1   HOUSE BILL NO. 653

2   INTRODUCED BY N. NICOL, S. VINTON, M. REGIER, S. FITZPATRICK, B. LER, K. ZOLNIKOV, B. USHER,

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5   A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ACCESS BY PARENTS TO A CHILD'S

6   HEALTH CARE INFORMATION; ELIMINATING THE EXCLUSIVE RIGHT OF A CONSENTING CHILD TO

7   ENFORCE VIOLATIONS OF HEALTH CARE INFORMATION PRIVACY BY PROVIDERS WHO ARE NOT

8   SUBJECT TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT; AMENDING

9   SECTIONS 40-6-702 AND 50-16-521, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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13   **Section 1.** Section 40-6-702, MCA, is amended to read:

14   "**40-6-702. Medical care for children -- right of access to health care information by parent.** (1)

15   (a) Except as otherwise provided by Title 41, chapter 1, part 4, or court order, a person, corporation,

16   association, organization, state-supported institution, or individual employee of a corporation, association,

17   organization, or state-supported institution may not:

18   (i)   procure, solicit to perform, arrange to perform, or perform surgical procedures on a child;

19   (ii)   procure, solicit to perform, arrange to perform, or perform a physical examination on a child;

20   (iii)   prescribe or dispense a prescription drug to a child;

21   (iv)   procure, solicit to perform, arrange to perform, or perform a mental health evaluation in a

22   clinical or nonclinical setting on a child; or

23   (v)   procure, solicit to perform, arrange to perform, or perform a mental health treatment on a child.

24   (b)   The prohibitions in subsection (1)(a) do not apply if the parent of the child has provided consent

25   for the medical care to be provided. If the parental consent is given through telemedicine, the health

26   professional shall verify the identity of the parent at the site where the consent is given.

27   (2)   Unless a parent's decisionmaking rights have been limited by court order, a hospital, as defined

28   in 50-5-101, is prohibited from allowing a surgical procedure to be performed on a child in its facilities unless

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1   the hospital has first received consent from a parent of the child.

2   (3)   The provisions of ~~this section~~ subsections (1) and (2) do not apply when a physician

3   determines that an emergency exists and that it is necessary to perform an activity described in subsection

4   (1)(a) to prevent death or imminent, irreparable physical injury to a child or when a parent cannot be located or

5   contacted after a reasonably diligent effort.

6   (4)   The provisions of ~~this section~~ subsections (1) and (2) do not apply to an abortion, which is

7   governed by the provisions of Title 50, chapter 20.

8   (5)   (a) A health care provider or custodian of health care information, as promptly as required

9   under the circumstances but no later than 10 days after receiving a request, shall:

10   (i)   make a child's health care information available, without charge, to the child's parent for

11   examination or provide a copy of the information, if requested, to the child's parent; or

12   (ii)   inform the child's parent if the requested health care information does not exist or cannot be

13   found.

14   (b)   If a health care provider has provided health care to a child but does not maintain the

15   requested health care information, then the health care provider, as promptly as required under the

16   circumstances but no later than 10 days after receiving a request, shall inform the child's parent and provide

17   contact information for the third party that maintains the health care information.

18   (6)   The access to health care information by a child's parent that is required to be provided under

19   subsection (5) does not apply when:

20   (a)   the legal guardian or legal custodian of the child is a government entity;

21   (b)   the parent's right to make medical decisions regarding the child or access the child's health

22   care information has been limited by court order; ~~or~~

23   (c)   the parent is the subject of an investigation or proceeding involving allegations that the parent:

24   (i)   has committed a crime against the child in violation of state, tribal, or federal law; or

25   (ii)   has committed child abuse or neglect, as defined in 41-3-102, against the child; or

26   (d)   the health care provider has a reasonable belief that:

27   (i)   the child has been or may be subjected to domestic violence, abuse, or neglect by the parent;

28   or

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1   (ii)   giving the parent access to the child's health information could endanger the child."

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3   **Section 2.** Section 50-16-521, MCA, is amended to read:

4   "**50-16-521. Health care representatives.** (1) A person authorized to consent to health care for

5 another may exercise the rights of that person under this part to the extent necessary to effectuate the terms or

6 purposes of the grant of authority. ~~If the patient is a minor and is authorized under 41-1-402 to consent to health~~

7 ~~care without parental consent, only the minor may exclusively exercise the rights of a patient under this part as~~

8 ~~to information pertaining to health care to which the minor lawfully consented.~~

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

10 the patient."

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12   <u>NEW SECTION.</u> **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are

13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

14 the part remains in effect in all valid applications that are severable from the invalid applications.

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16   <u>NEW SECTION.</u> **Section 4. Effective date.** [This act] is effective on passage and approval.

17   - END -