

HOUSE BILL NO. 621  
INTRODUCED BY T. NELSON

IN THE HOUSE

FEBRUARY 9, 1989                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

FIRST READING.

FEBRUARY 18, 1989                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

PRINTING REPORT.

FEBRUARY 20, 1989                   SECOND READING, DO PASS AS AMENDED.

FEBRUARY 21, 1989                   ENGROSSING REPORT.

THIRD READING, PASSED.  
AYES, 99; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989                   INTRODUCED AND REFERRED TO COMMITTEE  
ON PUBLIC HEALTH, WELFARE & SAFETY.

FIRST READING.

MARCH 27, 1989                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 28, 1989                   SECOND READING, CONCURRED IN.

MARCH 29, 1989                   THIRD READING, CONCURRED IN.  
AYES, 49; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 31, 1989                   RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 1, 1989

ON MOTION, TAKEN FROM THIRD READING  
AND REREFERRED TO SECOND READING FOR  
FURTHER CONSIDERATION.

SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

APRIL 4, 1989

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 5, 1989

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 11, 1989

CONFERENCE COMMITTEE REPORTED.

APRIL 13, 1989

SECOND READING, CONFERENCE COMMITTEE  
REPORT ADOPTED.

APRIL 14, 1989

THIRD READING, CONFERENCE COMMITTEE  
REPORT ADOPTED.

IN THE SENATE

APRIL 14, 1989

CONFERENCE COMMITTEE REPORT  
ADOPTED.

IN THE HOUSE

APRIL 20, 1989

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 621  
2 INTRODUCED BY Sam Nelson

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UNIFORM  
5 HEALTH CARE INFORMATION ACT TO AUTHORIZE A FAMILY MEMBER OF  
6 A DECEASED PATIENT TO EXERCISE THE RIGHTS PROVIDED FOR UNDER  
7 THE ACT; TO CLARIFY THE RECORDS THAT MUST BE KEPT OF PERSONS  
8 EXAMINING HEALTH CARE INFORMATION; TO AUTHORIZE DISCLOSURE  
9 OF HEALTH CARE INFORMATION TO THIRD-PARTY HEALTH CARE  
10 PAYORS; TO INCLUDE INVESTIGATIVE SUBPOENAS UNDER COMPULSORY  
11 PROCESS; TO ALLOW A HEALTH CARE PROVIDER TO DENY ACCESS TO  
12 RECORDS UNDER COMPULSORY PROCESS PENDING JUDICIAL REVIEW; TO  
13 PROHIBIT DISCLOSURE OF HEALTH CARE INFORMATION TO THE  
14 PATIENT IF IT MIGHT REVEAL BIRTH OUT OF WEDLOCK; AND  
15 AMENDING SECTIONS 50-16-522, 50-16-525, 50-16-529,  
16 50-16-535, 50-16-536, AND 50-16-542, MCA."

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 **Section 1.** Section 50-16-522, MCA, is amended to read:

20 "50-16-522. Representative of deceased patient. A  
21 personal representative of a deceased patient may exercise  
22 all of the deceased patient's rights under this part. If  
23 there is no personal representative or upon discharge of the  
24 personal representative, a deceased patient's rights under  
25 this part may be exercised by the surviving spouse, a

1 parent, an adult child, an adult sibling, or any other  
2 persons person who are is authorized by law to act for him."

3 **Section 2.** Section 50-16-525, MCA, is amended to read:

4 "50-16-525. Disclosure by health care provider. (1)  
5 Except as authorized in 50-16-529 and 50-16-530 or as  
6 otherwise specifically provided by law or the Montana Rules  
7 of Civil Procedure, a health care provider, an individual  
8 who assists a health care provider in the delivery of health  
9 care, or an agent or employee of a health care provider may  
10 not disclose health care information about a patient to any  
11 other person without the patient's written authorization. A  
12 disclosure made under a patient's written authorization must  
13 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 an  
19 ~~agent--or--employee--of--the--health--care--provider--or~~ a person  
20 who has examined the recorded health care information under  
21 50-16-529(1) or (2). The record of disclosure must include  
22 the name, address, and institutional affiliation, if any, of  
23 each person receiving or examining the recorded health care  
24 information, the date of the receipt or examination, and to  
25 the extent practicable a description of the information



-2- INTRODUCED BILL  
HB 621

1 disclosed."

2 **Section 3.** Section 50-16-529, MCA, is amended to read:

3 **"50-16-529. Disclosure without patient's authorization**  
4 **based on need to know.** A health care provider may disclose  
5 health care information about a patient without the  
6 patient's authorization, to the extent a recipient needs to  
7 know the information, if the disclosure is:

8 (1) to a person who is providing health care to the  
9 patient;

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

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

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

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

1 not to make the disclosure;

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

8 (5) to a health care provider who is the successor in  
9 interest to the health care provider maintaining the health  
10 care information;

11 (6) for use in a research project that an institutional  
12 review board has determined:

13 (a) is of sufficient importance to outweigh the  
14 intrusion into the privacy of the patient that would result  
15 from the disclosure;

16 (b) is impracticable without the use or disclosure of  
17 the health care information in individually identifiable  
18 form;

19 (c) contains reasonable safeguards to protect the  
20 information from improper disclosure;

21 (d) contains reasonable safeguards to protect against  
22 directly or indirectly identifying any patient in any report  
23 of the research project; and

24 (e) contains procedures to remove or destroy at the  
25 earliest opportunity, consistent with the purposes of the

1 project, information that would enable the patient to be  
2 identified, unless an institutional review board authorizes  
3 retention of identifying information for purposes of another  
4 research project;

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

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

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

15 (8) to an official of a penal or other custodial  
16 institution in which the patient is detained."

17 **Section 4.** Section 50-16-535, MCA, is amended to read:

18 "50-16-535. When health care information available by  
19 compulsory process. Health care information may not be  
20 disclosed by a health care provider pursuant to compulsory  
21 legal process or discovery in any judicial, legislative, or  
22 administrative proceeding unless:

23 (1) the patient has consented in writing to the release  
24 of the health care information in response to compulsory  
25 process or a discovery request;

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

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

5 (4) the patient's physical or mental condition is  
6 relevant to the execution or witnessing of a will or other  
7 document;

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

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

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

20 (8) the health care information is relevant to a  
21 proceeding brought under 50-16-551 through 50-16-553; or

22 (9) a court has determined that particular health care  
23 information is subject to compulsory legal process or  
24 discovery because the party seeking the information has  
25 demonstrated that there is a compelling state interest that

1 outweighs the patient's privacy interest; or

2 (10) the health care information is requested pursuant  
3 to an investigative subpoena issued under 46-4-301."

4 **Section 5.** Section 50-16-536, MCA, is amended to read:

5 "50-16-536. Method of compulsory process. (1) Unless  
6 the court for good cause shown determines that the  
7 notification should be waived or modified, if health care  
8 information is sought under 50-16-535(2), (4), or (5) or in  
9 a civil proceeding or investigation under 50-16-535(9) or  
10 (10), the person seeking discovery or compulsory process  
11 shall mail a notice by first-class mail to the patient or  
12 the patient's attorney of record of the compulsory process  
13 or discovery request at least 10 days before presenting the  
14 certificate required under subsection (2) to the health care  
15 provider.

16 (2) Service of compulsory process or discovery requests  
17 upon a health care provider must be accompanied by a written  
18 certification, signed by the person seeking to obtain health  
19 care information or his authorized representative,  
20 identifying at least one subsection of 50-16-535 under which  
21 compulsory process or discovery is being sought. The  
22 certification must also state, in the case of information  
23 sought under 50-16-535(2), (4), or (5) or in a civil  
24 proceeding or investigation under 50-16-535(9) or (10), that  
25 the requirements of subsection (1) for notice have been met.

1 A person may sign the certification only if the person  
2 reasonably believes that the subsection of 50-16-535  
3 identified in the certification provides an appropriate  
4 basis for the use of discovery or compulsory process. Unless  
5 otherwise ordered by the court, the health care provider  
6 shall maintain a copy of the process and the written  
7 certification as a permanent part of the patient's health  
8 care information.

9 (3) In response to service of compulsory process or  
10 discovery requests, a health care provider may deny access  
11 to the requested health care information under 50-16-542(1).  
12 If access to requested health care information is denied by  
13 the health care provider under 50-16-542(1), the health care  
14 provider shall submit to the court by affidavit or other  
15 reasonable means an explanation of why the health care  
16 provider believes the information should be protected from  
17 disclosure.

18 (4) The court may order disclosure of health care  
19 information, with or without restrictions as to its use, as  
20 the court considers necessary. In deciding whether to order  
21 disclosure, the court shall consider the explanation  
22 submitted by the health care provider, the reasons for  
23 denying access to health care information set forth in  
24 50-16-542(1), and any arguments presented by interested  
25 parties.

1       (5) A health care provider required to disclose health  
 2 care information pursuant to compulsory process may charge a  
 3 reasonable fee, not to exceed the health care provider's  
 4 actual cost for providing the information, and may deny  
 5 examination or copying of the information until the fee is  
 6 paid.

7       ~~(3)~~(6) Production of health care information under  
 8 50-16-535 and this section does not in itself constitute a  
 9 waiver of any privilege, objection, or defense existing  
 10 under other law or rule of evidence or procedure."

11       **Section 6.** Section 50-16-542, MCA, is amended to read:

12       "50-16-542. Denial of examination and copying. (1) A  
 13 health care provider may deny access to health care  
 14 information by a patient if the health care provider  
 15 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;

4       ~~(e)~~ the health care information might disclose birth  
 5 out of wedlock or provide information from which knowledge  
 6 of birth out of wedlock might be obtained and which  
 7 information is protected from disclosure pursuant to  
 8 50-15-206;

9       ~~(e)~~(f) the health care provider obtained the  
 10 information from a person other than the patient; or

11       ~~(f)~~(g) access to the health care information is  
 12 otherwise prohibited by law.

13       (2) Except as provided in 50-16-521, a health care  
 14 provider may deny access to health care information by a  
 15 patient who is a minor if:

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

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

21       (3) If a health care provider denies a request for  
 22 examination and copying under this section, the provider, to  
 23 the extent possible, shall segregate health care information  
 24 for which access has been denied under subsection (1) from  
 25 information for which access cannot be denied and permit the

1 patient to examine or copy the disclosable information.

2 (4) If a health care provider denies a patient's  
3 request for examination and copying, in whole or in part,  
4 under subsection (1)(a) or (1)(c), he shall permit  
5 examination and copying of the record by another health care  
6 provider who is providing health care services to the  
7 patient for the same condition as the health care provider  
8 denying the request. The health care provider denying the  
9 request shall inform the patient of the patient's right to  
10 select another health care provider under this subsection."

11 NEW SECTION. **Section 7. Extension of authority.** Any  
12 existing authority to make rules on the subject of the  
13 provisions of [this act] is extended to the provisions of  
14 [this act].

-End-

APPROVED BY COMM. ON EDUCATION AND CULTURAL RESOURCES

HOUSE BILL NO. 621

INTRODUCED BY T. NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UNIFORM HEALTH CARE INFORMATION ACT TO AUTHORIZE A FAMILY MEMBER OF A DECEASED PATIENT TO EXERCISE THE RIGHTS PROVIDED FOR UNDER THE ACT; TO CLARIFY THE RECORDS THAT MUST BE KEPT OF PERSONS EXAMINING HEALTH CARE INFORMATION; TO AUTHORIZE DISCLOSURE OF HEALTH CARE INFORMATION TO THIRD-PARTY HEALTH CARE PAYORS; TO INCLUDE INVESTIGATIVE SUBPOENAS UNDER COMPULSORY PROCESS; TO ALLOW A HEALTH CARE PROVIDER TO DENY ACCESS TO RECORDS UNDER COMPULSORY PROCESS PENDING JUDICIAL REVIEW; TO PROHIBIT DISCLOSURE OF HEALTH CARE INFORMATION TO THE PATIENT IF IT MIGHT REVEAL BIRTH OUT OF WEDLOCK; AND AMENDING SECTIONS 50-16-522, 50-16-525, 50-16-529, 50-16-535, 50-16-536, AND 50-16-542, MCA."

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

Section 1. Section 50-16-522, MCA, is amended to read:

"50-16-522. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a

parent, an adult child, an adult sibling, or any other persons person who are is authorized by law to act for him."

Section 2. Section 50-16-525, MCA, is amended to read:

"50-16-525. Disclosure by health care provider. (1) Except as authorized in 50-16-529 and 50-16-530 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for an agent--or--employee-of-the-health-care-provider-or INCLUDING AN AGENT OR EMPLOYEE OF THE HEALTH CARE PROVIDER OR a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to



1 the extent practicable a description of the information  
2 disclosed."

3 **Section 3.** Section 50-16-529, MCA, is amended to read:

4 "50-16-529. Disclosure without patient's authorization  
5 based on need to know. A health care provider may disclose  
6 health care information about a patient without the  
7 patient's authorization, to the extent a recipient needs to  
8 know the information, if the disclosure is:

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

11 (2) to any other person who requires health care  
12 information for health care education; to provide planning,  
13 quality assurance, peer review, or administrative, legal,  
14 financial, or actuarial services to the health care  
15 provider; or for assisting the health care provider in the  
16 delivery of health care; or to a third-party health care  
17 payor who requires health care information and if the health  
18 care provider 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 immediate family members of the patient or any  
4 other individual with whom the patient is known to have a  
5 close personal relationship, if made in accordance with the  
6 laws of the state and good medical or other professional  
7 practice, unless the patient has instructed the health care  
8 provider not to make the disclosure;

9 (5) to a health care provider who is the successor in  
10 interest to the health care provider maintaining the health  
11 care information;

12 (6) for use in a research project that an  
13 institutional review board has determined:

14 (a) is of sufficient importance to outweigh the  
15 intrusion into the privacy of the patient that would result  
16 from the disclosure;

17 (b) is impracticable without the use or disclosure of  
18 the health care information in individually identifiable  
19 form;

20 (c) contains reasonable safeguards to protect the  
21 information from improper disclosure;

22 (d) contains reasonable safeguards to protect against  
23 directly or indirectly identifying any patient in any report  
24 of the research project; and

25 (e) contains procedures to remove or destroy at the

1 earliest opportunity, consistent with the purposes of the  
 2 project, information that would enable the patient to be  
 3 identified, unless an institutional review board authorizes  
 4 retention of identifying information for purposes of another  
 5 research project;

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

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

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

16 (8) to an official of a penal or other custodial  
 17 institution in which the patient is detained."

18 **Section 4.** Section 50-16-535, MCA, is amended to read:

19 **"50-16-535. When health care information available by**  
 20 **compulsory process.** Health care information may not be  
 21 disclosed by a health care provider pursuant to compulsory  
 22 legal process or discovery in any judicial, legislative, or  
 23 administrative proceeding unless:

24 (1) the patient has consented in writing to the  
 25 release of the health care information in response to

1 compulsory process or a discovery request;

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

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

6 (4) the patient's physical or mental condition is  
 7 relevant to the execution or witnessing of a will or other  
 8 document;

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

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

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

21 (8) the health care information is relevant to a  
 22 proceeding brought under 50-16-551 through 50-16-553; or

23 (9) a court has determined that particular health care  
 24 information is subject to compulsory legal process or  
 25 discovery because the party seeking the information has

1 demonstrated that there is a compelling state interest that  
2 outweighs the patient's privacy interest; or

3 (10) the health care information is requested pursuant  
4 to an investigative subpoena issued under 46-4-301."

5 **Section 5.** Section 50-16-536, MCA, is amended to read:

6 **"50-16-536. Method of compulsory process.** (1) Unless  
7 the court for good cause shown determines that the  
8 notification should be waived or modified, if health care  
9 information is sought under 50-16-535(2), (4), or (5) or in  
10 a civil proceeding or investigation under 50-16-535(9) or  
11 (10), the person seeking discovery or compulsory process  
12 shall mail a notice by first-class mail to the patient or  
13 the patient's attorney of record of the compulsory process  
14 or discovery request at least 10 days before presenting the  
15 certificate required under subsection (2) to the health care  
16 provider.

17 (2) Service of compulsory process or discovery  
18 requests upon a health care provider must be accompanied by  
19 a written certification, signed by the person seeking to  
20 obtain health care information or his authorized  
21 representative, identifying at least one subsection of  
22 50-16-535 under which compulsory process or discovery is  
23 being sought. The certification must also state, in the case  
24 of information sought under 50-16-535(2), (4), or (5) or in  
25 a civil proceeding or investigation under 50-16-535(9) or

1 (10), that the requirements of subsection (1) for notice  
2 have been met. A person may sign the certification only if  
3 the person reasonably believes that the subsection of  
4 50-16-535 identified in the certification provides an  
5 appropriate basis for the use of discovery or compulsory  
6 process. Unless otherwise ordered by the court, the health  
7 care provider shall maintain a copy of the process and the  
8 written certification as a permanent part of the patient's  
9 health care information.

10 (3) In response to service of compulsory process or  
11 discovery requests, a health care provider may deny access  
12 to the requested health care information under 50-16-542(1).  
13 If access to requested health care information is denied by  
14 the health care provider under 50-16-542(1), the health care  
15 provider shall submit to the court by affidavit or other  
16 reasonable means an explanation of why the health care  
17 provider believes the information should be protected from  
18 disclosure.

19 (4) The court may order disclosure of health care  
20 information, with or without restrictions as to its use, as  
21 the court considers necessary. In deciding whether to order  
22 disclosure, the court shall consider the explanation  
23 submitted by the health care provider, the reasons for  
24 denying access to health care information set forth in  
25 50-16-542(1), and any arguments presented by interested

1 parties.

2 (5) A health care provider required to disclose health  
 3 care information pursuant to compulsory process may charge a  
 4 reasonable fee, not to exceed the health care provider's  
 5 actual cost for providing the information, and may deny  
 6 examination or copying of the information until the fee is  
 7 paid.

8 ~~f3~~(6) Production of health care information under  
 9 50-16-535 and this section does not in itself constitute a  
 10 waiver of any privilege, objection, or defense existing  
 11 under other law or rule of evidence or procedure."

12 **Section 6.** Section 50-16-542, MCA, is amended to read:

13 **"50-16-542. Denial of examination and copying.** (1) A  
 14 health care provider may deny access to health care  
 15 information by a patient if the health care provider  
 16 reasonably concludes that:

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

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

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

1 of any individual;

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

5 (e) the health care information might disclose birth  
 6 out of wedlock or provide information from which knowledge  
 7 of birth out of wedlock might be obtained and which  
 8 information is protected from disclosure pursuant to  
 9 50-15-206;

10 ~~f~~(f) the health care provider obtained the  
 11 information from a person other than the patient; or

12 ~~f~~(g) access to the health care information is  
 13 otherwise prohibited by law.

14 (2) Except as provided in 50-16-521, a health care  
 15 provider may deny access to health care information by a  
 16 patient who is a minor if:

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

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

22 (3) If a health care provider denies a request for  
 23 examination and copying under this section, the provider, to  
 24 the extent possible, shall segregate health care information  
 25 for which access has been denied under subsection (1) from

1 information for which access cannot be denied and permit the  
2 patient to examine or copy the disclosable information.

3 (4) If a health care provider denies a patient's  
4 request for examination and copying, in whole or in part,  
5 under subsection (1)(a) or (1)(c), he shall permit  
6 examination and copying of the record by another health care  
7 provider who is providing health care services to the  
8 patient for the same condition as the health care provider  
9 denying the request. The health care provider denying the  
10 request shall inform the patient of the patient's right to  
11 select another health care provider under this subsection."

12 NEW SECTION. **Section 7.** Extension of authority. Any  
13 existing authority to make rules on the subject of the  
14 provisions of [this act] is extended to the provisions of  
15 [this act].

-End-

## 1 HOUSE BILL NO. 621

2 INTRODUCED BY T. NELSON

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UNIFORM  
5 HEALTH CARE INFORMATION ACT TO AUTHORIZE A FAMILY MEMBER OF  
6 A DECEASED PATIENT TO EXERCISE THE RIGHTS PROVIDED FOR UNDER  
7 THE ACT; TO CLARIFY THE RECORDS THAT MUST BE KEPT OF PERSONS  
8 EXAMINING HEALTH CARE INFORMATION; TO AUTHORIZE DISCLOSURE  
9 OF HEALTH CARE INFORMATION TO THIRD-PARTY HEALTH CARE  
10 PAYORS; TO INCLUDE INVESTIGATIVE SUBPOENAS UNDER COMPULSORY  
11 PROCESS; TO ALLOW A HEALTH CARE PROVIDER TO DENY ACCESS TO  
12 RECORDS UNDER COMPULSORY PROCESS PENDING JUDICIAL REVIEW; TO  
13 PROHIBIT DISCLOSURE OF HEALTH CARE INFORMATION TO THE  
14 PATIENT IF IT MIGHT REVEAL BIRTH OUT OF WEDLOCK; AND  
15 AMENDING SECTIONS 50-16-522, 50-16-525, 50-16-529,  
16 50-16-535, 50-16-536, AND 50-16-542, MCA."

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:19 **Section 1.** Section 50-16-522, MCA, is amended to read:

20 "50-16-522. Representative of deceased patient. A  
21 personal representative of a deceased patient may exercise  
22 all of the deceased patient's rights under this part. If  
23 there is no personal representative or upon discharge of the  
24 personal representative, a deceased patient's rights under  
25 this part may be exercised by the surviving spouse, a

1 parent, an adult child, an adult sibling, or any other  
2 persons person who are is authorized by law to act for him."

3 **Section 2.** Section 50-16-525, MCA, is amended to read:

4 "50-16-525. Disclosure by health care provider. (1)  
5 Except as authorized in 50-16-529 and 50-16-530 or as  
6 otherwise specifically provided by law or the Montana Rules  
7 of Civil Procedure, a health care provider, an individual  
8 who assists a health care provider in the delivery of health  
9 care, or an agent or employee of a health care provider may  
10 not disclose health care information about a patient to any  
11 other person without the patient's written authorization. A  
12 disclosure made under a patient's written authorization must  
13 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 an~~  
19 ~~agent--or--employee--of-the-health-care-provider--or~~ a person  
20 who has examined the recorded health care information under  
21 50-16-529(1) or (2). The record of disclosure must include  
22 the name, address, and institutional affiliation, if any, of  
23 each person receiving or examining the recorded health care  
24 information, the date of the receipt or examination, and to  
25 the extent practicable a description of the information

1 disclosed."

2 **Section 3.** Section 50-16-529, MCA, is amended to read:

3 "50-16-529. Disclosure without patient's authorization  
4 based on need to know. A health care provider may disclose  
5 health care information about a patient without the  
6 patient's authorization, to the extent a recipient needs to  
7 know the information, if the disclosure is:

8 (1) to a person who is providing health care to the  
9 patient;

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

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

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

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

1 not to make the disclosure;

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

8 (5) to a health care provider who is the successor in  
9 interest to the health care provider maintaining the health  
10 care information;

11 (6) for use in a research project that an  
12 institutional review board has determined:

13 (a) is of sufficient importance to outweigh the  
14 intrusion into the privacy of the patient that would result  
15 from the disclosure;

16 (b) is impracticable without the use or disclosure of  
17 the health care information in individually identifiable  
18 form;

19 (c) contains reasonable safeguards to protect the  
20 information from improper disclosure;

21 (d) contains reasonable safeguards to protect against  
22 directly or indirectly identifying any patient in any report  
23 of the research project; and

24 (e) contains procedures to remove or destroy at the  
25 earliest opportunity, consistent with the purposes of the

1 project, information that would enable the patient to be  
2 identified, unless an institutional review board authorizes  
3 retention of identifying information for purposes of another  
4 research project;

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

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

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

15 (8) to an official of a penal or other custodial  
16 institution in which the patient is detained."

17 **Section 4.** Section 50-16-535, MCA, is amended to read:

18 "50-16-535. When health care information available by  
19 compulsory process. Health care information may not be  
20 disclosed by a health care provider pursuant to compulsory  
21 legal process or discovery in any judicial, legislative, or  
22 administrative proceeding unless:

23 (1) the patient has consented in writing to the  
24 release of the health care information in response to  
25 compulsory process or a discovery request;

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

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

5 (4) the patient's physical or mental condition is  
6 relevant to the execution or witnessing of a will or other  
7 document;

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

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

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

20 (8) the health care information is relevant to a  
21 proceeding brought under 50-16-551 through 50-16-553; or

22 (9) a court has determined that particular health care  
23 information is subject to compulsory legal process or  
24 discovery because the party seeking the information has  
25 demonstrated that there is a compelling state interest that

1 outweighs the patient's privacy interest; or

2 (10) the health care information is requested pursuant  
3 to an investigative subpoena issued under 46-4-301."

4 **Section 5.** Section 50-16-536, MCA, is amended to read:

5 "50-16-536. Method of compulsory process. (1) Unless  
6 the court for good cause shown determines that the  
7 notification should be waived or modified, if health care  
8 information is sought under 50-16-535(2), (4), or (5) or in  
9 a civil proceeding or investigation under 50-16-535(9) or  
10 (10), the person seeking discovery or compulsory process  
11 shall mail a notice by first-class mail to the patient or  
12 the patient's attorney of record of the compulsory process  
13 or discovery request at least 10 days before presenting the  
14 certificate required under subsection (2) to the health care  
15 provider.

16 (2) Service of compulsory process or discovery  
17 requests upon a health care provider must be accompanied by  
18 a written certification, signed by the person seeking to  
19 obtain health care information or his authorized  
20 representative, identifying at least one subsection of  
21 50-16-535 under which compulsory process or discovery is  
22 being sought. The certification must also state, in the case  
23 of information sought under 50-16-535(2), (4), or (5) or in  
24 a civil proceeding or investigation under 50-16-535(9) or  
25 (10), that the requirements of subsection (1) for notice

1 have been met. A person may sign the certification only if  
2 the person reasonably believes that the subsection of  
3 50-16-535 identified in the certification provides an  
4 appropriate basis for the use of discovery or compulsory  
5 process. Unless otherwise ordered by the court, the health  
6 care provider shall maintain a copy of the process and the  
7 written certification as a permanent part of the patient's  
8 health care information.

9 (3) In response to service of compulsory process or  
10 discovery requests, a health care provider may deny access  
11 to the requested health care information under 50-16-542(1).  
12 If access to requested health care information is denied by  
13 the health care provider under 50-16-542(1), the health care  
14 provider shall submit to the court by affidavit or other  
15 reasonable means an explanation of why the health care  
16 provider believes the information should be protected from  
17 disclosure.

18 (4) The court may order disclosure of health care  
19 information, with or without restrictions as to its use, as  
20 the court considers necessary. In deciding whether to order  
21 disclosure, the court shall consider the explanation  
22 submitted by the health care provider, the reasons for  
23 denying access to health care information set forth in  
24 50-16-542(1), and any arguments presented by interested  
25 parties.

1       (5) A health care provider required to disclose health  
 2 care information pursuant to compulsory process may charge a  
 3 reasonable fee, not to exceed the health care provider's  
 4 actual cost for providing the information, and may deny  
 5 examination or copying of the information until the fee is  
 6 paid.

7       ~~f3~~(6) Production of health care information under  
 8 50-16-535 and this section does not in itself constitute a  
 9 waiver of any privilege, objection, or defense existing  
 10 under other law or rule of evidence or procedure."

11       **Section 6.** Section 50-16-542, MCA, is amended to read:

12       "50-16-542. Denial of examination and copying. (1) A  
 13 health care provider may deny access to health care  
 14 information by a patient if the health care provider  
 15 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;

4       (e) A PERSON IS SEEKING UNDER 50-16-522 TO EXERCISE  
 5 THE PATIENT'S RIGHTS AND the health care information might  
 6 disclose birth out of wedlock or provide information from  
 7 which knowledge of birth out of wedlock might be obtained  
 8 and which information is protected from disclosure pursuant  
 9 to 50-15-206;

10       ~~f~~(f) the health care provider obtained the  
 11 information from a person other than the patient; or

12       ~~f~~(g) access to the health care information is  
 13 otherwise prohibited by law.

14       (2) Except as provided in 50-16-521, a health care  
 15 provider may deny access to health care information by a  
 16 patient who is a minor if:

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

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

22       (3) If a health care provider denies a request for  
 23 examination and copying under this section, the provider, to  
 24 the extent possible, shall segregate health care information  
 25 for which access has been denied under subsection (1) from

1 information for which access cannot be denied and permit the  
2 patient to examine or copy the disclosable information.

3 (4) If a health care provider denies a patient's  
4 request for examination and copying, in whole or in part,  
5 under subsection (1)(a) or (1)(c), he shall permit  
6 examination and copying of the record by another health care  
7 provider who is providing health care services to the  
8 patient for the same condition as the health care provider  
9 denying the request. The health care provider denying the  
10 request shall inform the patient of the patient's right to  
11 select another health care provider under this subsection."

12 NEW SECTION. **Section 7. Extension of authority.** Any  
13 existing authority to make rules on the subject of the  
14 provisions of [this act] is extended to the provisions of  
15 [this act].

-End-

SENATE STANDING COMMITTEE REPORT

page 1 of 2  
March 27, 1989

SENATE COMMITTEE ON PUBLIC HEALTH  
page 2 of 2

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration HB 621 (third reading copy -- blue), respectfully report that HB 621 be amended and as so amended be concurred in:

Sponsor: Nelson, T. (Hager)

1. Title, lines 13 and 14.  
Strike: line 13 through "WEDLOCK" on line 14  
Insert: "CLARIFY THAT INFORMATION THAT MIGHT DISCLOSE BIRTH OUT OF WEDLOCK IS TO BE DISCLOSED ONLY IN ACCORDANCE WITH SECTION 50-15-206, MCA"
2. Page 2, line 19.  
Following: "~~provider or~~"  
Insert: "except for"
3. Page 5, line 19.  
Following: "process."  
Insert: "(1)"
4. Page 5, line 23.  
Strike: "(1)"  
Insert: "(a)"  
Renumber: subsequent subsections
5. Page 7, line 4.  
Following: line 3  
Insert: "{2} Nothing in this part authorizes the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law."
6. Page 7, line 8.  
Strike: "(2), (4), or (5)"  
Insert: "(1)(b), (1)(d), or (1)(e)"
7. Page 7, lines 9 and 10.  
Strike: "(9) or (10)"  
Insert: "(1)(i)"
8. Page 7, line 23.  
Strike: "(2), (4), or (5)"  
Insert: "(1)(b), (1)(d), or (1)(e)"

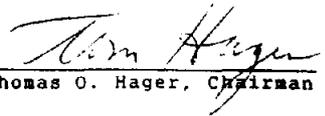
9. Page 7, lines 24 and 25.  
Strike: "or investigation"  
Following: "50-16-535"  
Strike: "(9) or (10)"  
Insert: "(1)(i)"

10. Page 8, line 10.  
Following: "requests."  
Insert: "where authorized by law, a health care provider may deny access to the requested health care information. Additionally,"

11. Page 8, line 18.  
Following: "(4)"  
Strike: "The"  
Insert: "Where access to health care is denied under 50-16-542(1), the"

12. Page 10, lines 4 and 5.  
Strike: "A PERSON IS SEEKING UNDER 50-16-522 TO EXERCISE THE PATIENT'S RIGHTS AND"

AND AS AMENDED BE CONCURRED IN

Signed:   
Thomas O. Hager, Chairman

## HOUSE BILL NO. 621

INTRODUCED BY T. NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UNIFORM HEALTH CARE INFORMATION ACT TO AUTHORIZE A FAMILY MEMBER OF A DECEASED PATIENT TO EXERCISE THE RIGHTS PROVIDED FOR UNDER THE ACT; TO CLARIFY THE RECORDS THAT MUST BE KEPT OF PERSONS EXAMINING HEALTH CARE INFORMATION; TO AUTHORIZE DISCLOSURE OF HEALTH CARE INFORMATION TO THIRD-PARTY HEALTH CARE PAYORS; TO INCLUDE INVESTIGATIVE SUBPOENAS UNDER COMPULSORY PROCESS; TO ALLOW A HEALTH CARE PROVIDER TO DENY ACCESS TO RECORDS UNDER COMPULSORY PROCESS PENDING JUDICIAL REVIEW; TO ~~PROHIBIT--DISCLOSURE--OF--HEALTH--CARE--INFORMATION--TO--THE~~ PATIENT-IF-IT-MIGHT-REVEAL-BIRTH-OUT-OF-WEDLOCK CLARIFY THAT INFORMATION THAT MIGHT DISCLOSE BIRTH OUT OF WEDLOCK IS TO BE DISCLOSED ONLY IN ACCORDANCE WITH SECTION 50-15-206, MCA; AND AMENDING SECTIONS 50-16-522, 50-16-525, 50-16-529, 50-16-535, 50-16-536, AND 50-16-542, MCA."

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

**Section 1.** Section 50-16-522, MCA, is amended to read:

"50-16-522. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the

personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other persons person who are is authorized by law to act for him."

**Section 2.** Section 50-16-525, MCA, is amended to read:

"50-16-525. Disclosure by health care provider. (1) Except as authorized in 50-16-529 and 50-16-530 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, ~~except--for an agent--or--employee--of--the--health--care--provider--or~~ EXCEPT FOR a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining

1 the recorded health care information, the date of the  
 2 receipt or examination, and to the extent practicable a  
 3 description of the information disclosed."

4 **Section 3.** Section 50-16-529, MCA, is amended to read:

5 **"50-16-529. Disclosure without patient's authorization**  
 6 **based on need to know.** A health care provider may disclose  
 7 health care information about a patient without the  
 8 patient's authorization, to the extent a recipient needs to  
 9 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; or to a third-party health care~~  
 18 ~~payor who requires health care information~~ and if the health  
 19 care provider reasonably believes that the person will:

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

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

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

1 extent necessary to provide health care to the patient,  
 2 unless the patient has instructed the health care provider  
 3 not to make the disclosure;

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

10 (5) to a health care provider who is the successor in  
 11 interest to the health care provider maintaining the health  
 12 care information;

13 (6) for use in a research project that an  
 14 institutional review board has determined:

15 (a) is of sufficient importance to outweigh the  
 16 intrusion into the privacy of the patient that would result  
 17 from the disclosure;

18 (b) is impracticable without the use or disclosure of  
 19 the health care information in individually identifiable  
 20 form;

21 (c) contains reasonable safeguards to protect the  
 22 information from improper disclosure;

23 (d) contains reasonable safeguards to protect against  
 24 directly or indirectly identifying any patient in any report  
 25 of the research project; and

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

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

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

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

17 (8) to an official of a penal or other custodial  
 18 institution in which the patient is detained."

19 **Section 4.** Section 50-16-535, MCA, is amended to read:

20 "50-16-535. When health care information available by  
 21 compulsory process. (1) Health care information may not be  
 22 disclosed by a health care provider pursuant to compulsory  
 23 legal process or discovery in any judicial, legislative, or  
 24 administrative proceeding unless:

25 (1)(A) the patient has consented in writing to the

1 release of the health care information in response to  
 2 compulsory process or a discovery request;

3 (2)(B) the patient has waived the right to claim  
 4 confidentiality for the health care information sought;

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

7 (4)(D) the patient's physical or mental condition is  
 8 relevant to the execution or witnessing of a will or other  
 9 document;

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

13 (6)(F) a patient's health care information is to be  
 14 used in the patient's commitment proceeding;

15 (7)(G) the health care information is for use in any  
 16 law enforcement proceeding or investigation in which a  
 17 health care provider is the subject or a party, except that  
 18 health care information so obtained may not be used in any  
 19 proceeding against the patient unless the matter relates to  
 20 payment for his health care or unless authorized under  
 21 subsection (9)(I);

22 (8)(H) the health care information is relevant to a  
 23 proceeding brought under 50-16-551 through 50-16-553; or

24 (9)(I) a court has determined that particular health  
 25 care information is subject to compulsory legal process or

1 discovery because the party seeking the information has  
2 demonstrated that there is a compelling state interest that  
3 outweighs the patient's privacy interest; or

4 ~~{10}~~(J) the health care information is requested  
5 pursuant to an investigative subpoena issued under 46-4-301.

6 (2) NOTHING IN THIS PART AUTHORIZES THE DISCLOSURE OF  
7 HEALTH CARE INFORMATION BY COMPULSORY LEGAL PROCESS OR  
8 DISCOVERY IN ANY JUDICIAL, LEGISLATIVE, OR ADMINISTRATIVE  
9 PROCEEDING WHERE DISCLOSURE IS OTHERWISE PROHIBITED BY LAW."

10 **Section 5.** Section 50-16-536, MCA, is amended to read:

11 "50-16-536. Method of compulsory process. (1) Unless  
12 the court for good cause shown determines that the  
13 notification should be waived or modified, if health care  
14 information is sought under 50-16-535~~(2)~~~~(4)~~~~(5)~~  
15 (1)(B), (1)(D), OR (1)(E) or in a civil proceeding or  
16 investigation under 50-16-535~~(9)~~ ~~or~~~~{10}~~ (1)(I), the person  
17 seeking discovery or compulsory process shall mail a notice  
18 by first-class mail to the patient or the patient's attorney  
19 of record of the compulsory process or discovery request at  
20 least 10 days before presenting the certificate required  
21 under subsection (2) to the health care provider.

22 (2) Service of compulsory process or discovery  
23 requests upon a health care provider must be accompanied by  
24 a written certification, signed by the person seeking to  
25 obtain health care information or his authorized

1 representative, identifying at least one subsection of  
2 50-16-535 under which compulsory process or discovery is  
3 being sought. The certification must also state, in the case  
4 of information sought under 50-16-535~~(2)~~~~(4)~~~~(5)~~  
5 (1)(B), (1)(D), OR (1)(E) or in a civil proceeding ~~or~~  
6 investigation under 50-16-535~~(9)~~ ~~or~~~~{10}~~ (1)(I), that the  
7 requirements of subsection (1) for notice have been met. A  
8 person may sign the certification only if the person  
9 reasonably believes that the subsection of 50-16-535  
10 identified in the certification provides an appropriate  
11 basis for the use of discovery or compulsory process. Unless  
12 otherwise ordered by the court, the health care provider  
13 shall maintain a copy of the process and the written  
14 certification as a permanent part of the patient's health  
15 care information.

16 (3) In response to service of compulsory process or  
17 discovery requests, WHERE AUTHORIZED BY LAW, A HEALTH CARE  
18 PROVIDER MAY DENY ACCESS TO THE REQUESTED HEALTH CARE  
19 INFORMATION. ADDITIONALLY, a health care provider may deny  
20 access to the requested health care information under  
21 50-16-542(1). If access to requested health care  
22 information is denied by the health care provider under  
23 50-16-542(1), the health care provider shall submit to the  
24 court by affidavit or other reasonable means an explanation  
25 of why the health care provider believes the information

1 should be protected from disclosure.

2 (4) The WHERE ACCESS TO HEALTH CARE IS DENIED UNDER  
 3 50-16-542(1), THE court may order disclosure of health care  
 4 information, with or without restrictions as to its use, as  
 5 the court considers necessary. In deciding whether to order  
 6 disclosure, the court shall consider the explanation  
 7 submitted by the health care provider, the reasons for  
 8 denying access to health care information set forth in  
 9 50-16-542(1), and any arguments presented by interested  
 10 parties.

11 (5) A health care provider required to disclose health  
 12 care information pursuant to compulsory process may charge a  
 13 reasonable fee, not to exceed the health care provider's  
 14 actual cost for providing the information, and may deny  
 15 examination or copying of the information until the fee is  
 16 paid.

17 {3}(6) Production of health care information under  
 18 50-16-535 and this section does not in itself constitute a  
 19 waiver of any privilege, objection, or defense existing  
 20 under other law or rule of evidence or procedure."

21 **Section 6.** Section 50-16-542, MCA, is amended to read:

22 **"50-16-542. Denial of examination and copying. (1) A**  
 23 **health care provider may deny access to health care**  
 24 **information by a patient if the health care provider**  
 25 **reasonably concludes that:**

1 (a) knowledge of the health care information would be  
 2 injurious to the health of the patient;

3 (b) knowledge of the health care information could  
 4 reasonably be expected to lead to the patient's  
 5 identification of an individual who provided the information  
 6 in confidence and under circumstances in which  
 7 confidentiality was appropriate;

8 (c) knowledge of the health care information could  
 9 reasonably be expected to cause danger to the life or safety  
 10 of any individual;

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

14 ~~(e) A PERSON IS SEEKING UNDER 50-16-522 TO EXERCISE~~  
 15 ~~THE PATIENT'S RIGHTS AND~~ the health care information might  
 16 disclose birth out of wedlock or provide information from  
 17 which knowledge of birth out of wedlock might be obtained  
 18 and which information is protected from disclosure pursuant  
 19 to 50-15-206;

20 ~~(e)(f)~~ the health care provider obtained the  
 21 information from a person other than the patient; or

22 ~~(f)(g)~~ access to the health care information is  
 23 otherwise prohibited by law.

24 (2) Except as provided in 50-16-521, a health care  
 25 provider may deny access to health care information by a

1 patient who is a minor if:

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

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

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

13 (4) If a health care provider denies a patient's  
14 request for examination and copying, in whole or in part,  
15 under subsection (1)(a) or (1)(c), he shall permit  
16 examination and copying of the record by another health care  
17 provider who is providing health care services to the  
18 patient for the same condition as the health care provider  
19 denying the request. The health care provider denying the  
20 request shall inform the patient of the patient's right to  
21 select another health care provider under this subsection."

22 NEW SECTION. **Section 7. Extension of authority.** Any  
23 existing authority to make rules on the subject of the  
24 provisions of [this act] is extended to the provisions of  
25 [this act].

-End-

Conference Committee  
on HOUSE BILL 621  
Report No. 1, April 11, 1989

Page 1 of 1

Mr. Speaker:

We, your Conference Committee on House Bill 621 met and considered: House Bill 621 (third reading -- blue copy) and amendments to House Bill 621 adopted by the Senate (pink sheet).

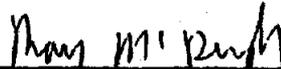
We recommend that House Bill 621 (reference copy -- salmon) be amended as follows:

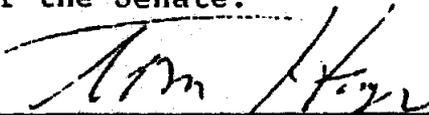
Adopt the Senate amendments to House Bill 621 in their entirety

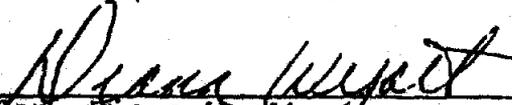
And that this Conference Committee Report be adopted.

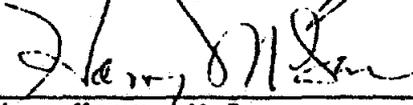
For the House:

For the Senate:

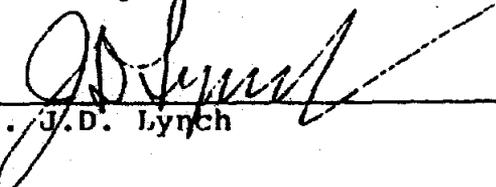
  
Rep. Mary McDonough, Chairman

  
Sen. Tom Hager, Chairman

  
Rep. Diana Wyatt

  
Sen. Harry McLane

  
Rep. Tom Nelson

  
Sen. J.D. Lynch

ADOPT

REJECT

HB 621  
811423CC.HBV