

SENATE BILL 409

Introduced by Hockett

2/16	Introduced
2/16	Referred to Public Health, Welfare & Safety
2/16	First Reading
2/19	Hearing
2/20	Committee Report--Bill Passed as Amended
2/22	2nd Reading Passed
2/23	3rd Reading Passed
	Transmitted to House
2/23	Referred to Judiciary
2/23	First Reading
2/24	Hearing
3/26	Tabled in Committee

1 Senate BILL NO. 409
2 INTRODUCED BY Sp. Rep. J. H. H.
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 CONFIDENTIALITY OF THE PROCEEDINGS AND RECORDS OF COMMITTEES
6 ORGANIZED TO CONDUCT QUALITY ASSURANCE REVIEWS OF EMERGENCY
7 MEDICAL AND TRAUMA CARE; PROVIDING FOR IMMUNITY FROM SUIT
8 FOR THOSE COMMITTEES; PROVIDING FOR CONFIDENTIALITY OF
9 CERTAIN RECORDS OF, THE DEPARTMENT OF HEALTH AND
10 ENVIRONMENTAL SCIENCES, OTHER STATE AGENCIES, HOSPITALS,
11 MEDICAL ASSISTANCE FACILITIES, AND EMERGENCY MEDICAL
12 SERVICES; PROVIDING FOR IMMUNITY FROM SUIT FOR PERSONS
13 COMMUNICATING CERTAIN INFORMATION TO THE DEPARTMENT;
14 ALLOWING HEALTH CARE INFORMATION TO BE SHARED WITH OTHER
15 STATE AGENCIES FOR DEVELOPMENT OF EMERGENCY CARE PLANNING
16 STATISTICS; AND AMENDING SECTION 50-16-603, MCA."
17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19 NEW SECTION. Section 1. Definitions. For the purposes
20 of [sections 1 through 4], the following definitions apply:
21 (1) "Department" means the department of health and
22 environmental sciences established in 2-15-2101.
23 (2) "Emergency medical service" means an emergency
24 medical service as defined in 50-6-302.
25 (3) "Hospital" means a hospital as defined in 50-5-101.

1 (4) "Medical assistance facility" means a medical
2 assistance facility as defined in 50-5-101.

3 NEW SECTION. Section 2. Emergency medical and trauma
4 services -- peer review and quality assurance --
5 confidentiality. (1) Except as provided in subsection (4),
6 the proceedings and records of a peer review committee or
7 other committee organized by the department to assess the
8 quality of emergency medical and trauma care provided by a
9 hospital, by an emergency medical service, by a medical
10 assistance facility, or by any portion of the network of
11 emergency medical and trauma services within Montana are
12 confidential, are not subject to disclosure by subpoena,
13 discovery, or otherwise, and are not admissible as evidence
14 when the proceedings and records relate to review,
15 evaluation, or improvement of emergency medical and trauma
16 care.

17 (2) The proceedings and records of a peer review
18 committee or a quality assurance committee that is directed
19 to recommend improvements in the delivery of that care are
20 confidential, are not subject to disclosure by subpoena,
21 discovery, or otherwise, and are not admissible as evidence.

22 (3) The proceedings and records may be used by a peer
23 review committee or quality assurance committee and its
24 members only in the exercise of a function within the course
25 and scope of the duties of the committee.

(4) This section does not apply to the records of an individual patient that were made or maintained in the regular course of business by a hospital, emergency medical service, or medical assistance facility that are in its possession and that are also used by a peer review committee or quality assurance committee in assessing the quality of emergency medical and trauma care.

NEW SECTION. **Section 3. Committee immunity.** A member of a peer review committee or quality assurance committee organized to conduct activities pursuant to [section 2] is not liable for damages to a person for an action taken or a recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the committee member.

NEW SECTION. **Section 4. State emergency medical and trauma network data -- confidentiality -- immunity.** (1) Except as provided in subsection (2), the following data and reports are confidential, are not subject to disclosure by subpoena, discovery, or otherwise, and are not admissible as evidence:

(a) demographic, clinical, financial, and other statistical data that is from a state agency, insurance company, health service corporation as defined in 33-30-101, hospital, emergency medical service, or medical assistance

facility and that is in the possession of the department or provided to another state agency for the purpose of evaluation of the statewide network of emergency medical and trauma care;

(b) a report generated by the department for the purpose of evaluating the quality of the emergency medical and trauma care offered by a particular hospital, emergency medical service, or medical assistance facility;

(c) data and reports developed and maintained by a hospital, emergency medical service, or medical assistance facility for the purpose of submission to the department of health and environmental sciences for planning and evaluation of the provision of emergency medical and trauma care within Montana.

(2) Data or a report referred to in subsection (1)(a) or (1)(b) that contains health care information as defined in 50-16-602 is releasable by the department of health and environmental sciences only as allowed by 50-16-603 and 50-16-604.

(3) A person who communicates to the department information for use in a state trauma register or for the planning and evaluating of the statewide provision of emergency medical and trauma care is not subject to an action for civil damages for affirmative action taken or statements made in good faith while communicating that

1 information.

2 **Section 5.** Section 50-16-603, MCA, is amended to read:

3 "50-16-603. Confidentiality of health care information.

4 (1) Health care information in the possession of the
5 department, a local board, a local health officer, or their
6 authorized representatives may not be released except:

7 (1)(a) for statistical purposes, if no identification
8 of individuals can be made from the information released;

9 (2)(b) subject to subsection (2), when the health care
10 information pertains to a person who has given written
11 consent to the release and has specified the type of
12 information to be released and the person or entity to whom
13 it may be released;

14 (3)(c) to medical personnel in a medical emergency as
15 necessary to protect the health, life, or well-being of the
16 named person;

17 (4)(d) as allowed by Title 50, chapters 17 and 18;

18 (5)(e) to another state or local public health agency,
19 including those in other states, whenever necessary to
20 continue health services to the named person or to undertake
21 public health efforts to prevent or interrupt the
22 transmission of a communicable disease;

23 (6)(f) in the case of a minor, as required by 41-3-201
24 or pursuant to an investigation under 41-3-202. If the
25 health care information is required in a subsequent court

1 proceeding involving child abuse, the information may be
2 disclosed only in camera and documents containing the
3 information must be sealed by the court upon conclusion of
4 the proceedings.

5 (7)(g) to medical personnel, the department, a local
6 health officer or board, or a district court when necessary
7 to implement or enforce state statutes or state or local
8 health rules concerning the prevention or control of
9 diseases designated as reportable pursuant to 50-1-202, if
10 the release does not conflict with any other provision
11 contained in this part;

12 (h) to a peer review or quality assurance committee
13 pursuant to [section 2] for the exercise of a function
14 within the course and scope of the duties of the committee;
15 and

16 (i) to another state agency if necessary to collect and
17 develop statistical information for evaluating the quality
18 of statewide emergency medical and trauma care.

19 (2) Health care information in the possession of the
20 department or its authorized representative may not be
21 released to the individual about whom the information is
22 concerned or to any person designated by that individual if
23 the information is retained and used by the department for
24 evaluation and quality assurance of emergency medical and
25 trauma care."

-End-

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APPROVED BY COMMITTEE
ON PUBLIC HEALTH, WELFARE
& SAFETY

SENATE BILL NO. 409
INTRODUCED BY HOCKETT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
CONFIDENTIALITY OF THE PROCEEDINGS AND RECORDS OF COMMITTEES
ORGANIZED TO CONDUCT QUALITY ASSURANCE REVIEWS OF EMERGENCY
MEDICAL AND TRAUMA CARE; PROVIDING FOR IMMUNITY FROM SUIT
FOR THOSE COMMITTEES; PROVIDING FOR CONFIDENTIALITY OF
CERTAIN RECORDS OF THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL SCIENCES, OTHER STATE AGENCIES, HOSPITALS,
MEDICAL ASSISTANCE FACILITIES, AND EMERGENCY MEDICAL
SERVICES; PROVIDING FOR IMMUNITY FROM SUIT FOR PERSONS
COMMUNICATING CERTAIN INFORMATION TO THE DEPARTMENT;
ALLOWING CERTAIN HEALTH CARE INFORMATION TO BE SHARED WITH
OTHER STATE AGENCIES FOR DEVELOPMENT OF EMERGENCY CARE
PLANNING STATISTICS; AND AMENDING SECTION 50-16-603, MCA."

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

NEW SECTION. **Section 1. Definitions.** For the purposes
of [sections 1 through 4], the following definitions apply:

(1) "Department" means the department of health and
environmental sciences established in 2-15-2101.

(2) "Emergency medical service" means an emergency
medical service as defined in 50-6-302.

(3) "Hospital" means a hospital as defined in 50-5-101.

(4) "Medical assistance facility" means a medical
assistance facility as defined in 50-5-101.

NEW SECTION. Section 2. Emergency medical and trauma
services -- peer review and quality assurance --
confidentiality. (1) Except as provided in subsection (4),
the proceedings and records of a peer review committee or
other committee organized ~~by the department~~ to assess the
quality of emergency medical and trauma care provided by a
hospital, by an emergency medical service, by a medical
assistance facility, or by any portion of the network of
emergency medical and trauma services within Montana are
confidential, ~~are not subject to disclosure by subpoena,
discovery, or otherwise, and are not admissible as evidence
when the proceedings and records relate to review,
evaluation, or improvement of emergency medical and trauma
care.~~ ALL PROCEEDINGS AND RECORDS ARE PRIVILEGED INFORMATION
TO THE COMMITTEE AND THE MEMBERS OF THE COMMITTEE AS THOUGH
THE PATIENT OR PATIENTS WERE PATIENTS OF THE MEMBERS OF THE
COMMITTEE.

(2) The EXCEPT AS PROVIDED IN SUBSECTION (4), THE
proceedings and records of a peer review committee or a
quality assurance committee that is directed ORGANIZED BY
THE DEPARTMENT TO REVIEW DATA CONCERNING EMERGENCY MEDICAL
AND TRAUMA CARE AND to recommend improvements in the
delivery of that care are confidential, ~~are not subject to~~

~~disclosure-by-subpoena, discovery, or otherwise, and are not~~
~~admissible as evidence~~ AND PRIVILEGED.

(3) The proceedings and records may be used by a peer review committee or quality assurance committee and its members only in the exercise of a function within the course and scope of the duties of the committee.

(4) This section does not apply to the records of an individual patient that were made or maintained in the regular course of business by a hospital, emergency medical service, or medical assistance facility that are in its possession and that are also used by a peer review committee or quality assurance committee in assessing the quality of emergency medical and trauma care.

NEW SECTION. Section 3. Committee immunity. A member of a peer review committee or quality assurance committee organized to conduct activities pursuant to [section 2] is not liable for damages to a person for an action taken or a recommendation made within the scope of the functions of the committee if the committee member acts without malice OR GROSS NEGLIGENCE and in the reasonable belief that the action or recommendation is warranted by the facts known to the committee member. THIS SECTION DOES NOT AFFECT AN ACTION REGARDING THE RELEASE OR DISCLOSURE OF CONFIDENTIAL INFORMATION.

NEW SECTION. Section 4. State emergency medical and

trauma network data -- confidentiality -- immunity. (1) ALL DATA AND REPORTS ARE PRIVILEGED INFORMATION TO THE PEER REVIEW COMMITTEE AND ITS MEMBERS AS THOUGH THE PERSON TO WHOM THE INFORMATION RELATES IS A PATIENT OF THE MEMBERS OF THE COMMITTEE. Except as provided in subsection (2), the following data and reports are confidential ~~are not subject to disclosure by subpoena, discovery, or otherwise, and are not admissible as evidence:~~

(a) demographic, clinical, financial, and other statistical data that is from a state agency, insurance company, health service corporation as defined in 33-30-101, hospital, emergency medical service, or medical assistance facility and that is in the possession of the department or provided to another state agency for the purpose of evaluation of the statewide network of emergency medical and trauma care;

(b) a report generated by the department for the purpose of evaluating the quality of the emergency medical and trauma care offered by a particular hospital, emergency medical service, or medical assistance facility, UNLESS THE REPORT IS GENERATED AS PART OF AN INVESTIGATION OF A POSSIBLE VIOLATION OF STATE LICENSURE REQUIREMENTS BY THAT ENTITY;

(c) data and reports developed and maintained by a hospital, emergency medical service, or medical assistance

1 facility for the purpose of submission to the department of
2 health and environmental sciences for planning and
3 evaluation of the provision of emergency medical and trauma
4 care within Montana.

5 (2) Data or a report referred to in subsection (1)(a)
6 or (1)(b) that contains health care information as defined
7 in 50-16-602 is releasable by the department of health and
8 environmental sciences only as allowed by 50-16-603 and
9 50-16-604.

10 (3) A person who communicates to the department
11 information for use in a state trauma register or for the
12 planning and evaluating of the statewide provision of
13 emergency medical and trauma care is not subject to an
14 action for civil damages for affirmative action taken or
15 statements made in good faith while communicating that
16 information.

17 **Section 5.** Section 50-16-603, MCA, is amended to read:

18 **"50-16-603. Confidentiality of health care information.**

19 ~~(1)~~ Health care information in the possession of the
20 department, a local board, a local health officer, or their
21 authorized representatives may not be released except:

22 ~~(1)(a)~~(1) for statistical purposes, if no
23 identification of individuals can be made from the
24 information released;

25 ~~(2)(b)--subject-to-subsection-(2)~~ (2) when the health

1 care information pertains to a person who has given written
2 consent to the release and has specified the type of
3 information to be released and the person or entity to whom
4 it may be released;

5 ~~(3)(c)~~(3) to medical personnel in a medical emergency
6 as necessary to protect the health, life, or well-being of
7 the named person;

8 ~~(4)(d)~~(4) as allowed by Title 50, chapters 17 and 18;

9 ~~(5)(e)~~(5) to another state or local public health
10 agency, including those in other states, whenever necessary
11 to continue health services to the named person or to
12 undertake public health efforts to prevent or interrupt the
13 transmission of a communicable disease;

14 ~~(6)(f)~~(6) in the case of a minor, as required by
15 41-3-201 or pursuant to an investigation under 41-3-202. If
16 the health care information is required in a subsequent
17 court proceeding involving child abuse, the information may
18 be disclosed only in camera and documents containing the
19 information must be sealed by the court upon conclusion of
20 the proceedings.

21 ~~(7)(g)~~(7) to medical personnel, the department, a local
22 health officer or board, or a district court when necessary
23 to implement or enforce state statutes or state or local
24 health rules concerning the prevention or control of
25 diseases designated as reportable pursuant to 50-1-202, if

the release does not conflict with any other provision contained in this part;

(h)(8) to a peer review or quality assurance committee pursuant to [section 2] for the exercise of a function within the course and scope of the duties of the committee; and

(i)(9) to another state agency if necessary to collect and develop statistical information THAT IS NOT IDENTIFIABLE BY INDIVIDUAL for evaluating the quality of statewide emergency medical and trauma care.

(2)--Health-care-information-in-the--possession--of--the department--or--its--authorized--representative--may--not--be released-to-the-individual-about--whom--the--information--is concerned--or-to-any-person-designated-by-that-individual-if the-information-is-retained-and-used-by-the--department--for evaluation--and--quality--assurance-of-emergency-medical-and trauma-care."

NEW SECTION. **SECTION 6.** SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

-End-

SENATE BILL NO. 409
INTRODUCED BY HOCKETT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE CONFIDENTIALITY OF THE PROCEEDINGS AND RECORDS OF COMMITTEES ORGANIZED TO CONDUCT QUALITY ASSURANCE REVIEWS OF EMERGENCY MEDICAL AND TRAUMA CARE; PROVIDING FOR IMMUNITY FROM SUIT FOR THOSE COMMITTEES; PROVIDING FOR CONFIDENTIALITY OF CERTAIN RECORDS OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, OTHER STATE AGENCIES, HOSPITALS, MEDICAL ASSISTANCE FACILITIES, AND EMERGENCY MEDICAL SERVICES; PROVIDING FOR IMMUNITY FROM SUIT FOR PERSONS COMMUNICATING CERTAIN INFORMATION TO THE DEPARTMENT; ALLOWING CERTAIN HEALTH CARE INFORMATION TO BE SHARED WITH OTHER STATE AGENCIES FOR DEVELOPMENT OF EMERGENCY CARE PLANNING STATISTICS; AND AMENDING SECTION 50-16-603, MCA."

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(3) "Hospital" means a hospital as defined in 50-5-101.

(4) "Medical assistance facility" means a medical assistance facility as defined in 50-5-101.

NEW SECTION. **Section 2. Emergency medical and trauma services -- peer review and quality assurance -- confidentiality.** (1) Except as provided in subsection (4), the proceedings and records of a peer review committee or other committee organized by the department to assess the quality of emergency medical and trauma care provided by a hospital, by an emergency medical service, by a medical assistance facility, or by any portion of the network of emergency medical and trauma services within Montana are confidential, ~~are not subject to disclosure by subpoena, discovery, or otherwise, and are not admissible as evidence when the proceedings and records relate to review, evaluation, or improvement of emergency medical and trauma care.~~ ALL PROCEEDINGS AND RECORDS ARE PRIVILEGED INFORMATION TO THE COMMITTEE AND THE MEMBERS OF THE COMMITTEE AS THOUGH THE PATIENT OR PATIENTS WERE PATIENTS OF THE MEMBERS OF THE

THERE ARE NO CHANGES IN THIS BILL
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