

HOUSE BILL NO. 796

INTRODUCED BY G. OBLANDER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO COMPULSORY HEALTH CARE SHARING OF RECORDS; CLARIFYING THAT A PROFESSIONAL LICENSING BOARD OR PROGRAM MAY REQUEST HEALTH CARE INFORMATION PURSUANT TO AN ADMINISTRATIVE SUBPOENA FOR INVESTIGATIVE AND DISCIPLINARY PURPOSES; AND AMENDING SECTIONS 50-16-535 AND 50-16-811, MCA."

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

Section 1. Section 50-16-535, MCA, is amended to read:

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

(a) the patient has authorized in writing the release of the health care information in response to compulsory process or a discovery request;

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

(c) the patient is a party to the proceeding and has placed the patient's physical or mental condition in issue;

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

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

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

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for the patient's health care

1 or unless authorized under subsection (1)(j);

2 (h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-
3 553;

4 (i) the health care information is relevant to a proceeding brought under Title 41, chapter 3;

5 (j) a court has determined that particular health care information is subject to compulsory legal
6 process or discovery because the party seeking the information has demonstrated that there is a compelling
7 state interest that outweighs the patient's privacy interest; or

8 (k) the health care information is requested pursuant to an investigative subpoena issued under
9 46-4-301 or a similar federal law; or

10 (l) the health care information is requested pursuant to an administrative subpoena as required in
11 investigative and disciplinary proceedings before a professional or occupational licensing board as defined in
12 37-1-302 or license program as defined in 37-1-401.

13 (2) This part does not authorize the disclosure of health care information by compulsory legal
14 process or discovery in any judicial, legislative, or administrative proceeding in which disclosure is otherwise
15 prohibited by law."

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17 **Section 2.** Section 50-16-811, MCA, is amended to read:

18 **"50-16-811. When health care information available by compulsory process.** (1) Health care
19 information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery
20 in any judicial, legislative, or administrative proceeding unless:

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

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

24 (c) the patient is a party to the proceeding and has placed the patient's physical or mental
25 condition in issue;

26 (d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or
27 other document;

28 (e) the physical or mental condition of a deceased patient is placed in issue by any person

1 claiming or defending through or as a beneficiary of the patient;

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

3 (g) the health care information is for use in any law enforcement proceeding or investigation in
4 which a health care provider is the subject or a party, except that health care information so obtained may not
5 be used in any proceeding against the patient unless the matter relates to payment for the patient's health care
6 or unless authorized under subsection (1)(i);

7 (h) a court has determined that particular health care information is subject to compulsory legal
8 process or discovery because the party seeking the information has demonstrated that there is a compelling
9 state interest that outweighs the patient's privacy interest;

10 (i) the health care information is requested pursuant to an investigative subpoena issued under
11 46-4-301 or similar federal law; or

12 (j) the health care information is requested pursuant to an administrative subpoena as required in
13 investigative and disciplinary proceedings before a professional or occupational licensing board as defined in
14 37-1-302 or license program as defined in 37-1-401; or

15 (j)(k) the patient is deceased and the coroner requires the health care information for the
16 investigation of the death as provided in Title 46, chapter 4, part 1.

17 (2) This part does not authorize the disclosure of health care information by compulsory legal
18 process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise
19 prohibited by law."

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