provider shall effect reasonable  
 14 safeguards for the security of all health care information  
 15 it maintains.

16 NEW SECTION. Section 22. Retention of record. A  
 17 health care provider shall maintain a record of existing  
 18 health care information for at least 1 year following  
 19 receipt of an authorization to disclose that health care  
 20 information under [section 6] and during the pendency of a  
 21 request for examination and copying under [section 13] or a  
 22 request for correction or amendment under [section 15].

23 NEW SECTION. Section 23. Criminal penalty. ~~(1)---A~~  
 24 ~~person--who--purposely--discloses--health--care--information--in~~  
 25 ~~violation--of--{sections--1--through--25}--and--who--knew--or--should~~

1 ~~have--known--that--disclosure--is--prohibited--is--guilty--of--a~~  
 2 ~~misdemeanor--and--upon--conviction--is--punishable--by--a--fine--not~~  
 3 ~~exceeding--\$10,000--or--imprisonment--for--a--period--not--exceeding~~  
 4 ~~1--year,--or--both.~~

5       ~~{2}{1}~~ A person who by means of bribery, theft, or  
 6 misrepresentation of identity, purpose of use, or  
 7 entitlement to the information examines or obtains, in  
 8 violation of [sections 1 through 25], health care  
 9 information maintained by a health care provider is guilty  
 10 of a misdemeanor and upon conviction is punishable by a fine  
 11 not exceeding \$10,000 or imprisonment for a period not  
 12 exceeding 1 year, or both.

13       ~~{3}{2}~~ A person who, knowing that a certification  
 14 under [section 12(2)] or a disclosure authorization under  
 15 [sections 6 and 7] is false, purposely presents the  
 16 certification or disclosure authorization to a health care  
 17 provider is guilty of a misdemeanor and upon conviction is  
 18 punishable by a fine not exceeding \$10,000 or imprisonment  
 19 for a period not exceeding 1 year, or both.

20       NEW SECTION. Section 24. Civil enforcement. The  
 21 attorney general or appropriate county attorney may maintain  
 22 a civil action to enforce [sections 1 through 25]. The court  
 23 may order any relief authorized by [section 25].

24       NEW SECTION. Section 25. Civil remedies. (1) A person  
 25 aggrieved by a violation of [sections 1 through 25] may

1 maintain an action for relief as provided in this section.

2       (2) The court may order the health care provider or  
 3 other person to comply with [sections 1 through 25] and may  
 4 order any other appropriate relief.

5       (3) A health care provider who relies in good faith  
 6 upon a certification, pursuant to [section 12(2)], is not  
 7 liable for disclosures made in reliance on that  
 8 certification.

9       (4) NO DISCIPLINARY OR PUNITIVE ACTION MAY BE TAKEN  
 10 AGAINST A HEALTH CARE PROVIDER OR HIS EMPLOYEE OR AGENT WHO  
 11 BRINGS EVIDENCE OF A VIOLATION OF [SECTIONS 1 THROUGH 25] TO  
 12 THE ATTENTION OF THE PATIENT OR AN APPROPRIATE AUTHORITY.

13       ~~{4}{5}~~ In an action by a patient alleging that health  
 14 care information was improperly withheld under [sections 13  
 15 and 14], the burden of proof is on the health care provider  
 16 to establish that the information was properly withheld.

17       ~~{5}{6}~~ If the court determines that there is a  
 18 violation of [sections 1 through 25], the aggrieved person  
 19 is entitled to recover damages for pecuniary losses  
 20 sustained as a result of the violation and, in addition, if  
 21 the violation results from willful or grossly negligent  
 22 conduct, the aggrieved person may recover not in excess of  
 23 \$5,000, exclusive of any pecuniary loss.

24       ~~{6}{7}~~ If a plaintiff prevails, the court may assess  
 25 reasonable attorney fees and all other expenses reasonably

1 incurred in the litigation.

2 ~~†7†(8)~~ An action under [sections 1 through 25] is  
3 barred unless the action is commenced within 3 years after  
4 the cause of action accrues.

5 Section 26. Section 50-5-106, MCA, is amended to read:

6 "50-5-106. Records and reports required of health care  
7 facilities -- confidentiality. Health care facilities shall  
8 keep records and make reports as required by the department.  
9 Before February 1 of each year, every licensed health care  
10 facility shall submit an annual report for the preceding  
11 calendar year to the department. The report shall be on  
12 forms and contain information specified by the department.  
13 Information received by the department or board through  
14 reports, inspections, or provisions of parts 1 and 2 may not  
15 be disclosed in a way which would identify patients. A  
16 department employee who discloses information which would  
17 identify a patient shall be dismissed from employment and  
18 subject to the provisions of 45-7-401 and [section 23],  
19 unless the disclosure was authorized in writing by the  
20 patient, his guardian, or his agent in accordance with  
21 [sections 1 through 25]. Information and statistical reports  
22 from health care facilities which are considered necessary  
23 by the department for health planning and resource  
24 development activities will be made available to the public  
25 and the health planning agencies within the state."

1 Section 27. Section 50-15-704, MCA, is amended to  
2 read:

3 "50-15-704. Confidentiality. Information received by  
4 the department pursuant to this part may not be released  
5 unless:

- 6 (1) it is in statistical, nonidentifiable form;  
7 (2) the provisions of ~~50-16-3††~~ [sections 1 through  
8 25] are satisfied;  
9 (3) the release or transfer is to a person or  
10 organization that is qualified to perform data processing or  
11 data analysis and that has safeguards against unauthorized  
12 disclosure of that information; or  
13 (4) the release or transfer is to a central tumor  
14 registry of another state and is of information concerning a  
15 person who is residing in that state."

16 SECTION 28. SECTION 53-21-166, MCA, IS AMENDED TO  
17 READ:

18 "53-21-166. Records to be confidential -- exceptions.  
19 All information obtained and records prepared in the course  
20 of providing any services under this part to individuals  
21 under any provision of this part shall be confidential and  
22 privileged matter. Such Except as provided in [sections 1  
23 through 25], information and records may be disclosed only:  
24 (1) in communications between qualified ~~professional~~  
25 ~~persons~~ PROFESSIONALS in the provision of services or

1 appropriate referrals;

2 (2) when the recipient of services designates persons  
3 to whom information or records may be released, provided  
4 that if a recipient of services is a ward and his guardian  
5 or conservator designates in writing persons to whom records  
6 or information may be disclosed, such designation shall be  
7 valid in lieu of the designation by the recipient; except  
8 that nothing in this section shall be construed to compel a  
9 physician, psychologist, social worker, nurse, attorney, or  
10 other professional person to reveal information which has  
11 been given to him in confidence by members of a patient's  
12 family;

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

16 (4) for research if the department has promulgated  
17 rules for the conduct of research; such rules shall include  
18 but not be limited to the requirement that all researchers  
19 must sign an oath of confidentiality;

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

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

1 procedure;

2 (7) to members of the mental disabilities board of  
3 visitors or their agents when necessary to perform their  
4 functions as set out in 53-21-104."

5 Section 29. Section 53-24-306, MCA, is amended to  
6 read:

7 "53-24-306. Records of chemically dependent persons,  
8 intoxicated persons, and family members. (1) The  
9 registration and other records of treatment facilities shall  
10 remain confidential and are privileged to the patient.

11 (2) Notwithstanding subsection (1), the department may  
12 make available in accordance with [sections 1 through 25]  
13 information from patients' records for purposes of research  
14 into the causes and treatment of chemical dependency.  
15 Information under this subsection shall not be published in  
16 a way that discloses patients' names or other identifying  
17 information."

18 NEW SECTION. Section 30. Severability. If a part of  
19 this act is invalid, all valid parts that are severable from  
20 the invalid part remain in effect. If a part of this act is  
21 invalid in one or more of its applications, the part remains  
22 in effect in all valid applications that are severable from  
23 the invalid applications.

24 NEW SECTION. Section 31. Repealer. Sections 50-16-301  
25 through 50-16-305 and 50-16-311 through 50-16-314, MCA, are



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1 repealed.

-End-