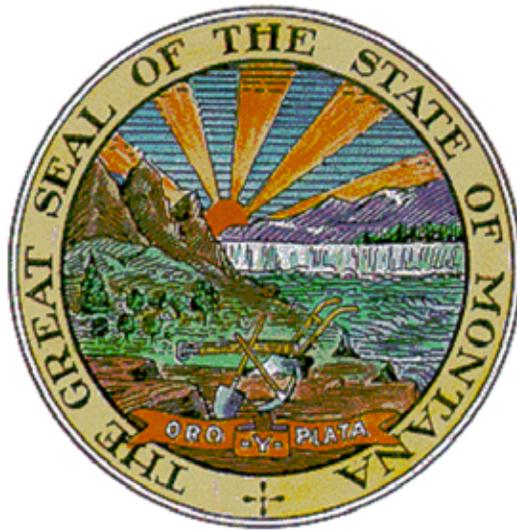


State of Montana  
Department of Labor and Industry  
Business Standards Division

DEPARTMENT AND BOARD STATUTES RELATING TO THE  
PRACTICE OF FUNERAL SERVICE



ISSUED BY:

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UPDATED 2007

**MONTANA CODES ANNOTATED  
2007**

**TITLE 2  
GOVERNMENT STRUCTURE & ADMINISTRATION**

**CHAPTER 15  
EXECUTIVE BRANCH OFFICERS AND AGENCIES**

**Part 17 – Department of Labor & Industry**

**2-15-1743. Board of funeral service.** (1) There is a board of funeral service.

(2) The board consists of six members appointed by the governor with the consent of the senate. Three members must be licensed morticians. One member must be a representative of the public who is not engaged in the practice of mortuary science or funeral directing. One member must be a licensed crematory operator or crematory technician or a mortician who is engaged in a crematory operation. One member must be a representative of a cemetery company governed by Title 37, chapter 19, part 8.

(3) Board members shall serve staggered 5-year terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

**History:** (1) thru (3)En. Sec. 2, Ch. 41, L. 1963; Sec. 66-2702, R.C.M. 1947; amd. and redes. 82A-1602.16 by Sec. 261, Ch. 350, L. 1974; amd. Sec. 1, Ch. 233, L. 1977; Sec. 82A-1602.16, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.16; MCA 1979, 2-15-1619; redes. 2-15-1853 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 378, L. 1981; amd. Sec. 2, Ch. 38, L. 1993; amd. Sec. 1, Ch. 52, L. 1997; Sec. 2-15-1853, MCA 1999; redes. 2-15-1743 by Sec. 221(2), Ch. 483, L. 2001.

**Cross-References**

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies -- emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Morticians and funeral directors, Title 37, ch. 19.

Nondiscrimination in licensing, 49-3-204.

**TITLE 33  
INSURANCE AND INSURANCE COMPANIES**

**CHAPTER 18**

**UNFAIR TRADE PRACTICES**

**Part 1 -- General Provisions**

- 33-18-101. Purposes.
- 33-18-102. Unfair methods or deceptive practices prohibited -- refusal to renew.
- 33-18-103. Protection of active duty members of armed forces -- rulemaking authority.

**Part 2 -- Insurer's Relations With Insured and Claimant**

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- 33-18-202. Misrepresentation and false advertising of policies prohibited.
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- 33-18-206. Unfair discrimination prohibited -- life insurance, annuities, and disability insurance.
- 33-18-207. Preferred rates to fictitious groups prohibited -- approval of preferred group rates and forms.
- 33-18-208. Contract to contain agreements -- rebates prohibited -- life, disability, and annuity contracts.
- 33-18-209. Exceptions to discrimination and rebates provision.
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- 33-18-217 through 33-18-220 reserved.
- 33-18-221. Designation of specific repair shops prohibited -- lists allowed.
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- 33-18-223. Prohibited activities -- glass broker defined.
- 33-18-224. Designation of specific automobile body repair businesses prohibited.
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- 33-18-226 through 33-18-230 reserved.
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- 33-18-232. Time for payment of claims.
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- 33-18-234. Right of privacy guaranteed.
- 33-18-235. Rulemaking authority.

- 33-18-236 through 33-18-240 reserved.
- 33-18-241. Repealed.
- 33-18-242. Independent cause of action -- burden of proof.
- 33-18-243 and 33-18-244 reserved.
- 33-18-245. Prompt payment of motor vehicle damage claims.

### **Part 3 -- Insurers--Noninsurance-Related Prohibitions**

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- 33-18-302. Defaming insurer prohibited.
- 33-18-303. Boycott, coercion, or intimidation prohibited.
- 33-18-304. Interlocking ownership and management -- restrictions.
- 33-18-305. Political contributions prohibited -- penalty.

### **Part 4 -- Insured's Relations With Insurer**

- 33-18-401. False application, claim, and proof of loss -- criminal penalty.

### **Part 5 -- Miscellaneous Prohibitions**

- 33-18-501. Lenders -- restrictions on solicitation, rejection, charges, and disclosure -- favoring insurance producer prohibited.
- 33-18-502. Prohibited relations with long-term care facility.

### **Part 6 -- Montana Use of Credit Information in Personal Insurance**

- 33-18-601. Short title.
- 33-18-602. Purpose.
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### **Part 9 -- Restrictions on Use of Genetic Information**

- 33-18-901. Definitions.
- 33-18-902. Requirement for genetic testing -- limitations.
- 33-18-903. Discrimination on basis of genetic traits prohibited.
- 33-18-904. Seeking genetic information for nontherapeutic purposes prohibited.

## Part 10 -- Enforcement

- 33-18-1001. Complaint handling -- record.
- 33-18-1002. Power of commissioner to examine insurers.
- 33-18-1003. Undefined unfair practices -- procedures for determining and restraining.
- 33-18-1004. Desist orders for prohibited practices.
- 33-18-1005. Penalty for violation of cease and desist orders.
- 33-18-1006. Desist orders for prohibited practices.

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### Chapter Cross-References

- Unfair trade practices and consumer protection, Title 30, ch. 14.
- Personal solicitation sales -- exemption for insurance sales, 30-14-502.
- Insurance contracts -- policy requirements -- construction, Title 33, ch. 15.

## Part 1

### General Provisions

**33-18-101. Purposes.** The purpose of this chapter is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in Public Law 79-15 (the McCarran-Ferguson Act, 15 U.S.C. 1011 through 1015), which was approved March 9, 1945, by defining or providing for determination of all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

**History:** En. Sec. 203, Ch. 286, L. 1959; amd. Sec. 6, Ch. 320, L. 1977; R.C.M. 1947, 40-3501.

**33-18-102. Unfair methods or deceptive practices prohibited -- refusal to renew.** (1) No person shall engage in this state in any trade practice which is defined in this chapter as or determined pursuant to this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

(2) Nothing in this chapter shall be construed to prevent an insurer owned or controlled by an association or organization, including a mutual insurer formed to provide insurance to the members of an association or organization, from refusing to renew a casualty or liability policy for nonpayment of dues to the association or organization if payment of dues is a condition for obtaining or continuing such insurance.

**History:** En. Sec. 204, Ch. 286, L. 1959; R.C.M. 1947, 40-3502; amd. Sec. 2, Ch. 319, L. 1981; amd. Sec. 1, Ch. 143, L. 1983.

**33-18-103. Protection of active duty members of armed forces -- rulemaking authority.** (1) (a) As used in this section, "life insurance product" means any product, including individual and group life insurance, funding agreements, and annuities, that provides insurance for which the probabilities of the duration of human life or the rate of mortality are an element or condition of

insurance.

(b) The term includes the granting of:

(i) endowment benefits;

(ii) additional benefits in the event of death by accident or accidental means;

(iii) disability income benefits;

(iv) additional disability benefits that operate to safeguard the contract from lapse or to provide a special surrender value or special benefit in the event of total and permanent disability;

(v) benefits that provide payment or reimbursement for long-term home health care or long-term care in a nursing home or other related facility;

(vi) burial insurance; and

(vii) optional modes of settlement or proceeds of life insurance.

(c) The term does not include workers' compensation insurance, health insurance, disability insurance, property and casualty insurance, or life insurance products specifically contracted by or through the federal government.

(2) As provided in Public Law 109-290, in cooperation with the national association of insurance commissioners, the commissioner shall:

(a) work collectively with other states to develop and implement appropriate standards to protect active duty members of the armed forces from dishonest and predatory insurance sales practices;

(b) identify this state's role in promoting standards developed pursuant to subsection (2)(a); and

(c) work collectively with other states to implement a system to receive and disseminate reports of disciplinary actions taken by federal or state government entities or insurers against persons that sell or solicit the sale of any life insurance product to active duty members of the armed forces.

(3) (a) The commissioner may adopt rules for:

(i) written disclosures to be used in the sale or solicitation of any life insurance product to active duty members of the armed forces and their dependents to protect the members or the members' dependents from dishonest and predatory insurance sales practices while located in this state;

(ii) requiring insurers to implement a system to report to the commissioner:

(A) disciplinary actions taken by a federal or state government entity with respect to sales or solicitations of life insurance products to active duty members of the armed forces that the insurer knows or in the exercise of due diligence should have known were taken; and

(B) significant disciplinary action taken by the insurer with respect to sales or solicitations of life insurance products to active duty members of the armed forces of this state.

(b) Rules adopted by the commissioner must be consistent with and may not go beyond the scope of:

(i) any model regulations that are adopted by the national association of insurance commissioners in response to a directive from the United States congress in Public Law 109-290, directing that the states ensure implementation of appropriate standards to protect active duty members of the armed forces from dishonest and predatory insurance sales practices;

(ii) rules or regulations adopted by the secretary of defense pursuant to Public Law 109-290; and

(iii) the requirements of Public Law 109-290.

**History: En. Sec. 1, Ch. 333, L. 2007.**

#### **Compiler's Comments**

*Effective Date:* Section 3, Ch. 333, L. 2007, provided that this section is effective on passage and

approval. Approved April 27, 2007.

## Part 2

### Insurer's Relations With Insured and Claimant

**33-18-201. Unfair claim settlement practices prohibited.** No person may, with such frequency as to indicate a general business practice, do any of the following:

(1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

(2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempt to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

**History:** En. 40-3502.1 by Sec. 1, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.1.

#### Cross-References

Punitive damages -- when allowed, 27-1-220.

Insurance contracts -- policy requirements -- construction, Title 33, ch. 15.

Administrative penalty for failure to pay promptly -- determination by Commissioner whether delay is general course of business practice, 33-18-232.

Crop hail insurance, Title 80, ch. 2, part 2.

**33-18-202. Misrepresentation and false advertising of policies prohibited.** No person shall make, issue, circulate, or cause to be made, issued, or circulated any estimate, illustration, circular, sales presentation, omission, comparison, or statement which:

(1) misrepresents the benefits, advantages, conditions, or terms of any insurance policy;

(2) misrepresents the dividends or share of the surplus to be received on any insurance policy;

(3) makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;

(4) is misleading or is a misrepresentation as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates;

(5) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;

(6) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(7) misrepresents any insurance policy as being shares of stock.

**History:** En. Sec. 205, Ch. 286, L. 1959; R.C.M. 1947, 40-3503; amd. Sec. 1, Ch. 9, L. 1979.

**33-18-203. False or deceptive advertising prohibited.** No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter, or poster or over any radio or television station or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

**History:** En. Sec. 206, Ch. 286, L. 1959; R.C.M. 1947, 40-3504.

#### **Cross-References**

Civil libel, 27-1-802.

Criminal defamation, 45-8-212.

**33-18-204. Twisting prohibited.** No person shall make or issue or cause to be made or issued any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing or attempting or tending to induce the policyholder to lapse, forfeit, surrender, retain, exchange, or convert any insurance policy.

**History:** En. Sec. 207, Ch. 286, L. 1959; R.C.M. 1947, 40-3505.

**33-18-205. Filing or publishing false financial statements or making false entries prohibited.** (1) No person shall file with any supervisory or other public official or make, publish, disseminate, circulate, or deliver to any person or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of an insurer with intent to deceive.

(2) No person shall make any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs or any public official to whom such insurer is required by law to report or who has authority by law to examine into its condition or into any of its affairs or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book,

report, or statement of such insurer. Any person who aids or abets in any such violation of this section shall be punishable upon conviction by a fine of \$1,000 or by imprisonment in the county jail for 6 months or both such fine and imprisonment.

**History:** En. Sec. 208, Ch. 286, L. 1959; amd. Sec. 1, Ch. 29, L. 1967; R.C.M. 1947, 40-3506.

**Cross-References**

Unsworn falsification to authorities -- misdemeanor, 45-7-203.

Misdemeanor -- definition, 46-18-212.

**33-18-206. Unfair discrimination prohibited -- life insurance, annuities, and disability insurance.** (1) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such contract.

(2) No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of disability insurance or in the benefits payable thereunder or in any of the terms or conditions of such contract or in any other manner whatever.

(3) An insurer may not refuse to consider an application for life or disability insurance on the basis of a genetic condition, developmental delay, or developmental disability.

(4) The rejection of an application or the determining of rates, terms, or conditions of a life or disability insurance contract on the basis of genetic condition, developmental delay, or developmental disability constitutes unfair discrimination unless the applicant's medical condition and history and either claims experience or actuarial projections establish that substantial differences in claims are likely to result from the genetic condition, developmental delay, or developmental disability.

(5) As used in this section, the following definitions apply:

(a) "Developmental delay" means a delay of at least 1 1/2 standard deviations from the norm.

(b) "Developmental disability" means the singular of developmental disabilities as defined in 53-20-202.

(c) "Genetic condition" means a specific chromosomal or single-gene genetic condition.

**History:** En. Sec. 211, Ch. 286, L. 1959; R.C.M. 1947, 40-3509; amd. Sec. 1, Ch. 318, L. 1991.

**33-18-207. Preferred rates to fictitious groups prohibited -- approval of preferred group rates and forms.** (1) No insurer, whether an authorized insurer or an unauthorized insurer, shall make available through any rating plan or form, property, casualty, or surety insurance to any firm, corporation, or association of individuals, any preferred rate or premium based upon any fictitious group of such firm, corporation, or association of individuals.

(2) No form or plan of insurance covering any group or combination of persons or risks shall be written or delivered within or outside this state to cover persons or risks in this state at any preferred rate or on any form other than as offered to persons not in such group or combination and to the public generally unless such form, plan of insurance, and the rates or premiums to be charged therefor have been submitted to and approved by the commissioner as being not unfairly discriminatory and as not otherwise being in conflict with subsection (1) above or with any provision of parts 1 through 4 of chapter 16 to the extent that

parts 1 through 4 are, by their terms, applicable thereto.

(3) This section does not apply to life insurance, disability insurance, workers' compensation insurance written for industry or business associations, or annuity contracts. However, workers' compensation group insurance rates are subject to all applicable provisions of chapter 16, part 10.

**History:** En. Sec. 222, Ch. 286, L. 1959; amd. Sec. 1, Ch. 292, L. 1977; R.C.M. 1947, 40-3520.

**33-18-208. Contract to contain agreements -- rebates prohibited -- life, disability, and annuity contracts.** Except as otherwise expressly provided by law, no person shall knowingly:

(1) permit or offer to make or make any contract of life insurance, life annuity, or disability insurance or agreement as to such contract other than as plainly expressed in the contract issued thereon;

(2) pay or allow or give or offer to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity any rebate of premiums payable on the contract or any special favor or advantage in the dividends or other benefits thereon or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever not specified in the contract;

(3) directly or indirectly give or sell or purchase or offer or agree to give, sell, purchase, or allow as inducement to such insurance or annuity or in connection therewith and whether or not to be specified in the policy or contract, any agreement of any form or nature promising returns and profits or any stocks, bonds, or other securities or interest present or contingent therein or as measured thereby of any insurance company or other corporation, association, or partnership or any dividends or profits accrued or to accrue thereon; or

(4) offer, promise, or give anything of value whatsoever not specified in the contract.

**History:** En. Sec. 212, Ch. 286, L. 1959; R.C.M. 1947, 40-3510.

**33-18-209. Exceptions to discrimination and rebates provision.** Nothing in 33-18-206 and 33-18-208 shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer;

(2) in the case of life insurance policies issued on the industrial debit, preauthorized check, bank draft, or similar plans, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer or by preauthorized check, bank draft, or similar plans, in an amount which fairly represents the saving in collection expense;

(3) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(4) reduction of premium rate for policies of large amount but not exceeding savings in issuance and administration expenses reasonably attributable to such policies as compared with policies of similar plan issued in smaller amounts;

(5) issuing life or disability insurance policies on a salary savings or payroll deduction plan at reduced rate reasonably commensurate with the savings made by the use of such plan.

**History:** En. Sec. 213, Ch. 286, L. 1959; R.C.M. 1947, 40-3511.

## Cross-References

Discrimination in insurance and retirement plans, 49-2-309.

**33-18-210. Unfair discrimination and rebates prohibited -- property, casualty, and surety insurances.** (1) A title, property, casualty, or surety insurer or an employee, representative, or insurance producer of an insurer may not, as an inducement to purchase insurance or after insurance has been effected, pay, allow, or give or offer to pay, allow, or give, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of the premium named in the insurance policy;

(b) special favor or advantage in the dividends or other benefits to accrue on the policy; or

(c) valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) An insured named in a policy or an employee of the insured may not knowingly receive or accept, directly or indirectly, a:

(a) rebate, discount, abatement, credit, or reduction of premium;

(b) special favor or advantage; or

(c) valuable consideration or inducement.

(3) An insurer may not make or permit unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable on insurance, or in any other of the terms and conditions of the insurance either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.

(4) This section may not be construed as prohibiting the payment of commissions or other compensation to licensed insurance producers or as prohibiting an insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits to its participating policyholders, members, or subscribers.

(5) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(6) An insurer may not make or permit unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk or on the personal property contained in the residential property, because of the age of the residential property, unless:

(a) the refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(b) the refusal, cancellation, or limitation is required by law or regulatory mandate.

(7) An insurer may not refuse to insure, refuse to continue to insure, or limit the amount of coverage available to an individual because of the sex or marital status of the individual. However, an insurer may take marital status into account for the purpose of defining persons eligible for dependents' benefits.

(8) An insurer may not terminate or modify coverage or refuse to issue or refuse to renew a property or casualty policy or contract of insurance solely because

the applicant or insured or any employee of either is mentally or physically impaired. However, this subsection does not apply to accident and health insurance sold by a casualty insurer, and this subsection may not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract.

(9) An insurer may not refuse to insure, refuse to continue to insure, charge higher rates, or limit the amount of coverage available to an individual based solely on adverse information contained in a driving record that is 3 years old or older. However, an insurer may provide discounts to an insured based on favorable aspects of an insured's claims history that is 3 years old or older.

(10) An insurer may not charge points or surcharge a private passenger motor vehicle policy because of a claim submitted under the insured's policy if the insured was not at fault.

**History:** En. Sec. 214, Ch. 286, L. 1959; amd. Sec. 1, Ch. 191, L. 1969; amd. Sec. 5, Ch. 38, L. 1977; amd. Sec. 8, Ch. 320, L. 1977; R.C.M. 1947, 40-3512; amd. Sec. 19, Ch. 303, L. 1981; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 5, Ch. 699, L. 1991; amd. Sec. 35, Ch. 798, L. 1991; amd. Sec. 2, Ch. 320, L. 1995; amd. Sec. 1, Ch. 427, L. 1995; amd. Sec. 12, Ch. 363, L. 2005.

#### **Cross-References**

Discrimination in insurance and retirement plans, 49-2-309.

**33-18-211. Stock operations and advisory board contracts.** No person shall issue or deliver or permit its insurance producers, officers, or employees to issue or deliver agency company stock or other capital stock or benefit certificates or shares in any common-law corporation or any advisory board contract or other similar contract of any kind promising returns and profits as an inducement to insurance.

**History:** En. Sec. 215, Ch. 286, L. 1959; R.C.M. 1947, 40-3513; amd. Sec. 1, Ch. 713, L. 1989.

**33-18-212. Illegal dealing in premiums -- improper charges for insurance.** (1) A person may not willfully collect any sum as a premium or charge for insurance that is not then provided or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as authorized by this code.

(2) A person may not willfully collect as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to the insurance and, as specified in the policy, in accordance with the applicable classifications and rates filed with or approved by the commissioner; or in cases in which classifications, premiums, or rates are not required by this code to be filed or approved, the premiums and charges may not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision may not prohibit the charging and collection, by surplus lines insurance producers licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. This provision may not prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

(3) Each violation of this section is punishable under 33-1-104.

**History:** En. Sec. 221, Ch. 286, L. 1959; R.C.M. 1947, 40-3519; amd. Sec. 1, Ch. 86, L. 1979; amd. Sec. 29, Ch. 537, L. 1987; amd. Sec. 41, Ch. 613, L. 1989; amd. Secs. 1, 2, Ch. 713, L. 1989; amd. Sec. 54, Ch. 379, L. 1995.

**33-18-213. Extension of credit to policyholder.** Notwithstanding any

other provision of law, an insurance producer, as defined in 33-17-102, may extend credit to a policyholder in connection with the issuance or servicing of any policy procured or negotiated by the insurance producer, but any credit so extended must satisfy one of the following requirements:

(1) if credit is extended to a policyholder for not more than 30 days from the date the premium is due and the credit is not evidenced by a written instrument, no interest may be charged; or

(2) if credit is extended to a policyholder for more than 30 days from the date the premium is due and the credit is not evidenced by a written instrument, interest may be charged for credit extended after 30 days at a rate not more than 1 1/2% a month on the unpaid balance; or

(3) if the extension of credit to a policyholder is evidenced by a written instrument signed by the policyholder, any interest charged for such credit shall be clearly stated in the instrument and may not exceed the legal rate of interest authorized in 31-1-107.

**History: En. Sec. 1, Ch. 128, L. 1981; amd. Sec. 1, Ch. 713, L. 1989.**

**33-18-214. Unfair referral as unfair trade practice.** A referral made in violation of 33-22-1518 is an unfair trade practice under this chapter.

**History: En. Sec. 3, Ch. 357, L. 1995.**

**33-18-215. Postclaim underwriting prohibited -- condition.** An insurer, health service corporation, or health maintenance organization may not place an elimination rider on or rescind coverage provided by a disability policy, certificate, or subscriber contract after a policy, certificate, or contract has been issued unless the insured has made a material misrepresentation or fraudulent misstatement on the application or has failed to pay the premium when due.

**History: En. Sec. 1, Ch. 53, L. 1997.**

**33-18-216. Unfair discrimination against victims of abuse prohibited.** (1) An insurer, health maintenance organization, or health service corporation may not unfairly discriminate against a victim of abuse.

(2) For purposes of this section, "abuse" means the occurrence between family members, current or former household members, or intimate partners of one or more of the following:

(a) purposely, knowingly, or recklessly subjecting another person, including a minor child, to bodily injury, severe emotional distress, psychological trauma, sexual assault, or sexual intercourse without consent;

(b) subjecting another person, including a minor child, to false imprisonment or unlawful restraint or confinement.

(3) For purposes of this section, "abuse" includes purposely or knowingly engaging in a course of conduct toward a family member, current or former household member, or intimate partner that constitutes stalking in violation of 45-5-220.

(4) The following acts, when based on the insured's status as a victim of abuse, are prohibited as unfairly discriminatory:

(a) denying, refusing to issue, renew, or reissue, canceling, or otherwise terminating an insurance policy, certificate of coverage delivered or issued for delivery in Montana, subscriber contract, or health care services agreement;

(b) restricting or excluding coverage under an insurance policy or certificate delivered or issued for delivery in Montana;

(c) adding a premium differential to any insurance policy or certificate delivered or issued for delivery in Montana on the basis that the applicant or insured has been the victim of abuse; or

(d) excluding or limiting coverage for losses or denying a claim.

(5) Upon written request of the insured or an applicant, an insurer that takes an underwriting action that adversely affects a victim of abuse on the basis of a medical condition or property or casualty risk that the insurer knows is related to abuse shall explain to the insured or applicant in writing the reason for the insurer's action.

(6) (a) This section does not prohibit an insurer from underwriting, classifying risk, or administering a contract of insurance as otherwise allowed by law based on property or casualty risk or medical information that the insurer knows is related to abuse as long as the insurer underwrites, classifies risk, or administers the contract of insurance on the basis of the applicant's or insured's property or casualty risk or medical condition and not on the applicant's or insured's status as a victim of abuse.

(b) This section does not prohibit or otherwise limit an insurer's ability to elicit information from or about an applicant or insured as otherwise provided by law.

(7) This section may not be construed to alter or modify any conditions, exclusions, or limitations clearly stated in an insurance policy or certificate delivered or issued for delivery in Montana that are not otherwise inconsistent with the provisions of subsection (4).

(8) An insurer may not be held civilly or criminally liable for the death of or physical injury to an insured that is related to acts of abuse resulting from any action taken in a good faith effort to comply with the requirements of this section.

**History: En. Sec. 1, Ch. 304, L. 1997.**

**33-18-217 through 33-18-220 reserved.**

**33-18-221. Designation of specific repair shops prohibited -- lists allowed.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured, in whole or in part, under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass

replacement, glass repair services, or glass products than the lowest prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair.

**History:** En. Sec. 1, Ch. 554, L. 1993; amd. Sec. 2, Ch. 526, L. 1999; amd. Sec. 2, Ch. 345, L. 2001.

**33-18-222. Lowest prevailing market price.** For purposes of 33-18-221 and 33-18-223, "lowest prevailing market price" means the lowest market price in a local area. The lowest prevailing market price may not be less than cost as provided in 30-14-209.

**History:** En. Sec. 2, Ch. 554, L. 1993; amd. Sec. 3, Ch. 526, L. 1999; amd. Sec. 3, Ch. 345, L. 2001.

**33-18-223. Prohibited activities -- glass broker defined.** (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; or

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the lowest prevailing market price as provided in 33-18-222.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to perform glass replacement or glass repair work.

**History:** En. Sec. 3, Ch. 554, L. 1993; amd. Sec. 2, Ch. 207, L. 1997; amd. Sec. 4, Ch. 526, L. 1999; amd. Sec. 4, Ch. 345, L. 2001.

#### **Cross-References**

Automobile glass -- sale, repair, or replacement -- advertising allowed, 30-14-225.

Windshield tinting -- restrictions, 61-9-405.

**33-18-224. Designation of specific automobile body repair businesses prohibited.** (1) (a) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(i) require that a claimant under the policy use a particular automobile body repair business or location for an estimate or a repair; or

(ii) engage in any act or practice that intimidates, coerces, or threatens a claimant or that provides an incentive or inducement for a claimant to use a particular automobile body repair business or location.

(b) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may have access to the motor vehicle for purposes of preparing a competitive estimate.

(2) (a) Except as provided in subsection (2)(b), if an insurance company has direct repair programs with automobile body repair businesses or locations, the insurance company may not limit the number of automobile body repair businesses or locations with whom it maintains direct repair programs.

(b) An insurance company may limit the number of automobile body repair businesses or locations participating in the insurance company's direct repair program to those automobile body repair businesses or locations that comply with the provisions of subsection (2)(c). An insurance company is not required to establish a direct repair program in a particular market area in which the insurance company's number of policyholders does not support establishing a direct repair program with any automobile body repair business or location.

(c) Upon request, the insurance company shall provide, without prejudice or bias, the claimant with a list that includes all automobile body repair businesses or locations that are reasonably close or convenient to the claimant and willing to provide services and that meet the insurance company's criteria regarding whether the automobile body repair business or location:

(i) possesses the equipment necessary to undertake repairs;

(ii) undertakes training of management and technical personnel with respect to repair information and the claims process;

(iii) agrees to perform quality repairs at the prevailing competitive market price and that meet reasonable industry repair standards;

(iv) agrees to warrant the quality of work, including refinishing, in writing to the claimant, for a period of not less than 1 year from the date of repair;

(v) agrees to inspection of its repairs and services by the insurance company and agrees that the insurance company may terminate the direct repair program with the automobile body repair business or location if the repairs and services are below the standards of quality required by the insurance company; and

(vi) if requested, agrees to execute an agreement with the insurance company that may contain additional criteria that are not designed to unfairly limit the number of automobile body repair businesses or locations with whom the insurance company maintains direct repair programs. The additional criteria may include criteria determined to be necessary by the insurance company and designed to ensure that the automobile body repair business or location has the necessary estimating systems and programs and equipment to communicate electronically with the insurance company and that the automobile body repair business or location has taken steps to ensure the privacy of the insurance company and the claimant.

(d) If the claimant requests the list provided for in subsection (2)(c), the insurance company shall inform the claimant that the claimant may use an automobile body repair business or location at the sole discretion of the claimant.

(3) For the purposes of this section, an incentive or inducement does not include:

(a) providing a claimant with the list provided for in subsection (2)(c); or

(b) referring to a warranty issued by an automobile body repair business or location.

(4) The claimant may use an automobile body repair business or location at the claimant's sole discretion, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the lowest prevailing market price, as defined in 33-18-222.

(5) If the claimant uses an automobile body repair business or location that is not on a list provided for in subsection (2)(c), the insurance company may not be held liable for any repair work performed by the automobile body repair business or location chosen by the claimant.

(6) It is unlawful for an automobile body repair business or location to charge or agree to charge a claimant more than an uninsured customer for any automobile body repair service.

(7) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section.

(8) For purposes of this section:

(a) "automobile body repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products;

(b) "claimant" means the person seeking repair of a motor vehicle whether that person is the insured person or a third party making a claim against the insurer.

**History:** En. Sec. 1, Ch. 292, L. 1997; amd. Sec. 5, Ch. 526, L. 1999; amd. Sec. 5, Ch. 345, L. 2001; amd. Sec. 1, Ch. 407, L. 2005; amd. Sec. 1, Ch. 339, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 339 throughout section substituted references to claimant for references to person insured or insured person; in (1)(a)(i) after "location" inserted "for an estimate or a repair"; inserted (1)(b) allowing insurance company, including company's producers and adjusters, that issues or renews policy covering motor vehicle to have access to vehicle to prepare competitive estimate; inserted (8)(b) defining claimant; and made minor changes in style. Amendment effective October 1, 2007.

#### **Cross-References**

Montana Professional Tow Truck Act, Title 61, ch. 8, part 9.

State law enforcement rotation system -- local government rotation system, 61-8-908.

**33-18-225. Designation of specific car rental business prohibited.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require that a person, whether or not insured by the insurance company, for whom the insurance company is obligated to provide a car rental while the person's own car is being repaired use a particular car rental business; or

(b) engage in any act or practice that intimidates, coerces, or threatens a person to use a particular car rental business.

(2) (a) An insurance company that is subject to the provisions of this section and that provides for direct payment to any one or more car rental businesses in this state must provide for direct payment to any car rental business selected by a person described in subsection (1)(a).

(b) For the purposes of this section, "direct payment" means a method by which an insurance company makes a direct payment on behalf of an insured or a third party either through electronic means or by check to a car rental business.

(c) The insurance company may approve the daily rate to be paid by the insurance company based on the car classification.

(d) The insurance company is not obligated to pay more to the car rental business than is provided in the insured's policy limits pursuant to 33-23-203.

(3) This section does not require an insurer to pay more for a comparable car rental than the lowest price negotiated between a car rental business and the insurer.

(4) This section does not prohibit an insurer, its producers, or its adjusters from providing to a customer the name of a car rental business with which arrangements may have been made to provide car rental services as long as the ultimate choice is left to the person described in subsection (1)(a).

**History:** En. Sec. 1, Ch. 251, L. 2005.

**33-18-226 through 33-18-230 reserved.**

**33-18-231. State administrative process to provide timely payment of medical benefits -- definitions.** In 33-18-231 through 33-18-235 the following definitions apply:

(1) "Claim documentation" means standard claims forms or other documentation routinely accepted by insurers as proof of loss.

(2) "Insurer" means any insurer as that term is defined by this title, including any fraternal benefit society, hospital service nonprofit corporation, health service corporation, nonprofit medical service corporation, nonprofit health care corporation, health maintenance organization, self-insurer, or third-party administrator or any other public or private, profit or nonprofit, governmental or nongovernmental individual, group, or organization that sells or offers for sale insurance policies, subscriber contracts, certificates, or agreements by which the offerer promises to pay medical benefits in any form in this state.

(3) "Proof of loss" means any claim documentation received by an insurer upon which payment of claims is requested.

**History:** En. Sec. 1, Ch. 300, L. 1983; amd. Sec. 1, Ch. 378, L. 2003.

**33-18-232. Time for payment of claims.** (1) An insurer shall pay or deny a claim within 30 days after receipt of a proof of loss unless the insurer makes a reasonable request for additional information or documents in order to evaluate the claim. If an insurer makes a reasonable request for additional information or documents, the insurer shall pay or deny the claim within 60 days of receiving the proof of loss unless the insurer has notified the insured, the insured's assignee, or the claimant of the reasons for failure to pay the claim in full or unless the insurer has a reasonable belief that insurance fraud has been committed and the insurer has reported the possible insurance fraud to the commissioner. This section does not eliminate an insurer's right to conduct a thorough investigation of all the facts necessary to determine payment of a claim.

(2) If an insurer fails to comply with this section and the insurer is liable for payment of the claim, the insurer shall pay an amount equal to the amount of the claim due plus 10% annual interest calculated from the date on which the claim was due. For purposes of calculating the amount of interest, a claim is considered due 30 days after the insurer's receipt of the proof of loss or 60 days after receipt of the proof of loss if the insurer made a reasonable request for information or documents. Interest payments must be made to the person who receives the claims payment. Interest is payable under this subsection only if the amount of interest due on a claim exceeds \$5.

(3) A private cause of action under 33-18-201 or 33-18-242 may not be based on the compliance or noncompliance with the requirements of this section and evidence of compliance or noncompliance with this section is not admissible in any private action based on 33-18-201 or 33-18-242.

**History:** En. Sec. 2, Ch. 300, L. 1983; amd. Sec. 2, Ch. 378, L. 2003; amd. Sec. 21, Ch. 469, L. 2005.

#### **Cross-References**

Unfair claim settlement practices -- unreasonable refusal to pay claims, 33-18-201.

**33-18-233. Administrative penalty for failure to pay promptly.** (1) The commissioner may, after a hearing, impose an administrative fine as provided in 33-1-317 on an insurer if the commissioner finds that the insurer as a general course of business practice in this state fails to:

- (a) use due diligence in processing all claims;
- (b) pay claims in a timely manner;
- (c) provide proper notice, when required, with respect to the reasons for the

insurer's failure to make claim payments when due;

(d) pay, without just cause, proper claims arising under coverage provided by its policies, whether the claims are in favor of an insured, in favor of a third person with respect to the liability of an insured to the third person, or in favor of any other person entitled to the benefits of a policy; or

(e) pay interest pursuant to 33-18-232(2).

(2) If an insurer can demonstrate that it has consistently paid 90% of the total dollar amount outstanding in claims to each claimant within 20 working days and all of the amount within 30 working days of receipt of claims during the 6-month period immediately preceding the hearing date, the insurer is not subject to the fine described in subsection (1).

**History:** En. Sec. 3, Ch. 300, L. 1983; amd. Sec. 3, Ch. 378, L. 2003.

#### **Cross-References**

Unfair claim settlement practices -- unreasonable refusal to pay claims, 33-18-201.

**33-18-234. Right of privacy guaranteed.** Nothing in 33-18-231 through 33-18-235 requires the commissioner to disclose information in violation of the Insurance Information and Privacy Protection Act.

**History:** En. Sec. 4, Ch. 300, L. 1983.

#### **Cross-References**

Insurance information and privacy protection, Title 33, ch. 19.

**33-18-235. Rulemaking authority.** The commissioner may adopt rules, under the Montana Administrative Procedure Act, necessary to implement 33-18-231 through 33-18-234.

**History:** En. Sec. 5, Ch. 300, L. 1983; amd. Sec. 9, Ch. 399, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 399 near beginning substituted "may adopt" for "shall make". Amendment effective May 3, 2007.

#### **Cross-References**

Montana Administrative Procedure Act, Title 2, ch. 4.

**33-18-236 through 33-18-240 reserved.**

**33-18-241. Repealed.** Sec. 2, Ch. 278, L. 1987.

**History:** En. Sec. 1, Ch. 504, L. 1985.

**33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant has an independent cause of action against an insurer for actual damages caused by the insurer's violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201.

(2) In an action under this section, a plaintiff is not required to prove that the violations were of such frequency as to indicate a general business practice.

(3) An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

(4) In an action under this section, the court or jury may award such damages as were proximately caused by the violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201. Exemplary damages may also be assessed in accordance

with 27-1-221.

(5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

(6) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial where justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

(7) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

(8) As used in this section, an insurer includes a person, firm, or corporation utilizing self-insurance to pay claims made against them.

**History: En. Sec. 3, Ch. 278, L. 1987.**

### **33-18-243 and 33-18-244 reserved.**

**33-18-245. Prompt payment of motor vehicle damage claims.** (1) Except for providers who are prepaid or agree to a different payment schedule, an insurer shall make an offer to pay or shall pay all approved claims for covered services or damages that solely involve the recovery of property damages in an amount of \$2,500 or less arising out of the ownership, maintenance, or use of a motor vehicle within 30 working days of receipt of a proof of loss that is correctly completed and submitted to the insurer.

(2) Subsection (1) does not apply to an insurer who has notified the insured or the insured's assignee of the reasons for the insurer's failure to pay the claim in full or to an insurer that has made a reasonable request for additional information or documents.

**History: En. Sec. 4, Ch. 378, L. 2003.**

## **Part 3**

### **Insurers -- Noninsurance-Related Prohibitions**

**33-18-301. Prohibited relations with mortuaries.** (1) A life insurer and its board of directors, officers, employees, or representatives that sell any life insurance, other than funeral insurance as defined in 33-20-1501(1)(c)(ii), may not own, manage, supervise, operate, or maintain any mortuary, funeral, or undertaking establishment in Montana.

(2) (a) A life insurer may not contract or agree with any funeral director, mortician, or undertaker that the funeral director, mortician, or undertaker shall conduct the funeral or be named beneficiary of any person insured by the insurer.

(b) This subsection (2) does not prohibit a life insurer from selling, soliciting, or negotiating funeral insurance, as defined in 33-20-1501(1)(c)(ii), through a funeral director, mortician, undertaker, or any employee of a mortuary or undertaker if the funeral director, mortician, undertaker or employee of a mortuary or

undertaker, through whom the sale, solicitation, or negotiation occurs, is an insurance producer licensed and qualified under 33-17-214. A life insurer that sells, solicits, or negotiates funeral insurance, as defined in 33-20-1501(1)(c)(ii), through a funeral director, mortician, undertaker, or any employee of a mortuary or undertaker shall comply with the provisions of 33-20-1501 and 33-20-1502.

(3) A funeral insurance policy or certificate and any solicitation material for the policy must comply with 33-20-1501.

(4) An attempt by the insurer or its representative to require the insured to designate a specific beneficiary, including but not limited to a funeral director, mortician, mortuary, or undertaker, constitutes a violation of this section punishable as a misdemeanor pursuant to subsection (5).

(5) Each violation of this section constitutes a misdemeanor punishable by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or both.

**History:** En. Sec. 223, Ch. 286, L. 1959; R.C.M. 1947, 40-3521; amd. Sec. 23, Ch. 198, L. 1979; amd. Sec. 1, Ch. 229, L. 1981; amd. Sec. 55, Ch. 379, L. 1995; amd. Sec. 36, Ch. 472, L. 1999; amd. Sec. 6, Ch. 507, L. 2007.

#### Compiler's Comments

*2007 Amendment:* Chapter 507 in (1) near middle after "representatives" inserted "that sell any life insurance, other than funeral insurance as defined in 33-20-1501(1)(c)(ii)"; in (2)(a) in two places after "director" substituted "mortician" for "mortuary"; in (2)(b) in first sentence at end after "insurer from" deleted "making insurance, designated as funeral insurance, available" and inserted language providing that an insurance producer is not prohibited from selling, soliciting, or negotiating funeral insurance through various persons engaged in the funeral, mortuary, or undertaking business if those persons are licensed insurance producers and inserted second sentence providing that the insurance producer shall comply with the provisions of 33-20-1501 and 33-20-1502; deleted former (3) that read: "(3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:

(a) the policy is a life insurance product;

(b) the applicant may designate the beneficiary if there is an appropriate and insurable interest;

(c) the beneficiary may use the proceeds for any purpose"; inserted (3) providing that a funeral insurance policy or certificate and solicitation material must comply with 33-20-1501; in (4) near middle after "director" inserted "mortician"; and made minor changes in style. Amendment effective January 1, 2008.

#### Cross-References

Morticians -- general provisions, Title 37, ch. 19, part 1.

Misdemeanor -- definition, 46-18-212.

**33-18-302. Defaming insurer prohibited.** No person shall make, publish, disseminate, or circulate, directly or indirectly, or aid, abet, or encourage the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer or of an organization proposing to become an insurer and which is calculated to injure any person engaged or proposing to engage in the business of insurance.

**History:** En. Sec. 209, Ch. 286, L. 1959; R.C.M. 1947, 40-3507.

#### Cross-References

Civil libel, 27-1-802.

Criminal defamation, 45-8-212.

**33-18-303. Boycott, coercion, or intimidation prohibited.** No person shall enter into any agreement to commit or by any concerted action commit any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance.

**History:** En. Sec. 210, Ch. 286, L. 1959; R.C.M. 1947, 40-3508.

#### Cross-References

Restraint of trade, 30-14-205.

Intimidation -- criminal offense, 45-5-203.

#### **33-18-304. Interlocking ownership and management -- restrictions.**

(1) Any insurer may retain, invest in, or acquire the whole or any part of the capital stock of any other insurer or insurers or have a common management with any other insurer or insurers unless such retention, investment, acquisition, or common management is inconsistent with any other provision of this code or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create a monopoly therein.

(2) Any person otherwise qualified may be director of two or more insurers which are competitors unless the effect thereof is to lessen substantially competition between insurers generally or tends materially to create a monopoly.

**History: En. Sec. 219, Ch. 286, L. 1959; R.C.M. 1947, 40-3517.**

#### Cross-References

Affiliation and merger -- holding company systems, Title 33, ch. 2, part 11.

**33-18-305. Political contributions prohibited -- penalty.** (1) No insurer shall directly or indirectly pay or use or offer, consent, or agree to pay or use any money or property for or in aid of any political party, committee, or organization or for or in aid of any corporation or other body organized or maintained for political purposes or for or in aid of any candidate for political office or for nomination for such office or for any political purpose whatsoever or for the reimbursement or indemnification of any person for money or property so used.

(2) Any officer, director, stockholder, attorney, or insurance producer of any insurer which violates any of the provisions of this section, who participates in, aids, abets, or advises or consents to any such violation and any person who solicits or knowingly receives any money or property in violation of this section shall be guilty of a misdemeanor and be punished by imprisonment for not more than 1 year and a fine of not more than \$1,000; and any officer or director aiding or abetting in any contribution made in violation of this section shall be liable to the insurer for the amount so contributed.

**History: En. Sec. 220, Ch. 286, L. 1959; R.C.M. 1947, 40-3518; amd. Sec. 1, Ch. 713, L. 1989.**

#### Cross-References

Prohibited contributions from corporations, 13-35-227.

Campaign finance, Title 13, ch. 37, part 2.

Misdemeanor, 46-18-212.

## Part 4

### Insured's Relations With Insurer

**33-18-401. False application, claim, and proof of loss -- criminal penalty.** (1) An insurance producer, examining physician, applicant, or other person who knowingly makes a false or fraudulent statement or representation in or with reference to an application for insurance is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 or more than \$1,000 or by imprisonment in the county jail for not less than 3 months or more than 6

months, or both fine and imprisonment at the discretion of the court.

(2) (a) A person who, for the purpose of obtaining any money or benefit, knowingly presents or causes to be presented a false or fraudulent claim or any proof in support of a false or fraudulent claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of a false or fraudulent claim, is guilty of theft under 45-6-301. Either a county attorney or the attorney general may prosecute the person.

(b) As used in subsection (2)(a), "person" includes but is not limited to an insurance producer, examining physician, or applicant.

**History:** En. Sec. 224, Ch. 286, L. 1959; R.C.M. 1947, 40-3522; amd. Sec. 60, Ch. 713, L. 1989; amd. Sec. 3, Ch. 562, L. 2005.

## Part 5

### Miscellaneous Prohibitions

**33-18-501. Lenders -- restrictions on solicitation, rejection, charges, and disclosure -- favoring insurance producer prohibited.** (1) No person may require as a condition precedent to the lending of money or extension of credit or any renewal thereof that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance negotiate any contract of insurance or renewal thereof through a particular insurer or group of insurers or insurance producer or group of insurance producers.

(2) No person who lends money or extends credit may:

(a) solicit insurance for the protection of real property, after a person indicates interest in securing a first-mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension;

(b) unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection is not unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards may not discriminate against any particular type of insurer or call for rejection of an insurance contract because the contract contains coverage in addition to that required by the credit transaction.

(c) require that any borrower, mortgagor, purchaser, insurer, or insurance producer pay a separate charge in connection with the handling of any contract of insurance required as security for a loan on real estate or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection (2)(c) does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document.

(d) use or disclose information relative to a contract of insurance which is required by the credit transaction:

(i) for the purpose of replacing such insurance; and

(ii) without the prior written consent of the borrower;

(e) require any procedures or conditions of licensed insurance producers or insurers not customarily required of those insurance producers or insurers affiliated or in any way connected with the person who lends money or extends credit.

(3) Each person who lends money or extends credit and who solicits insurance on real and personal property subject to subsection (2) of this section

must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or insurance producer of the borrower's choice, subject only to the lender's right to reject a given insurer or insurance producer as provided in subsection (2)(b). Compliance with disclosures as to insurance required by truth-in-lending laws or comparable state laws shall be compliance with this subsection.

(4) The commissioner may examine and investigate those insurance-related activities of any person which may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(5) Nothing herein prevents a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(6) Nothing contained in this section applies to credit life or credit accident and health insurance.

**History:** En. 40-3516.1 by Sec. 5, Ch. 320, L. 1977; R.C.M. 1947, 40-3516.1; amd. Sec. 1, Ch. 281, L. 1987; amd. Sec. 1, Ch. 713, L. 1989; amd. Sec. 35, Ch. 798, L. 1991.

#### **Cross-References**

Regulated lender -- definition, 31-1-111.  
Property insurance, Title 33, ch. 24.

**33-18-502. Prohibited relations with long-term care facility.** An insurance producer that owns, manages, supervises, operates, maintains, or works in a long-term care facility, as defined in 37-9-101, may not solicit, negotiate with, or sell a life or disability policy or certificate of insurance to a resident of a long-term care facility.

**History:** En. Sec. 5, Ch. 227, L. 2001.

## **Part 6**

### **Montana Use of Credit Information in Personal Insurance**

**33-18-601. Short title.** This part may be cited as the "Montana Use of Credit Information in Personal Insurance Act".

**History:** En. Sec. 1, Ch. 363, L. 2005.

**33-18-602. Purpose.** The purpose of this part is to regulate the use of credit information for personal insurance so that consumers are afforded certain protections with respect to the use of credit information.

**History:** En. Sec. 2, Ch. 363, L. 2005.

**33-18-603. Scope.** This part applies to personal insurance and not to commercial insurance. For purposes of this part, "personal insurance" means private passenger automobile, home owners, motorcycle, mobile home owners, and noncommercial dwelling fire insurance policies and boat, personal watercraft, snowmobile, and recreational vehicle policies. These policies must be individually underwritten for personal, family, or household use. Other types of insurance may not be included as personal insurance for the purpose of this part.

**History:** En. Sec. 3, Ch. 363, L. 2005.

**33-18-604. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Adverse action" means, in regard to the terms of coverage or amount of coverage of any insurance, existing or applied for, in connection with the underwriting of personal insurance, any of the following:

(a) denial, nonrenewal, or cancellation of coverage;  
(b) an increase in any charge for coverage;  
(c) failure to give an otherwise available credit-related discount; or  
(d) a reduction or any other adverse or unfavorable change in the terms of coverage or the amount of coverage.

(2) "Affiliate" means a company that controls, is controlled by, or is under common control with another company.

(3) "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.

(4) "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or of an applicant for a personal insurance policy.

(5) "Consumer reporting agency" means any entity that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(6) "Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that is not credit-related may not be considered credit information regardless of whether it is contained in a credit report or in an application or is used to calculate an insurance score.

(7) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(8) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

**History: En. Sec. 4, Ch. 363, L. 2005.**

**33-18-605. Use of credit information.** (1) An insurer authorized to do business in this state that uses credit information to underwrite or rate risks may not:

(a) use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor;

(b) deny, cancel, or not renew a policy of personal insurance on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subsection (1)(a);

(c) base an insured's renewal rates for personal insurance upon credit information without consideration of any other applicable factor independent of credit information;

(d) take an adverse action against a consumer because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information;

(e) consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:

(i) treats the consumer as otherwise approved by the commissioner if the insurer presents information that the absence or inability relates to the risk for the insurer;

(ii) treats the consumer as if the consumer had neutral credit information, as defined by the insurer; or

(iii) excludes the use of credit information as a factor and uses only other underwriting criteria;

(f) take an adverse action against a consumer based on credit information unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date that the policy is first written or renewal is issued;

(g) use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the requirements of this subsection (1)(g):

(i) at annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall reunderwrite and rerate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a 12-month period.

(ii) the insurer has the discretion to obtain current credit information upon any renewal before the 36 months provided for in subsection (1)(g), if consistent with its underwriting guidelines;

(iii) an insurer may but does not have to obtain current credit information for an insured, despite the requirements of subsection (1)(g)(i), if one of the following applies:

(A) the insurer is treating the consumer as otherwise approved by the commissioner;

(B) the insured is in the most favorably priced tier of the insurer within a group of affiliated insurers;

(C) credit was not used for underwriting or rating the insured when the policy was initially written;

(D) the insurer reevaluates the insured beginning not later than 36 months after inception and at similar succeeding times based upon other underwriting or rating factors, excluding credit information.

(h) use a credit score that treats any of the following as a negative factor for the purpose of underwriting or rating a policy of personal insurance:

(i) credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information;

(ii) inquiries relating to insurance coverage, if so identified on a consumer's credit report;

(iii) collection accounts with a medical industry code, if so identified on the consumer's credit report;

(iv) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered;

(v) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered;

(vi) the number of credit inquiries;

(vii) the consumer's use of a particular type of credit card, charge card, or debit card or the number of credit cards obtained by a consumer;

(viii) a loan if information from the credit report makes it evident that the loan is for the purchase of an automobile or a personal residence. However, an insurer may consider the bill payment history of any loan, the total number of loans, or both.

(ix) the consumer's total available line of credit or total debt. However, an insurer may consider:

(A) the consumer's bill payment history on the debt; or

(B) the total amount of outstanding debt if the outstanding debt exceeds the total line of credit.

(2) (a) An insurer shall, on written request from an applicant or an insured, provide reasonable underwriting or rating exceptions for a consumer whose credit report has been directly affected by an extraordinary event.

(b) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the consumer's credit before granting an exception. An insurer is not required to consider repeated extraordinary events or extraordinary events the insurer reconsidered previously.

(c) An insurer may also consider granting an exception to a consumer for an extraordinary event not listed in this section.

(d) An insurer may not be considered to be out of compliance with its filed rules and rates as a result of granting an exception pursuant to this subsection (2).

(e) As used in this subsection (2), "extraordinary event" means:

(i) expenses related to a catastrophic injury or illness;

(ii) temporary loss of employment;

(iii) death of an immediate family member; or

(iv) theft of identity pursuant to 45-6-332.

**History: En. Sec. 5, Ch. 363, L. 2005.**

**33-18-606. Dispute resolution and error correction.** If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of that determination from either the consumer reporting agency or the insured, the insurer shall reunderwrite and rerate the consumer within 30 days of receiving the notice. After reunderwriting or rerating the insured, the insurer shall make any adjustments necessary consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid the premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

**History: En. Sec. 6, Ch. 363, L. 2005.**

**33-18-607. Initial notification.** (1) If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time that the insurance application is taken, that it may obtain credit information in connection with the application. The disclosure must be either written or provided to an applicant in the same medium as the application for insurance. The insurer does not have to provide the disclosure statement required under this section to any insured on a renewal policy if the consumer has previously been provided a disclosure statement.

(2) Use of the following disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information

contained in that credit report. We may use a third party in connection with the development of your insurance score."

**History: En. Sec. 7, Ch. 363, L. 2005.**

**33-18-608. Adverse action notification.** If an insurer takes an adverse action based upon credit information, the insurer shall:

(1) provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. 1681m(a); and

(2) provide notification to the consumer explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take an adverse action. The notification must include a description of up to four factors that were the primary influences of the adverse action. The use of generalized terms, such as "poor credit history", "poor credit rating", or "poor insurance score", does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are considered to comply with this section.

**History: En. Sec. 8, Ch. 363, L. 2005.**

**33-18-609. Filing.** (1) Insurers that use insurance scores to underwrite and rate risks shall file their scoring models or other scoring processes with the commissioner. A third party may file scoring models on behalf of insurers.

(2) A filing relating to credit information is considered a trade secret under the laws of this state.

**History: En. Sec. 9, Ch. 363, L. 2005.**

**33-18-610. Indemnification.** An insurer shall indemnify, defend, and hold insurance producers harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurance producer that obtains or uses credit information or insurance scores for an insurer if the insurance producer follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. This section may not be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

**History: En. Sec. 10, Ch. 363, L. 2005.**

**33-18-611. Sale of policy term information by consumer reporting agency.** (1) A consumer reporting agency may not provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. This information includes but is not limited to the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer's insurance may expire and the terms and conditions of the consumer's insurance coverage.

(2) The restrictions provided in subsection (1) do not apply to data or lists that the consumer reporting agency supplies to the insurance producer from whom information was received, the insurer on whose behalf the insurance producer acted, or the insurer's affiliates or holding companies.

(3) This section may not be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

**History: En. Sec. 11, Ch. 363, L. 2005.**

**33-18-612. Refund for expunged record.** An insurance company that

charges an additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged because of identity theft pursuant to 46-24-219 shall refund the additional premiums to the policyholder upon notification and verification of the expungement.

**History: En. Sec. 5, Ch. 195, L. 2007.**

#### **Compiler's Comments**

*Effective Date:* This section is effective October 1, 2007

### **Parts 7 and 8 reserved**

## **Part 9**

### **Restrictions on Use of Genetic Information**

**33-18-901. Definitions.** Unless the context indicates otherwise, the following definitions apply to this part:

(1) "Genetic information" means, unless otherwise provided by Public Law 104-191, information derived from genetic testing or medical evaluation to determine the presence or absence of variations or mutations, including carrier status, in an individual's genetic material or genes that are scientifically or medically believed to cause a disease, disorder, or syndrome or are associated with a statistically increased risk of developing a disease, disorder, or syndrome that is asymptomatic at the time of testing.

(2) "Genetic testing" or "genetic test" means a test used to diagnose a presymptomatic genetic factor, including analysis of human deoxyribonucleic acid or ribonucleic acid, chromosomes, proteins, or metabolites. The term does not include a routine physical examination or a chemical, blood, or urine analysis, unless conducted or analyzed purposefully or knowingly to obtain genetic information, or a family history.

(3) "Genetic trait" means any medically or scientifically identified genetic factor, known or presumed to be present in the individual or a biological relative but not presently associated with any manifestations of the disorder in the individual, that could cause a disorder or be statistically associated with an increased risk of development of a disorder.

(4) "Group policy" includes:

(a) the group insurance program authorized by Title 2, chapter 18, part 7;

(b) the state employee group insurance program required by Title 2, chapter 18, part 8; and

(c) a self-funded multiple employer welfare arrangement that is not regulated pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

**History: En. Sec. 3, Ch. 334, L. 1999.**

**33-18-902. Requirement for genetic testing -- limitations.** (1) An insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of

insurance may not require an individual to obtain a genetic test unless the test is otherwise required by law for reasons including but not limited to the following:

- (a) to establish parentage;
  - (b) to determine the presence of metabolic disorders in a newborn by testing conducted pursuant to newborn screening and protocols;
  - (c) in connection with a criminal investigation or prosecution; or
  - (d) for remains identification.
- (2) This section does not apply to transactions of life, disability income, or long-term care insurance.

**History: En. Sec. 4, Ch. 334, L. 1999.**

**33-18-903. Discrimination on basis of genetic traits prohibited.** (1)

Unless otherwise required by law, an insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance may not, on the basis of a person's genetic traits:

- (a) fail or refuse to accept an application for a policy or certificate of insurance;
  - (b) fail or refuse to issue a policy or certificate of insurance to an applicant;
  - (c) cancel a policy or certificate of insurance;
  - (d) refuse to renew a policy or certificate of insurance;
  - (e) charge a higher rate or premium for a policy or certificate of insurance;
- or
- (f) offer or provide different terms, conditions, or benefits or place a limitation on coverage under a policy or certificate of insurance.

(2) An insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance may not underwrite or condition coverage on the basis of:

- (a) a requirement or agreement that the individual undergo genetic testing;
- or
- (b) genetic information about a member of the individual's family.

(3) Discrimination may not be made in the fees or commissions of agents or brokers for writing or renewing an individual or group policy of insurance on the basis of an individual's genetic traits.

(4) This section does not apply to transactions of life, disability income, or long-term care insurance.

(5) This section does not prohibit an insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance from discriminating as otherwise allowed by law on the basis of other factors unrelated to genetic traits.

**History: En. Sec. 5, Ch. 334, L. 1999.**

**33-18-904. Seeking genetic information for nontherapeutic purposes prohibited.** (1)

An insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance may not seek genetic information about an individual for a purpose that is:

- (a) unrelated to assessing or managing the individual's current health;
- (b) inappropriate in an asymptomatic individual; or
- (c) unrelated to research in which a subject is not personally identifiable.

(2) This section does not apply to transactions of life, disability income, or long-term care insurance.

**History: En. Sec. 6, Ch. 334, L. 1999.**

## Part 10

### Enforcement

**33-18-1001. Complaint handling -- record.** (1) An insurer shall maintain a complete record of all the complaints which it has received since the date of its last examination under 33-1-401. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, and the time it took to process each complaint.

(2) For purposes of this section, "complaint" means any written communication primarily expressing a grievance.

**History:** En. 40-3502.2 by Sec. 2, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.2.

**33-18-1002. Power of commissioner to examine insurers.** The commissioner may examine and investigate the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this chapter.

**History:** En. 40-3502.3 by Sec. 3, Ch. 320, L. 1977; R.C.M. 1947, 40-3502.3.

**33-18-1003. Undefined unfair practices -- procedures for determining and restraining.** (1) If the commissioner believes that any person engaged in the insurance business is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in this chapter but that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be in the public interest, he shall, after a hearing of which notice of the hearing and of the charges against him are given such person, make a written report of his findings of fact relative to such charges and serve a copy thereof upon such person and any intervenor at the hearing.

(2) If such report charges a violation of this chapter and if such method of competition, act, or practice has not been discontinued, the commissioner may, through the attorney general of this state, at any time after the service of such report cause an action to be instituted to enjoin and restrain such person from engaging in such method, act, or practice. In such action the court may grant a restraining order or injunction upon such terms as may be just, but the people of this state shall not be required to give security before the issuance of any such order or injunction. If a stenographic record of the proceedings in the hearing before the commissioner was made, a certified transcript thereof, including all evidence taken and the report and findings, shall be received in evidence in such action.

(3) If the commissioner's report made under subsection (1) above or order on hearing made under 33-18-1004 does not charge a violation of this chapter, then any intervenor in the proceedings may appeal therefrom within the time and in the manner provided in this code for appeals from the commissioner generally.

**History:** En. Sec. 217, Ch. 286, L. 1959; R.C.M. 1947, 40-3515.

#### Cross-References

Attorney General -- duties, 2-15-501.

Injunctions, Title 27, ch. 19.

Hearings by Commissioner, 33-1-701.

Appeals from Commissioner's decision, 33-1-711.

Premium changes and cancellation -- property or casualty insurance -- unfair trade practices, 33-

**33-18-1004. Desist orders for prohibited practices.** (1) If, after a hearing thereon of which notice of such hearing and of the charges against him were given such person, the commissioner finds that any person in this state has engaged or is engaging in any act or practice defined in or prohibited under this chapter, the commissioner shall order such person to desist from such acts or practices.

(2) Such desist order shall become final upon expiration of the time allowed for appeals from the commissioner's orders if no such appeal is taken or, in event of such an appeal, upon final decision of the court if the court affirms the commissioner's order or dismisses the appeal. An intervenor in such hearing shall have the right to appeal as provided in 33-18-1003(3).

(3) In event of such an appeal, to the extent that the commissioner's order is affirmed, the court shall issue its own order commanding obedience to the terms of the commissioner's order.

(4) No order of the commissioner pursuant to this section or order of court to enforce it shall in any way relieve or absolve any person affected by such order from any other liability, penalty, or forfeiture under law.

(5) This section shall not be deemed to affect or prevent the imposition of any penalty provided by this code or by other law for violation of any other provision of this chapter, whether or not any such hearing is called or held or such desist order issued.

**History:** En. Sec. 216, Ch. 286, L. 1959; amd. Sec. 7, Ch. 320, L. 1977; R.C.M. 1947, 40-3514.

**Cross-References**

General penalty -- Montana Insurance Code violations, 33-1-104.

Hearings by Commissioner, 33-1-701.

Appeals from Commissioner's orders, 33-1-711.

Revocation or suspension of certificate of authority, 33-2-118, 33-2-119.

**33-18-1005. Penalty for violation of cease and desist orders.** (1) Any person who violates a cease and desist order issued pursuant to 33-18-1004 is subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation. The total penalty may not exceed a \$10,000 aggregate. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county in which the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(2) An action under subsection (1) of this section is not a bar to enforcement of this chapter or rules or orders made under it by injunction or other appropriate remedies.

(3) Moneys collected hereunder shall be deposited in the state general fund.

**History:** En. 40-3514.1 by Sec. 4, Ch. 320, L. 1977; R.C.M. 1947, 40-3514.1.

**Cross-References**

Attorney General -- duties, 2-15-501.

County Attorneys -- duties, 7-4-2716.

Legal actions by state agencies -- Attorney General to be notified, 25-1-501.

**33-18-1006. Desist orders for prohibited practices.** Violations of 33-18-221 through 33-18-224 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

**History:** En. Sec. 5, Ch. 554, L. 1993; amd. Sec. 37, Ch. 472, L. 1999; amd. Sec. 6, Ch. 526, L. 1999; amd. Sec. 6, Ch. 345, L. 2001; amd. Sec. 2, Ch. 407, L. 2005.

**TITLE 37  
PROFESSIONS AND OCCUPATIONS**

**CHAPTER 1  
GENERAL PROVISIONS**

**Part 1 -- Duties and Authority of Department,  
Director, and Boards**

- 37-1-101. Duties of department.
- 37-1-102. Renumbered 37-1-121.
- 37-1-103. Renumbered 37-1-131.
- 37-1-104. Standardized forms.
- 37-1-105. Reporting disciplinary actions against licensees.
- 37-1-106. Biennial report.
- 37-1-107. Joint meetings -- department duties.
- 37-1-108 through 37-1-120 reserved.
- 37-1-121. Duties of commissioner.
- 37-1-122 through 37-1-129 reserved.
- 37-1-130. Definitions.
- 37-1-131. Duties of boards -- quorum required.
- 37-1-132. Nominees for appointment to licensing and regulatory boards.
- 37-1-133. Board members' compensation and expenses.
- 37-1-134. Fees commensurate with costs.
- 37-1-135. Licensing investigation and review -- record access.
- 37-1-136. Disciplinary authority of boards -- injunctions.
- 37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses.
- 37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions.
- 37-1-139 and 37-1-140 reserved.
- 37-1-141. License renewal -- lapse -- expiration -- termination.

**Part 2 -- Licensure of Criminal Offenders**

- 37-1-201. Purpose.
- 37-1-202. Intent and policy.
- 37-1-203. Conviction not a sole basis for denial.
- 37-1-204. Statement of reasons for denial.
- 37-1-205. Licensure on completion of supervision.

**Part 3 -- Uniform Professional Licensing  
and Regulation Procedures**

- 37-1-301. Purpose.
- 37-1-302. Definitions.
- 37-1-303. Scope.

- 37-1-304. Licensure of out-of-state applicants -- reciprocity.
- 37-1-305. Temporary practice permits.
- 37-1-306. Continuing education.
- 37-1-307. Board authority.
- 37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -  
- exceptions.
- 37-1-309. Notice -- request for hearing.
- 37-1-310. Hearing -- adjudicative procedures.
- 37-1-311. Findings of fact -- order -- report.
- 37-1-312. Sanctions -- stay -- costs -- stipulations.
- 37-1-313. Appeal.
- 37-1-314. Reinstatement.
- 37-1-315. Enforcement of fine.
- 37-1-316. Unprofessional conduct.
- 37-1-317. Practice without license -- investigation of complaint -- injunction  
-- penalties.
- 37-1-318. Violation of injunction -- penalty.
- 37-1-319. Rules.
- 37-1-320. Mental intent -- unprofessional conduct.
- 37-1-321 through 37-1-330 reserved.
- 37-1-331. Correctional health care review team.

## Part 1

### Duties and Authority of Department, Director, and Boards

#### Part Cross-References

- Contested cases, Title 2, ch. 4, part 6.
- Appointment and qualifications of department heads -- duties, 2-15-111, 2-15-112.
- Allocation for administrative purposes only, 2-15-121.
- Department and boards created, Title 2, ch. 15, part 18.
- Department's duties for Board of Horseracing, 23-4-103.
- Grounds for disciplinary action as grounds for license denial -- conditions to new licenses, 37-1-137.

**37-1-101. (Temporary) Duties of department.** In addition to the provisions of 2-15-121, the department shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board or a program within the department;

- (6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;
- (7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;
- (8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(d);
- (9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;
- (b) suspend all duties under this title related to the board except for services related to renewal of licenses;
- (c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and
- (d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;
- (10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and
- (11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

**37-1-101. (Effective January 1, 2009) Duties of department.** In addition to the provisions of 2-15-121, the department shall:

- (1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;
- (2) standardize policies and procedures and keep in Helena all official records of the boards;
- (3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;
- (4) contract for or administer and grade examinations required by each board;
- (5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board or a program within the department;
- (6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;
- (7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;
- (8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(d);
- (9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;
- (b) suspend all duties under this title related to the board except for services

related to renewal of licenses;

(c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and

(d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary;

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

(12) adopt uniform rules for all boards and department programs to comply with the public notice requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the fact that a hearing is being held when the information is being posted on a publicly available website prior to a decision leading to a suspension or revocation of a license or other final decision of a board or the department.

**History:** En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995; amd. Sec. 106, Ch. 483, L. 2001; amd. Sec. 6, Ch. 467, L. 2005; amd. Sec. 17, Ch. 11, L. 2007; amd. Sec. 39, Ch. 44, L. 2007; amd. Sec. 1, Ch. 225, L. 2007.

#### **Compiler's Comments**

*2007 Amendments -- Composite Section:* Chapter 11 in (5) near end after "board" inserted "or a program"; in (9)(a) near beginning after "notice to the" inserted "board and to the"; inserted (9)(b) through (9)(d) outlining additional department duties regarding boards; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 44 in introductory clause after "department" deleted "of labor and industry"; and in (8) at end substituted "37-1-307(1)(d)" for "37-1-307(1)(e)". Amendment effective October 1, 2007.

Chapter 225 in (8) substituted "37-1-307(1)(d)" for "37-1-307(1)(e)"; inserted (12) concerning uniform rules for public notice; and made minor changes in style. Amendment effective January 1, 2009.

**37-1-102. Renumbered 37-1-121.** Code Commissioner, 1981.

**37-1-103. Renumbered 37-1-131.** Code Commissioner, 1981.

**37-1-104. Standardized forms.** The department shall adopt standardized forms and processes to be used by the boards and department programs. The standardization is to streamline processes, expedite services, reduce costs and waste, and facilitate computerization.

**History:** En. Sec. 2, Ch. 293, L. 1981; amd. Sec. 7, Ch. 467, L. 2005.

**37-1-105. Reporting disciplinary actions against licensees.** The department has the authority and shall require that all boards and department programs require each applicant for licensure or renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license.

**History:** En. Sec. 3, Ch. 293, L. 1981; amd. Sec. 5, Ch. 271, L. 2003; amd. Sec. 8, Ch. 467, L. 2005.

**37-1-106. Biennial report.** The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program planning as a part of the information required by 17-7-111.

**History:** En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.

**37-1-107. Joint meetings -- department duties.** (1) The department shall convene a joint meeting once every 2 years of two or more boards that:

(a) have licensees with dual licensure in related professions or occupations;  
(b) have licensees licensed by another board in a related profession or with similar scopes of practice, including but not limited to:

- (i) health care boards;
- (ii) mental health care boards;
- (iii) design boards;
- (iv) therapeutic boards; or
- (v) technical boards; or

(c) have issues of joint concern or related jurisdiction with each other.

(2) A quorum is not required for the joint meeting. However, one member from each board shall attend.

(3) The department shall report to the interim committee responsible for monitoring boards with regard to attendance and issues of concern addressed by the boards.

**History:** En. Sec. 1, Ch. 11, L. 2007.

#### **Compiler's Comments**

*Effective Date:* Section 26, Ch. 11, L. 2007, provided: "[This act] is effective July 1, 2007."

#### **37-1-108 through 37-1-120 reserved.**

**37-1-121. Duties of commissioner.** In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial hearings examiner to conduct hearings whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(2) establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner.

**History:** En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995; amd. Sec. 107, Ch. 483, L. 2001; amd. Sec. 9, Ch. 467, L. 2005.

**37-1-122 through 37-1-129 reserved.**

**37-1-130. Definitions.** As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 46 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing.

**History:** En. Sec. 5, Ch. 274, L. 1981; amd. Sec. 108, Ch. 483, L. 2001; amd. Sec. 10, Ch. 467, L. 2005; amd. Sec. 7, Ch. 502, L. 2007.

**Compiler's Comments**

*2007 Amendment:* Chapter 502 in definition of expired license after "period of" increased 45 days to 46 days; in definition of license at end after "occupation" inserted "regardless of the specific term used for the permission, including permit, certificate, recognition, or registration"; and made minor changes in style. Amendment effective October 1, 2007.

**37-1-131. (Temporary) Duties of boards -- quorum required.** (1) A quorum of each board within the department shall:

(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(e) consult with the department before the board initiates a program

expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

**37-1-131. (Effective January 1, 2009) Duties of boards -- quorum required.** (1) A quorum of each board within the department shall:

(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed

program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311.

**History:** En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 2001; amd. Sec. 8, Ch. 416, L. 2005; amd. Sec. 11, Ch. 467, L. 2005; amd. Sec. 2, Ch. 225, L. 2007; amd. Sec. 8, Ch. 502, L. 2007.

#### **Compiler's Comments**

*2007 Amendments -- Composite Section:* Chapter 225 inserted (6) concerning public notice; and made minor changes in style. Amendment effective January 1, 2009.

Chapter 502 inserted (3) requiring licensees reactivating expired licenses to prove they have met continuing education or certification requirements; in (4)(d) in first sentence after "37-1-306" inserted "or require continued state, regional, or national certification for licensure", in second sentence in two places after "education" inserted "or continued state, regional, or national certification", at beginning inserted exception clause, and after "audit or" substituted "require proof of" for "verify", and in third sentence near middle after "audits" inserted "after the lapsed date" and at end after "requirement" deleted "after the renewal period closes"; and made minor changes in style. Amendment effective October 1, 2007.

**37-1-132. Nominees for appointment to licensing and regulatory boards.** Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making

appointments to such boards.

**History:** En. Sec. 9, Ch. 244, L. 1981.

**Cross-References**

Appointing power, Art. VI, sec. 8, Mont. Const.

**37-1-133. Board members' compensation and expenses.** Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive \$50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

**History:** En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

**37-1-134. Fees commensurate with costs.** Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

**History:** En. Sec. 1, Ch. 345, L. 1981; amd. Sec. 12, Ch. 467, L. 2005.

**37-1-135. Licensing investigation and review -- record access.** Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

**History:** En. Sec. 1, Ch. 242, L. 1981.

**Cross-References**

Procurement of services, Title 18, ch. 8.

**37-1-136. (Temporary) Disciplinary authority of boards -- injunctions.** (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

**37-1-136. (Effective January 1, 2009) Disciplinary authority of boards -- injunctions.** (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

(5) Rules adopted under subsection (1) must provide for the provision of public notice as required by 37-1-311.

**History:** En. Sec. 1, Ch. 246, L. 1981; amd. Sec. 6, Ch. 271, L. 2003; amd. Sec. 10, I.M. No. 148, approved Nov. 2, 2004; amd. Sec. 3, Ch. 225, L. 2007.

**Compiler's Comments**

*2007 Amendment:* Chapter 225 inserted (5) concerning public notice. Amendment effective January 1, 2009.

**Cross-References**

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.  
Contempts, Title 3, ch. 1, part 5.  
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.  
Affidavits, Title 26, ch. 1, part 10.

**37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses.** (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of labor and

industry against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

**History: En. Sec. 1, Ch. 273, L. 1985; amd. Sec. 109, Ch. 483, L. 2001.**

**37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions.** (1) For purposes of this section, the following definitions apply:

(a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.

(b) "License" has the meaning provided in 37-1-302.

(c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board or to the department of labor and industry if the licensing requirements are administered by the department. The report must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

(i) the license must be fully restored;

(ii) conditions must be attached to the reservist's continued retention of the license; or

(iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license

is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

**History: En. Sec. 2, Ch. 271, L. 2003.**

**37-1-139 and 37-1-140 reserved.**

**37-1-141. License renewal -- lapse -- expiration -- termination. (1)**

The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements, and remit renewal fees before the end of the renewal period.

(3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.

(4) A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.

(5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:

(a) submit the completed renewal form;

(b) pay the late penalty fee provided for in subsection (7); and

(c) pay the current renewal fee as prescribed by the department or the board.

(6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

(8) Unless otherwise provided by statute or rule, an occupational or professional license that is not renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained.

(9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.

(10) This section may not be interpreted to conflict with 37-1-138.

**History: En. Sec. 1, Ch. 272, L. 1985; amd. Sec. 13, Ch. 467, L. 2005.**

## **Part 2**

### **Licensure of Criminal Offenders**

#### **Part Cross-References**

Criminal justice policy -- rights of convicted, Art. II, sec. 28, Mont. Const.

Gambling -- qualifications for licensure, 23-5-176.

Building and loan agent's license revocable for violation of criminal statutes, 32-2-409.

No outfitter's license issued to criminal offender, 37-47-302.

Effect of conviction, 46-18-801.  
Supervision of probationers and parolees, Title 46, ch. 23, part 10.

**37-1-201. Purpose.** It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public. The legislature finds that the process of licensure will be strengthened by instituting an effective mechanism for obtaining accurate public information regarding a license applicant's criminal background.

**History:** En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001; amd. Sec. 1, Ch. 389, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 389 inserted third sentence regarding an applicant's criminal background; and made minor changes in style. Amendment effective October 1, 2007.

*Applicability:* Section 3, Ch. 389, L. 2007, provided: "[This act] applies to applications for licensure submitted on or after [the effective date of this act]." Effective October 1, 2007.

**37-1-202. Intent and policy.** It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

**History:** En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

**37-1-203. Conviction not a sole basis for denial.** Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

**History:** En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

**37-1-204. Statement of reasons for denial.** When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

**History:** En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

#### **Cross-References**

Findings of fact required, 2-4-623.

Application of contested case procedure to licensing, 2-4-631.

**37-1-205. Licensure on completion of supervision.** Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

**History:** En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.

## Part 3

### Uniform Professional Licensing and Regulation Procedures

**37-1-301. Purpose.** The purpose of this part is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by this part.

**History:** En. Sec. 1, Ch. 429, L. 1995.

**37-1-302. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board.

**History:** En. Sec. 2, Ch. 429, L. 1995; amd. Sec. 110, Ch. 483, L. 2001; amd. Sec. 14, Ch. 467, L. 2005; amd. Sec. 9, Ch. 502, L. 2007.

#### Compiler's Comments

*2007 Amendment:* Chapter 502 in definition of license at end after "occupation" inserted "regardless of the specific term used for the permission, including permit, certificate, recognition, or registration"; and made minor changes in style. Amendment effective October 1, 2007.

**37-1-303. Scope.** This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(d), must be used by a board in all disciplinary proceedings involving licensed professionals.

**History:** En. Sec. 3, Ch. 429, L. 1995; amd. Sec. 40, Ch. 44, L. 2007.

**Compiler's Comments**

*2007 Amendment:* Chapter 44 in third sentence after "specified in" substituted "37-1-307(1)(d)" for "37-1-307(1)(e)". Amendment effective October 1, 2007.

**37-1-304. Licensure of out-of-state applicants -- reciprocity.** (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

**History:** En. Sec. 4, Ch. 429, L. 1995; amd. Sec. 1, Ch. 210, L. 1997.

**37-1-305. Temporary practice permits.** (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

**History:** En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999.

**37-1-306. Continuing education.** A board or, for programs without a board, the department may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

**History:** En. Sec. 6, Ch. 429, L. 1995; amd. Sec. 15, Ch. 467, L. 2005.

**37-1-307. Board authority.** (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

[(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)

**History:** En. Sec. 7, Ch. 429, L. 1995; amd. Sec. 22, Ch. 552, L. 1997; amd. Sec. 2, Ch. 230, L. 1999; amd. Sec. 8, Ch. 492, L. 2001; amd. Sec. 16, Ch. 467, L. 2005; amd. Sec. 2, Ch. 389, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 389 in (2) near middle after "information" inserted "as defined in 44-5-103" and at end after "practice" inserted "but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5"; inserted (3) allowing a board to obtain criminal history

record information; inserted (4) regarding fingerprinting, background check information, and payment of fees; and made minor changes in style. Amendment effective October 1, 2007.

*Applicability:* Section 3, Ch. 389, L. 2007, provided: "[This act] applies to applications for licensure submitted on or after [the effective date of this act]." Effective October 1, 2007.

*Contingent Termination -- Request for Federal Exemptions:* Section 1, Ch. 27, L. 1999, revised sec. 104, Ch. 552, L. 1997, to contain the following contingent termination provisions and order that the department of public health and human services seek federal exemptions: "(1) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 95] [61-5-107];

(e) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement." Amendment effective February 18, 1999.

**37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions.** (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated.

**History:** En. Sec. 8, Ch. 429, L. 1995; amd. Sec. 4, Ch. 475, L. 1997; amd. Sec. 1, Ch. 375, L. 1999; amd. Sec. 9, Ch. 492, L. 2001.

**37-1-309. Notice -- request for hearing.** (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

**History:** En. Sec. 9, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 2001.

**37-1-310. Hearing -- adjudicative procedures.** The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under this part. A board has all the powers and duties granted by Title 2, chapter 4.

**History:** En. Sec. 10, Ch. 429, L. 1995.

**37-1-311. (Temporary) Findings of fact -- order -- report.** (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public.

**37-1-311. (Effective January 1, 2009) Findings of fact -- order -- report.** (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-309, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the

required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure.

**History:** En. Sec. 11, Ch. 429, L. 1995; amd. Sec. 4, Ch. 225, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 225 substituted (2) concerning report of suspension for former text that read: "(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public." Amendment effective January 1, 2009.

**37-1-312. Sanctions -- stay -- costs -- stipulations.** (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

(f) censure or reprimand, either public or private;

(g) compliance with conditions of probation for a designated period of time;

(h) payment of a fine not to exceed \$1,000 for each violation. Fines must be deposited in the state general fund.

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

**History:** En. Sec. 12, Ch. 429, L. 1995.

**37-1-313. Appeal.** A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

**History:** En. Sec. 13, Ch. 429, L. 1995.

**37-1-314. Reinstatement.** A licensee whose license has been suspended or revoked under this part may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The board may require the successful completion of an

examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

**History: En. Sec. 14, Ch. 429, L. 1995.**

**37-1-315. Enforcement of fine.** (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

**History: En. Sec. 15, Ch. 429, L. 1995.**

**37-1-316. Unprofessional conduct.** The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;

(11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent,

protective gear, or cessation of practice;

(14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

**History: En. Sec. 16, Ch. 429, L. 1995.**

**37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties.** (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316 and 37-69-310, from a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements.

**History: En. Sec. 17, Ch. 429, L. 1995; amd. Sec. 3, Ch. 230, L. 1999; amd. Sec. 1, Ch.**

402, L. 1999.

**37-1-318. Violation of injunction -- penalty.** A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

**History: En. Sec. 18, Ch. 429, L. 1995.**

**37-1-319. Rules.** A board may adopt rules:

(1) under the guidelines of 37-1-306, regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education topics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under 37-1-305 and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

(5) defining acts of unprofessional conduct, in addition to those contained in 37-1-316, that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the profession or occupation.

**History: En. Sec. 19, Ch. 429, L. 1995.**

**Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

**37-1-320. Mental intent -- unprofessional conduct.** A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

**History: En. Sec. 7, Ch. 492, L. 2001.**

**37-1-321 through 37-1-330 reserved.**

**37-1-331. Correctional health care review team.** (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or certified health care or rehabilitative service

professionals who have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

(3) Each correctional health care review team is composed of three members who shall represent health care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must be providers of the same discipline and scope of practice as the provider against whom a complaint was filed, and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

**History: En. Sec. 2, Ch. 375, L. 1999.**

## CHAPTER 2

### GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS

#### Part 1 -- Dispensing of Drugs

- 37-2-101. Definitions.
- 37-2-102. Practices declared unlawful between drug companies and medical practitioners.
- 37-2-103. Practices declared unlawful between medical practitioners and pharmacies.
- 37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions.
- 37-2-105. Duty of county attorneys.
- 37-2-106. Existing ownership of pharmacy.
- 37-2-107. Civil penalty for unreadable prescription.
- 37-2-108 through 37-2-110 reserved.
- 37-2-111. Repealed.

#### Part 2 -- Nonliability for Peer Review

- 37-2-201. Nonliability -- evidential privilege -- application to nonprofit corporations.

#### Part 3 -- Miscellaneous Provisions

- 37-2-301. Duty to report cases of communicable disease.
- 37-2-302. Gunshot or stab wounds to be reported.
- 37-2-303. Immunity from liability.
- 37-2-304 through 37-2-310 reserved.
- 37-2-311. Report to department of justice by physician.
- 37-2-312. Physician's immunity from liability.
- 37-2-313 and 37-2-314 reserved.
- 37-2-315. Direct billing for anatomic pathology services.

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#### Part 1

#### Dispensing of Drugs

#### Part Cross-References

Pharmacy, Title 37, ch. 7.

Dangerous drugs, Title 45, ch. 9.  
Model Drug Paraphernalia Act, Title 45, ch. 10.  
Controlled substances, Title 50, ch. 32.

**37-2-101. Definitions.** As used in this part, the following definitions apply:

(1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(b) to affect the structure or any function of the body of humans.

(3) "Drug" has the same meaning as provided in 37-7-101.

(4) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs. The term does not include a pharmacy.

(5) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202 and in the licensed practice to administer or prescribe drugs.

(6) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(7) "Pharmacy" has the same meaning as provided in 37-7-101.

(8) "State" means the state of Montana or any political subdivision of the state.

**History:** En. Sec. 1, Ch. 311, L. 1971; R.C.M. 1947, 27-901; amd. Sec. 2, Ch. 379, L. 1981; amd. Sec. 1, Ch. 588, L. 1987; amd. Sec. 43, Ch. 83, L. 1989; amd. Sec. 1, Ch. 444, L. 1989; amd. Sec. 2, Ch. 388, L. 2001; amd. Sec. 17, Ch. 467, L. 2005.

**37-2-102. Practices declared unlawful between drug companies and medical practitioners.** It shall be unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment; and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

**History:** En. Sec. 2, Ch. 311, L. 1971; R.C.M. 1947, 27-902.

**37-2-103. Practices declared unlawful between medical practitioners and pharmacies.** (1) It shall be unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under

37-2-104.

(2) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

**History:** En. Sec. 4, Ch. 311, L. 1971; R.C.M. 1947, 27-904.

**37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions.** (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) This section does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

**History:** En. Sec. 3, Ch. 311, L. 1971; R.C.M. 1947, 27-903; amd. Sec. 1, Ch. 22, L. 1979; amd. Sec. 1, Ch. 472, L. 1989; amd. Sec. 1, Ch. 445, L. 1991; amd. Sec. 57, Ch. 418, L. 1995; amd. Sec. 86, Ch. 546, L. 1995; amd. Sec. 1, Ch. 125, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 125 in (2)(f) near beginning substituted "contraceptives, other than mifepristone" for "oral contraceptives"; and made minor changes in style. Amendment effective October 1, 2007.

**37-2-105. Duty of county attorneys.** It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceedings may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as possible to the hearing and determination of the action.

**History:** En. Sec. 5, Ch. 311, L. 1971; R.C.M. 1947, 27-905.

#### **Cross-References**

Duty of Attorney General to supervise County Attorneys, 2-15-501.  
Duties of County Attorneys generally, Title 7, ch. 4, part 27.  
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).  
Injunctions generally, Title 27, ch. 19.

**37-2-106. Existing ownership of pharmacy.** The provisions of 37-2-103(1) shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on July 1, 1971, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

**History:** En. Sec. 6, Ch. 311, L. 1971; R.C.M. 1947, 27-906.

#### **Cross-References**

Store license for pharmacy, 37-7-321.

**37-2-107. Civil penalty for unreadable prescription.** (1) A medical practitioner may not issue a written prescription, to be delivered to a patient or pharmacy, in such a manner that the name of the drug, the dosage, the instructions for use, the printed name or other identifying letters or numbers unique to the medical practitioner, and, if required, the federal drug enforcement agency identifying number cannot be read by a registered pharmacist licensed to practice in this state.

(2) Any person may file a complaint alleging a violation of subsection (1) with the board that licensed the medical practitioner who issued the prescription. The board may investigate the complaint and take any action and impose any sanction allowed by the statutes relating to the board and rules adopted by the board. Each board licensing a medical practitioner shall adopt rules to implement this section.

(3) The board may refer the complaint to the county attorney of the county in which the prescription was issued, whether or not the board itself has taken any action or imposed any sanction. A county attorney may not file an action alleging a violation of subsection (1) unless a complaint has been referred to the county attorney by the medical practitioner's licensing board.

(4) A medical practitioner who violates subsection (1) is guilty of a civil offense and may be punished by a civil penalty of not more than \$500 for each prescription.

**History:** En. Sec. 1, Ch. 436, L. 2005.

**37-2-108 through 37-2-110 reserved.**

**37-2-111. Repealed.** Sec. 75, Ch. 492, L. 2001.

**History:** En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; re-en. Sec. 3194, R.C.M. 1935; amd. Sec. 8, Ch. 101, L. 1977; R.C.M. 1947, 66-1516.

## **Part 2**

### **Nonliability for Peer Review**

#### **Part Cross-References**

Libel and slander, Title 27, ch. 1, part 8.  
Montana Medical Legal Panel created, 27-6-104.  
Licensing investigation and review -- record access, 37-1-135.  
Reporting obligations of physicians, Title 37, ch. 3, part 4.  
Health care information, Title 50, ch. 16.

**37-2-201. Nonliability -- evidential privilege -- application to nonprofit corporations.** (1) No member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or 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 him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee.

**History:** En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979; amd. Sec. 1, Ch. 380, L. 1989.

### Part 3

#### Miscellaneous Provisions

##### Part Cross-References

Doctor-patient privilege, 26-1-805.

Libel and slander, Title 27, ch. 1, part 8.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Communicable disease defined, 50-1-101.

Powers of Department relating to communicable diseases, 50-1-202.

Report of exposure to infectious disease, Title 50, ch. 16, part 7.

Report of exposure to infectious disease -- immunity from liability, 50-16-704.

Revocation, suspension, or cancellation of driver's license, Title 61, ch. 5, part 2.

**37-2-301. Duty to report cases of communicable disease.** (1) If a physician or other practitioner of the healing arts examines or treats a person who the physician or other practitioner believes has a communicable disease or a disease declared reportable by the department of public health and human services, the physician or other practitioner shall immediately report the case to the local health officer. The report must be in the form and contain the information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, must be paid to

the county treasurer of the county in which the violation occurs.

**History:** (1)En. Sec. 91, Ch. 197, L. 1967; Sec. 69-4514, R.C.M. 1947; (2)En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4514, 69-4519(part); amd. Sec. 21, Ch. 557, L. 1987; amd. Sec. 58, Ch. 418, L. 1995; amd. Sec. 87, Ch. 546, L. 1995.

**Cross-References**

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

**37-2-302. Gunshot or stab wounds to be reported.** The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

**History:** En. 66-1050 by Sec. 1, Ch. 303, L. 1974; R.C.M. 1947, 66-1050.

**37-2-303. Immunity from liability.** A physician or other person reporting pursuant to 37-2-302 shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

**History:** En. 66-1051 by Sec. 2, Ch. 303, L. 1974; R.C.M. 1947, 66-1051.

**37-2-304 through 37-2-310 reserved.**

**37-2-311. Report to department of justice by physician.** (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to his condition to the department of justice. The department, upon receiving the report, shall require the person so reported to be examined or investigated as provided for in 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license, driving privilege, or commercial driver's license before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection, without the consent of the patient.

**History:** En. Sec. 1, Ch. 126, L. 1983; amd. Sec. 1, Ch. 419, L. 1991.

**37-2-312. Physician's immunity from liability.** Any physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of his actions pursuant to 37-2-311 except for damages occasioned by gross negligence. No action may be brought against a physician for not making a report pursuant to 37-2-311.

**History:** En. Sec. 2, Ch. 126, L. 1983.

**37-2-313 and 37-2-314 reserved.**

**37-2-315. Direct billing for anatomic pathology services.** (1) A clinical laboratory or physician providing anatomic pathology services for a patient may

present a bill or demand for payment for services furnished by the laboratory or physician only to the following entities:

- (a) the patient;
- (b) the patient's insurer or other third-party payor;
- (c) the health care facility ordering the services;
- (d) a referring laboratory, other than a laboratory in which the patient's physician or other practitioner of the healing arts has a financial interest; or
- (e) a state or federal agency or the agent of that agency, on behalf of the patient.

(2) Except as provided in subsection (5), a physician or other practitioner of the healing arts licensed pursuant to Title 37 may not directly or indirectly bill or charge for or solicit payment for anatomic pathology services unless those services were provided personally by the physician or other practitioner or under the direct supervision of a physician providing that supervision for the purposes of 42 U.S.C. 263a.

(3) The following entities are not required to reimburse a physician for a bill or charge made in violation of this section:

- (a) a patient;
- (b) an insurer;
- (c) a health care facility; or
- (d) another third-party payor.

(4) This section does not require an assignment of benefits for anatomic pathology services.

(5) This section does not prohibit billing between laboratories, other than laboratories in which the patient's physician or other practitioner of the healing arts has a financial interest, for anatomic pathology services in instances requiring that a sample be sent to a specialist at another laboratory.

(6) This section does not prohibit a clinical laboratory or physician providing anatomic pathology services for a patient from presenting a bill or demand for payment for those services or presenting separate bills or demands for payment to a payor when allowed by this section.

(7) The licensing entity for a physician or other practitioner of the healing arts licensed pursuant to Title 37 may revoke, suspend, or refuse to renew the license of a physician or other practitioner of the healing arts who violates a provision of this section.

(8) As used in this section, the following definitions apply:

- (a) "Anatomic pathology services" means:
  - (i) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or under the supervision of a physician;
  - (ii) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician or under the supervision of a physician;
  - (iii) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral human blood smears when the attending or treating physician or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;
  - (iv) subcellular pathology and molecular pathology; or
  - (v) blood bank services performed by a pathologist.
- (b) "Clinical laboratory" or "laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from

the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.

(c) "Health care facility" has the meaning provided in 50-5-101.

(d) "Insurer" includes a disability insurer, a health services corporation, a health maintenance organization, and a fraternal benefit society.

(e) "Patient" has the meaning provided in 50-16-504.

(f) "Physician" has the meaning provided in 37-3-102.

**History: En. Sec. 1, Ch. 266, L. 2005.**

## **CHAPTER 19**

### **MORTICIANS AND FUNERAL DIRECTORS**

#### **Part 1 -- General**

37-19-101. Definitions.

#### **Part 2 -- Board of Funeral Service**

37-19-201. Organization -- compensation and expenses of members.

37-19-202. Meetings -- rulemaking power.

#### **Part 3 -- Licensing of Morticians and Funeral Directors**

37-19-301. Funeral director's license -- renewal -- fee.

37-19-302. License required for practice of mortuary science -- qualifications of applicants.

37-19-303. Mortician's license -- application fee.

37-19-304. Issuance of intern's license -- license fee -- issuance of mortician's license on completion of internship.

37-19-305. Repealed.

37-19-306. Repealed.

37-19-307. Deposit of money received.

37-19-308 through 37-19-310 reserved.

37-19-311. Repealed.

37-19-312. Repealed.

37-19-313 and 37-19-314 reserved.

37-19-315. Funeral costs -- rules on disclosure.

37-19-316. Repealed.

#### **Part 4 -- Licensing of Mortuaries**

37-19-401. License required -- display of license.

37-19-402. Operator's license requirements -- facility inspections -- transfer of license to new facility.

37-19-403. Power of board to set facility standards -- inspection -- fees.

37-19-404. Repealed.

**Part 5 -- Remedies for Violation**

37-19-501. Penalty provision.

**Part 6 reserved**

**Part 7 -- Licensing of Crematoriums, Crematory Operators,  
and Crematory Technicians**

37-19-701. Purpose.

37-19-702. Licenses required -- display of licenses -- renewal -- penalty for late renewal.

37-19-703. Application -- power of board to set standards -- inspection -- fees.

37-19-704. Cremation authorization required -- identification.

37-19-705. Cremation procedures -- cremation containers.

37-19-706. Disposition of cremated remains.

37-19-707. Limitation of liability.

37-19-708. Preneed cremation authorizations.

**Part 8 -- Perpetually Maintained Cemeteries**

37-19-801. Title.

37-19-802. Purpose.

37-19-803. Application of this part -- exceptions.

37-19-804 through 37-19-806 reserved.

37-19-807. Powers and duties of board.

37-19-808. Authority to inspect cemeteries and audit cemetery companies.

37-19-809 through 37-19-813 reserved.

37-19-814. Permit -- application.

37-19-815. Permit -- amendment.

37-19-816. Permit -- transfer of ownership.

37-19-817 through 37-19-821 reserved.

37-19-822. Perpetual care and maintenance fund.

37-19-823. Records required.

37-19-824. Conveyance.

37-19-825. Preexisting cemeteries.

37-19-826. Repealed.

37-19-827. Contract for prearranged funeral plan or related services -- trust requirement -- interest -- exception.

37-19-828. Trust fund -- deposit of money.

37-19-829. Report of entity holding deposited money.

37-19-830 reserved.

37-19-831. Penalty -- injunction.

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## Chapter Cross-References

Cadavers and autopsies, Title 50, ch. 21.

### Part 1

#### General

**37-19-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Arrangements" includes:
  - (a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy;
  - (b) obtaining the necessary information for filing death certificates;
  - (c) comparing or discussing prices, including merchandise prices and financial arrangements; and
  - (d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, graveside, or memorial services or rites.
- (2) "At-need" arrangements means arrangements made by an authorized person on behalf of a deceased.
- (3) "Authorizing agent" means a person legally entitled to order the final disposition, including burial, cremation, entombment, donation to medical science, or other means, of human remains. An authorizing agent is, in order of preference:
  - (a) a spouse;
  - (b) a majority of adult children;
  - (c) a parent;
  - (d) a close relative of the deceased; or
  - (e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.
- (4) "Board" means the board of funeral service provided for in 2-15-1743.
- (5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by a licensed mortuary.
- (6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.
- (7) "Cemetery company" means an individual, partnership, corporation, or association that:
  - (a) owns or controls cemetery lands or property and conducts the business of a cemetery; or
  - (b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.
- (8) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.
- (9) "Columbarium" means a room or space in a building or structure used or

intended to be used for the interment of cremated remains.

(10) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(11) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(12) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(13) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

- (a) be composed of readily combustible materials suitable for cremation;
- (b) be able to be closed in order to provide a complete covering for the human remains;
- (c) be resistant to leakage and spillage;
- (d) be rigid enough for handling with ease; and
- (e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(14) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(15) "Crematory operator" means the person in charge of the licensed crematory facility.

(16) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

(17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

(18) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(19) "Embalming" means:

- (a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;
- (b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the chemical substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and
- (c) restorative art.

(20) "Funeral directing" includes:

- (a) supervising funerals;
- (b) the making of preneed or at-need contractual arrangements for funerals;
- (c) preparing dead bodies for burial, other than by embalming;
- (d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and
- (e) representing to the public that one is a funeral director.

(21) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

- (a) comply with any applicable public health law;
- (b) preserve the dignity of the human remains;
- (c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and
- (d) be secure from access by anyone other than authorized personnel.

(22) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

(23) "Interment" means any lawful disposition of cremated remains or human remains.

(24) (a) "Intern" means a person who has met the educational and testing requirements for a license to practice mortuary science in Montana, has been licensed by the board as an intern, and is engaged in the practice of mortuary science under the supervision of a licensed mortician.

(b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician believes an intern requires based upon the training, experience, judgment, and professional development of the intern.

(25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

(26) "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.

(27) "Mortician" means a person licensed under this chapter to practice mortuary science.

(28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

(b) The term includes conducting activities from the place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted.

(29) "Mortuary science" means the profession or practice of funeral directing and embalming.

(30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.

(31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.

(32) "Preneed arrangements" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

(33) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(34) "Urn" means a receptacle designed to permanently encase the cremated remains.

**History:** En. Sec. 1, Ch. 41, L. 1963; amd. Sec. 260, Ch. 350, L. 1974; R.C.M. 1947, 66-2701; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 298, L. 1989; amd. Sec. 3, Ch. 38, L. 1993; amd. Sec. 2, Ch. 52, L. 1997; amd. Sec. 1, Ch. 336, L. 1999; amd. Sec. 128, Ch. 483, L. 2001; amd. Sec. 40, Ch. 126, L. 2005.

## Part 2

### Board of Funeral Service

#### Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.  
Open meetings, Title 2, ch. 3, part 2.  
Meeting defined, 2-3-202.  
Adoption and publication of rules, Title 2, ch. 4, part 3.  
Allocation of boards for administrative purposes, 2-15-121.  
Quasi-judicial boards, 2-15-124.  
Board established, 2-15-1743.  
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.  
Disrupting meeting as disorderly conduct, 45-8-101.

#### **37-19-201. Organization -- compensation and expenses of members.**

The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members are entitled to receive compensation and travel expenses as provided for in 37-1-133.

**History:** En. Sec. 3, Ch. 41, L. 1963; amd. Sec. 262, Ch. 350, L. 1974; amd. Sec. 42, Ch. 439, L. 1975; amd. Sec. 4, Ch. 531, L. 1977; R.C.M. 1947, 66-2703; amd. Sec. 23, Ch. 474, L. 1981.

#### **37-19-202. Meetings -- rulemaking power.**

The board shall hold meetings as may be necessary. The board may adopt and enforce rules to carry out the purposes of this chapter.

**History:** En. Sec. 4, Ch. 41, L. 1963; R.C.M. 1947, 66-2704; amd. Sec. 27, Ch. 492, L. 2001.

## Part 3

### Licensing of Morticians and Funeral Directors

#### Part Cross-References

Licensing to follow contested case procedure, 2-4-631.  
Duty of Department to administer and grade examinations, 37-1-101.  
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.  
Licensing boards to establish fees commensurate with costs, 37-1-134.  
Licensing investigation and review -- record access, 37-1-135.  
Grounds for disciplinary action as grounds for license denial -- conditions to new licenses, 37-1-137.  
Licensure of criminal offenders, Title 37, ch. 1, part 2.  
Nondiscrimination in licensing, 49-3-204.

**37-19-301. Funeral director's license -- renewal -- fee.** The practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited. A person licensed to practice funeral directing is entitled to the renewal of the license on payment of a renewal fee to the department on or before the date set by department rule. The amount of the renewal license fee must be set by the board.

**History:** En. Sec. 7, Ch. 41, L. 1963; amd. Sec. 264, Ch. 350, L. 1974; amd. Sec. 11, Ch. 215, L. 1975; R.C.M. 1947, 66-2707; amd. Sec. 47, Ch. 345, L. 1981; amd. Sec. 69, Ch. 429, L. 1995; amd. Sec. 24, Ch. 492, L. 1997.

#### **37-19-302. License required for practice of mortuary science --**

**qualifications of applicants.** (1) The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the board is prohibited. A person 18 years of age or older wishing to practice mortuary science in this state must apply to the board on the form and in the manner prescribed by the board.

(2) To qualify for a mortician's license, a person must:

(a) be of good moral character;

(b) present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study at an accredited college or university;

(c) in addition to the 90 quarter credits or the equivalent of study required in subsection (2)(b), have graduated with a diploma from an accredited college of mortuary science;

(d) pass an examination prescribed by the board; and

(e) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary after passing the examination provided for in subsection (2)(d).

(3) A person who fails the examination required in subsection (2)(d) may retake it under conditions prescribed by rule of the board.

**History:** En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971; amd. Sec. 265, Ch. 350, L. 1974; R.C.M. 1947, 66-2708; amd. Sec. 4, Ch. 378, L. 1981; amd. Sec. 1, Ch. 510, L. 1985; amd. Sec. 22, Ch. 224, L. 2003.

**37-19-303. Mortician's license -- application fee.** A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board, may take the examination prescribed by the board.

**History:** En. Sec. 9, Ch. 41, L. 1963; amd. Sec. 266, Ch. 350, L. 1974; amd. Sec. 12, Ch. 215, L. 1975; R.C.M. 1947, 66-2709; amd. Sec. 48, Ch. 345, L. 1981; amd. Sec. 23, Ch. 224, L. 2003.

**37-19-304. Issuance of intern's license -- license fee -- issuance of mortician's license on completion of internship.** An applicant who passes the examination provided for in 37-19-302 shall, upon payment of a license fee prescribed by the board, be granted an intern mortician's license to practice mortuary science under the supervision of a licensed mortician in a licensed mortuary in Montana and, upon completion of 1 year's internship and payment of the license fee, may apply for and receive a mortician's license.

**History:** En. Sec. 10, Ch. 41, L. 1963; R.C.M. 1947, 66-2710; amd. Sec. 49, Ch. 345, L. 1981; amd. Sec. 2, Ch. 510, L. 1985; amd. Sec. 25, Ch. 492, L. 1997.

**37-19-305. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. Sec. 12, Ch. 41, L. 1963; R.C.M. 1947, 66-2712; amd. Sec. 5, Ch. 378, L. 1981.

**37-19-306. Repealed.** Sec. 127, Ch. 467, L. 2005.

**History:** En. Sec. 11, Ch. 41, L. 1963; amd. Sec. 267, Ch. 350, L. 1974; amd. Sec. 13, Ch. 215, L. 1975; R.C.M. 1974, 66-2711; amd. Sec. 50, Ch. 345, L. 1981; amd. Sec. 70, Ch. 429, L. 1995; amd. Sec. 26, Ch. 492, L. 1997; amd. Sec. 27, Ch. 271, L. 2003.

**37-19-307. Deposit of money received.** Money collected by the department under this chapter shall be deposited for the use of the board, subject to 37-1-101(6).

**History:** En. Sec. 6, Ch. 41, L. 1963; amd. Sec. 263, Ch. 350, L. 1974; R.C.M. 1947, 66-2706.

**37-19-308 through 37-19-310 reserved.**

**37-19-311. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. Sec. 14, Ch. 41, L. 1963; R.C.M. 1947, 66-2714; amd. Sec. 6, Ch. 378, L. 1981; amd. Sec. 3, Ch. 510, L. 1985; amd. Sec. 2, Ch. 298, L. 1989.

**37-19-312. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. Sec. 15, Ch. 41, L. 1963; amd. Sec. 268, Ch. 350, L. 1974; R.C.M. 1947, 66-2715.

**37-19-313 and 37-19-314 reserved.**

**37-19-315. Funeral costs -- rules on disclosure.** The board shall adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming.

**History:** En. Sec. 7, Ch. 378, L. 1981.

#### **Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

**37-19-316. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. Sec. 8, Ch. 378, L. 1981.

## **Part 4**

### **Licensing of Mortuaries**

#### **Part Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing to follow contested case procedure, 2-4-631.

Prohibited relations with mortuaries, 33-18-301.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

**37-19-401. License required -- display of license.** An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

**History:** En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 3, Ch. 298, L. 1989; amd. Sec. 71, Ch. 429, L. 1995; amd. Sec. 59, Ch. 467, L. 2005.

**37-19-402. Operator's license requirements -- facility inspections -- transfer of license to new facility.** (1) The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

(2) A license to operate a new mortuary facility in Montana may be issued only if the proposed mortuary facility meets standards for operating mortuaries adopted by the board.

(3) (a) An applicant for a license to operate a new mortuary shall send to the department a written and verified application on a form prescribed by the board. The application must be accompanied by an initial inspection fee.

(b) The department shall inspect the proposed new mortuary and report its findings to the board.

(4) The board shall grant a license if the department determines that the proposed new facility meets the standards adopted by the board and will be operated by a person who has been issued a mortician's or a funeral director's license.

(5) The board may grant a temporary license to a mortuary until the initial

inspection is completed.

(6) A mortuary license may be transferred from one facility to another only when the proprietor of a licensed facility terminates services at the licensed facility and commences services at a new facility. The new facility must be inspected and must meet standards for operating mortuaries.

(7) A mortuary may be inspected by members of the board or their representatives during business hours.

**History:** En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(4); amd. Sec. 4, Ch. 298, L. 1989.

**37-19-403. Power of board to set facility standards -- inspection -- fees.** (1) The board may adopt rules prescribing reasonable standards for operating mortuaries, including minimum requirements for drainage, ventilation, and instruments. The board may inspect the premises of a mortuary establishment to determine if rules are complied with. Inspections are at the discretion of the board and may be without notice. An initial inspection is mandatory.

(2) The board may charge the operator an inspection fee, including an initial inspection fee, to be set at the discretion of the board. Fees must be commensurate with costs.

**History:** En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 51, Ch. 345, L. 1981; amd. Sec. 5, Ch. 298, L. 1989.

**37-19-404. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(3); amd. Sec. 6, Ch. 298, L. 1989.

## Part 5

### Remedies for Violation

**37-19-501. Penalty provision.** A person who violates this chapter is guilty of a misdemeanor.

**History:** En. Sec. 17, Ch. 41, L. 1963; R.C.M. 1947, 66-2717.

### Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Misdemeanor penalty when none specified, 46-18-212.

## Part 6 reserved

## Part 7

### Licensing of Crematoriums, Crematory Operators, and Crematory Technicians

**37-19-701. Purpose.** The legislature finds that because the practice of crematory operation affects the lives of the people of this state and because some Montanans may exercise their right to choose cremation for themselves or a loved one, it is the purpose of this part to:

- (1) provide standards for the licensing and regulation of crematoriums in order to protect the public health, safety, and welfare; and
- (2) ensure the qualified and professional practice of crematory operation.

**History:** En. Sec. 1, Ch. 38, L. 1993.

**37-19-702. Licenses required -- display of licenses -- renewal -- penalty for late renewal.** (1) A person doing business in this state or a cemetery, mortuary, corporation, partnership, joint venture, voluntary organization, or other entity that erects, maintains, or provides the necessary appliances and facilities for the cremation of human remains and that conducts cremations must be licensed by the board. The license must be displayed in a conspicuous place in the crematory facility.

(2) A crematory license expires on the date set by department rule and may be renewed upon payment of a fee set by the board. The fee must include the cost of annual inspection. If a crematory facility is attached to a licensed mortuary, only one inspection fee may be charged for inspection of both a mortuary facility under 37-19-403 and a crematory facility.

(3) A person in charge of a licensed crematory facility must be licensed as a crematory operator by the board. A person employed by a licensed crematory facility must be licensed as a crematory technician by the board. The license must be displayed in a conspicuous place in the crematory facility.

(4) Crematory operator and crematory technician licenses expire on the date set by department rule and may be renewed upon payment of a fee set by the board. On-the-job training must be provided to a crematory technician at the time of employment.

**History:** En. Sec. 4, Ch. 38, L. 1993; amd. Sec. 72, Ch. 429, L. 1995; amd. Sec. 60, Ch. 467, L. 2005.

**37-19-703. Application -- power of board to set standards -- inspection -- fees.** (1) Application for a crematory, crematory operator, or crematory technician license must be on forms prescribed by the board and must include the name of the applicant, name of the crematory facility, location of the crematory facility and its mailing address, and any further information the board requires. To be eligible for licensure:

(a) as a crematory facility, an application must include a description of the type of structure and equipment to be used in the operation of the crematory facility;

(b) as a crematory operator, an applicant must be at least 18 years of age, must be a high school graduate or have an equivalent degree, and must be of good moral character.

(2) The application must be accompanied by an application fee set by the board.

(3) The board must be notified of any change of ownership of a crematory within 30 days of the change.

(4) A license to operate a crematory in Montana may be issued only upon inspection of the crematory facility and upon a finding of compliance with standards for operation set by the board.

(5) A temporary permit may be issued to operate a crematory facility, as prescribed by board rule, that is effective until the initial inspection is completed to the board's satisfaction.

(6) A crematory facility may be inspected by a board member or the board's designated representative during business hours.

(7) The board shall adopt rules governing the cremation of human remains, the transportation of human remains, sanitation, equipment, fire protection, building

construction, and recordkeeping.

(8) A crematory facility shall comply with all local building codes, environmental standards, and applicable state and local regulations.

(9) A new crematory facility shall pay an initial inspection fee, set by the board, that must accompany the application.

**History: En. Sec. 5, Ch. 38, L. 1993.**

**37-19-704. Cremation authorization required -- identification.** (1)

Except as otherwise provided in this chapter, a crematory may not cremate human remains until it has received a cremation authorization.

(2) A crematory may not accept unidentified human remains.

(3) Appropriate identification must be placed upon the exterior of the cremation container upon receipt of the human remains.

**History: En. Sec. 6, Ch. 38, L. 1993.**

**37-19-705. Cremation procedures -- cremation containers.** (1)

Human remains may not be cremated except in a licensed crematory.

(2) Human remains may not be cremated within 24 hours after the time of death.

(3) A body may not be cremated with a pacemaker or other potentially hazardous implant, as defined by the board, including any toxic or explosive-type sealed implants, in place. The authorizing agent is responsible for disclosing the existence of any pacemakers or other hazardous implants.

(4) A crematory shall hold human remains, prior to their cremation, under the following conditions:

(a) In the event the crematory is unable to perform cremation upon receipt of the human remains, it shall place the human remains in a holding facility.

(b) If the human remains are not embalmed, they may not be held longer than 48 hours after the time of death outside of a refrigerated facility.

(5) Human remains delivered to a crematory may not be removed from the cremation container, and the cremation container must be cremated with the human remains.

(6) Unauthorized persons may not be permitted in the retort area while any human remains are awaiting cremation, being cremated, or being removed from the cremation chamber.

(7) The unauthorized, simultaneous cremation of human remains of more than one person within the same cremation chamber is prohibited unless the crematory has received express written authorization from all appropriate authorizing agents for the human remains to be cremated simultaneously. A written authorization exempts the crematory from liability for commingling of the product of the cremation process provided the authorization is complied with.

(8) The identification of the human remains, as indicated on the cremation container, must be verified by the crematory operator or crematory technician immediately prior to the cremation container being placed within the cremation chamber. The identification must be removed from the cremation container and be placed near the cremation chamber control panel where it must remain until the cremation process is complete.

(9) Upon completion of the cremation process, all recoverable residue must be removed from the cremation chamber. All residue of the cremation process must be separated from material other than bone fragments, which must be processed so as to reduce the bone fragments to unidentifiable particles.

(10) Cremated remains, with proper identification, must be packed and placed in a temporary container or urn ordered by the authorizing agent.

(11) If the cremated remains will not fit within the dimensions of the temporary container or urn, the remainder of the cremated remains must be returned to the authorizing agent in a separate container.

(12) If the cremated remains are to be shipped, the temporary container or designated receptacle ordered by the authorizing agent must be packed securely in a suitable, sturdy, pressure resistant, and properly sealed container.

(13) Cremated remains may be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

**History: En. Sec. 7, Ch. 38, L. 1993.**

**37-19-706. Disposition of cremated remains.** (1) The person arranging the cremation shall require the authorizing agent to provide a signed statement that specifies the ultimate disposition of the cremated remains, if known.

(2) The authorizing agent is responsible for specifying the disposition of the cremated remains. If, after a period of 90 days from the date of cremation, the authorizing agent has not specified the ultimate disposition or claimed the cremated remains, the crematory or person in possession of the cremated remains is responsible for disposition of the cremated remains and may then dispose of the cremated remains in any manner permitted by law. A record of the disposition must be made and kept by the crematory operator. This subsection applies to all cremated remains in the possession of a crematory or other party.

(3) Except with the express written consent of the authorizing agent, a person may not:

(a) dispose of or scatter cremated remains in a manner or in a location that commingles the cremated remains with those of another person. The provisions of this subsection (3) do not apply to the scattering of cremated remains from individual containers over public waterways or by air or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for that purpose.

(b) place cremated remains of more than one person in the same closed container.

(4) Cremated remains must be delivered to the individual specified by the authorizing agent on the cremation authorization form.

(5) A representative of the crematory and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased and the date, time, and place of the delivery. The crematory shall retain a copy of the receipt, and the original must be given to the authorizing agent. After this delivery, the cremated remains may be transported, in this state, without a permit and disposed of in accordance with this chapter.

**History: En. Sec. 8, Ch. 38, L. 1993.**

**37-19-707. Limitation of liability.** (1) A person signing a cremation authorization form shall warrant the truthfulness of any facts set forth in the form, including the identity of the deceased whose remains are to be cremated and the signer's authority to order cremation.

(2) A crematory, crematory operator, or crematory technician who properly cremates human remains, refuses to accept a body or perform a cremation, or refuses to release cremated remains due to an unresolved dispute is presumed to have acted properly and without negligence if the actions were performed in accordance with Title 37, chapter 19.

**History: En. Sec. 9, Ch. 38, L. 1993.**

**37-19-708. Preneed cremation authorizations.** (1) Preneed cremation authorizations may be made with a cemetery, funeral establishment, crematory, or any other party. Preneed authorizations must specify the ultimate disposition of the cremated remains, be signed by the authorizing agent, and meet other requirements established by board rule.

(2) A crematory operator or crematory technician shall comply with the terms of the preneed authorization in releasing or disposing of the cremated remains at the time of death.

(3) Upon payment for cremation and disposition, a crematory, crematory operator, or crematory technician in possession of a cremation authorization form and the deceased's human remains is not liable for the actual cremation and the disposition of the cremated remains if the terms of the preneed authorization have been complied with.

**History: En. Sec. 10, Ch. 38, L. 1993.**

## **Part 8**

### **Perpetually Maintained Cemeteries**

#### **Part Cross-References**

Funeral plan trusts, Title 72, ch. 37, part 1.

**37-19-801. Title.** This part may be referred to as the "Perpetually Maintained Cemeteries Act".

**History: En. Sec. 3, Ch. 52, L. 1997.**

**37-19-802. Purpose.** The legislature declares that it is the public policy of this state to regulate privately owned, for-profit cemeteries to protect public health and promote financial stability through perpetual care and maintenance trusts.

**History: En. Sec. 4, Ch. 52, L. 1997.**

**37-19-803. Application of this part -- exceptions.** This part applies to all cemeteries and burial grounds located in the state of Montana unless the cemetery is owned and operated by:

- (1) a church or similar religious organization;
- (2) a municipality or county government;
- (3) a family, as a private family burial ground where lots are not offered for sale; or
- (4) a community nonprofit association in which persons other than the bookkeeper and maintenance crew are not entitled to receive any pecuniary profit.

**History: En. Sec. 5, Ch. 52, L. 1997.**

**37-19-804 through 37-19-806 reserved.**

**37-19-807. Powers and duties of board.** The board is charged with administering this part. The board may:

- (1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery company, including but not limited to an examination of the physical condition or appearance of the cemetery, an audit of the financial condition of the cemetery company and any trust funds maintained by the cemetery company, and any other examinations the board considers necessary or appropriate in the public interest. The board may also order examinations in response to public complaints. The examinations must be made by members or representatives of the board that may include a certified or registered public accountant or any other person

designated by the board.

(2) issue or amend permits to operate a cemetery in accordance with the provisions of this part;

(3) adopt rules to enforce the provisions of this part;

(4) require a cemetery company to observe minimum accounting principles and practices and to keep books and records in accordance with the principles and practices for a period that the board may by rule prescribe; and

(5) require a cemetery company to provide additional contributions to the perpetual care and maintenance fund of the cemetery as provided for in this part, including but not limited to contributions not to exceed \$1,000 whenever a cemetery company fails to properly care for, maintain, or preserve a cemetery.

**History:** En. Sec. 6, Ch. 52, L. 1997; amd. Sec. 61, Ch. 467, L. 2005.

**Cross-References**

Board of funeral service, 2-15-1743.

**37-19-808. Authority to inspect cemeteries and audit cemetery companies.** (1) The board may order an inspection of a cemetery or may audit a cemetery company. For each cemetery examined or cemetery company audited in accordance with this part, the cemetery company shall pay to the board a fee for each examination or audit as the board prescribes by rule. When an examination is ordered by the board, the cemetery company shall pay, at the state per diem rate, travel expenses, meals, and lodging for each day that a member of the board or an authorized examiner spends in examining the physical condition or appearance of a cemetery. Once audited, a cemetery company may not be required to submit to an audit at the request of the board for a period of 5 years unless complaints have resulted in a formal notice of disciplinary action by the department against the cemetery company.

(2) (a) In lieu of any financial examination that the board is authorized to make, the board may accept the audit of an independent certified or registered public accountant if the board has notified the cemetery company that the audit would be acceptable and the cemetery company has notified the board in writing that the audit will be prepared.

(b) The costs of the audit provided for in subsection (2)(a) must be borne by the cemetery company, and the scope of the audit must be at least equal to the scope of the examination required by the board.

**History:** En. Sec. 7, Ch. 52, L. 1997.

**37-19-809 through 37-19-813 reserved.**

**37-19-814. Permit -- application.** (1) By January 1, 1998, a person operating a cemetery or a cemetery company governed by this part must have a permit issued by the board. The permit must be displayed in a conspicuous place at the cemetery.

(2) A cemetery permit expires on the date set by board rule and may be renewed for a 5-year period upon payment of a fee set by the board. An application for a permit or renewal of a permit must designate a responsible person, including that person's address and telephone number, who is available to act on behalf of the cemetery company with regard to the requirements of this part. A cemetery company may designate a different person with board approval. An application for renewal of a permit must contain:

(a) the name of the cemetery company, the location of the cemetery, the name of the person in charge of the records of the cemetery company, and the telephone number of the cemetery company;

(b) the number and dollar amount of sales of cemetery lots, grave spaces,

mausoleums, crypts, niches, and burial rights for which payment has been made in full and the number of certificates or deeds of conveyance issued during the preceding 5 calendar years;

(c) an accounting of the amounts paid into the perpetual care and maintenance fund and the income received from the fund during the preceding 5 calendar or fiscal years, including the total amount due to the fund whether paid in or not, the amount due to the fund at the date of the report, and the amount expended for maintenance of the cemetery;

(d) the names and addresses of the owners of the cemetery company or the officers and directors of the cemetery company, any change in control of the cemetery company that has occurred during the past 5 calendar or fiscal years, the date of incorporation, if applicable, and the resident agent and address of the registered agent's office if the cemetery company is a corporation; and

(e) any other information that the board requires by rule.

(3) The board may set a penalty fee for late renewal of a permit.

**History: En. Sec. 8, Ch. 52, L. 1997.**

**37-19-815. Permit -- amendment.** (1) Whenever a cemetery company that is subject to the provisions of this part proposes to amend its present permit for construction of a mausoleum, reduction or increase in percentage of gross sales proceeds to be placed in the perpetual care and maintenance fund, expansion of a cemetery, or other changes in its operation, the cemetery company shall file an application for amendment of the permit with the board.

(2) The application must be accompanied by a fee and other information that the board requires by rule.

**History: En. Sec. 9, Ch. 52, L. 1997.**

**37-19-816. Permit -- transfer of ownership.** (1) If a cemetery company that is subject to the provisions of this part is to be sold, if the ownership is to be otherwise transferred, or if a controlling interest in the company is to be sold or otherwise transferred, the proposed purchaser or transferee shall file an application for the issuance of a new permit with the board.

(2) The application must be accompanied by a fee and other information that the board requires by rule.

**History: En. Sec. 10, Ch. 52, L. 1997.**

**37-19-817 through 37-19-821 reserved.**

**37-19-822. Perpetual care and maintenance fund.** (1) A perpetual care and maintenance fund established pursuant to the provisions of this part for the purpose of administration, care, and maintenance of a cemetery, including lots, grave spaces, crypts, niches, burial rights, or other land or buildings, is a trust fund.

(2) The net income from the fund must be used by the owners, managers, or officers and directors of a cemetery company exclusively for the care and maintenance of the cemetery and may not be used for any other purpose.

(3) The principal of a perpetual care and maintenance fund must in all cases remain intact and inviolate and must be administered with the same care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person would use to accomplish the purpose of the trust as required by this section and reflected in the trust document.

(4) Each cemetery company shall maintain at a minimum the following:

(a) a general ledger and general journal or comparable books of entry showing all receipts, disbursements, assets, liabilities, and income of the perpetual

care and maintenance fund;

(b) documents supporting and verifying each asset of the fund; and

(c) a trust agreement.

(5) The board may require a cemetery company to provide an accounting or audit of its perpetual care and maintenance fund.

(6) Each cemetery company shall deposit not less than 15% of the gross proceeds of each sale of a lot, grave space, crypt, niche, or burial right, as determined by the board, into the perpetual care and maintenance fund.

(7) In establishing a perpetual care and maintenance fund, a cemetery company may from time to time adopt plans for the general care and maintenance of its cemetery.

(8) A perpetual care and maintenance fund may receive, take, and hold any real or personal property that is bequeathed, devised, granted, given, or otherwise contributed to it.

**History:** En. Sec. 11, Ch. 52, L. 1997.

**37-19-823. Records required.** (1) A cemetery company shall make and keep accounts and records confirming that it has made the required contributions to its perpetual care and maintenance fund. The burden is upon the cemetery company to maintain the accounts and records.

(2) All sales contracts and deeds, unless otherwise authorized by the board, issued by a cemetery company must be numbered prior to their execution by the cemetery company and must contain those items the board prescribes by rule.

**History:** En. Sec. 12, Ch. 52, L. 1997.

**37-19-824. Conveyance.** (1) An instrument of conveyance for a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space must be issued to the purchaser upon complete payment of the purchase price.

(2) Only a cemetery company or its agents may sell or convey the items listed in subsection (1). However, an owner may sell the item if the owner has first offered in writing to sell it to the cemetery company at the purchase price then being charged by the cemetery company for a similar item and the cemetery company has not accepted the offer within 30 days of the offer.

(3) (a) The secretary or other responsible person of a cemetery company shall file and record in the cemetery company's books all instruments of conveyance.

(b) An instrument of conveyance must be recorded by the cemetery company in the office of the county clerk and recorder and returned to the purchaser.

(4) An instrument of conveyance must be signed on behalf of a cemetery company by the person having proper authority to sign the instrument of conveyance.

**History:** En. Sec. 13, Ch. 52, L. 1997; amd. Sec. 2, Ch. 336, L. 1999.

**37-19-825. Preexisting cemeteries.** A cemetery or cemetery company that is in existence on January 1, 1998, shall obtain the necessary permits required by this part in order to continue operation and is subject as of January 1, 1998, to the provisions of this part.

**History:** En. Sec. 14, Ch. 52, L. 1997.

**37-19-826. Repealed.** Sec. 6, Ch. 336, L. 1999.

**History:** En. Sec. 15, Ch. 52, L. 1997.

**37-19-827. Contract for prearranged funeral plan or related services -- trust requirement -- interest -- exception.** (1) Prearranged funeral or related

services may be presented, negotiated, and sold to the public only by a licensed funeral director or licensed mortician.

(2) Except as provided in subsection (4), all money paid pursuant to a contract for a prearranged funeral or related services must be held in trust for the purposes for which it was furnished until the obligations of a funeral director, embalmer, cemetery firm, or mausoleum-columbarium corporation have been fulfilled according to the terms of the contract or, by mutual consent of the parties, until the money is refunded to the proper party.

(3) Any interest accrued by money in a trust must be held in the trust and is subject to the terms of the trust agreement.

(4) Money paid for the purchase of a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space is not subject to the trust requirements of this section if title passes to the purchaser at the time that the payment is made.

**History: En. Sec. 3, Ch. 336, L. 1999.**

**37-19-828. Trust fund -- deposit of money.** (1) (a) A party that provides services pursuant to a contract for a prearranged funeral or related services and that receives money under the contract shall deposit the money within 3 business days of receipt in a banking institution or invest the money in the stock of a savings or building and loan association or in the shares of a credit union.

(b) The banking institution, savings or building and loan association, or credit union must have its principal place of business in this state and must be organized under the laws of this state or of the United States.

(c) Deposits or investments made as provided in this section must be insured by an instrumentality of the federal government.

(2) Deposits or investments made pursuant to this section constitute a trust fund for the benefit of the person contracting for the prearranged funeral or related services. The money must be placed in a separate account in the name of the depositor as trustee for the person contracting for the prearranged funeral or related services.

**History: En. Sec. 4, Ch. 336, L. 1999.**

**37-19-829. Report of entity holding deposited money.** A banking institution, savings or building and loan association, or credit union shall report to the department prior to February 1 of each year all amounts that it has received and held in trust accounts created as provided in 37-19-828. The report must contain the name and address of each trustee and trust beneficiary and must contain the amount of principal in each account and the amount of interest or dividends paid on each account.

**History: En. Sec. 5, Ch. 336, L. 1999.**

**37-19-830 reserved.**

**37-19-831. Penalty -- injunction.** (1) A person who violates a provision of this part is guilty of a misdemeanor and upon conviction shall be fined not more than \$500 or imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of this part by injunction or any other appropriate proceeding.

**History: En. Sec. 16, Ch. 52, L. 1997.**

**TITLE 46**  
**CRIMINAL PROCEDURE**  
**CHAPTER 4**  
**INVESTIGATIVE PROCEDURES**

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**Chapter Cross-References**

- County Coroner, Title 7, ch. 4, part 29.
- Witness fees -- inquests, 26-2-503.

**Part 1**

**Investigation of Death -- Autopsy**

**46-4-101. Jurisdiction -- death and cause of death in different counties.** (1) The coroner of the county where a dead human body is found has jurisdiction if:

- (a) the place of death is unknown;
- (b) the dead human body was shipped into the county without proper permits; or
- (c) the death occurred while the deceased was in transit in the state.

(2) When death occurs as a direct result of acts or events that occurred in another county, the coroner of the county where the acts or events causing death occurred has jurisdiction. If a coroner that has jurisdiction of a death fails to act, the state medical examiner has jurisdiction.

(3) A county coroner has primary jurisdiction in the county in which he is appointed or elected to serve; however, a qualified coroner may serve in another county upon the request of the coroner or county attorney of that county. A coroner may travel to another county to inquire into a death pursuant to 46-4-122.

**History:** En. 95-812 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-812; amd. Sec. 13, Ch. 660, L. 1991.

**46-4-102. Repealed.** Sec. 21, Ch. 660, L. 1991.

**History:** En. 95-801 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 530, L. 1977; R.C.M. 1947, 95-801.

**46-4-103. Autopsy -- when conducted, scope.** (1) If in the opinion of the coroner an autopsy is advisable, the coroner shall order one performed on any dead human body for which the death requires an inquiry and shall retain a medical examiner or associate medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. Consent of the family or next of kin of the deceased is not required for an autopsy that is ordered by the coroner, county attorney, or attorney general. In ordering an autopsy the coroner, county attorney, or attorney general shall order the body to be exhumed if it has been interred.

(2) The right to conduct an autopsy includes the right to retain specimens the medical examiner performing the autopsy considers necessary.

(3) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy, investigation, or inquiry is initiated at the request of the county attorney or county

coroner.

(4) If a county does not provide a morgue or other facility for postmortem examination, the county coroner may order the use of a funeral home or an appropriate hospital facility for the examination.

(5) Autopsies performed under this section on a decedent whose death is under investigation and who has made an anatomical gift or on whose behalf an anatomical gift has been made must be performed in accordance with 72-17-217 and 72-17-218.

**History:** En. 95-802 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 25, Ch. 530, L. 1977; R.C.M. 1947, 95-802; amd. Sec. 14, Ch. 660, L. 1991; amd. Sec. 1, Ch. 345, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 345 inserted (5) requiring autopsies pursuant to 72-17-216 and 72-17-218 on decedent whose death is under investigation and who made anatomical gift. Amendment effective October 1, 2007.

*Retroactive Applicability:* Section 20, Ch. 345, L. 2007, provided: "[This act] applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift made before October 1, 2007."

#### **Cross-References**

Records and findings -- copies maintained by State Medical Examiner's office, 44-3-214.  
Autopsies -- limitations, 50-21-103, 50-21-104.

**46-4-104. Liability of mortuary or physician.** A mortuary owner or person employed in a mortuary is not liable for the acts of the coroner performed in the removal of a body to a mortuary or during the course of an autopsy on that body. No criminal or civil action may arise against a licensed physician for performing an autopsy authorized by this chapter or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction.

**History:** En. 95-813 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-813; amd. Sec. 2, Ch. 492, L. 1985; amd. Sec. 12, Ch. 800, L. 1991.

#### **Cross-References**

Exemption from liability for autopsy, 44-3-401.

**46-4-105 through 46-4-109 reserved.**

**46-4-110. Powers of coroner.** In the performance of his duties under this chapter, the coroner may:

(1) pronounce the fact of death of any human being under circumstances in which he has a duty to inquire pursuant to 46-4-122;

(2) certify and amend death certificates as considered necessary in circumstances under which he has a duty to inquire pursuant to 46-4-122;

(3) issue subpoenas pursuant to 46-4-112;

(4) order autopsies as provided in 46-4-103;

(5) conduct examinations and tests as considered necessary to determine the cause, manner, and circumstances of death and identification of a dead human body as provided in 46-4-101 and 46-4-113;

(6) order a dead human body to be disinterred or removed from its place of disposition, with or without the consent of the next of kin, under circumstances in which he has a duty to inquire pursuant to 46-4-122;

(7) conduct inquests pursuant to 46-4-201; and

(8) order cessation of any activity by any person or agency, other than the law enforcement agency having jurisdiction, that may obstruct or hinder the orderly conduct of an inquiry or the collection of information or evidence needed for an

inquiry.

**History: En. Sec. 2, Ch. 660, L. 1991.**

**Cross-References**

Duties of County Coroner, 7-4-2911.

**46-4-111. Coroner's authority to seize and preserve evidence.** (1) A county coroner may enter any room, dwelling, building, or other place in which he has probable cause to believe that a dead human body or evidence of the circumstances of a death that requires investigation may be found. If refused entry, a coroner who is investigating a death pursuant to his authority may apply to a judge authorized to issue search warrants for a warrant to enter the premises and to search for and seize evidence of the cause of a death, including a dead human body.

(2) The application for a search warrant must:

(a) state facts sufficient to show probable cause that a human body or evidence of the circumstances of death is present in the place to be searched;

(b) particularly describe the place to be searched; and

(c) particularly describe the things to be seized.

(3) To preserve evidence of the cause of death, a coroner may:

(a) place under his custody and control any dwelling, building, item, vehicle, aircraft, railroad engine or train, vessel, enclosure, or open area for a period of not more than 10 days; and

(b) forbid entrance by an unauthorized person into any area specified in subsection (3)(a).

(4) A person may not enter an area that is restricted pursuant to subsection (3) without the permission of the coroner or the law enforcement agency having jurisdiction if there is also a criminal investigation in progress.

**History: En. Sec. 1, Ch. 660, L. 1991.**

**Cross-References**

Custody and disposition of bodies held pending investigation, 7-4-2915.

**46-4-112. Subpoenaing of witnesses and documents.** (1) In an inquiry or inquest, a coroner may:

(a) issue subpoenas for witnesses as provided in 46-4-203; and

(b) issue subpoenas commanding the production of books, records, papers, documents, and other objects as may be necessary and proper to the inquiry or inquest.

(2) Any material subpoenaed pursuant to subsection (1)(b) is confidential criminal justice information, as defined in 44-5-103, and public access to the information may be obtained only in accordance with 44-5-303. However, any material produced at an inquest is public information.

(3) Disobedience of a subpoena issued under 46-4-203 or this section is punishable in the same manner as disobedience of a subpoena issued by a justice of the peace as provided in Title 3, chapter 10, part 4.

**History: En. Sec. 7, Ch. 660, L. 1991.**

**46-4-113. Examinations and tests.** The coroner may direct a properly qualified expert to conduct any test or examination that he reasonably believes is necessary to determine the cause, manner, and circumstances of a death or to identify a dead human body. The coroner may also require examination by the next of kin or any other person when necessary to identify a dead human body.

**History: En. Sec. 8, Ch. 660, L. 1991.**

**46-4-114. Reporting fetal deaths.** A licensed nurse, a midwife, a

physician assistant, an emergency medical technician, a birthing assistant, or any other person who assists in the delivery that occurs outside a licensed medical facility of a fetus that is believed or declared to be dead shall report the death by the earliest means available to the coroner of the county in which the death occurred.

**History:** En. Sec. 6, Ch. 660, L. 1991; amd. Sec. 22, Ch. 519, L. 2005.

**46-4-115 through 46-4-119 reserved.**

**46-4-120. Notification of finding human remains.** A person who finds a dead human body or fetus or remains that appear to be human shall immediately report this fact to the county coroner by telephone or by the fastest available means of communication.

**History:** En. Sec. 1, Ch. 287, L. 1993.

**Cross-References**

Protection of human skeletal remains and burial sites, Title 22, ch. 3, part 8.

**46-4-121. Inquiry defined.** For the purposes of this part, an inquiry by a county coroner is an informal examination of a death and its attendant circumstances to determine whether:

- (1) an inquest, which is a formal inquiry, should be held;
- (2) the reporting physician should certify the death;
- (3) any further action or examination should be made concerning a death; or
- (4) there is anything unusual or remarkable about a death that may warrant further action by the county attorney or the law enforcement agency that has jurisdiction.

**History:** En. Sec. 3, Ch. 660, L. 1991.

**46-4-122. Human deaths requiring inquiry by coroner.** The coroner shall inquire into and determine the cause and manner of death and all circumstances surrounding a human death:

- (1) that was caused or is suspected to have been caused:
  - (a) in any degree by an injury, either recent or remote in origin; or
  - (b) by the deceased or any other person that was the result of an act or omission, including but not limited to:
    - (i) a criminal or suspected criminal act;
    - (ii) a medically suspicious death, unusual death, or death of unknown circumstances, including any fetal death; or
    - (iii) an accidental death; or
  - (c) by an agent, disease, or medical condition that poses a threat to public health;
- (2) whenever the death occurred:
  - (a) while the deceased was incarcerated in a prison or jail or confined to a correctional or detention facility owned and operated by the state or a political subdivision of the state;
  - (b) while the deceased was in the custody of, or was being taken into the custody of, a law enforcement agency or a peace officer;
  - (c) during or as a result of the deceased's employment;
  - (d) less than 24 hours after the deceased was admitted to a medical facility or if the deceased was dead upon arrival at a medical facility; or
  - (e) in a manner that was unattended or unwitnessed and the deceased was not attended by a physician at any time in the 30-day period prior to death;
- (3) if the dead human body is to be cremated or shipped into the state and lacks proper medical certification or burial or transmit permits; or

(4) that occurred under suspicious circumstances.

**History:** En. Sec. 4, Ch. 660, L. 1991; amd. Sec. 2, Ch. 287, L. 1993.

**Cross-References**

Custody and disposition of bodies held pending investigation, 7-4-2915.

**46-4-123. Inquiry report.** The coroner shall make a full report of the facts discovered in all human deaths requiring an inquiry under the provisions of 46-4-122. In the case of a fetal death inquiry under 46-4-122, the department of justice shall adopt rules for respectful transportation and delivery of the fetus to the place where the autopsy will be performed. The rules must require that a fetus be transported in a crush-proof container and be labeled with the words "fragile--human remains inside". The report must be made in triplicate on a form provided by the division of forensic sciences of the department of justice. The coroner and the medical examiner shall each retain one copy and shall deliver the other copy to the county attorney. If the coroner orders an autopsy during the course of an inquiry, the coroner shall also provide the medical examiner with a copy of the autopsy report. The forms must be completed and distributed as provided in this section as promptly as practicable.

**History:** En. Sec. 5, Ch. 660, L. 1991; amd. Sec. 1, Ch. 268, L. 2007.

**Compiler's Comments**

*2007 Amendment:* Chapter 268 inserted second and third sentences relating to rules for the transportation and delivery of a fetus; and made minor changes in style. Amendment effective October 1, 2007.

**Part 2**

**Inquests**

**Part Cross-References**

Jury of inquest defined, 3-15-105.

Jurors' fees, 3-15-203.

Jurors -- competency and exemptions, Title 3, ch. 15, part 3.

Jurors -- penalty for nonappearance, 3-15-321.

Juries of inquest -- summoning and impaneling, Title 3, ch. 15, part 8.

**46-4-201. Inquest -- definition -- when held -- how conducted.** (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of a person and is conducted by the coroner before a coroner's jury.

(2) The coroner may hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, the county attorney shall order the coroner to hold an inquest if the death of a person occurs:

(a) in a prison, jail, or other correctional facility and is not caused by the terminal condition, as defined in 50-9-102, of, or the execution of a death penalty upon, the person while the person is incarcerated in the prison, jail, or other correctional facility because of conviction of a criminal offense. This subsection (2)(a) applies to a death caused by a terminal condition only if the person was under medical care at the time of death.

(b) while a person is being taken into custody or is in the custody of a peace officer or if the death is caused by a peace officer, except when criminal charges have been or will be filed.

(3) If an inquest is held, the proceedings are public. The coroner shall

conduct the inquest with the aid and assistance of the county attorney. The coroner shall, and the county attorney may, examine each witness, after which the witness may be examined by the jurors. The inquest must be held in accordance with this part.

(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

- (i) died in a prison, jail, or other correctional facility;
- (ii) died while in the custody of a peace officer; or
- (iii) was killed by a peace officer.

(b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified coroner of a neighboring county to conduct the inquest. The expenses of a coroner fulfilling the request, including salary, must be paid by the requesting county.

**History:** Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sec. 95-809, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-809; amd. Sec. 1, Ch. 343, L. 1983; amd. Sec. 15, Ch. 660, L. 1991; amd. Sec. 1, Ch. 478, L. 1997.

#### **Cross-References**

Jury of inquest defined, 3-15-105.  
Duties of County Coroner, 7-4-2911.  
Payment of costs of inquest, 7-4-2913.

**46-4-202. Summoning and swearing in of jurors -- instructions.** (1) For holding an inquest, the coroner shall summon a jury of at least 6 but not more than 12 persons qualified by law to serve as jurors and selected at random from a list of eligible jurors that is furnished to the coroner annually by the county clerk of court.

(2) The jury selected by the coroner must be sworn by the coroner to inquire who the person was and when, where, and by what means he came to his death and into the circumstances attending his death and to render a true verdict on the death according to the evidence offered to them or arising from the inspection of the body.

(3) The coroner shall instruct the jurors as to their duties.

**History:** (1)En. 95-803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; (2)En. 95-804 by Sec. 1, Ch. 196, L. 1967; Sec. 95-804, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-804; amd. Sec. 2, Ch. 343, L. 1983; amd. Sec. 16, Ch. 660, L. 1991.

#### **Cross-References**

Jurors' fees, 3-15-203.  
Jurors -- competency and exemptions, Title 3, ch. 15, part 3.  
Jurors -- penalty for nonappearance, 3-15-321.  
Juries of inquest -- summoning and impaneling, Title 3, ch. 15, part 8.

**46-4-203. Coroner's subpoena.** Upon the request of the county attorney, a coroner shall issue subpoenas for witnesses, returnable immediately or at a time and place the coroner may designate, that may be served by any competent person.

**History:** En. 95-805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-805; amd. Sec. 1, Ch. 116, L. 1979; amd. Sec. 15, Ch. 800, L. 1991.

#### **Cross-References**

Witnesses at inquests, 26-2-503.

**46-4-204. Repealed.** Sec. 21, Ch. 660, L. 1991.

**History:** En. 95-806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-806; amd. Sec. 3, Ch. 343, L. 1983.

**46-4-205. Verdict of jury -- form.** The jury may view the body, and the

county attorney may require the jury to view the body. The jury shall review the death scene and may do so by videotape, photographs, or slide transparencies. After viewing the body and the death scene and hearing the testimony, the jury shall render its verdict, which must be by majority vote, and certify the same in writing signed by each juror. The verdict must set forth:

- (1) who the deceased person is;
- (2) when and where he came to his death;
- (3) if he came to his death by criminal means; and
- (4) if he was killed or his death was occasioned by the act of another by criminal means, who committed the act, if known. If the jury finds that the death was not by criminal means, that fact must be stated on the verdict form.

**History:** En. 95-807 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-807; amd. Sec. 17, Ch. 660, L. 1991.

**46-4-206. Recording and filing of testimony and proceedings.**

Testimony before a coroner's jury must be given under oath. The testimony of the witnesses examined and proceedings before the coroner's jury must be recorded and transcribed by a competent stenographer appointed by the coroner. The record of the inquest and the verdict of the jury must be filed by the coroner in the office of the clerk of the district court of the county in which the inquest was held. The expenses of recording and transcribing must be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

**History:** En. 95-808 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-808; amd. Sec. 18, Ch. 660, L. 1991.

**46-4-207. Coroner's register.**

The county coroner shall keep an official register, in which he must enter the date of holding all inquests, the cause and circumstances of death, if known, and the name of the deceased, when known, and, when not, such description of the deceased as may be sufficient for identification.

**History:** En. 95-811 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-811.

### Part 3

## Investigative Subpoenas

### Part Cross-References

Subpoenas, Title 26, ch. 2, part 1.

Subpoenas and witnesses, Title 46, ch. 15, part 1.

**46-4-301. Issuance of subpoena.**

(1) Whenever a prosecutor has a duty to investigate alleged unlawful activity, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the prosecutor and give testimony and produce books, records, papers, documents, and other objects as may be necessary and proper to the investigation.

(2) Except as provided in subsection (3), a subpoena may be issued only when it appears upon the affidavit of the prosecutor that the administration of justice requires it to be issued.

(3) In the case of constitutionally protected material, such as but not limited to medical records or information, a subpoena may be issued only when it appears upon the affidavit of the prosecutor that a compelling state interest requires it to be issued. In order to establish a compelling state interest for the issuance of such a

subpoena, the prosecutor shall state facts and circumstances sufficient to support probable cause to believe that:

- (a) an offense has been committed; and
- (b) the information relative to the commission of that offense is in the possession of the person or institution to whom the subpoena is directed.

**History:** En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(1); amd. Sec. 19, Ch. 800, L. 1991; amd. Sec. 1, Ch. 318, L. 1999.

**46-4-302. Penalty for failure to appear or obey.** (1) A person who, without just cause, fails to obey a subpoena served under this part is punishable for contempt of court.

(2) (a) A person who, after being granted immunity under 46-4-305, refuses to give testimony or produce evidence under this part must be brought without unnecessary delay before the judge issuing the subpoena or, in that judge's absence or inability to act, before the nearest or most accessible judge, who shall inform the person:

- (i) of the contents and requirements of the subpoena;
- (ii) that the person has been granted immunity and may not be excused from testifying or producing evidence on the grounds that the testimony may incriminate the person; and
- (iii) that a refusal to testify or produce evidence as commanded in the subpoena is punishable as a contempt of court under Title 3, chapter 1, part 5.

(b) In the presence of the judge, the person must be examined by the prosecutor or produce evidence as commanded in the subpoena.

(c) A refusal to testify or produce evidence may be punished as a contempt under Title 3, chapter 1, part 5.

**History:** En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(2); amd. Sec. 1, Ch. 157, L. 1987; amd. Sec. 20, Ch. 800, L. 1991.

**46-4-303. Relief from improper subpoena.** A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion must be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

**History:** En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(3); amd. Sec. 21, Ch. 800, L. 1991.

**46-4-304. Conduct of investigative inquiry.** (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the office of state public defender, provided for in 47-1-201, to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part.

**History:** En. 95-721 by Sec. 2, Ch. 486, L. 1977; R.C.M. 1947, 95-721; amd. Sec. 22, Ch. 800, L. 1991; amd. Sec. 39, Ch. 449, L. 2005.

**46-4-305. Self-incrimination -- immunity.** (1) No person subpoenaed to give testimony pursuant to this part may be required to make a statement or to produce evidence that may be personally incriminating.

(2) The prosecutor may, with the approval of the judge who authorized the

issuance of the subpoena, grant a person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from the testimony or evidence against that person in a criminal prosecution.

(3) Nothing in this part prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in the prosecutor's sole discretion, that the best interest of justice would be served by granting immunity.

(4) After being granted immunity, no person may be excused from testifying on the grounds that the testimony may be personally incriminating. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(5) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

**History:** En. 95-722 by Sec. 3, Ch. 486, L. 1977; R.C.M. 1947, 95-722; amd. Sec. 3, Ch. 577, L. 1983; amd. Sec. 23, Ch. 800, L. 1991.

#### **Cross-References**

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

**46-4-306. Applicability of other laws -- costs.** (1) The fees and mileage of witnesses subpoenaed pursuant to this part are the same as those required in criminal actions. The state shall bear all costs, including the cost of service, when the application for the subpoena is made by the attorney general, the appropriate county shall bear all costs, including the cost of service, when the application for the subpoena is made by a county attorney, and the appropriate city shall bear all costs, including the cost of service, when the application for the subpoena is made by a city attorney.

(2) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this part, including the provisions of 46-15-112, 46-15-113, and 46-15-120.

(3) Each investigative cost, including testing of evidence and persons, must be borne by the governmental entity whose action created the cost, unless another governmental entity agrees to or by law is required to bear the cost.

**History:** En. 95-723 by Sec. 4, Ch. 486, L. 1977; R.C.M. 1947, 95-723; amd. Sec. 259, Ch. 800, L. 1991; amd. Sec. 2, Ch. 262, L. 1993.

#### **Cross-References**

Witness fees, Title 26, ch. 2, part 5.

## **Part 4**

### **Recording Numbers of Devices Used to Communicate**

**46-4-401. Definitions.** As used in this part, the following definitions apply:

(1) "Pen register" means a device that records or decodes electronic or other impulses that identify a number dialed or otherwise transmitted on a telephone line to which the pen register is attached. The term does not include a device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services, such as but not limited to caller identification services, or used for cost accounting or similar purposes in the ordinary course of business.

(2) "Trap and trace device" means a device that records or decodes incoming electronic or other impulses that identify the originating number of an instrument or

device from which a wire or electronic communication was transmitted. The term does not include a device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services, such as but not limited to caller identification services, or used for cost accounting or similar purposes in the ordinary course of business.

**History: En. Sec. 1, Ch. 97, L. 1999.**

**46-4-402. Limitations on use of pen register or trap and trace device.**

(1) A person may not install or use a pen register or trap and trace device without a court order obtained under 46-4-403, except as provided in subsection (2). Subsection (2) may not be construed to permit a law enforcement agent to operate a pen register or trap and trace device without a court order obtained under 46-4-403. The use of a pen register or trap and trace device that has the ability to record conversations is prohibited.

(2) Subsection (1) does not apply to the installation or use of a pen register or trap and trace device by a provider of a wire or electronic communication service:

(a) for the:

(i) operation, maintenance, or testing of the service;

(ii) protection of the rights and property of the provider; or

(iii) protection of a user of the service from abuse of or unlawful use of the service;

(b) to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the communication, or a user of the service from fraudulent, unlawful, or abusive use of the service; or

(c) if the consent of each person whose originating or transmitted number is recorded or decoded is obtained.

(3) A person who knowingly violates subsection (1) commits a criminal offense punishable upon conviction by incarceration for a period of up to 6 months and a fine of up to \$500.

**History: En. Sec. 2, Ch. 97, L. 1999.**

**46-4-403. Order for pen register or trap and trace device -- installation -- disclosures.** (1) A prosecutor may apply to the district court for an order, or for the extension of an existing order, for the installation and use of a pen register or a trap and trace device. The application must be in writing and under oath. The application must name the prosecutor and must also name the law enforcement agency that will use the pen register or trap and trace device. The applicant shall show probable cause for the order.

(2) If the court is satisfied that the applicant has shown probable cause for the order, the court shall issue the order. The order must state:

(a) the name, if known, of each person to whom the telephone line is leased or in whose name the telephone line to which a pen register or trap and trace device is to be attached is listed;

(b) the name, if known, of each person who is the subject of the criminal investigation;

(c) the number and, if known, the physical location of each telephone line to which a pen register or trap and trace device is to be attached and, for a trap and trace device, the geographic limits of the court order; and

(d) the offense or offenses to which the information that might be obtained relates.

(3) The order must direct the provider of the telephone service and a landlord, custodian, or other person to furnish the prosecutor and law enforcement

agency with the information, facilities, and technical assistance necessary to install and operate the pen register or trap and trace device. The installation and operation must create the most minimal interference with the telephone service of each person whose originating or transmitted telephone number is recorded or decoded. Information received by the service provider from the operation of the pen register or trap and trace device must be given to the law enforcement agency at reasonable intervals during regular business hours.

(4) The order may cover a period not to exceed 60 days and may be extended for periods not to exceed 60 days for each extension. An extension may be granted only if the court is satisfied that probable cause for the extension has been shown.

(5) A person leasing or owning a telephone line that is subject to the order, the provider of the service, and any other person with knowledge of the order, pen register, or trap and trace device may not disclose the existence of the order, pen register, or trap and trace device to any person without the court's permission.

(6) A service provider, landlord, custodian, or other person must be reasonably compensated by the law enforcement agency for expenses incurred in furnishing facilities or assistance relating to the order.

(7) Proceedings conducted under this section are subject to the secrecy and disclosure provisions relating to grand jury proceedings. Any information obtained pursuant to an order issued under this section is confidential criminal justice information subject to the provisions of Title 44, chapter 5.

**History: En. Sec. 3, Ch. 97, L. 1999.**

**46-4-404. Immunity from suit.** Except for gross negligence or willful or wanton misconduct, there is no cause of action against a service provider, landlord, or custodian or their officers, employees, or agents or other nongovernmental person for injury or damage caused in furnishing facilities or assistance under the order or against a service provider or its officers, employees, or agents for providing the law enforcement agency with information received from the operation of the pen register or trap and trace device. The immunity provided by this section does not extend to any governmental agency, law enforcement agent, or prosecutor.

**History: En. Sec. 4, Ch. 97, L. 1999.**

**46-4-405. Procedural irregularity -- rule of evidence.** An irregularity in a proceeding under this part may not be used to exclude evidence obtained under an order unless the irregularity affects substantial rights of the accused.

**History: En. Sec. 5, Ch. 97, L. 1999.**

## TITLE 50

### HEALTH AND SAFETY CHAPTER 15

#### VITAL STATISTICS

##### Part 1 -- General Provisions

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50-15-103. Duties of department.

- 50-15-104. Appointment and supervision of local registrars.
- 50-15-105. Appointment of deputies authorized.
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- 50-15-107. Payment of fees to local registrars.
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- 50-15-301. Marriage certificates.
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## Part 4 -- Death

- 50-15-401. Repealed.
- 50-15-402. Copy to be forwarded to deceased's county of residence.
- 50-15-403. Preparation and filing of death or fetal death certificate.
- 50-15-404. Preparation of certificate when death not medically attended.
- 50-15-405. Authorization for removal of body from place of death.
- 50-15-406. Body brought into state for disposition.
- 50-15-407. Disinterment permit.
- 50-15-408 reserved.
- 50-15-409. List of deaths to be made by department -- copy to county clerk.
- 50-15-410 reserved.
- 50-15-411. Sudden infant death syndrome -- findings -- definition.
- 50-15-412. Cause of death -- sudden infant death syndrome.

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### Part 1

#### General Provisions

**50-15-101. Definitions.** Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

(1) "Advanced practice registered nurse" means an individual who has been certified as an advanced practice registered nurse as provided in 37-8-202.

(2) "Authorized representative" means a person:

(a) designated by an individual, in a notarized written document, to have access to the individual's vital records;

(b) who has a general power of attorney for an individual; or

(c) appointed by a court to manage the personal or financial affairs of an individual.

(3) "Dead body" means a human body or parts of a human body from which it reasonably may be concluded that death occurred.

(4) "Department" means the department of public health and human services provided for in 2-15-2201.

(5) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(6) "Fetal death" means death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(7) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(8) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(9) "Live birth" means the complete expulsion or extraction from the mother as a product of conception, notwithstanding the duration of pregnancy. The birth is

indicated by the fact that after expulsion or extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(10) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(11) "Person in charge of disposition of a dead body" means a person who places or causes a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a funeral director licensed under Title 37, chapter 19, an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

(12) "Physician" means a person legally authorized to practice medicine in this state.

(13) "Registration" means the process by which vital records are completed, filed, and incorporated into the official records of the department.

(14) "Research" means a systematic investigation designed primarily to develop or contribute to generalizable knowledge.

(15) (a) "Stillbirth" means a fetal death occurring after a minimum of 20 weeks of gestation.

(b) The term does not include an abortion, as defined in 50-20-104.

(16) "System of vital statistics" means the registration, collection, preservation, amendment, and certification of vital records. The term includes the collection of reports required by this chapter and related activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

(17) "Vital records" means certificates or reports of birth, death, fetal death, marriage, and dissolution of marriage and related reports.

(18) "Vital statistics" means the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports.

**History:** En. Secs. 2, 41, Ch. 197, L. 1967; amd. Secs. 28, 48, Ch. 349, L. 1974; R.C.M. 1947, 69-4102(1), (2), 69-4401; amd. Sec. 4, Ch. 228, L. 1981; amd. Sec. 1, Ch. 402, L. 1991; amd. Sec. 104, Ch. 418, L. 1995; amd. Sec. 3, Ch. 515, L. 1995; amd. Sec. 279, Ch. 546, L. 1995; amd. Sec. 2, Ch. 91, L. 2001; amd. Sec. 1, Ch. 258, L. 2001; amd. Sec. 2, Ch. 474, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 474 inserted definition of stillbirth; and made minor changes in style. Amendment effective January 1, 2008.

#### **Cross-References**

Determination of death, 50-22-101.

**50-15-102. Statewide system of vital statistics to be established.** The department shall establish a statewide system of vital statistics and adopt rules for gathering, recording, using, amending, and preserving vital statistics and vital records.

**History:** En. Sec. 42, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4402; amd. Sec. 4, Ch. 515, L. 1995.

#### **Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

**50-15-103. Duties of department.** The department shall:

- (1) divide the state into registration districts and change districts as necessary;
- (2) promulgate rules necessary to implement this chapter;
- (3) administer and enforce the provisions of this chapter and rules adopted to implement this chapter;
- (4) conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics;
- (5) prescribe, furnish, and distribute forms required by this chapter or rules adopted pursuant to this chapter or prescribe other means for the transmission of data that will accomplish complete and accurate reporting and registration; and
- (6) prepare and publish reports of vital statistics of this state.

**History:** En. Sec. 43, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4403; amd. Sec. 5, Ch. 515, L. 1995.

**Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

**50-15-104. Appointment and supervision of local registrars.** The department shall:

- (1) appoint local registrars;
- (2) supervise local registrars and other persons required to comply with this chapter.

**History:** En. Sec. 49, Ch. 197, L. 1967; amd. Sec. 51, Ch. 349, L. 1974; R.C.M. 1947, 69-4409.

**50-15-105. Appointment of deputies authorized.** With approval of the department, local registrars may appoint deputies.

**History:** En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

**50-15-106. Registrars and deputies to report violations.** Local registrars and deputies shall immediately report violations of this chapter or rules of the department to the department.

**History:** En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

**50-15-107. Payment of fees to local registrars.** (1) The department may specify by rule a fee to be paid each local registrar for each complete birth, fetal death, or death certificate forwarded by the local registrar to the department or a monthly report stating the local registrar did not file certificates.

(2) The department shall annually certify to the county treasurer the number of births, fetal deaths, deaths, or monthly reports received from the county with the names of the local registrars and the amount due each.

(3) (a) The county treasurer shall pay each local registrar out of the county general fund.

(b) If the local registrar, appointed pursuant to 50-15-104, is employed by the county, the payment under subsection (3)(a) must be made to the county office in which the local registrar is employed.

**History:** En. Sec. 71, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4431; amd. Sec. 1, Ch. 434, L. 2003.

**Cross-References**

Fees to be charged by County Clerk for copies, 7-4-2631.

**50-15-108. Duty to furnish information.** (1) Any person having

knowledge of the fact shall furnish information he possesses about a birth, death, fetal death, marriage, dissolution of marriage, or invalid marriage upon demand of the department.

(2) The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility.

**History:** (1)En. Sec. 75, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4435, R.C.M. 1947; (2)En. Sec. 70, Ch. 197, L. 1967; Sec. 69-4430, R.C.M. 1947; R.C.M. 1947, 69-4430, 69-4435; amd. Sec. 5, Ch. 228, L. 1981.

**50-15-109. Certificates.** (1) All certificates must include information required by the department.

(2) Local registrars shall forward original certificates to the department, file a duplicate copy with the county clerk and recorder, and, unless the certificate is filed electronically, retain a triplicate copy.

(3) Local registrars may not issue certified copies of certificates.

(4) Certificates filed within 1 year after the time prescribed by the department are prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child is prima facie evidence only if the alleged father is the husband of the mother. If the alleged father is not the husband of the mother, data pertaining to the alleged father is not evidence in any proceedings adverse to the alleged father's interests, heirs, next of kin, devisees, legatees, or other successors in interest.

**History:** En. Secs. 51, 52, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4411, 69-4412; amd. Sec. 1, Ch. 149, L. 2005.

#### **Cross-References**

Uniform Parentage Act, Title 40, ch. 6, part 1.

**50-15-110. Repealed.** Sec. 20, Ch. 515, L. 1995.

**History:** En. Sec. 46, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4406.

**50-15-111. Certified copy fee.** (1) The department shall prescribe, by rule, a fee for:

(a) a certified copy of certificates or records;

(b) a search of files or records when a copy is not made;

(c) a copy of information provided for statistical or administrative purposes as allowed by law;

(d) the replacement of a birth certificate subsequent to adoption, legitimation, paternity determination or acknowledgment, or court order;

(e) filing a delayed registration of a vital event;

(f) the amendment of a vital record, after 1 year from the date of filing; and

(g) other services specified by this chapter or by rule.

(2) Fees received under subsection (1) must be deposited in the state special revenue fund to be used by the department for:

(a) the maintenance of indexes to vital records;

(b) the preservation of vital records; and

(c) the administration of the system of vital statistics.

**History:** (1)En. Sec. 47, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4407, R.C.M. 1947; (2)En. Sec. 48, Ch. 197, L. 1967; Sec. 69-4408, R.C.M. 1947; R.C.M. 1947, 69-4407(part), 69-4408; amd. Sec. 6, Ch. 228, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 587, L. 1983; amd. Sec. 6, Ch. 515, L. 1995.

#### **Cross-References**

Fund structure, Title 17, ch. 2.

**50-15-112. Repealed.** Sec. 20, Ch. 515, L. 1995.

**History:** En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; R.C.M. 1947, 69-4404(part); amd. Sec. 1, Ch. 178, L. 1979; amd. Sec. 1, Ch. 118, L. 1989; amd. Sec. 1, Ch. 456, L. 1989; amd. Sec. 1, Ch. 384, L. 1991.

**50-15-113. Repealed.** Sec. 20, Ch. 515, L. 1995.

**History:** En. Secs. 45, 47, Ch. 197, L. 1967; amd. Secs. 50, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4405, 69-4407(part).

**50-15-114. Unlawful acts and penalties.** (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law.

(2) A person shall be fined not more than \$1,000, imprisoned not more than 1 year, or both, if:

(a) he willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment thereof or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, he makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) he willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, he willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(e) he willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than \$25 or more than \$500, imprisoned for not more than 30 days, or both, if:

(a) he knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) he refuses to provide information required by law;

(c) he willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law.

**History:** (1)En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; Sec. 69-4404, R.C.M. 1947; (2)En. Sec. 76, Ch. 197, L. 1967; Sec. 69-4436, R.C.M. 1947; (3)En. Sec. 77, Ch. 197, L. 1967; Sec. 69-4437, R.C.M. 1947; R.C.M. 1947, 69-4404(part), 69-4436, 69-4437; amd. Sec. 1, Ch. 487, L. 1989; amd. Sec. 2, Ch. 384, L. 1991.

#### **Cross-References**

Willfully defined, 1-1-204.

Knowingly defined, 1-1-204, 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

Permit for disposition of body, 50-15-405.

**50-15-115 through 50-15-120 reserved.**

**50-15-121. Copies from system of vital statistics.** (1) Except as provided in subsections (6) and (7), the department and county clerk and recorders

shall, upon receipt of an application, issue a certified copy or copies of a vital record or a part of a vital record to the registrant, the registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may obtain certified copies when the individual demonstrates that the record is needed for the determination or protection of the individual's personal or property rights. The department shall adopt rules to further define those who may obtain copies of vital records filed under this chapter.

(2) All applications, forms, and procedures used in the issuance of certified copies of vital records in the state must be uniform and prepared or approved by the department. All certified copies must contain security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection that there have been these changes to the document.

(3) Each copy issued must show the date of filing. Copies issued from amended records must be marked and must show the effective date of the amendment. Copies issued from delayed records must be marked, must include the date of filing, and must contain a statement of the evidence used to establish the delayed certificate. A copy issued of a certificate of foreign birth must indicate the fact of foreign birth and the date of birth (if known), must show the actual place of birth, and must state that the certificate is not proof of United States citizenship for the adoptive child.

(4) A certified copy or other copy of a death certificate must be issued upon request of any person.

(5) A certified copy of a vital record or any part of a vital record, issued in accordance with subsections (1) through (3), must be considered for all purposes the same as the original. The admissibility of a certificate or vital record filed more than 1 year after the event or after a corrective record is filed, of a vital record that has been amended, or of a certificate of foreign birth must be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(6) This section may not be construed to permit disclosure of confidential information contained in a birth certificate for medical or health use or of information for statistical purposes only contained in a certificate of marriage or report of dissolution of marriage unless disclosure is specifically authorized by law for statistical or research purposes or unless ordered by a court.

(7) (a) When the department receives information that a certificate may have been registered through fraud or misrepresentation, it shall withhold issuance of the certificate or any copy of that certificate pending issuance of an order after an administrative contested case hearing before the department to determine whether fraud or misrepresentation has occurred.

(b) The hearing provided for in subsection (7)(a) must be conducted pursuant to the Montana Administrative Procedure Act. In the proceeding, the department shall notify the registrant or the registrant's authorized representative and provide the registrant or the representative the opportunity to be heard.

(c) If, upon conclusion of the hearing, fraud or misrepresentation is not found, the department may issue the certificate or copies of the certificate in question.

(d) If, upon conclusion of the hearing, fraud or misrepresentation is found, the department may not register the certificate unless ordered to do so by a court.

(e) An affected person may appeal the department's decision to the district court as provided in Title 2, chapter 4, part 7.

(8) A person may not prepare or issue any certificate that purports to be an original or certified copy, except as authorized in this chapter or rules adopted to implement this chapter.

(9) The department may, by rule, prescribe details for the hearing and

appellate procedures contained in this section.

**History:** En. Sec. 7, Ch. 515, L. 1995; amd. Sec. 1, Ch. 118, L. 1997; amd. Sec. 13, Ch. 416, L. 1999.

**Cross-References**

- Right to know, Art. II, sec. 9, Mont. Const.
- Right of privacy, Art. II, sec. 10, Mont. Const.
- Adoption and publication of rules, Title 2, ch. 4, part 3.
- Contested case procedure, Title 2, ch. 4, part 6.
- Uniform Parentage Act, Title 40, ch. 6, part 1.
- Perjury and other falsification in official matters, Title 45, ch. 7, part 2.
- Confidentiality of health care information, Title 50, ch. 16, part 5.

**50-15-122. Disclosure of information from vital records or vital reports -- rules.** (1) It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy, a person may not permit inspection of or disclose information contained in vital records or in vital reports or copy or issue a copy of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital records.

(2) The execution of a research agreement that protects the confidentiality of the information provided to a researcher in response to a written request is required for disclosure of information that may identify a person or institution named in a vital record or report. This agreement must be made in compliance with this chapter or rules adopted to implement this chapter. Each agreement must prohibit the release by the researcher of any information that might identify a person or institution, other than releases that may be provided for in the agreement.

(3) This section does not prohibit the release of information or data that does not identify a person or institution named in a vital record or report.

(4) A challenge to a decision of a custodian of vital records to refuse disclosing information from records, as prescribed by this section and rules issued to implement this section, must be made before the department in the case of a county clerk and recorder and to a district court in the case of the department. A challenge before the department must be in the form of a contested case pursuant to the Montana Administrative Procedure Act. An appeal of the department's decision to district court must be made by filing an original action pursuant to the Montana Rules of Civil Procedure.

(5) (a) Immediately upon the filing of a record with the department, the fact that a birth or death has occurred may be released to the public without restriction. Notwithstanding the restrictions provided in 50-15-121, complete birth records may be released to the public 30 years after the date of birth. The department shall adopt rules that provide for the continued safekeeping of the records.

(b) Upon the filing of a record of marriage with the clerk of the district court, information that may be released to the public without restriction is specifically limited to:

- (i) the names of the parties, the age of the parties, and their place of birth;
- (ii) the date and place of the marriage;
- (iii) the names and addresses of the parents of the parties;
- (iv) the name of the officiant; and
- (v) the type of ceremony.

(c) Any other information contained in a marriage license application that is not authorized to be disclosed under subsection (5)(b) is considered confidential and is subject to the disclosure limitations and penalties provided in 50-15-114.

(d) Notwithstanding the restrictions provided in 50-15-121 and this section, the information contained in a marriage license and marriage certificate may be released to the public 30 years after the date of the marriage.

(e) Upon the filing of a record of a dissolution of marriage with the clerk of the district court, that record may be released to the public without restriction unless designated confidential by the court. A record of dissolution of marriage designated confidential by the court may be provided to a federal, state, or local government agency upon request when the record is used solely in the conduct of the agency's official duties.

(6) The department may provide the national center for health statistics or a successor agency with copies of records, reports, or data from the system of vital statistics that are required for national statistics. The department shall enter into an agreement with the center, indicating the scope of disclosure of information, as required by this chapter or rules implementing this chapter, concerning the use of records, reports, or data for statistical or research purposes. The agreement must set forth the financial support to be provided by the center for the collection, processing, and transmission of the records, reports, or data. Upon written request of the center, the department may approve, by amendment to the agreement, additional statistical or research uses of the records, reports, or data supplied under the agreement.

(7) Federal, state, and local governmental agencies may, subject to this chapter and rules implementing this chapter, upon request, be furnished copies of records or data from the system of vital statistics if the copies or data is used solely in the conduct of the agency's official duties. The department shall, upon request by a licensed adoption agency, provide a birth certificate and related records for purposes of adoption, termination of parental rights, custody actions, paternity actions, child support actions, social security eligibility determinations, or Indian tribal enrollment determinations.

(8) Subject to this chapter and rules implementing this chapter, the department may, by agreement, transmit copies of records and other reports required to be compiled by this chapter to offices of vital statistics outside this state when the records or reports concern residents of those jurisdictions or persons born in those jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may be used, and the agreement must provide instructions concerning proper retention, confidentiality requirements, and disposition of the copies. Copies received by the department from offices of vital statistics in other states must be handled as provided for in this subsection.

**History:** En. Sec. 8, Ch. 515, L. 1995; amd. Sec. 14, Ch. 416, L. 1999; amd. Sec. 3, Ch. 91, L. 2001.

#### **Cross-References**

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

**50-15-123. Preservation of vital records.** To preserve vital records, the department may prepare typewritten, photographic, electronic, or other reproductions of certificates, vital records, or reports kept by the department. The reproductions when certified and approved by the department must be accepted as the original records. The department shall maintain original vital records intact and in their original form on file at the department.

**History:** En. Sec. 9, Ch. 515, L. 1995.

**50-15-124. Content of certificates, records, and reports.** (1) In order

to promote and maintain nationwide uniformity in the system of vital statistics, the department, in the preparation of the forms of certificates, vital records, or reports required by this chapter or rules adopted under this chapter, may include the elements in forms and the forms recommended by the national center for health statistics for implementing a system of vital statistics.

(2) Each certificate, record, report, and other document required by this chapter must be prepared in a format approved by the department. All vital records must contain the date of filing.

(3) Information required in certificates, forms, records, or reports authorized by this chapter may be filed, verified, registered, and stored by photographic, electronic, or other means as prescribed by the department.

**History:** En. Sec. 10, Ch. 515, L. 1995.

## Part 2

### Birth

#### Part Cross-References

County Clerk to record births, 7-4-2613, 7-4-2619.

**50-15-201. Repealed.** Sec. 20, Ch. 515, L. 1995.

**History:** En. Sec. 53, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4413.

**50-15-202. Unattended birth.** (1) If a birth is unattended and neither parent is able to prepare a birth certificate, the local registrar shall:

- (a) secure information from any person having knowledge of the birth;
- (b) prepare and file a birth certificate;

(c) within the time prescribed by the department, file a supplementary report furnishing information omitted from the original birth certificate if additional information is received.

(2) Birth certificates completed by a supplementary report shall not be considered "delayed" or "altered".

**History:** En. Sec. 54, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4414.

**50-15-203. Child of unknown parentage.** (1) A person who assumes custody of a child of unknown parentage shall immediately file with the local registrar a written report which shall constitute a birth certificate.

(2) The report shall contain:

- (a) the date and place of finding or assumption of custody;
- (b) sex, color or race, and approximate age of the child;

(c) name and address of the person or institution with whom the child has been placed for care;

(d) name given to the child by the finder or person who assumes custody.

(3) The place where the child was found or custody assumed shall be the place of birth.

(4) The date of birth shall be determined by approximation.

(5) If the child is identified and a regular birth certificate is found or obtained, the report shall be sealed and may be opened only by court order.

**History:** En. Sec. 55, Ch. 197, L. 1967; R.C.M. 1947, 69-4415.

**50-15-204. Delayed or amended birth certificate.** (1) (a) If a certificate of birth for a person born in this state has not been filed within 1 year of the birth, a delayed certificate of birth may be filed in accordance with rules adopted by the department. A delayed certificate of birth may not be registered until the requirements regarding facts pertaining to the delayed certificate, as specified by rule, have been met.

(b) A birth of a person in this state whose name has not been registered within 1 year after the birth must be registered on a delayed certificate of birth form. The delayed certificate must contain the date of registration and a summary statement of the information submitted to explain the delayed registration.

(c) A delayed certificate of birth may not be registered for a deceased person.

(d) The department may not register a delayed certificate of birth if an applicant for a delayed certificate of birth does not submit the minimum documentation required by rule for delayed registration or if the department has cause to question the validity or adequacy of the applicant's sworn statement or the documentation provided to establish the facts and the deficiencies are not corrected. The department shall advise the applicant of the reasons for the refusal to register the delayed certificate of birth. The department shall advise the applicant of the right to seek an order from a court of competent jurisdiction to obtain registration of the delayed certificate of birth as provided in 50-15-222.

(e) The department may, by rule, provide for the dismissal of an application for registration of a delayed certificate of birth that is not actively pursued.

(2) The department or its designee may amend a birth, death, or fetal death certificate upon submitting proof as required by the department.

(3) The department shall adopt rules establishing the circumstances under which vital records may be corrected or amended and the procedure to correct or amend those records.

(4) If birth certificates are altered by the department after filing, the certificate must show the date of the alteration and the mark "altered". A summary statement of the evidence in support of the alteration must be endorsed on the certificate.

(5) The probative value of a "delayed" or "altered" certificate of birth is determined by the judicial or administrative body before whom the certificate is offered as evidence.

**History:** (1), (2)En. Sec. 56, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4416, R.C.M. 1947; (3)En. Sec. 57, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4417, R.C.M. 1947; (4)En. Sec. 59, Ch. 197, L. 1967; Sec. 69-4419, R.C.M. 1947; R.C.M. 1947, 69-4416, 69-4417, 69-4419; amd. Sec. 12, Ch. 515, L. 1995.

#### **Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

Proof of contents of public record, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

**50-15-205. Repealed.** Sec. 20, Ch. 515, L. 1995.

**History:** En. Sec. 58, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4418.

**50-15-206. Repealed.** Sec. 20, Ch. 515, L. 1995.

**History:** En. Sec. 62, Ch. 197, L. 1967; R.C.M. 1947, 69-4422; amd. Sec. 2, Ch. 178, L. 1979; amd. Sec. 67, Ch. 609, L. 1987; amd. Sec. 2, Ch. 118, L. 1989.

**50-15-207. New birth certificate upon proof of legitimation.** Upon receipt of proof of legitimation, the department shall prepare a new birth certificate in the new name of the person legitimated. Evidence upon which the new certificate

is based and the original birth certificate shall be sealed and may be opened only upon court order. In case of legitimation, the department shall substitute records in the way provided in 50-15-304(2) for records of adoption.

**History:** En. Sec. 63, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4423.

**50-15-208. (Effective January 1, 2008) Birth registration for stillbirth -- requirements.** (1) The department shall establish a certificate of birth resulting in a stillbirth on a form adopted by the department when the birth results in a stillbirth. Upon request by a parent, a certificate of birth resulting in a stillbirth must be filed in addition to the fetal death certificate provided for in 50-15-403. Upon request, a certificate of birth resulting in a stillbirth must be provided to a parent.

(2) A certificate of birth resulting in a stillbirth may be filed by:

(a) the physician, the physician's designee, or the direct-entry midwife licensed pursuant to Title 37, chapter 27, in attendance at a stillbirth;

(b) the person in attendance at a stillbirth;

(c) the father or the mother;

(d) in the absence of the father and the inability of the mother, the person in charge of the premises where the stillbirth occurred; or

(e) the local registrar if 50-15-202 applies.

(3) The department shall adopt rules providing for:

(a) the time by which the certificate of birth resulting in a stillbirth must be filed after the stillbirth;

(b) the evidence required to establish the facts of a stillbirth; and

(c) the information required on a certificate of birth resulting in a stillbirth.

**History:** En. Sec. 1, Ch. 474, L. 2007.

#### **Compiler's Comments**

*Effective Date:* Section 4, Ch. 474, L. 2007, provided that this section is effective January 1, 2008.

**50-15-209 reserved.**

**50-15-210. Paternity acknowledgment.** (1) Upon the birth of a child to a mother unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in which the birth occurs or the midwife who attends the birth shall:

(a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment of paternity pursuant to 40-6-105;

(b) provide written information, furnished by the department of public health and human services, describing the rights and responsibilities of paternity, the benefits of having a child's paternity established, and the child's right to receive support; and

(c) forward a copy of an acknowledgment signed by the mother and the father to the department.

(2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of obtaining an acknowledgment. The department of public health and human services shall establish the amount of reasonable costs, not to exceed the amount for which federal financial participation is available, and the procedures for claiming reimbursement.

(3) Hospitals, institutions, and midwives shall use forms prescribed by the department of public health and human services for the acknowledgment of paternity.

(4) If the child is born in this state, the department of public health and human services shall file an acknowledgment received under 40-6-105 or this section with the child's certificate of birth. If the child was not born in this state or if an acknowledgment received under 40-6-105 or this section cannot be filed with the child's certificate of birth, the department shall file the acknowledgment in an acknowledgment registry created and maintained for that purpose.

**History:** En. Sec. 2, Ch. 523, L. 1993; amd. Sec. 11, Ch. 70, L. 1995; amd. Sec. 91, Ch. 552, L. 1997.

#### **Cross-References**

Establishment of paternity -- jurisdiction and venue, 40-5-231.  
Establishment of paternity -- notice of paternity determination, 40-5-232.  
Establishment of paternity -- administrative hearing, 40-5-233.  
Paternity blood tests, 40-5-234.  
Effect of order establishing paternity, 40-5-235.  
Referral of paternity issue to District Court, 40-5-236.  
District Court paternity proceedings, 40-5-237.

#### **50-15-211 through 50-15-220 reserved.**

**50-15-221. Birth registration.** (1) A certificate of birth must be filed as specified in this section with the department for each live birth that occurs in this state. Unless otherwise directed by the department, the certificate must be filed within the time prescribed by the department by rule after the birth. The birth certificate must be registered if it has been completed and filed in accordance with this section and rules adopted to implement this section.

(2) If a birth occurs in a health care facility, the birth certificate must be completed and filed by the attending physician or the physician's designee.

(3) If a birth occurs in or en route to a health care facility, the person in charge of the facility or the person's authorized designee shall obtain the personal data concerning the newborn child, prepare the certificate, and certify that the child was born alive at the place, at the time, and on the date stated. Certification may be by signature or by an approved electronic process. The person referenced in this subsection shall file the certificate as directed in subsection (1). The physician or other person in attendance at the birth shall provide the medical information required by the certificate within 72 hours after the birth.

(4) The department shall, by rule, determine what evidence may be required to establish the facts of birth if the birth occurs at a place other than a health care facility. In accordance with rules promulgated by the department, the certificate must be prepared and filed by one of the following persons in the indicated order of priority in subsections (4)(a) through (4)(e):

(a) the physician or the physician's designee or a midwife licensed pursuant to Title 37, chapter 27, in attendance at or immediately after the birth;

(b) a person in attendance at or immediately after the birth;

(c) the father or the mother;

(d) in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or

(e) the local registrar, if 50-15-202 applies.

(5) When a birth occurs on a moving conveyance within the United States and the newborn child is first removed from the conveyance in this state, the birth must be registered in this state by a person listed in subsection (4) and the place where the child is first removed from the conveyance is considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth must be registered by a person listed in

subsection (4) in this state, but the certificate must indicate the actual place of birth insofar as the place can be determined.

(6) For the purposes of birth registration, the woman who gives birth to the child is considered to be the mother, unless otherwise provided by state law or determined by a court of competent jurisdiction prior to the filing of the birth certificate. Information about the father must be entered as provided in subsection (7).

(7) (a) If the mother was married at the time of conception or birth or between conception and birth, the name of the husband must be entered on the certificate as the father of the child, unless:

(i) other paternity has been determined by a court of competent jurisdiction;

(ii) the mother and the husband execute joint or separate affidavits attesting that the husband is not the father of the child. Affidavits must be notarized, and signatures of the mother and of the husband must be individually notarized on any joint affidavit. If affidavits are filed, information about the father must be omitted from the certificate.

(iii) the mother executes an affidavit attesting that the husband is not the father and names a putative father, the putative father executes an affidavit attesting paternity, and the husband executes an affidavit denying paternity. Affidavits may be joint or individual or a combination of joint and individual affidavits. Each signature on an affidavit must be individually notarized. If all affidavits are filed, the putative father must be shown as the father on the certificate.

(b) If the mother was not married at the time of conception or birth or between conception and birth, the name of the father may not be entered on the certificate without an affidavit of paternity signed by the mother and the person to be named as the father.

(c) If paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child must be entered on the certificate of birth in accordance with the finding and order of the court.

(d) If the father is not named on the certificate of birth, information about the father may not be entered on the certificate.

(e) Affidavits required under this subsection (7) must be filed with the department.

(8) Either parent of the child, or another informant, shall verify the accuracy of the personal data to be entered on the certificate in order to permit the filing of the certificate within the time prescribed in subsection (1).

(9) A certificate of birth filed after the time prescribed in subsection (1) but within 1 year from the date of birth must be registered by the natural parents, the adoptive parents, or the person having legal custody of the child, on the standard form of live birth certificate in the manner prescribed in this section and by rule. The certificate may not be designated as delayed. The department may require additional evidence in support of the facts of birth.

**History: En. Sec. 11, Ch. 515, L. 1995.**

#### **Cross-References**

Adoption of publication of rules, Title 2, ch. 4, part 3.

**50-15-222. Judicial birth facts procedure.** (1) If the department declines to register a certificate of birth under the provisions of 50-15-204 or 50-15-221, a petition signed and sworn to by the petitioner may be filed with the district court, seeking an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

(2) The petition must be made on a form adopted or approved by the

department and must allege:

(a) that the person for whom a certificate of birth is sought was born in this state;

(b) that a certificate of birth of the person cannot be found at the department or at the office of the clerk and recorder;

(c) that diligent efforts by the petitioner have failed to obtain the evidence to establish entitlement to a certificate of birth required in accordance with this chapter and rules adopted pursuant to this chapter;

(d) that the department has declined to file a certificate of birth; and

(e) other allegations as may be required by law.

(3) The petition must be accompanied by all documentary evidence that was submitted to the department in support of the applicant's registration and by a statement of the reasons why the department declined to register the certificate of birth.

(4) The district court shall fix a time and place for hearing the petition and shall give the department 30 days' notice of the hearing. The department through its authorized representative shall appear and testify as a witness in the proceeding if determined necessary by the court.

(5) If the district court finds, from the evidence presented, that the person for whom a certificate of birth is sought was born in this state, it shall make findings as to the date and place of birth, parentage, and other relevant facts and shall issue an order establishing the certificate of birth. The order must include the findings and birth data to be registered, a description of the evidence presented, and the date of the court's action.

(6) The clerk of the court shall forward the order referred to in subsection (5) to the department not later than the 10th calendar day of the month following the month in which it was entered. The order must be registered by the department and constitutes the court-ordered certificate of birth.

**History: En. Sec. 13, Ch. 515, L. 1995.**

**50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity.** (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court, court of appropriate jurisdiction in another state, or administrative agency in this state or another state with appropriate jurisdiction has determined the paternity of the person and information necessary to identify the original certificate of birth is provided; or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment are only subject to inspection, except upon order of a district court, as provided by rule, as provided in Title 42, chapter 6, part 1, or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except upon order of a district court or as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established by the department, the department shall direct that all copies of the original certificate of birth in the custody of any other custodian of vital records in this state be forwarded immediately to the department.

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person who was born in a foreign country and adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section.

**History:** En. Sec. 14, Ch. 515, L. 1995; amd. Sec. 169, Ch. 480, L. 1997; amd. Sec. 92, Ch. 552, L. 1997; amd. Sec. 2, Ch. 149, L. 2005.

**Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

### **Part 3**

#### **Marriage and Adoption**

**Part Cross-References**

County Clerk to maintain index of marriage certificates, 7-4-2619.

Marriage license requirements, Title 40, ch. 1, part 2.  
Declaration of marriage without solemnization, 40-1-311.  
Registration of marriages, 40-1-321.  
Certificates of marriage and records of certificates as evidence of marriage,  
40-1-322.  
Proof of solemnized marriage when no record, 40-1-323.

**50-15-301. Marriage certificates.** Before the 10th day of each month, each clerk of a district court shall report marriage certificates filed during the preceding calendar month to the department. Reports must be on forms and contain information prescribed by the department.

**History:** En. Sec. 72, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4432; amd. Sec. 7, Ch. 228, L. 1981; amd. Sec. 14, Ch. 13, Sp. L. August 2002; amd. Sec. 6, Ch. 114, L. 2005.

**Cross-References**

Marriage licenses, Title 40, ch. 1, part 2.

**50-15-302. Clerk to report decree of dissolution or declaration of invalidity of marriage.** (1) At the same time a decree of dissolution or declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include the:

- (a) name, age, birthplace, residence, race or color, and occupation of each party;
- (b) number, date, and place of any previous marriage of either party;
- (c) number of children under 18 years of age in custody of either party and residing with him;
- (d) grounds for the action;
- (e) number of the cause of action;
- (f) county and judicial district where the action is filed; and
- (g) date of judgment and the party which was granted it.

**History:** En. Sec. 74, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4434; amd. Sec. 4, Ch. 37, L. 1979.

**Cross-References**

Declaration of invalidity, Title 40, ch. 1, part 4.  
Dissolution of marriage, Title 40, ch. 4, part 1.

**50-15-303. Certificates of dissolution of marriage or declaration of invalidity of marriage.** Before the 10th day of each month, the clerk of the court shall prepare and forward to the department a certificate for each decree of dissolution of marriage or declaration of invalidity of marriage that became final during the preceding calendar month. Certificates must be on forms prescribed by the department.

**History:** En. Sec. 73, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4433; amd. Sec. 5, Ch. 37, L. 1979; amd. Sec. 8, Ch. 228, L. 1981; amd. Sec. 15, Ch. 515, L. 1995.

**Cross-References**

Declaration of invalidity, Title 40, ch. 1, part 4.  
Termination of marriage, Title 40, ch. 4.

**50-15-304. Substitute birth certificate for person adopted.** (1) The procedure for issuing a substitute birth certificate for a person born in Montana and

adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of another state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and the sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of public health and human services" substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute birth certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in their files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only as provided in 50-15-223(2).

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original birth certificate to its place in its files and notify the local registrar and county clerk and recorder.

**History:** (1)En. Sec. 60, Ch. 197, L. 1967; amd. Sec. 52, Ch. 349, L. 1974; amd. Sec. 1, Ch. 162, L. 1977; Sec. 69-4420, R.C.M. 1947; (2), (3)En. Sec. 61, Ch. 197, L. 1967; amd. Sec. 53, Ch. 349, L. 1974; Sec. 69-4421, R.C.M. 1947; R.C.M. 1947, 69-4420, 69-4421; amd. Sec. 9, Ch. 228, L. 1981; amd. Sec. 105, Ch. 418, L. 1995; amd. Sec. 282, Ch. 546, L. 1995; amd. Sec. 3, Ch. 149, L. 2005.

#### **Cross-References**

Office of County Clerk, Title 7, ch. 4, part 26.

#### **50-15-305 through 50-15-310 reserved.**

**50-15-311. Certificates of adoption or annulment of adoption -- report of amended or annulled adoption decree.** (1) For each adoption decreed by a district court, the decree must require the clerk of the court to prepare a certificate of adoption on a form prescribed and furnished by the department. The certificate of adoption must include facts that are necessary to locate and identify the date and place of birth of the adopted person or, in the case of a person who was born in a foreign country, evidence from sources determined to be reliable by the district court as to the date and place of birth of the person. The certificate of adoption must also contain information necessary to establish a new certificate of birth for the person adopted and must identify the order of adoption. The clerk of the court shall certify the certificate of adoption.

(2) Information necessary for the clerk of the court to prepare the certificate of adoption must be furnished, by each petitioner for adoption on a form prescribed by the department, at the time that the petition for adoption is filed. A person or agency having knowledge of facts, as described in subsection (1), may be required by the court to supply the court with information necessary to complete the certificate of adoption. The district court may make the provision of the information

for the preparation of a certificate of adoption a prerequisite to the issuance of a final decree.

(3) Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a report. The report must include the facts that are necessary to identify the original certificate of adoption and the facts amended in the adoption decree that are necessary to properly amend the birth record.

(4) No later than the 16th day of each calendar month or more frequently, as directed by the department, the clerk of the court shall forward to the department certificates of adoption, reports of annulment of adoption, and amendments of decrees of adoption that were entered in the preceding month, together with any related reports required by the department.

(5) When the department receives a certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption for a person born outside this state, the department shall forward the certificate, report, or amendment to the state registrar or the agency charged with registering vital statistics in the state where the person was born.

(6) If the birth of an adopted child occurred in a foreign country and the adopted child was not a citizen of the United States at the time of birth, the department shall prepare a "Certificate of Foreign Birth" as required by 50-15-223. If the adopted child was born in Canada, the department shall send a copy of the certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption to the appropriate registration authority in Canada.

(7) If the adopted child born in a foreign country was a citizen of the United States at the time of birth, the department may not prepare a "Certificate of Foreign Birth" and shall notify the adoptive parents of the procedures for obtaining a revised certificate of birth for their child through the United States department of state.

(8) A deceased person cannot be adopted.

**History:** En. Sec. 16, Ch. 515, L. 1995.

## Part 4

### Death

#### Part Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

**50-15-401. Repealed.** Sec. 3, Ch. 118, L. 1997.

**History:** En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(1); amd. Sec. 1, Ch. 502, L. 1989.

#### **50-15-402. Copy to be forwarded to deceased's county of residence.**

If a state resident dies outside the county of his residence, the clerk and recorder shall send a certified copy of the death certificate to the clerk and recorder of the deceased's county of residence. The copy shall be considered the same as the original.

**History:** En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(2).

#### Cross-References

Residence -- rules for determining, 1-1-215.

Office of County Clerk, Title 7, ch. 4, part 26.

#### **50-15-403. Preparation and filing of death or fetal death certificate.**

(1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of

gestation at death shall obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician, the certifying advanced practice registered nurse, or the coroner having jurisdiction for medical certification of the cause of death. The medical certification must be completed by the physician, the advanced practice registered nurse, or the coroner within the timeframe established by the department by rule. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician, the advanced practice registered nurse, or the coroner and shall, within the time that the department may prescribe by rule, file the death or fetal death certificate with the local registrar in the registration area where the death occurred or, if the place of death is unknown, where the dead body was discovered.

(3) If a dead body is found in this state but the place of death is unknown, the place where the body is found must be shown as the place of death on the death certificate. If the date of death is unknown, then the approximate date must be entered on the certificate. If the date cannot be approximated, the date that the body was found must be entered as the date of death, and the certificate must indicate that fact.

(4) When a death occurs in a moving vehicle, as defined in 45-2-101, in the United States and the body is first removed from the vehicle in this state, the death must be registered in this state and the place where the body is first removed is considered the place of death. When a death occurs in a moving vehicle while in international air space or in a foreign country or its air space and the body is first removed from the vehicle in this state, the death must be registered in this state, but the actual place of death, insofar as it can be determined, must be entered on the death certificate.

**History:** En. Sec. 65, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4425; amd. Sec. 28, Ch. 7, L. 1979; amd. Sec. 3, Ch. 287, L. 1993; amd. Sec. 17, Ch. 515, L. 1995; amd. Sec. 2, Ch. 118, L. 1997; amd. Sec. 93, Ch. 552, L. 1997; amd. Sec. 2, Ch. 27, L. 1999; amd. Sec. 2, Ch. 258, L. 2001.

**50-15-404. Preparation of certificate when death not medically attended.** (1) If the death or fetal death occurred without medical attendance or the physician or advanced practice registered nurse last in attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of information received from persons having knowledge of the facts.

(2) If it appears the death or fetal death resulted from other than natural causes, the local registrar shall notify the coroner and the state medical examiner for investigation and certification.

**History:** En. Sec. 66, Ch. 197, L. 1967; R.C.M. 1947, 66-4426; amd. Sec. 29, Ch. 7, L. 1979; amd. Sec. 3, Ch. 258, L. 2001.

**50-15-405. Authorization for removal of body from place of death.** (1) Except as provided in subsection (2), a dead body may be removed from the place of death only upon the written authorization or oral authorization, which must be reduced to writing within 24 hours, of the physician in attendance at death or the physician's designee, the advanced practice registered nurse in attendance at death, the coroner having jurisdiction, or a mortician licensed under 37-19-302.

(2) If the death requires inquiry under 46-4-122, the written authorization may only be granted by the coroner having jurisdiction or the coroner's designee or by the state medical examiner if the coroner fails to act. However, when the only

reason for inquiry under 46-4-122 is that the body is to be cremated, the coroner may grant oral authorization for cremation of the body, which must be reduced to writing as specified under subsection (1) by the coroner.

(3) The written authorization to move a dead body or, when applicable, to cremate a dead body must be made in quadruplicate on a form provided by the department. The person in charge of disposition of the dead body, the coroner having jurisdiction, and the local registrar must each be provided with and retain a copy of the authorization. A fourth copy may accompany the body to final disposition, as necessary.

(4) A written authorization issued under this section permits removal, transportation, and final disposition of a dead body.

**History:** En. Secs. 67, 68, Ch. 197, L. 1967; R.C.M. 1947, 69-4427, 69-4428; amd. Sec. 30, Ch. 7, L. 1979; amd. Sec. 4, Ch. 287, L. 1993; amd. Sec. 18, Ch. 515, L. 1995; amd. Sec. 4, Ch. 258, L. 2001.

**50-15-406. Body brought into state for disposition.** If a body is brought into the state for burial or other disposition accompanied by a permit, the local registrar shall endorse the permit and keep a record of it.

**History:** En. Sec. 69, Ch. 197, L. 1967; R.C.M. 1947, 69-4429.

**50-15-407. Disinterment permit.** (1) A body, after burial, may be disinterred for reinterment or transport after a permit is obtained from the local registrar of the jurisdiction where the body is interred.

(2) Administration of this section is in the department, which shall adopt rules accordingly. The rules shall provide that, as a precondition to the permit, the applicant make a showing of reasonable cause for the disinterment.

(3) This section provides a supplementary procedure for disinterment of a dead body and is not amendatory to or repealing of any other act.

**History:** En. Sec. 1, Ch. 481, L. 1973; amd. Sec. 19, Ch. 187, L. 1977; R.C.M. 1947, 69-4428.1.

#### **Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

Human Skeletal Remains and Burial Site Protection Act, Title 22, ch. 3, part 8.

Penalty for disturbing corpses, 44-3-404.

Authority to order exhumation for autopsy, 46-4-103.

Power of County Coroner to order exhumation, 46-4-110.

**50-15-408 reserved.**

**50-15-409. List of deaths to be made by department -- copy to county clerk.** The department shall prepare on or before the fifth of January, April, July, and October of each year a list of all deaths, together with the date of the death, reported to it during the period and shall send a copy of the list of deaths to the county clerk of each county in the state.

**History:** En. Sec. 2, Ch. 186, L. 1935; re-en. Sec. 10400.50, R.C.M. 1935; R.C.M. 1947, 91-4458; amd. Sec. 175, Ch. 418, L. 1995; amd. Sec. 521, Ch. 546, L. 1995; Sec. 72-16-217, MCA 1999; redes. 50-15-409 by Sec. 35, Ch. 9, Sp. L. May 2000.

**50-15-410 reserved.**

**50-15-411. Sudden infant death syndrome -- findings -- definition.**

(1) As used in 50-15-412 and this section, "sudden infant death syndrome" means the sudden death of an infant under 1 year of age that remains unexplained after a thorough case investigation, including the performance of a complete autopsy, an

examination of the death scene, and a review of the clinical history.

(2) The legislature recognizes that research has shown that sudden infant death syndrome is a leading cause of death among children from 1 month to 1 year of age. The legislature finds and declares that sudden infant death syndrome is a serious problem within Montana and that public interest is served by research and study of sudden infant death syndrome and its potential causes and indications.

**History: En. Sec. 1, Ch. 351, L. 1997.**

**50-15-412. Cause of death -- sudden infant death syndrome.** When the coroner's findings are consistent with sudden infant death syndrome, the coroner may state on the death certificate that sudden infant death syndrome was the cause of death.

**History: En. Sec. 2, Ch. 351, L. 1997.**

**Cross-References**

Office of County Coroner, Title 7, ch. 4, part 29.

Investigation of death -- autopsy, Title 46, ch. 4, part 1.

Cadavers and autopsies, Title 50, ch. 21, part 1.

**TITLE 50  
HEALTH AND SAFETY**

**CHAPTER 16**

**HEALTH CARE INFORMATION**

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50-16-102. Information on infant morbidity and mortality.

**Part 2 -- Professional Review Committees**

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50-16-202. Committees to have access to information.

50-16-203. Committee health care information and proceedings confidential and privileged.

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(Repealed)**

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(Repealed)**

**Part 5 -- Uniform Health Care Information**

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- 50-16-504. Definitions.
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- 50-16-512. Content and dissemination of notice.
- 50-16-513. Retention of record.
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- 50-16-521. Health care representatives.
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- 50-16-525. Disclosure by health care provider.
- 50-16-526. Patient authorization to health care provider for disclosure.
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- 50-16-535. When health care information available by compulsory process.
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- 50-16-540. Reasonable fees allowed.
- 50-16-541. Requirements and procedures for patient's examination and copying.
- 50-16-542. Denial of examination and copying.
- 50-16-543. Request for correction or amendment.
- 50-16-544. Procedure for adding correction, amendment, or statement of disagreement.
- 50-16-545. Dissemination of corrected or amended information or statement of disagreement.
- 50-16-546 through 50-16-550 reserved.
- 50-16-551. Criminal penalty.
- 50-16-552. Civil enforcement.
- 50-16-553. Civil remedies.

**Part 6 -- Government Health Care Information**

- 50-16-601. Short title.
- 50-16-602. Definitions.
- 50-16-603. Confidentiality of health care information.
- 50-16-604. Secondary release of health care information.
- 50-16-605. Judicial, legislative, and administrative proceedings -- testimony.
- 50-16-606. Correlation with Uniform Health Care Information Act.

50-16-607 through 50-16-610 reserved.  
50-16-611. Penalty.

### **Part 7 -- Report of Exposure to Infectious Disease**

50-16-701. Definitions.  
50-16-702. Notification of exposure to infectious disease -- report of exposure to disease.  
50-16-703. Notification of precautions after exposure to infectious disease.  
50-16-704. Confidentiality -- penalty for violation -- immunity from liability.  
50-16-705. Rulemaking authority.  
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50-16-805. Disclosure of information for workers' compensation and occupational disease claims and law enforcement purposes.  
50-16-806 through 50-16-810 reserved.  
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50-16-1001. Short title.  
50-16-1002. Statement of purpose.  
50-16-1003. Definitions.  
50-16-1004. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases.  
50-16-1005 and 50-16-1006 reserved.  
50-16-1007. Testing -- counseling -- informed consent -- penalty.  
50-16-1008. Testing of donors of organs, tissues, and semen required -- penalty.  
50-16-1009. Confidentiality of records -- notification of contacts -- penalty

for unlawful disclosure.  
50-16-1010 through 50-16-1012 reserved.  
50-16-1013. Civil remedy.

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#### **Chapter Cross-References**

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.  
Right of privacy, Art. II, sec. 10, Mont. Const.  
Duty to report cases of communicable disease, 37-2-301.  
Gunshot or stab wounds to be reported, 37-2-302.  
Immunity from liability, 37-2-303.  
Report to Department of Justice by physician, 37-2-311.  
Physician's immunity from liability, 37-2-312.

## **Part 1**

### **General Provisions**

**50-16-101. Public officials and corporations to furnish information on request.** On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of public health and human services.

**History:** En. Sec. 14, Ch. 197, L. 1967; R.C.M. 1947, 69-4114; amd. Sec. 107, Ch. 418, L. 1995; amd. Sec. 284, Ch. 546, L. 1995.

**50-16-102. Information on infant morbidity and mortality.** (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of public health and human services, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an inhospital staff committee.

(2) A person who furnishes information under subsection (1) is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of a person whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or the person's legal representative, is prejudicial error resulting in a mistrial.

**History:** En. Sec. 15, Ch. 197, L. 1967; R.C.M. 1947, 69-4115; amd. Sec. 108, Ch. 418, L. 1995; amd. Sec. 285, Ch. 546, L. 1995.

## Part 2

### Professional Review Committees

**50-16-201. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with quality assessment or improvement activities, including the professional training, supervision, or discipline of a medical practitioner by a health care facility.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident reports" or "occurrence reports" means a written business record of a health care facility, created in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, for the purpose of ensuring a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee.

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202 or licensed as a physician assistant pursuant to 37-20-203.

**History:** En. Sec. 4, Ch. 104, L. 1969; R.C.M. 1947, 69-6304; amd. Sec. 1, Ch. 359, L. 2001; amd. Sec. 5, Ch. 396, L. 2003; amd. Sec. 124, Ch. 467, L. 2005; amd. Sec. 25, Ch. 519, L. 2005.

**50-16-202. Committees to have access to information.** It is in the interest of public health and patient medical care that health care facility committees have access to the records and other health care information relating to the condition and treatment of patients in the health care facility to study and evaluate for the purpose of evaluating matters relating to the care and treatment of patients for research purposes and for the purpose of reducing morbidity or mortality and obtaining statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries. To carry out these purposes, any health care facility and its agents and employees may provide medical records or other health care information relating to the condition and treatment of any patient in the health care facility to any utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of the health care facility.

**History:** En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part); amd. Sec. 2, Ch. 359, L. 2001.

**50-16-203. Committee health care information and proceedings confidential and privileged.** All records and health care information referred to in 50-16-202 are confidential and privileged to the committee and the members of the committee as though the health care facility patients were the patients of the members of the committee. All proceedings, records, and reports of committees are confidential and privileged.

**History:** En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part); amd. Sec. 3, Ch. 359, L. 2001.

**Cross-References**

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

**50-16-204. Restrictions on use or publication of information.** A utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility may use or publish health care information only for the purpose of evaluating matters of medical care, therapy, and treatment for research and statistical purposes. Neither a committee nor the members, agents, or employees of a committee shall disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of a committee, but a committee and its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and may not disclose or reveal the name of any health care facility patient.

**History:** En. Sec. 2, Ch. 104, L. 1969; R.C.M. 1947, 69-6302; amd. Sec. 4, Ch. 359, L. 2001.

**50-16-205. Data confidential -- inadmissible in judicial proceedings.** All data is confidential and is not discoverable or admissible in evidence in any judicial proceeding. However, this section does not affect the discoverability or admissibility in evidence of health care information that is not data as defined in 50-16-201.

**History:** En. Sec. 3, Ch. 104, L. 1969; R.C.M. 1947, 69-6303; amd. Sec. 5, Ch. 359, L. 2001.

**Cross-References**

Montana Rules of Evidence, Title 26, ch. 10.

### Part 3

#### Confidentiality of Health Care Information (Repealed)

**50-16-301. Repealed.** Sec. 31, Ch. 632, L. 1987.

**History:** En. Sec. 1, Ch. 578, L. 1979.

**50-16-302. Repealed.** Sec. 31, Ch. 632, L. 1987.

**History:** En. Sec. 2, Ch. 578, L. 1979.

**50-16-303. Repealed.** Sec. 31, Ch. 632, L. 1987.

**History:** En. Sec. 6, Ch. 578, L. 1979.

**50-16-304. Repealed.** Sec. 31, Ch. 632, L. 1987.

**History:** En. Sec. 8, Ch. 578, L. 1979.

**50-16-305. Repealed.** Sec. 31, Ch. 632, L. 1987.

**History:** En. Sec. 7, Ch. 578, L. 1979.

**50-16-306 through 50-16-310 reserved.**

**50-16-311. Repealed.** Sec. 31, Ch. 632, L. 1987.

**History:** En. Sec. 3, Ch. 578, L. 1979; amd. Sec. 1, Ch. 725, L. 1985.

**50-16-312. Repealed.** Sec. 31, Ch. 632, L. 1987.  
History: En. Sec. 4, Ch. 578, L. 1979.

**50-16-313. Repealed.** Sec. 31, Ch. 632, L. 1987.  
History: En. Sec. 4, Ch. 578, L. 1979.

**50-16-314. Repealed.** Sec. 31, Ch. 632, L. 1987.  
History: En. Sec. 5, Ch. 578, L. 1979.

## Part 4

### Health Information Center (Repealed)

**50-16-401. Repealed.** Sec. 1, Ch. 66, L. 1987.  
History: En. Sec. 1, Ch. 628, L. 1983.

## Part 5

### Uniform Health Care Information

#### Part Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

**50-16-501. Short title.** This part may be cited as the "Uniform Health Care Information Act".

History: En. Sec. 1, Ch. 632, L. 1987.

**50-16-502. Legislative findings.** The legislature finds that:

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

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

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in ensuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

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

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

(6) the enactment of federal health care privacy legislation and the adoption

of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., require health care providers subject to that legislation to provide significant privacy protection for health care information and the provisions of this part are no longer necessary for those health care providers; and

(7) because the provisions of HIPAA do not apply to some health care providers, it is important that these health care providers continue to adhere to this part.

**History:** En. Sec. 2, Ch. 632, L. 1987; amd. Sec. 6, Ch. 396, L. 2003.

**50-16-503. Uniformity of application and construction.** This part must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

**History:** En. Sec. 3, Ch. 632, L. 1987.

**50-16-504. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

- (a) statutory, regulatory, fiscal, medical, or scientific standards;
- (b) a private or public program of payments to a health care provider; or
- (c) requirements for licensing, accreditation, or certification.

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

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

(4) "Health care" means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or any function of the human body.

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

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

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

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

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

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

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

- (a) authorized by law to evaluate health care services; and

(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

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

(13) "Reasonable fee" means the charge, as provided for in 50-16-540, for duplicating, searching for, or handling recorded health care information.

**History:** En. Sec. 4, Ch. 632, L. 1987; amd. Sec. 2, Ch. 300, L. 1999; amd. Sec. 7, Ch. 396, L. 2003.

**Cross-References**

Government health care information -- definition of health care information, 50-16-602.

**50-16-505. Limit on applicability.** The provisions of this part apply only to a health care provider that is not subject to the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

**History:** En. Sec. 8, Ch. 396, L. 2003.

**50-16-506 through 50-16-510 reserved.**

**50-16-511. Duty to adopt security safeguards.** A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

**History:** En. Sec. 21, Ch. 632, L. 1987.

**50-16-512. Content and dissemination of notice.** (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

NOTICE

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

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

**History:** En. Sec. 18, Ch. 632, L. 1987.

**50-16-513. Retention of record.** A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under 50-16-526 and during the pendency of a request for examination and copying under 50-16-541 or a request for correction or amendment under 50-16-543.

**History:** En. Sec. 22, Ch. 632, L. 1987.

**Cross-References**

Records and reports required of health care facilities -- confidentiality, 50-5-106.

Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.

**50-16-514 through 50-16-520 reserved.**

**50-16-521. Health care representatives.** (1) A person authorized to consent to health care for another may exercise the rights of that person under this part to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under this part as to information pertaining to health care to which the minor lawfully consented.

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

**History: En. Sec. 19, Ch. 632, L. 1987.**

**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 person who is authorized by law to act for him.

**History: En. Sec. 20, Ch. 632, L. 1987; amd. Sec. 1, Ch. 657, L. 1989.**

**50-16-523 and 50-16-524 reserved.**

**50-16-525. Disclosure by health care provider.** (1) Except as authorized in 50-16-529, 50-16-530, and 50-19-402 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 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 the extent practicable a description of the information disclosed.

**History: En. Sec. 5, Ch. 632, L. 1987; amd. Sec. 2, Ch. 657, L. 1989; amd. Sec. 8, Ch. 519, L. 1997.**

**Cross-References**

Right of privacy, Art. II, sec. 10, Mont. Const.  
Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).  
Doctor-patient privilege, 26-1-805.  
Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).  
Gunshot or stab wounds -- reporting by health care practitioners, 37-2-302.  
Release of information by physician concerning minor, 41-1-403.  
Records and reports required of health care facilities -- confidentiality, 50-5-106.  
Confidentiality under Tumor Registry Act, 50-15-704.  
Unauthorized divulgence of serological test information, 50-19-108.  
Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.  
Confidentiality of records concerning mental illness, 53-21-166.  
Records of chemically dependent persons, intoxicated persons, and family members, 53-24-306.

**50-16-526. Patient authorization to health care provider for**

**disclosure.** (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under 50-16-542.

(2) A health care provider may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and is not required to honor an authorization until the fee is paid.

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

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

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

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

(4) Except as provided by this part, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

**History:** En. Sec. 6, Ch. 632, L. 1987; amd. Sec. 3, Ch. 300, L. 1999.

#### **Cross-References**

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

**50-16-527. Patient authorization -- retention -- effective period -- exception -- communication without prior notice for workers' compensation purposes.** (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

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

(3) Health care information disclosed under an authorization is otherwise subject to this part. An authorization becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court, or as otherwise provided by law.

(5) A signed claim for workers' compensation or occupational disease benefits or a signed release authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (4), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (4) without prior notice to the

injured employee, to the employee's authorized representative or agent, or in the case of death, to the employee's personal representative or any person with a right or claim to compensation for the injury or death.

**History:** En. Sec. 7, Ch. 632, L. 1987; amd. Sec. 13, Ch. 333, L. 1989; amd. Sec. 1, Ch. 480, L. 1999; amd. Sec. 5, Ch. 464, L. 2003.

**50-16-528. Patient's revocation of authorization for disclosure.** A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

**History:** En. Sec. 8, Ch. 632, L. 1987.

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

- (1) to a person who is providing health care to the patient;
- (2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; for assisting the health care provider in the delivery of health care; or to a third-party health care payor who requires health care information and if the health care provider reasonably believes that the person will:
  - (a) not use or disclose the health care information for any other purpose; and
  - (b) take appropriate steps to protect the health care information;
- (3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;
- (4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;
- (5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;
- (6) for use in a research project that an institutional review board has determined:
  - (a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;
  - (b) is impracticable without the use or disclosure of the health care information in individually identifiable form;
  - (c) contains reasonable safeguards to protect the information from improper disclosure;
  - (d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and
  - (e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

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

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

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

(8) to an official of a penal or other custodial institution in which the patient is detained; and

(9) to any contact, as defined in 50-16-1003, if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual.

**History:** En. Sec. 9, Ch. 632, L. 1987; amd. Sec. 3, Ch. 657, L. 1989; amd. Sec. 6, Ch. 544, L. 1991.

#### **Cross-References**

Duty of mental health professionals to warn of violent patients, 27-1-1102.

Nonliability for peer review, 37-2-201.

Pharmacists not liable for peer review, 37-7-1101.

Release of information by physician concerning minor, 41-1-403.

Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.

Confidentiality of records concerning mental illness, 53-21-166.

**50-16-530. Disclosure without patient's authorization.** A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

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

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

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

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

(5) in response to a request of the office of victims services for information under 53-9-104(2)(b);

(6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536;

(7) pursuant to 50-16-712; or

(8) to the state medical examiner or a county coroner for use in determining cause of death. The information is required to be held confidential as provided by law.

**History:** En. Sec. 10, Ch. 632, L. 1987; amd. Sec. 1, Ch. 68, L. 1989; amd. Sec. 2, Ch. 396, L. 1995; amd. Sec. 1, Ch. 101, L. 2001; amd. Sec. 2, Ch. 124, L. 2001.

**50-16-531. Immunity of health care providers pursuant to written authorization -- form required.** A health care provider who discloses health care information within the possession of the provider, including health care information from another provider, is immune from any civil cause of action by the patient or the patient's heirs or successors in interest that is based upon delivery to the patient or the patient's designee of health care information concerning the patient that is contained in the health care provider's patient file if the information is disclosed in accordance with a written authorization using the following language:

"All health care information in your possession, whether generated by you or by any other source, may be released to me or to .....(named person) for .....(purpose of the disclosure). This release is subject to revocation at any time. The revocation is effective from the time it is communicated to the health care provider. If not revoked, the release terminates in accordance with 50-16-527.

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.....  
(Signature of patient)"

History: En. Sec. 1, Ch. 469, L. 1993.

**50-16-532 through 50-16-534 reserved.**

**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 or unless authorized under subsection (1)(j);
- (h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;
- (i) the health care information is relevant to a proceeding brought under Title 41, chapter 3;
- (j) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or
- (k) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or a similar federal law.

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

History: En. Sec. 11, Ch. 632, L. 1987; amd. Sec. 4, Ch. 657, L. 1989; amd. Sec. 9, Ch. 396, L. 2003; amd. Sec. 24, Ch. 504, L. 2003.

**Cross-References**

Government health care information -- legal proceedings, 50-16-605.

**50-16-536. Method of compulsory process.** (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health

care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535(1)(j), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535(1)(j), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

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

(4) When access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and may deny examination or copying of the information until the fee is paid.

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

**History:** En. Sec. 12, Ch. 632, L. 1987; amd. Sec. 5, Ch. 657, L. 1989; amd. Sec. 44, Ch. 16, L. 1991; amd. Sec. 4, Ch. 300, L. 1999; amd. Sec. 25, Ch. 504, L. 2003.

**50-16-537 through 50-16-539 reserved.**

**50-16-540. Reasonable fees allowed.** A reasonable fee for providing health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed \$15 for searching and handling recorded health care information.

**History:** En. Sec. 1, Ch. 300, L. 1999.

**50-16-541. Requirements and procedures for patient's examination and copying.** (1) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care

provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination, without charge, during regular business hours or provide a copy, if requested, to the patient;

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

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

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

(e) deny the request in whole or in part under 50-16-542 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee for each request, not to exceed the fee provided for in 50-16-540, for providing the health care information and is not required to provide copies until the fee is paid.

**History:** En. Sec. 13, Ch. 632, L. 1987; amd. Sec. 5, Ch. 300, L. 1999.

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

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

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

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

(d) the health care information is data, as defined in 50-16-201, that is compiled and used solely for utilization review, peer review, medical ethics review, quality assurance, or quality improvement;

(e) the health care information might contain information protected from disclosure pursuant to 50-15-121 and 50-15-122;

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

(g) access to the health care information is otherwise prohibited by law.

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

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

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

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

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), the provider shall permit examination and copying of the record by the patient's spouse, adult child, or parent or guardian or by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

**History:** En. Sec. 14, Ch. 632, L. 1987; amd. Sec. 6, Ch. 657, L. 1989; amd. Sec. 19, Ch. 515, L. 1995; amd. Sec. 6, Ch. 359, L. 2001.

**50-16-543. Request for correction or amendment.** (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under 50-16-541.

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

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

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

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

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

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

**History:** En. Sec. 15, Ch. 632, L. 1987.

**50-16-544. Procedure for adding correction, amendment, or statement of disagreement.** (1) In making a correction or amendment, the health care provider shall:

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

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

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

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

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

**History:** En. Sec. 16, Ch. 632, L. 1987.

**50-16-545. Dissemination of corrected or amended information or**

**statement of disagreement.** (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the fee provided for in 50-16-540, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

**History:** En. Sec. 17, Ch. 632, L. 1987; amd. Sec. 6, Ch. 300, L. 1999.

**50-16-546 through 50-16-550 reserved.**

**50-16-551. Criminal penalty.** (1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in violation of this part, health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who, knowing that a certification under 50-16-536(2) or a disclosure authorization under 50-16-526 and 50-16-527 is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year, or both.

**History:** En. Sec. 23, Ch. 632, L. 1987.

**Cross-References**

Government health care information -- penalty, 50-16-611.  
Unauthorized divulgence of serological test information, 50-19-108.

**50-16-552. Civil enforcement.** The attorney general or appropriate county attorney may maintain a civil action to enforce this part. The court may order any relief authorized by 50-16-553.

**History:** En. Sec. 24, Ch. 632, L. 1987.

**50-16-553. Civil remedies.** (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) is not liable for disclosures made in reliance on that certification.

(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of \$5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and

all other expenses reasonably incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

**History:** En. Sec. 25, Ch. 632, L. 1987.

## Part 6

### Government Health Care Information

#### Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

**50-16-601. Short title.** This part may be cited as the "Government Health Care Information Act".

**History:** En. Sec. 1, Ch. 481, L. 1989.

**50-16-602. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) (a) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and that relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.

(b) The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board.

**History:** En. Sec. 2, Ch. 481, L. 1989; amd. Sec. 109, Ch. 418, L. 1995; amd. Sec. 286, Ch. 546, L. 1995.

#### Cross-References

Uniform health care information -- definition of health care information, 50-16-504.

**50-16-603. Confidentiality of health care information.** Health care information in the possession of the department, a local board, a local health officer, or the entity's authorized representatives may not be released except:

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

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

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

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

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a

communicable disease or to alleviate and prevent injury caused by the release of biological, chemical, or radiological agents capable of causing imminent disability, death, or infection;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202 or if the health care information is to be presented as evidence in a court proceeding involving child abuse pursuant to Title 41, chapter 3. Documents containing the information must be sealed by the court upon conclusion of the proceedings.

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

**History:** En. Sec. 3, Ch. 481, L. 1989; amd. Sec. 10, Ch. 391, L. 2003; amd. Sec. 26, Ch. 504, L. 2003.

**Cross-References**

Uniform health care information, Title 50, ch. 16, part 5.

**50-16-604. Secondary release of health care information.** Information released pursuant to 50-16-603 may not be released by the person or entity it is released to unless the release conforms to the requirements of 50-16-603.

**History:** En. Sec. 4, Ch. 481, L. 1989.

**50-16-605. Judicial, legislative, and administrative proceedings -- testimony.** (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(6) and (7).

**History:** En. Sec. 5, Ch. 481, L. 1989; amd. Sec. 27, Ch. 504, L. 2003.

**Cross-References**

Uniform health care information -- when available by compulsory process, 50-16-535.

**50-16-606. Correlation with Uniform Health Care Information Act.** Health care information in the possession of a local board, local health officer, or the department because a health care provider employed by any of these entities provided health care to a patient, either individually or at a public health center or other publicly owned health care facility, is subject to the Uniform Health Care Information Act and not subject to this part.

**History:** En. Sec. 1, Ch. 432, L. 1991.

**Cross-References**

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

**50-16-607 through 50-16-610 reserved.**

**50-16-611. Penalty.** A person who knowingly violates the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

**History:** En. Sec. 6, Ch. 481, L. 1989.

## Cross-References

Uniform health care information -- criminal penalty, 50-16-551.

## Part 7

### Report of Exposure to Infectious Disease

#### Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Duty to report cases of communicable disease, 37-2-301.

Duty to report cases of sexually transmitted diseases, 50-18-106.

**50-16-701. Definitions.** As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying an emergency services provider of exposure.

(4) "Emergency services organization" means a public or private organization that provides emergency services to the public.

(5) "Emergency services provider" means a person employed by or acting as a volunteer with an emergency services organization, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(6) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(7) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

(8) "Infectious disease" means human immunodeficiency virus infection, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and any other disease capable of being transmitted through an exposure that has been designated by department rule.

(9) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this part and by rule.

(10) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

**History:** En. Sec. 1, Ch. 390, L. 1989; amd. Sec. 1, Ch. 476, L. 1993; amd. Sec. 110, Ch. 418, L. 1995; amd. Sec. 287, Ch. 546, L. 1995; amd. Sec. 13, Ch. 93, L. 1997; amd. Sec. 1, Ch. 146, L. 1999.

**50-16-702. Notification of exposure to infectious disease -- report of exposure to disease.** (1) (a) If an emergency services provider acting in an official capacity attends a patient prior to or during transport or assists in transporting a patient to a health care facility and the emergency services provider has had an exposure, the emergency services provider may request the designated officer to submit the form required by department rule to the health care facility on the

emergency services provider's behalf. The form must be provided for in rules adopted by the department and must include the emergency services provider's name and other information required by the department, including a description of the exposure. The designated officer shall submit the completed form to the health care facility receiving the patient as soon as possible after the request for submission by the emergency services provider. Submission of the form to the health care facility is an indication that the emergency services provider was exposed and a verification that the designated officer and the emergency services provider believe that the emergency services provider was exposed.

(b) If the exposure described on the form occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the centers for disease control and prevention, then submission of the form to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10).

(c) Upon receipt of the report of exposure from a designated officer, the health care facility shall notify the designated officer in writing whether or not a determination has been made that the patient has or does not have an infectious disease. If a determination has been made and the patient has been found:

(i) to have an infectious disease, the information required by 50-16-703 must be provided by the health care facility;

(ii) to not have an infectious disease, the date on which the patient was transported to the health care facility must be provided by the health care facility.

(2) If a health care facility receiving a patient determines that the patient has an airborne infectious disease, the health care facility shall, within 48 hours after the determination was made, notify the designated officer and the department of that fact. The notice to the department must include the name of the emergency services organization that transported the patient to the health care facility. The department shall, within 24 hours after receiving the notice, notify the designated officer of the emergency services provider who transported the patient.

(3) A designated officer who receives the notification from a health care facility required by 50-16-703(2) or by subsection (1)(c) of this section shall immediately provide the information contained in the notification to the emergency services provider for whom the report of exposure was filed or who was exposed to a patient with an airborne infectious disease.

**History:** En. Sec. 2, Ch. 390, L. 1989; amd. Sec. 7, Ch. 544, L. 1991; amd. Sec. 2, Ch. 476, L. 1993; amd. Sec. 2, Ch. 146, L. 1999.

**50-16-703. Notification of precautions after exposure to infectious disease.** (1) After a patient is transported to a health care facility and if a physician determines that the transported patient has an infectious disease, the physician shall inform the infectious disease control officer of the health care facility of the determination within 24 hours after the determination is made.

(2) If it is determined that the infectious disease is airborne or a report of exposure was filed concerning the patient under 50-16-702, the health care facility shall provide the notification required by subsection (3) orally within 48 hours after the time of diagnosis and in writing within 72 hours after diagnosis to the designated officer of each emergency services organization known to the health care facility to have provided emergency services to the patient prior to or during transportation to the health care facility.

(3) The notification must state the disease to which the emergency services provider was exposed, the appropriate medical precautions and treatment that the exposed person needs to take, the date on which the patient was transported to the health care facility, and the time that the patient arrived at the facility.

**History:** En. Sec. 3, Ch. 390, L. 1989; amd. Sec. 3, Ch. 476, L. 1993; amd. Sec. 3, Ch. 146, L. 1999.

**50-16-704. Confidentiality -- penalty for violation -- immunity from liability.** (1) The name of the person diagnosed as having an infectious disease may not be released to anyone, including the emergency services provider who was exposed, nor may the name of the emergency services provider who was exposed be released to anyone other than the emergency services provider, except as required by this part, by department rule concerning reporting of communicable disease, or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, a physician, or the designated officer of an emergency services provider's organization may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact an exposed person of exposure are unsuccessful.

**History:** En. Sec. 5, Ch. 390, L. 1989; amd. Sec. 4, Ch. 476, L. 1993; amd. Sec. 4, Ch. 146, L. 1999.

**Cross-References**

Physician's immunity from liability, 37-2-312.

**50-16-705. Rulemaking authority.** The department shall adopt rules to:

(1) define what constitutes an exposure to an infectious disease;

(2) specify the infectious diseases subject to this part;

(3) specify the information about an exposure that must be included in a report of exposure;

(4) specify recommended medical precautions and treatment for each infectious disease subject to this part; and

(5) specify recordkeeping and reporting requirements necessary to ensure compliance with the notification requirements of this part.

**History:** En. Sec. 4, Ch. 390, L. 1989; amd. Sec. 5, Ch. 476, L. 1993; amd. Sec. 5, Ch. 146, L. 1999.

**Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

**50-16-706 through 50-16-710 reserved.**

**50-16-711. Health care facility and emergency services organization responsibilities for tracking exposure to infectious disease.** (1) The health care facility and the emergency services organization shall develop internal procedures for implementing the provisions of this part and department rules.

(2) The health care facility must have available at all times a person to receive the form provided for in 50-16-702 containing a report of exposure to infectious disease.

(3) The health care facility shall designate an infectious disease control officer and an alternate who will be responsible for maintaining the required records and notifying designated officers in accordance with the provisions of this part and the rules promulgated under this part and shall provide the names of the designated officer and the alternate to the department.

(4) The emergency services organization shall name a designated officer and

an alternate and shall provide their names to the department.

**History:** En. Sec. 7, Ch. 476, L. 1993; amd. Sec. 6, Ch. 146, L. 1999.

**50-16-712. Notification to mortuary personnel -- exposure to infectious disease.** (1) A coroner, a health care facility, or a health care provider, as defined in 50-16-1003, shall disclose information regarding the status of a deceased individual with regard to an infectious disease to personnel from a mortuary licensed under Title 37, chapter 19, at the time of transfer of the dead body or as soon after transfer as possible. The information must include whether the individual had an infectious disease at the time of death and the nature of the infectious disease.

(2) The mortuary personnel who receive the information provided in subsection (1) may not disclose the information except for purposes related directly to the preparation and disposition of the dead body.

**History:** En. Sec. 1, Ch. 396, L. 1995.

## Part 8

### Health Care Information Privacy Requirements for Providers Subject to HIPAA

**50-16-801. Legislative findings.** The legislature finds that:

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

(2) the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., provide significant privacy protection for health care information with respect to health care providers subject to HIPAA;

(3) for health care providers subject to the health care information privacy protections of HIPAA, the applicability of the provisions of Title 50, chapter 16, part 5, relating to health care privacy is unnecessary and may result in significant practical difficulties;

(4) it is in the best interest of the citizens of Montana to have certain requirements, with respect to the use or release of health care information by health care providers, that are more restrictive than or additional to the health care privacy protections of HIPAA.

**History:** En. Sec. 15, Ch. 396, L. 2003.

**50-16-802. Applicability.** This part applies only to health care providers subject to the health care information privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

**History:** En. Sec. 16, Ch. 396, L. 2003.

**50-16-803. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Health care" means care, services, or supplies provided by a health care provider that are related to the health of an individual. Health care includes but is not limited to the following:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or

palliative care and counseling, service, assessment, or procedure with respect to an individual's physical or mental condition; or

(b) the sale or dispensing of any drug, device, equipment, or other item in accordance with a prescription.

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

(3) "Health care information" means any information, whether oral or recorded in any form or medium, that:

(a) is created or received by a health care provider;

(b) relates to the past, present, or future physical or mental health or condition of an individual or to the past, present, or future payment for the provision of health care to the individual; and

(c) identifies or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(4) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

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

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

(7) "Reasonable fee" means the charge, as provided for in 50-16-816, for duplicating, searching for, or handling recorded health care information.

**History: En. Sec. 17, Ch. 396, L. 2003.**

**50-16-804. Representative of deceased patient's estate.** A personal representative of a deceased patient's estate 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 person who is authorized by law to act for the deceased person.

**History: En. Sec. 18, Ch. 396, L. 2003.**

**50-16-805. Disclosure of information for workers' compensation and occupational disease claims and law enforcement purposes.** (1) To the extent provided in 39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider.

(2) A health care provider may disclose health care information about an individual for law enforcement purposes if the disclosure is to:

(a) federal, state, or local law enforcement authorities to the extent required by law; or

(b) a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured by the possible criminal act of another.

**History: En. Sec. 19, Ch. 396, L. 2003.**

**50-16-806 through 50-16-810 reserved.**

**50-16-811. 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 or unless authorized under subsection (1)(i);

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

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

(2) This part does not authorize 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.

**History: En. Sec. 20, Ch. 396, L. 2003.**

**50-16-812. Method of compulsory process.** (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-811(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-811(1)(h), the person seeking compulsory process or discovery shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-811 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-811(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-811(1)(h), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-811 identified in the certification provides an appropriate basis for the use of compulsory process or discovery. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, when authorized by law, a health care provider may deny access to the requested health care information. If access to requested health care information is denied by the

health care provider, the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes that the information should be protected from disclosure.

(4) When access to health care information is denied, the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-816, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-811 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

**History:** En. Sec. 21, Ch. 396, L. 2003.

**50-16-813 through 50-16-815 reserved.**

**50-16-816. Reasonable fees.** Unless prohibited by federal law, a reasonable fee for providing copies of health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed \$15 for searching and handling recorded health care information.

**History:** En. Sec. 22, Ch. 396, L. 2003.

**50-16-817. Civil remedies.** (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A disciplinary or punitive action may not be taken against a health care provider or the provider's employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(4) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of \$5,000, exclusive of any pecuniary loss.

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

(6) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

(7) A health care provider who relies in good faith upon certification pursuant to 50-16-812 is considered to have received reasonable assurances and is not liable for disclosures made in reliance on that certification.

**History:** En. Sec. 23, Ch. 396, L. 2003.

**50-16-818. Good faith.** A person authorized to act as a health care representative for an individual with respect to the individual's health care information shall act in good faith to represent the best interests of the individual.

**History:** En. Sec. 24, Ch. 396, L. 2003.

**Part 9 reserved**

## Part 10

### AIDS Education and Prevention

#### Part Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.  
Uniform health care information, Title 50, ch. 16, part 5.

**50-16-1001. Short title.** This part may be cited as the "AIDS Prevention Act".

**History: En. Sec. 1, Ch. 614, L. 1989.**

**50-16-1002. Statement of purpose.** (1) The legislature recognizes that the epidemic of human immunodeficiency virus (HIV) infection, the causative agent of acquired immune deficiency syndrome (AIDS), and related medical conditions constitutes a serious danger to the public health and welfare. In the absence of a vaccine or a cure and because of the sexual and intravenous drug use behaviors by which the virus is predominately spread, control of the epidemic is dependent on the education of those infected or at risk for infection.

(2) It is the intent of the legislature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education.

**History: En. Sec. 2, Ch. 614, L. 1989.**

**50-16-1003. Definitions.** As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means a person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

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

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected

person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Informed consent" means a freely executed oral or written grant of permission by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject of the test is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the person's behalf to perform an HIV-related test after the receipt of pretest counseling.

(10) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(11) "Local board" means a county, city, city-county, or district board of health.

(12) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(13) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(14) "Person" means an individual, corporation, organization, or other legal entity.

(15) "Posttest counseling" means counseling, conducted at the time that the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(16) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

(17) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(18) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

**History:** En. Sec. 3, Ch. 614, L. 1989; amd. Sec. 1, Ch. 544, L. 1991; amd. Sec. 111, Ch. 418, L. 1995; amd. Sec. 288, Ch. 546, L. 1995; amd. Sec. 1, Ch. 197, L. 1997; amd. Sec. 2, Ch. 524, L. 1997.

**50-16-1004. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases.** It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV infection in the same manner as other communicable diseases, including sexually transmitted diseases, by adopting the most currently accepted public health practices with regard to testing, reporting, partner notification, and disease intervention. Nothing in this section is intended to prohibit the department from allowing testing for HIV infection to be performed and reported without identification of the subject of the test. The department shall adopt rules, as provided in 50-1-202, to reflect this policy.

**History:** En. Sec. 1, Ch. 524, L. 1997.

#### **Cross-References**

Disclosure of communicable diseases, 50-16-603.

**50-16-1005 and 50-16-1006 reserved.**

**50-16-1007. Testing -- counseling -- informed consent -- penalty. (1)**

An HIV-related test may be ordered only by a health care provider and only after receiving the informed consent of:

- (a) the subject of the test;
- (b) the subject's legal guardian;
- (c) the subject's next of kin or significant other if:
  - (i) the subject is unconscious or otherwise mentally incapacitated;
  - (ii) there is no legal guardian;
  - (iii) there are medical indications of an HIV-related condition; and
  - (iv) the test is advisable in order to determine the proper course of treatment

of the subject; or

(d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

- (i) the subject is in a hospital; and
- (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

(2) When a health care provider orders an HIV-related test, the provider also certifies that informed consent has been received prior to ordering an HIV-related test.

(3) Before the subject of the test gives informed consent, the health care provider ordering the test or the provider's designee shall give pretest counseling to:

- (a) the subject;
- (b) the subject's legal guardian;
- (c) the subject's next of kin or significant other if:
  - (i) the subject is unconscious or otherwise mentally incapacitated; and
  - (ii) there is no guardian; or

(d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

- (i) the subject is in the hospital; and
- (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

(4) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform each person who wishes to be tested that anonymous testing is available at one of the counseling-testing sites established by the department, or elsewhere.

(5) The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, after giving informed consent, a health care provider to receive the results of an HIV-related test. The designated health care provider shall inform the subject or the subject's representative of the results in person.

(6) At the time that the subject of a test or the subject's representative is given the test results, the health care provider or the provider's designee shall give the subject or the subject's representative posttest counseling.

(7) If a test is performed as part of an application for insurance, the insurance company shall obtain the informed consent in writing and ensure that:

- (a) negative results can be obtained by the subject or the subject's representative upon request; and
- (b) positive results are returned to the health care provider designated by the subject or the subject's representative.

(8) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(9) Subsections (1) through (6) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;

(c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;

(ii) there are medical indications of an HIV-related condition;

(iii) the test is advisable in order to determine the proper course of treatment of the subject; and

(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within a reasonable time after the test is determined to be advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with the exception that the pretest and posttest counseling must still be given.

(10) (a) If an agent or employee of a health care facility, a health care provider with privileges at the health care facility, or a person providing emergency services who is described in 50-16-702 has been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized by the centers for disease control of the United States public health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek informed consent in accordance with guidelines of the centers for disease control for an HIV-related test of the patient. If informed consent cannot be obtained, the health care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may, without the consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of the results and provide the patient with posttest counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

(b) For the purposes of this subsection (10), "informed consent" means an agreement that is freely executed, either orally or in writing, by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf.

(11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of \$1,000 or imprisonment for up to 6 months, or both.

**History:** En. Sec. 4, Ch. 614, L. 1989; amd. Sec. 2, Ch. 544, L. 1991; amd. Sec. 6, Ch. 476, L. 1993; amd. Sec. 3, Ch. 524, L. 1997.

**50-16-1008. Testing of donors of organs, tissues, and semen required -- penalty.** (1) Prior to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor, in accordance with nationally accepted standards adopted by the department by rule, is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to \$1,000 or imprisonment of up to 6 months, or both.

**History:** En. Sec. 5, Ch. 614, L. 1989; amd. Sec. 3, Ch. 544, L. 1991.

**Cross-References**

Uniform Anatomical Gift Act, Title 72, ch. 17.

**50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure.** (1) A person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5, the Government Health Care Information Act, Title 50, chapter 16, part 6, or applicable federal law.

(2) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(3) A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of \$1,000 or imprisonment for 1 year, or both.

**History:** En. Sec. 6, Ch. 614, L. 1989; amd. Sec. 4, Ch. 544, L. 1991; amd. Sec. 10, Ch. 396, L. 2003.

**50-16-1010 through 50-16-1012 reserved.**

**50-16-1013. Civil remedy.** (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of \$5,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of this part, damages of \$20,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

(3) The department may maintain a civil action to enforce this part in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an HIV-related test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service.

**History:** En. Sec. 7, Ch. 614, L. 1989; amd. Sec. 5, Ch. 544, L. 1991.

**Cross-References**

Statutes of limitations, Title 27, ch. 2.

Injunctions, Title 27, ch. 19.

## CHAPTER 79

### NUCLEAR REGULATION

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#### Chapter Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.  
Disposal of hazardous wastes -- regulation, Title 75, ch. 10, part 4.  
Siting of nuclear facilities, Title 75, ch. 20, part 12.  
Disposal of wastes -- mining operations, 82-4-231.  
Western Interstate Nuclear Compact -- state nuclear policy, Title 90, ch. 5, part 2.

### Part 1

#### General Provisions

**50-79-101. Policy.** It is the policy of the state of Montana, in furtherance of its responsibility to protect the public health and safety, to:

- (1) institute and maintain a regulatory program for sources of ionizing radiation so as to provide, for compatibility with the standards and regulatory programs of the federal government, a single effective system of regulation within the state and a system consistent insofar as possible with those of other states; and
- (2) institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

**History:** En. Sec. 1, Ch. 108, L. 1967; R.C.M. 1947, 69-5801; Sec. 75-3-101, MCA 1995; redes. 50-79-101 by Sec. 13, Ch. 73, L. 1997.

#### Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.  
Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

**50-79-102. Purpose.** It is the purpose of this chapter to provide a program:

- (1) of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;
- (2) to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;
- (3) to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source, and special nuclear materials; and
- (4) to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

**History:** En. Sec. 2, Ch. 108, L. 1967; R.C.M. 1947, 69-5802; Sec. 75-3-102, MCA 1995; redes. 50-79-102 by Sec. 13, Ch. 73, L. 1997.

#### Cross-References

Montana Consumer Product Safety Act of 1975, Title 50, ch. 30.  
Occupational Health Act of Montana, Title 50, ch. 70.

**50-79-103. Definitions.** The definitions used in this chapter are intended to be consistent with those used in 10 CFR 1-171 and 49 CFR 173.401 through 173.478, subpart I. Unless the context requires otherwise, in this chapter, the

following definitions apply:

- (1) "Byproduct material" means:
  - (a) any radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to the radiation incident to, the process of producing or using special nuclear material; and
  - (b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.
- (2) "Department" means the department of public health and human services.
- (3) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.
- (4) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment using quantities of byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.
- (5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared, or ultraviolet light.
- (6) "Large quantity radioactive material" means highway route controlled quantity as defined in 49 CFR 173.403.
- (7) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency of a political subdivision, and any legal successor, representative, agent, or agency of the foregoing, other than the United States nuclear regulatory commission, any successor, or federal agencies licensed by the nuclear regulatory commission.
- (8) "Registration" means the registering with the department by the legal owner, user, or authorized representative of sources of ionizing radiation in the manner prescribed by rule.
- (9) "Source material" means uranium, thorium, or any other material that the department or the United States nuclear regulatory commission declares by order to be source material or ores containing one or more of the foregoing materials in a concentration that the department or the nuclear regulatory commission declares by order to be source material after the nuclear regulatory commission has determined the material in that concentration to be source material.
- (10) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the department or the United States nuclear regulatory commission or any successor declares by order to be special nuclear material or any material artificially enriched by any of the foregoing but does not include source material.
- (11) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment using quantities of byproduct, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

**History:** En. Sec. 3, Ch. 108, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 16, Ch. 140, L. 1977; R.C.M. 1947, 69-5803; amd. Sec. 1, Ch. 68, L. 1979; amd. Sec. 2, I.M. No. 84, approved Nov. 4, 1980; amd. Sec. 180, Ch. 418, L. 1995; amd. Sec. 265, Ch. 42, L. 1997; amd. Sec. 6, Ch. 73, L. 1997; Sec. 75-3-103, MCA 1995; redes. 50-79-103 by Sec. 13, Ch. 73, L. 1997.

**50-79-104. Exemptions -- sources, diagnosis, and therapy.** (1) This chapter does not apply to the following sources or conditions:

(a) electrical equipment that is not intended primarily to produce radiation and that, by nature of design, does not produce radiation at the point of nearest approach at a weekly rate higher than one-tenth the appropriate limit for any critical organ exposed. The production testing or production servicing of such equipment is not exempt.

(b) radiation machines during process of manufacture or in storage or transit;

(c) any radioactive material while being transported in conformity with regulations adopted by the nuclear regulatory commission or any successor thereto or the interstate commerce commission and specifically applicable to the transportation of such radioactive materials.

(2) No exemptions under this section are granted for those quantities or types of activities that do not comply with the established rules promulgated by the nuclear regulatory commission or by any successor thereto.

(3) The provisions of this chapter may not be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

**History:** (1), (2)En. Sec. 15, Ch. 108, L. 1967; Sec. 69-5815, R.C.M. 1947; (3)En. Sec. 8, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5808, R.C.M. 1947; R.C.M. 1947, 69-5808(4), 69-5815; amd. Sec. 2, Ch. 68, L. 1979; Sec. 75-3-104, MCA 1995; redes. 50-79-104 by Sec. 13, Ch. 73, L. 1997.

**50-79-105. Conflicting laws.** Ordinances, resolutions, or regulations now or hereafter in effect of the governing body of a municipality or county relating to byproduct, source, and special nuclear materials shall not be superseded by this chapter, provided that such ordinances or regulations are and shall continue to be consistent with the provisions of this chapter, amendments thereto, and rules thereunder.

**History:** En. Sec. 11, Ch. 108, L. 1967; R.C.M. 1947, 69-5811; Sec. 75-3-105, MCA 1995; redes. 50-79-105 by Sec. 13, Ch. 73, L. 1997.

**50-79-106. Confidentiality -- trade secrets.** A report of investigation or inspection or processes obtained under this chapter shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the department.

**History:** En. Sec. 6, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1975; amd. Sec. 17, Ch. 140, L. 1977; R.C.M. 1947, 69-5806(8); Sec. 75-3-106, MCA 1995; redes. 50-79-106 by Sec. 13, Ch. 73, L. 1997.

#### **Cross-References**

Right of privacy, Art. II, sec. 10, Mont. Const.  
Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

**50-79-107. Inspections.** The department or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property within the jurisdiction of the department, other than a private dwelling, for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules promulgated thereunder, and the owner, occupant, or person in charge of such property shall permit such entry and inspection. Entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

**History:** En. Sec. 7, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5807; Sec. 75-3-107, MCA 1995; redes. 50-79-107 by Sec. 13, Ch. 73, L. 1997.

#### **Cross-References**

Searches and seizures -- right of private individual to be secure, Art. II, sec. 11, Mont. Const.

**50-79-108. Inspection agreements and training programs.** (1) The department, on behalf of the state, may enter into an agreement or agreements with the federal government, other states, or interstate agencies whereby this state shall perform, on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The department and any other appropriate state agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter.

**History:** En. Sec. 10, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5810; Sec. 75-3-108, MCA 1995; redes. 50-79-108 by Sec. 13, Ch. 73, L. 1997.

## **Part 2**

### **Control of Radioactive Substances**

#### **Part Cross-References**

Northwest Interstate Compact on Low-Level Radioactive Waste Management, Title 50, ch. 79, part 5.

**50-79-201. State radiation control agency.** (1) The department is the state radiation control agency.

(2) Under the laws of this state, the department may employ, compensate, and prescribe the powers and duties of the individuals that are necessary to carry out this chapter.

(3) The department may, subject to the provisions of 50-79-410, for the protection of the occupational and public health and safety:

(a) develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation;

(b) develop programs and adopt rules with due regard for compatibility with federal programs for licensing and regulation of byproduct, source, radioactive waste, and special nuclear materials and other radioactive materials. These rules must cover equipment and facilities, methods for transporting, handling, and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas and sources, and methods and effectiveness of controlling individuals in posted and restricted areas.

(c) adopt rules relating to control of other sources of ionizing radiation. These rules must cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

(d) advise, consult, and cooperate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing radiation;

(e) accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(f) encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation;

(g) collect and disseminate information relating to control of sources of ionizing radiation, including:

(i) maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under this chapter and any administrative or judicial action pertaining to this chapter;

(iii) maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending or adopted, and proceedings.

**History:** En. Sec. 4, Ch. 108, L. 1967; amd. Sec. 83, Ch. 349, L. 1974; R.C.M. 1947, 69-5804; amd. Sec. 10, Ch. 471, L. 1995; Sec. 75-3-201, MCA 1995; redes. 50-79-201 by Sec. 13, Ch. 73, L. 1997.

#### **Cross-References**

Montana Administrative Procedure Act -- adoption of rules, Title 2, ch. 4, part 3.  
Northwest Interstate Compact on Low-Level Radioactive Waste Management, Title 50, ch. 79, part 5.

**50-79-202. Licensing and registration.** (1) The department may provide by rule for general or specific licensing of persons to receive, possess, or transfer radioactive materials and devices or equipment utilizing such materials. The rules shall provide for amendment, suspension, or revocation of licenses pursuant to 50-79-401 and 50-79-403.

(2) Each application for a specific license shall be in writing and shall state such information as the department by rule may determine to be necessary to decide the technical, insurance, and financial qualifications or any other qualification of the applicant as the department considers reasonable and necessary to protect the occupational and public health and safety. The department may, at any time after the filing of the application and before the expiration of the license, require further written statements and may make such inspections as the department considers necessary in order to determine whether the license should be granted, denied, modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require an application or statement to be made under oath or affirmation.

(3) Each license shall be in such form and contain such terms and conditions as the department may by rule prescribe.

(4) No license issued pursuant to the provisions of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license may be assigned or in any manner disposed of.

(5) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules or orders issued in accordance with the provisions of this chapter.

(6) The department may require registration and inspection of persons dealing with sources of ionizing radiation which do not require a specific license and may require compliance with specific safety standards to be promulgated by the department.

(7) The department is authorized to exempt certain users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of the users will not constitute a significant risk to the health and safety of the public.

(8) Rules promulgated pursuant to this chapter may provide for recognition of such other state or federal licenses as the department considers desirable, subject

to such registration requirements as the department prescribes.

**History:** En. Sec. 6, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1975; amd. Sec. 17, Ch. 140, L. 1977; R.C.M. 1947, 69-5806(1) thru (7), (9); amd. Sec. 1, Ch. 574, L. 1983; Sec. 75-3-202, MCA 1995; redes. 50-79-202 by Sec. 13, Ch. 73, L. 1997.

**Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

**50-79-203. Federal-state agreements.** (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state.

(2) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal government shall be deemed to possess the same pursuant to this chapter, which shall expire either 90 days after receipt from the department of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

**History:** En. Sec. 9, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5809; Sec. 75-3-203, MCA 1995; redes. 50-79-203 by Sec. 13, Ch. 73, L. 1997.

**50-79-204. Records.** (1) The department shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the department may require, subject to such exemptions as may be provided by rules.

(2) The department shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules of the department. Copies of these records and those required to be kept by subsection (1) of this section shall be submitted to the department on request.

(3) The department shall adopt reasonable regulations, compatible with those of the United States nuclear regulatory commission or the national committee on radiation protection, pertaining to reports of exposure of personnel to radiation. The regulations shall require that reports of excessive exposure be made to the individual exposed and to the department and shall make provision for periodic and terminal reports to individuals for whom personnel monitoring is required.

**History:** En. Sec. 8, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5808(1) thru (3); amd. Sec. 3, Ch. 68, L. 1979; Sec. 75-3-204, MCA 1995; redes. 50-79-204 by Sec. 13, Ch. 73, L. 1997.

**Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.

### Part 3

## Disposal of Large Quantities of Radioactive Material

**Part Cross-References**

Northwest Interstate Compact on Low-Level Radioactive Waste Management, Title 50, ch. 79, part 5.

**50-79-301. Definition.** Notwithstanding the definition in 50-79-103, as used in this part "person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

**History:** En. 69-5817 by Sec. 1, Ch. 68, L. 1977; R.C.M. 1947, 69-5817; amd. Sec. 4, Ch. 68, L. 1979; Sec. 75-3-301, MCA 1995; redes. 50-79-301 by Sec. 13, Ch. 73, L. 1997.

**50-79-302. Disposal of large quantities of radioactive material prohibited -- exceptions and exclusion.** (1) No person may dispose of large quantity radioactive material, byproduct material, or special nuclear material within the state of Montana.

(2) Byproduct material (except large quantity radioactive material) possessed, used, and transported for educational purposes, scientific research and development, medical research, diagnosis, and treatment, geophysical surveying, and similar uses licensed by the United States nuclear regulatory commission shall be excepted from this part, provided that such material is being or has been lawfully disposed of within Montana upon the effective date of this Act.

(3) Nothing in this part precludes the construction of a nuclear facility approved under the requirements of the Montana Major Facility Siting Act, or the mining of any raw ore, provided that such activity is not inconsistent with this part.

**History:** En. 69-5818, 69-5819, 69-5821 by Secs. 2, 3, 5, Ch. 68, L. 1977; R.C.M. 1947, 69-5818, 69-5819, 69-5821; amd. Sec. 3, I.M. No. 84, approved Nov. 4, 1980; Sec. 75-3-302, MCA 1995; redes. 50-79-302 by Sec. 13, Ch. 73, L. 1997.

**Cross-References**

Montana Major Facility Siting Act, Title 75, ch. 20.

**50-79-303. Penalty.** A person who knowingly or purposely disposes of large quantity radioactive material, byproduct material, or special nuclear material within Montana shall be fined an amount not more than \$5,000 or be imprisoned for not more than two years, or both, for each offense. A person who negligently disposes of large quantity radioactive material, byproduct material, or special nuclear material within Montana shall be fined not more than \$1,000 for each offense. In this part, each day of violation constitutes a separate offense.

**History:** En. 69-5820 by Sec. 4, Ch. 68, L. 1977; R.C.M. 1947, 69-5820; amd. Sec. 4, I.M. No. 84, approved Nov. 4, 1980; Sec. 75-3-303, MCA 1995; redes. 50-79-303 by Sec. 13, Ch. 73, L. 1997.

**Cross-References**

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

Execution of fine, 46-19-102.

**50-79-304. Policy.** It is the policy of the state of Montana, in furtherance of its responsibility to protect the public health and safety, under the police powers of the state and for protection of the constitutional right to a healthy environment, to prohibit the disposal of certain radioactive material.

**History:** En. Sec. 1, I.M. No. 84, approved Nov. 4, 1980; Sec. 75-3-304, MCA 1995; redes. 50-79-304 by Sec. 13, Ch. 73, L. 1997.

**Cross-References**

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

## Part 4

### Enforcement, Appeal, and Penalties

**50-79-401. Administrative hearings.** In a proceeding under this chapter for granting, suspending, revoking, or amending a license or for determining compliance with or granting exceptions from rules adopted under this chapter, the board of environmental review shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding and shall admit the person as a party to the proceeding.

**History:** En. Sec. 12, Ch. 108, L. 1967; amd. Sec. 84, Ch. 349, L. 1974; R.C.M. 1947, 69-5812(1); amd. Sec. 181, Ch. 418, L. 1995; Sec. 75-3-401, MCA 1995; redes. 50-79-401 by Sec. 13, Ch. 73, L. 1997.

#### Cross-References

Montana Administrative Procedure Act -- contested case hearings, Title 2, ch. 4, part 6.  
Board of Environmental Review created, 2-15-3502.

**50-79-402. Emergency impoundment of materials.** The department shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or who fails to observe the provisions of this chapter or any rules promulgated hereunder.

**History:** En. Sec. 14, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5814; Sec. 75-3-402, MCA 1995; redes. 50-79-402 by Sec. 13, Ch. 73, L. 1997.

**50-79-403. Emergency orders and rules.** When the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as considered necessary to meet the emergency. Notwithstanding any provision of this chapter to the contrary, the rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it immediately but on application to the board shall be afforded a prompt hearing. On the basis of the hearing the emergency rule or order shall be continued, modified, or revoked by the board within 30 days after the hearing or when the emergency no longer exists.

**History:** En. Sec. 12, Ch. 108, L. 1967; amd. Sec. 84, Ch. 349, L. 1974; R.C.M. 1947, 69-5812(2); Sec. 75-3-403, MCA 1995; redes. 50-79-403 by Sec. 13, Ch. 73, L. 1997.

#### Cross-References

Emergency rules, 2-4-303.  
Contested case procedure, Title 2, ch. 4, part 6.

**50-79-404. Prohibited activity.** (1) No person shall acquire, own, possess, or use any radioactive byproduct material, source material, special nuclear materials, or other radioactive materials, occurring naturally or produced artificially, without having been granted a license therefor from the department or transfer to another or dispose of said materials without first having been granted approval of the department therefor in accordance with the administrative rules of the department.

(2) It shall be unlawful for any person to use, manufacture, produce, or knowingly transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless such person is licensed by or registered with the department in accordance with the provisions of this chapter and rules issued hereunder.

**History:** (1)En. Sec. 16, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-5816, R.C.M. 1947; (2)En. Sec. 13, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-

5813, R.C.M. 1947; R.C.M. 1947, 69-5813, 69-5816(part); Sec. 75-3-404, MCA 1995; redes. 50-79-404 by Sec. 13, Ch. 73, L. 1997.

**50-79-405. Penalty.** A person who violates 50-79-404 is guilty of a misdemeanor punishable by a fine of not less than \$100 and not more than \$1,000 or by confinement in the county jail of not less than 30 days and not more than 90 days or by both.

**History:** En. Sec. 16, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5816(part); amd. Sec. 5, Ch. 68, L. 1979; Sec. 75-3-405, MCA 1995; redes. 50-79-405 by Sec. 13, Ch. 73, L. 1997.

#### **Cross-References**

Execution of criminal fine, 46-19-102.  
General penalty, 50-1-104.

**50-79-406. Injunctions.** The department may maintain an action in the district court to enjoin a continuance of an act in violation of this chapter or of a rule or order issued under this chapter. If the court finds that the defendant is violating or has violated any of the provisions of this chapter or any rule or order issued under this chapter, it shall enjoin the defendant from a continuance thereof.

**History:** En. Sec. 1, Ch. 323, L. 1989; Sec. 75-3-406, MCA 1995; redes. 50-79-406 by Sec. 13, Ch. 73, L. 1997.

#### **Cross-References**

Injunctions, Title 27, ch. 19.

**50-79-407. Civil penalties -- deposit in general fund -- injunctions not barred.** (1) A person who violates this chapter or a rule or order issued under this chapter is subject to a civil penalty not to exceed \$5,000 for each violation. For purposes of this section, each day of a violation is a separate violation.

(2) The department shall initiate civil proceedings in district court to recover a penalty under subsection (1).

(3) Civil penalties collected under this section must be deposited in the general fund.

(4) An action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

**History:** En. Sec. 2, Ch. 323, L. 1989; Sec. 75-3-407, MCA 1995; redes. 50-79-407 by Sec. 13, Ch. 73, L. 1997.

**50-79-408 and 50-79-409 reserved.**

**50-79-410. State regulations no more stringent than federal regulations or guidelines.** (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) The department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

**History:** En. Sec. 3, Ch. 471, L. 1995; Sec. 75-3-410, MCA 1995; redes. 50-79-410 by Sec. 13, Ch. 73, L. 1997.

#### **Cross-References**

Adoption of rule by incorporation by reference, 2-4-307.

## **Part 5**

### **Northwest Interstate Compact on Low-Level Radioactive Waste Management**

#### **Part Cross-References**

Western Interstate Nuclear Compact -- state nuclear policy, Title 90, ch. 5, part 2.

**50-79-501. Northwest Interstate Compact on Low-Level Radioactive Waste Management.** The legislature of the state of Montana approves and ratifies the compact designated as the "Northwest Interstate Compact on Low-Level Radioactive Waste Management", which compact is as follows:

#### **NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT**

#### **ARTICLE I -- Policy and Purpose**

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be

accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

## ARTICLE II -- Definitions

As used in this compact:

(1) "Facility" means any site, location, structure, or property, excluding federal waste facilities, used or to be used for the storage, treatment, or disposal of low-level waste.

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, spent reactor fuel, or material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(3) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(4) "Host state" means a state in which a facility is located.

## ARTICLE III -- Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(2) periodic unannounced inspection of the premises of such generators and the waste management activities thereon;

(3) authorization of the containers in which such waste may be shipped and a requirement that generators use only that type of container authorized by the state;

(4) assurance that inspections of the carriers which transport such waste are conducted by proper authorities and appropriate enforcement action is taken for violations;

(5) after receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, taking appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this article. Nothing in this

article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this article.

#### ARTICLE IV -- Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside the region comprising the party states, except as provided in Article V.

(3) Until such time as paragraph (2) of this article takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate must be in such form as may be required by the host state and shall contain at least the following:

(a) the generator's name and address;

(b) a description of the contents of the low-level waste container;

(c) a statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his agent or by a representative of the United States Nuclear Regulatory Commission and was found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state;

(d) a binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprising the party states in order to maximize public health and safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in its region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho, which host hazardous chemical waste disposal facilities, will allow access to such facilities by generators within other party states. Nothing in this compact may be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region composed of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facilities to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

## ARTICLE V -- Northwest Low-Level Waste Compact Committee

The Governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest Low-Level Waste Compact Committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprising the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

## ARTICLE VI -- Eligible Parties and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this article, any eligible party state may become a party to this compact by the execution of an executive order by the Governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its Legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Paragraph (2) of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every 5-year period.

## ARTICLE VII -- Severability

If any provision of this compact or its application to any person or circumstance is held to be invalid, all other provisions of this compact and the application of all of its provisions to all other persons and circumstances shall remain valid, and to this end the provisions of this compact are severable.

**History:** En. Sec. 1, Ch. 242, L. 1983; Sec. 75-3-501, MCA 1995; redes. 50-79-501 by Sec. 13, Ch. 73, L. 1997.

**50-79-502. Administration of compact -- fees.** (1) The department of public health and human services, as the state radiation control agency, shall administer the provisions of the compact.

(2) The department may assess and collect fees for services rendered in

inspecting and regulating low-level radioactive waste generators, transporters, and disposal facilities. The fees must cover the department's costs for those services and must be deposited in the state special revenue fund for use by the department. State and local government agencies, including the university system, are exempt from the payment of fees.

(3) The department may adopt rules under the authority contained in 50-79-201(3)(b) to implement the provisions of this compact.

**History:** En. Sec. 2, Ch. 242, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 182, Ch. 418, L. 1995; amd. Sec. 7, Ch. 73, L. 1997; Sec. 75-3-502, MCA 1995; redes. 50-79-502 by Sec. 13, Ch. 73, L. 1997.

**Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.  
Fund structure, 17-2-102.

**TITLE 72**

**ESTATES, TRUSTS,  
AND FIDUCIARY RELATIONSHIPS**

**CHAPTER 3**

**UPC -- PROBATE AND ADMINISTRATION**

**Part 5 -- Personal Representative  
Appointment Priorities, Bond, and Termination**

- 72-3-501. Who may not be personal representative.
- 72-3-502. Priorities for appointment.
- 72-3-503. Objection to appointment.
- 72-3-504. Renunciation -- nomination of other -- two or more persons sharing priority.
- 72-3-505. Rights of conservators relating to appointment.
- 72-3-506. Priority of domiciliary personal representative.
- 72-3-507. Appointment of one not having priority.
- 72-3-508. Application of priority provisions to appointment of successor.
- 72-3-509 and 72-3-510 reserved.
- 72-3-511. Acceptance of appointment -- consent to jurisdiction.
- 72-3-512. Qualification -- filing of bond and statement of acceptance.
- 72-3-513. Bond -- when required.
- 72-3-514. Demand for bond by interested person.
- 72-3-515. Bond amount -- security -- reduction.
- 72-3-516. Terms of bond -- liability of surety.
- 72-3-517 through 72-3-520 reserved.
- 72-3-521. Termination of appointment -- general effect.
- 72-3-522. Termination of appointment -- death or disability.
- 72-3-523. Termination of appointment -- change of testacy status.
- 72-3-524. Termination of appointment -- closing of estate.
- 72-3-525. Termination of appointment -- voluntary.
- 72-3-526. Termination of appointment -- removal for cause.
- 72-3-527. Successor personal representative.

## **Part 6 -- Personal Representative Powers, Duties, and Compensation**

- 72-3-601. Time of accrual of duties and powers -- power of executor prior to appointment -- ratification.
- 72-3-602. Priority among different letters.
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- 72-3-610. General duties -- fiduciary.
- 72-3-611. No surcharge for authorized acts generally -- limitation.
- 72-3-612. No individual liability -- exceptions -- certain claims to be brought against personal representative.
- 72-3-613. Transactions authorized for personal representative.
- 72-3-614. Power to recover property which is subject of void or voidable transfer.
- 72-3-615. Transaction involving conflict of interest -- voidable -- exceptions.
- 72-3-616. Improper exercise of power -- breach of fiduciary duty.
- 72-3-617. Order restraining personal representative.
- 72-3-618. Persons dealing with personal representative -- protection.
- 72-3-619 and 72-3-620 reserved.
- 72-3-621. Powers and duties of successor personal representative.
- 72-3-622. Corepresentatives -- when joint action required.
- 72-3-623. Persons dealing with single corepresentative -- protection.
- 72-3-624. Powers of remaining corepresentative.
- 72-3-625 through 72-3-630 reserved.
- 72-3-631. Compensation of personal representative.
- 72-3-632. Expenses of personal representative in estate litigation.
- 72-3-633. Compensation of attorney.
- 72-3-634. Proceedings for review of employment of agents and compensation of personal representatives and employees.

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## **Part 5**

### **Personal Representative Appointment Priorities, Bond, and Termination**

**72-3-501. Who may not be personal representative.** No person is qualified to serve as a personal representative who is:

- (1) under the age of 18;
- (2) a person whom the court finds unsuitable in formal proceedings.

**History:** En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(6).

**Cross-References** Rights of persons not adults, Art. II, sec. 15, Mont. Const.

**72-3-502. Priorities for appointment.** Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

- (1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;
- (2) the surviving spouse of the decedent who is a devisee of the decedent;
- (3) the custodial parent of a minor decedent;
- (4) other devisees of the decedent;
- (5) the surviving spouse of the decedent;
- (6) other heirs of the decedent;
- (7) public administrator;
- (8) 45 days after the death of the decedent, any creditor.

**History:** En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(1); amd. Sec. 1, Ch. 219, L. 1989.

**72-3-503. Objection to appointment.** (1) An objection to an appointment can be made only in formal proceedings.

(2) In case of objection the priorities stated in 72-3-502 apply, except that:

(a) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

(b) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value or, in default of this accord, any suitable person.

**History:** En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(2).

**72-3-504. Renunciation -- nomination of other -- two or more persons sharing priority.** (1) A person entitled to letters under (2) through (6) of 72-3-502 may nominate a qualified person to act as personal representative.

(2) Any person entitled to letters may renounce his right to nominate or to an appointment by appropriate writing filed with the court.

(3) When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment. If they are unable to concur in nominating another to act for them or in applying for appointment, the court may appoint any qualified person.

**History:** En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(3).

**72-3-505. Rights of conservators relating to appointment.** Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

**History:** En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(4).

#### **Cross-References**

Persons under disability -- guardianship and conservatorship, Title 72, ch. 5.

**72-3-506. Priority of domiciliary personal representative.** A personal representative appointed by a court of the decedent's domicile has priority over all

other persons, except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

**History:** En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(7).

**72-3-507. Appointment of one not having priority.** Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to 72-3-504, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.

**History:** En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(5).

**72-3-508. Application of priority provisions to appointment of successor.** Sections 72-3-501 through 72-3-507 govern priority for appointment of a successor personal representative but do not apply to the selection of a special administrator.

**History:** En. 91A-3-203 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 1, Ch. 223, L. 1977; R.C.M. 1947, 91A-3-203(8).

**72-3-509 and 72-3-510 reserved.**

**72-3-511. Acceptance of appointment -- consent to jurisdiction.** By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative or mailed to him by ordinary first-class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

**History:** En. 91A-3-602 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-602.

**72-3-512. Qualification -- filing of bond and statement of acceptance.** Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

**History:** En. 91A-3-601 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-601.

#### **Cross-References**

Documents requiring seals, 3-1-206.

Authority of agent, Title 28, ch. 10, part 4.

**72-3-513. Bond -- when required.** (1) No bond is required of a personal representative appointed in informal proceedings, except:

- (a) upon the appointment of a special administrator;
- (b) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or
- (c) when bond is required under 72-3-514.

(2) Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding, except that bond is not required of a personal representative appointed in formal proceedings if the will

relieves the personal representative of bond unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary.

(3) No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

**History:** En. 91A-3-603 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-603.

#### **Cross-References**

Authority of agent, Title 28, ch. 10, part 4.

**72-3-514. Demand for bond by interested person.** (1) Any person apparently having an interest in the estate worth in excess of \$1,000 or any creditor having a claim in excess of \$1,000 may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in 72-3-513 or 72-3-515.

(2) After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate.

(3) Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for his removal and appointment of a successor personal representative.

**History:** En. 91A-3-605 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-605.

#### **Cross-References**

Authority of agent, Title 28, ch. 10, part 4.

**72-3-515. Bond amount -- security -- reduction.** (1) If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the clerk indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the clerk or give other suitable security in an amount not less than the estimate.

(2) The clerk shall determine that the bond is duly executed by a corporate surety or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security.

(3) The clerk may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

**History:** En. 91A-3-604 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-604.

#### **Cross-References**

Authority of agent, Title 28, ch. 10, part 4.

**72-3-516. Terms of bond -- liability of surety.** (1) The following requirements and provisions apply to any bond required by this part:

(a) Bonds shall name the state as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(d) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(e) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

**History:** En. 91A-3-606 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-606.

#### **Cross-References**

Authority of agent, Title 28, ch. 10, part 4.

**72-3-517 through 72-3-520 reserved.**

**72-3-521. Termination of appointment -- general effect.** Termination of appointment of a personal representative occurs as indicated in 72-3-522 through 72-3-526, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination or relieve him of the duty to preserve assets subject to his control, to account therefor, and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative but terminates his authority to represent the estate in any pending or future proceeding.

**History:** En. 91A-3-608 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-608.

**72-3-522. Termination of appointment -- death or disability.** (1) The death of a personal representative or the appointment of a conservator for the estate of a personal representative terminates his appointment.

(2) Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection, and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

**History:** En. 91A-3-609 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-609.

**72-3-523. Termination of appointment -- change of testacy status.**

Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder does not terminate the appointment of the personal representative although his powers may be reduced as provided in 72-3-304. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within 30 days after expiration of time for appeal from the order in formal testacy proceedings or from the informal probate changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will or as in intestacy, as the case may be.

**History:** En. 91A-3-612 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-612.

**72-3-524. Termination of appointment -- closing of estate.**

(1) An appointment of a personal representative terminates, as provided in 72-3-1004, 1 year after the filing of a closing statement.

(2) An order closing an estate as provided in 72-3-1001, 72-3-1002, or 72-3-1003 terminates an appointment of a personal representative.

**History:** En. 91A-3-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-610(1), (2).

**72-3-525. Termination of appointment -- voluntary.**

A personal representative may resign his position by filing a written statement of resignation with the clerk after he has given at least 15 days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

**History:** En. 91A-3-610 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-610(3).

**72-3-526. Termination of appointment -- removal for cause.**

(1) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative and to other persons as the court may order. Except as otherwise ordered as provided in 72-3-617, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of or under the control of the personal representative being removed.

(2) Cause for removal exists:

(a) when removal would be in the best interests of the estate; or

(b) if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

(3) Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or

his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

**History:** En. 91A-3-611 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-611.

**72-3-527. Successor personal representative.** (1) Parts 2 and 3 of this chapter govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated.

(2) After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process, or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative.

(3) Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

**History:** En. 91A-3-613 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-613.

## Part 6

### Personal Representative Powers, Duties, and Compensation

**72-3-601. Time of accrual of duties and powers -- power of executor prior to appointment -- ratification.** (1) The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter.

(2) Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral, and burial arrangements.

(3) A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

**History:** En. 91A-3-701 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-701.

**72-3-602. Priority among different letters.** A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

**History:** En. 91A-3-702 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-702.

**72-3-603. Notice of appointment to heirs and devisees.** (1) Not later than 30 days after his appointment, every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail

to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate.

(2) (a) The information must:

(i) include the name and address of the personal representative;

(ii) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(iii) indicate whether bond has been filed; and

(iv) describe the court where papers relating to the estate are on file.

(b) The information must state that the estate is being administered by the personal representative under the uniform probate code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.

(3) The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers, or other duties.

(4) A personal representative may inform other persons of his appointment by delivery or ordinary first-class mail.

**History:** En. 91A-3-705 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-705; amd. Sec. 11, Ch. 582, L. 1989.

**72-3-604. Standing to sue.** Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.

**History:** En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(3).

#### **Cross-References**

Parties plaintiff and defendant -- capacity, Rule 17, M.R.Civ.P. (see Title 25, ch. 20).

**72-3-605. Personal representative to proceed without court order -- power to invoke jurisdiction.** A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified under this code or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

**History:** En. 91A-3-704 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-704.

**72-3-606. Possession and protection of estate.** (1) Except as otherwise provided by a decedent's will and subject to the provisions of chapter 12, part 7, every personal representative has a right to and shall take possession or control of the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration.

(2) The personal representative shall pay taxes on and take all steps

reasonably necessary for the management, protection, and preservation of the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

**History:** En. 91A-3-708 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-708.

**Cross-References**

Disposition of property of deceased -- suicide note, 7-4-2917.

Estate tax, Title 72, ch. 16, part 9.

**72-3-607. Inventory -- appraisal.** (1) Within 9 months after appointment, a personal representative who is not a special administrator or a successor to another representative who has previously discharged this duty shall prepare an inventory of property owned by the decedent at the time of the decedent's death, listing the inventory of property with reasonable detail and indicating for each listed item its fair market value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to the item.

(2) The inventory must include a statement of the full and true value of the decedent's interest in every item listed in the inventory. The personal representative may appoint one or more qualified and disinterested persons to assist the personal representative in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraisers must be indicated on the inventory with the item or items appraised.

(3) The personal representative shall:

(a) send a copy of the inventory to interested persons; or

(b) file the original of the inventory with the court and send a copy of the inventory to interested persons who request it.

**History:** En. 91A-3-706 by Sec. 1, Ch. 365, L. 1974; amd. Sec. 4, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-706; amd. Sec. 12, Ch. 582, L. 1989; amd. Sec. 17, Ch. 9, Sp. L. May 2000; amd. Sec. 1, Ch. 68, L. 2003.

**72-3-608. Repealed.** Sec. 18, Ch. 52, L. 1981.

**History:** En. 91A-3-715.1 by Sec. 6, Ch. 516, L. 1975; R.C.M. 1947, 91A-3-715.1.

**72-3-609. Supplemental inventory.** If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplemental inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions and the appraisers or other data relied upon, if any. The personal representative shall file the supplemental inventory with the court if the original inventory was filed or shall furnish copies of the supplemental inventory or information to persons interested in the new information.

**History:** En. 91A-3-707 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-707; amd. Sec. 2, Ch. 68, L. 2003.

**72-3-610. General duties -- fiduciary.** A personal representative is a fiduciary who shall observe the standards of care applicable to trustees under the laws of the state of Montana. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

**History:** En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(1).

**Cross-References**

Trust Code, Title 72, ch. 33 through 36.

**72-3-611. No surcharge for authorized acts generally -- limitation.**

(1) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and of this code, an informally probated will is authority to administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding.

(2) Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code.

**History:** En. 91A-3-703 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-703(2).

**72-3-612. No individual liability -- exceptions -- certain claims to be brought against personal representative.** (1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

**History:** En. 91A-3-808 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-808.

**72-3-613. Transactions authorized for personal representative.** Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the

decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due on the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees generally. If the personal representative is authorized to invest funds in United States obligations, the personal representative may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) with the consent of the heirs or devisees or the court, abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and the

personal representative against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) with the consent of the heirs or devisees or the court, effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of the personal representative's administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances; provided, however, a personal representative may not, without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate that the personal representative represents, nor be interested in the sale. All sales must be fairly conducted and made for the best price obtainable.

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of death in the same business form, including a sole proprietorship, partnership, or limited liability company, unless otherwise ordered by the court in a formal proceeding initiated by an interested person on the basis that continuation of the business is not in the best interests of the estate or its beneficiaries;

(25) incorporate any business or venture in which the decedent was engaged at the time of death;

(26) satisfy and settle claims and distribute the estate as provided in this code.

**History:** En. 91A-3-713 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-713; amd. Sec. 1, Ch. 145, L. 1989; amd. Sec. 5, Ch. 290, L. 1999.

**72-3-614. Power to recover property which is subject of void or voidable transfer.** The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

**History:** En. 91A-3-709 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-709.

#### Cross-References

Liens, Title 71, ch. 3.

**72-3-615. Transaction involving conflict of interest -- voidable -- exceptions.** Any sale or encumbrance to the personal representative, his spouse, agent, or attorney or any corporation or trust in which he has a substantial beneficial interest or any transaction which is affected by a substantial conflict of interest on the part of the personal representative is voidable by any person interested in the estate except one who has consented after fair disclosure, unless:

(1) the will or a contract entered into by the decedent expressly authorized the transaction; or

(2) the transaction is approved by the court after notice to interested persons.

**History:** En. 91A-3-711 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-711.

**72-3-616. Improper exercise of power -- breach of fiduciary duty.** (1) If any exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust.

(2) The rights of purchasers and others dealing with a personal representative shall be determined as provided in 72-3-615 and 72-3-618.

**History:** En. 91A-3-710 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-710.

#### Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

**72-3-617. Order restraining personal representative.** (1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution or exercise of any powers or discharge of any duties of his office or make any other order to secure proper performance of his duty if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(2) The matter shall be set for hearing within 10 days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

**History:** En. 91A-3-607 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-607.

#### Cross-References

Parties plaintiff and defendant -- capacity, Rule 17, M.R.Civ.P. (see Title 25, ch. 20).

**72-3-618. Persons dealing with personal representative -- protection.** (1) A person who in good faith and without notice either assists a personal representative or deals with a personal representative for value is protected as if the personal representative properly exercised the personal representative's power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives that are endorsed on letters as provided in 72-3-404(3), a provision in any will or order of court purporting to limit the power of a personal representative is not effective except as to persons with actual knowledge of the provision.

(2) A person is not bound to see to the proper application of estate assets

paid or delivered to a personal representative.

(3) The protection expressed in this section extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection expressed in this section is not a substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

**History:** En. 91A-3-712 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-712; amd. Sec. 18, Ch. 9, Sp. L. May 2000.

**72-3-619 and 72-3-620 reserved.**

**72-3-621. Powers and duties of successor personal representative.** A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

**History:** En. 91A-3-716 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-716.

**72-3-622. Corepresentatives -- when joint action required.** If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply:

(1) when any corepresentative receives and receipts for property due the estate;

(2) when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate; or

(3) when a corepresentative has been delegated to act for the others.

**History:** En. 91A-3-717 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-717(part).

**72-3-623. Persons dealing with single corepresentative -- protection.** Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

**History:** En. 91A-3-717 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-717(part).

**72-3-624. Powers of remaining corepresentative.** Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

**History:** En. 91A-3-718 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-718.

**72-3-625 through 72-3-630 reserved.**

**72-3-631. Compensation of personal representative.** (1) A personal representative is entitled to reasonable compensation for services. The compensation may not exceed 3% of the first \$40,000 of the value of the estate as reported for federal estate tax purposes and 2% of the value of the estate in excess of \$40,000 as reported for federal estate tax purposes. However, a personal representative is entitled to a minimum compensation of the lesser of \$100 or the value of the gross estate.

(2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative may not exceed 2% of the interest passing.

(3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative may not exceed 2% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation may not exceed 2% of the value of the estate, except that it may not be less than \$100.

(4) If there is more than one personal representative, only one compensation is allowed.

(5) The court may allow additional compensation for extraordinary services. The additional compensation may not be greater than the amount that is allowed for the original compensation.

(6) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce the right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

**History:** En. 91A-3-719 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-719; amd. Sec. 1, Ch. 424, L. 1979; amd. Sec. 19, Ch. 9, Sp. L. May 2000.

**Cross-References**

Compensation of Public Administrator, 72-15-301.

Inheritance and estate taxes, Title 72, ch. 16.

**72-3-632. Expenses of personal representative in estate litigation.** If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements, including reasonable attorneys' fees incurred.

**History:** En. 91A-3-721 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-721.

**72-3-633. Compensation of attorney.** (1) If the services of an attorney are engaged by the personal representative, the compensation of such attorney shall not exceed 1 1/2 times the compensation allowable to the personal representative.

(2) If the services of an attorney are engaged by the personal representative to assist in the termination of joint tenancies, the compensation allowed the attorney shall not exceed 3% of the interest passing.

(3) If the services of an attorney are engaged in connection with the termination of a life estate, the compensation allowed the attorney shall not exceed 3% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the attorney's compensation shall not exceed 3%, except that it shall not be less than \$100.

(4) If the services of more than one attorney are engaged, only one compensation shall be allowed.

(5) In cases where further compensation may be allowed to an attorney, the same must be fixed and determined by the court upon good cause shown after notice and hearing of an application therefor.

**History:** En. 91A-3-720 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-720.

**72-3-634. Proceedings for review of employment of agents and compensation of personal representatives and employees.** (1) Upon the filing of a motion for settlement of fees by the court filed by an interested person, the

personal representative, or the person employed by the personal representative and after notice to all interested persons, the propriety of employment of any person by a personal representative, including any attorney, auditor, investment advisor, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services shall be reviewed and determined by the court.

(2) In any dispute concerning fees, the court shall set the fee.

(3) Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

**History:** En. 91A-3-722 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-3-722.

## TITLE 75

### ENVIRONMENTAL PROTECTION

#### CHAPTER 10

#### WASTE AND LITTER CONTROL

##### Part 10 -- Infectious Waste Management Act

75-10-1001. Short title.

75-10-1002. Purpose.

75-10-1003. Definitions.

75-10-1004. Prohibition.

75-10-1005. Management standards -- procedures for storage, transportation, treatment, and disposal.

75-10-1006. Generation licensing and regulation -- rulemaking authority.

75-10-1007. Criminal penalty.

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##### Chapter Cross-References

County control of litter, 7-5-2109.

Refuse disposal districts, Title 7, ch. 13, part 2.

Nuisances, Title 27, ch. 30.

Littering on highways prohibited, 61-8-365.

Pesticides, Title 80, ch. 8.

Memorandum of agreement with Department of Agriculture, 80-8-110.

Forfeiture of hunting or fishing license for littering, 87-2-112.

##### Part 10

##### Infectious Waste Management Act

##### Part Cross-References

Report of unprotected exposure to disease, 50-16-702.

**75-10-1001. Short title.** This part may be cited as the "Infectious Waste Management Act".

**History: En. Sec. 1, Ch. 483, L. 1991.**

**75-10-1002. Purpose.** The purpose of this part is to protect the public health, safety, and welfare of the citizens of Montana by developing and implementing infectious waste management policies that are reasonable, cost-effective, aesthetically pleasing, and environmentally acceptable.

**History: En. Sec. 2, Ch. 483, L. 1991.**

**75-10-1003. Definitions.** As used in this part, the following definitions apply:

- (1) "Disposal" or "dispose" has the meaning provided in 75-10-203.
- (2) "Generate" or "generation" means to produce infectious waste.
- (3) "Infectious" means capable of producing disease. To be infectious, the following four factors simultaneously must be present:
  - (a) virulence, which is the ability of microorganisms to cause disease;
  - (b) dose, which is microorganisms in a quantity sufficient to cause infection;
  - (c) portal of entry, which is an opening or route of access into a human body; and
  - (d) host susceptibility, which means the host's natural resistance is incapable of preventing infection.
- (4) "Infectious waste" means waste capable of producing infectious disease. Infectious waste includes but is not limited to:
  - (a) cultures and stocks of infectious agents and associated biologicals;
  - (b) human pathological waste, including tissues, organs, and body parts removed during surgery or an autopsy;
  - (c) free-flowing waste human blood and products of blood, including serum, plasma, and other blood components and items soaked or saturated with blood; and
  - (d) sharps that have been used in patient care, medical research, or industrial laboratories.
- (5) "Intermediate point" means a place where infectious waste is not treated or disposed of.
- (6) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local government entity, federal agency, or any other governmental or private entity, whether organized for profit or not.
- (7) "Sharps" means any discarded health care article that may cause punctures or cuts, including but not limited to:
  - (a) broken glass that may be contaminated with blood;
  - (b) needles; and
  - (c) scalpel blades.
- (8) "Steam sterilization" means a treatment method for infectious waste using saturated steam within a pressure vessel (known as a steam sterilizer, autoclave, or retort) at a time, for a period of time, and at a temperature sufficient to kill infectious agents within the waste.
- (9) "Storage" or "store" means to hold for a temporary period.
- (10) "Transport" or "transportation" means to move infectious waste from the point of generation to any intermediate point or to the point of ultimate treatment or disposal.
- (11) "Treat" or "treatment" means to apply a method, technique, or process, including incineration, designed to render infectious waste sterile.

**History: En. Sec. 3, Ch. 483, L. 1991; amd. Sec. 209, Ch. 418, L. 1995; amd. Sec. 2, Ch. 97, L. 2007.**

**Compiler's Comments**

*2007 Amendment:* Chapter 97 inserted definitions of disposal, generate, intermediate point, and person; deleted definition of department that read: ""Department" means the department of environmental quality established in 2-15-3501"; deleted definition of generator that read: ""Generator" means an individual, firm, facility, or company that produces infectious waste"; in definition of storage at beginning added "or "store"" and after "means" substituted "to hold for a temporary period" for "the actual or intended containment of wastes on either a temporary basis or a long-term basis"; in definition of transportation at beginning inserted ""Transport" or"; in definition of treatment at beginning inserted ""Treat" or"; and made minor changes in style. Amendment effective October 1, 2007.

**75-10-1004. Prohibition.** (1) Except as provided in subsection (2), a person may not generate, treat, store, transport, or dispose of infectious waste in a manner not authorized under the provisions of this part or rules adopted under the provisions of this part.

(2) The prohibition in subsection (1) does not apply to the generation of infectious waste by an individual in reasonable association with the individual's household operations.

**History:** En. Sec. 4, Ch. 483, L. 1991; amd. Sec. 3, Ch. 97, L. 2007.

#### **Compiler's Comments**

*2007 Amendment:* Chapter 97 in (1) at beginning inserted exception clause and after "may not" inserted "generate"; inserted (2) providing that the prohibition does not apply to generation of infectious waste associated with household operations; and made minor changes in style. Amendment effective October 1, 2007.

**75-10-1005. Management standards -- procedures for storage, transportation, treatment, and disposal.** (1) Infectious waste must be separated from ordinary waste at the point of origin and stored until the waste is rendered noninfectious in separate, distinct containers with biohazard warning labels in compliance with the following procedures:

(a) Sharps must be contained for storage, transportation, treatment, and subsequent disposal in leakproof, rigid, puncture-resistant containers that must be taped closed or capped securely to prevent loss of contents.

(b) Infectious waste other than sharps must be contained in moisture-proof disposable containers or bags of a strength sufficient to prevent ripping, tearing, or bursting under normal conditions of use. The bags must be securely tied to prevent leakage or expulsion of solid or liquid wastes during storage, handling, and transportation.

(2) To inhibit the spread of infectious agents, infectious waste must be stored prior to treatment in a secured area that prevents access by unauthorized personnel and must be clearly marked or labeled as infectious.

(3) Handling of infectious waste must be done in a manner to prevent compaction or other mechanical manipulation that might cause the release of infectious agents.

(4) (a) Treatment and disposal of infectious waste must be accomplished through the following methods:

(i) incineration with complete combustion that reduces infectious waste to carbonized or mineralized ash;

(ii) steam sterilization that renders infectious waste noninfectious; or

(iii) sterilization by standard chemical techniques or by any scientifically proven techniques approved by state and federal authorities.

(b) Liquid or semisolid infectious waste may be discharged into a sewer system that provides secondary treatment or into a primary treatment sewage system if waste is first sterilized by chemical treatment. A subsurface disposal system installed and operated in accordance with state or local sanitary regulations is, for the purpose of this subsection (b), a sewer system providing secondary

treatment.

(c) Fetal remains or recognizable body parts other than teeth must be disposed of by incineration or interment.

(5) If infectious waste has been rendered noninfectious by one of the methods listed in subsection (4) and is no longer biologically hazardous, it may be mixed with and disposed of with ordinary waste in the following manner:

(a) Steam-sterilized waste must be labeled identifying it as such with heat sensitive tape or bagged in marked autoclavable bags.

(b) Chemically treated waste or waste otherwise treated under subsection (4)(a)(iii) must be appropriately labeled.

(6) Infectious waste may be transported by the generator, a municipal solid waste service, or a regulated commercial hauler to an offsite treatment facility if the waste is confined in a leakproof, noncompacting, fully enclosed vehicle compartment.

(7) (a) Infectious waste that has been treated by one of the methods in subsection (4) may be disposed of in a properly operated landfill licensed under 75-10-221.

(b) Untreated infectious waste may be disposed of at a licensed, properly operated landfill until April 1, 1993, if it is buried in a separate area without compaction and with minimum disturbance.

(8) An employee who handles or manages infectious waste must receive training provided by the employer that is adequate to ensure safe performance of duties.

(9) Generators and transporters of infectious waste shall develop a contingency plan to handle spills and equipment failure.

**History: En. Sec. 5, Ch. 483, L. 1991.**

**75-10-1006. Generation licensing and regulation -- rulemaking authority.** (1) A person that is required to obtain a license from a board or department of the state to operate a health care facility, as defined in 50-5-101, or to engage in a profession or occupation:

(a) may not generate infectious waste, store infectious waste at a place where infectious waste is generated, or transport infectious waste from the point of generation to an intermediate point without a license; and

(b) shall comply with the rules adopted under this part by the board or department responsible for licensing that person.

(2) A board or department of the state that issues a license to a person that generates infectious waste:

(a) shall adopt rules to implement this part governing the following activities by a licensee:

(i) generation of infectious waste;

(ii) storage of infectious waste at a place where infectious waste is generated;

(iii) transportation of infectious waste from the place of generation to an intermediate point; and

(b) may impose and adjust annual fees commensurate with the costs of regulation.

**History: En. Sec. 6, Ch. 483, L. 1991; amd. Sec. 4, Ch. 97, L. 2007.**

#### **Compiler's Comments**

*2007 Amendment:* Chapter 97 in (1) at beginning after "A" inserted "person that is required to obtain a license from a" and after "state" inserted "to operate a health care facility, as defined in 50-5-101, or to engage in a profession or occupation"; inserted (1)(a) prohibiting generation, storage, and transportation of infectious waste from the point of generation to an intermediate point without a license; in (1)(b) substituted "shall comply with the rules adopted under this part by the board or department responsible for licensing that person" for "that licenses a profession, occupation, or health care facility that

generates infectious waste shall require each licensee to comply with this part as a condition of licensure"; in (2) in introductory clause after "department" inserted "of the state that issues a license to a person that generates infectious waste"; in (2)(a) after "part" inserted "governing the following activities by a licensee:

(i) generation of infectious waste;

(ii) storage of infectious waste at a place where infectious waste is generated;

(iii) transportation of infectious waste from the place of generation to an intermediate point";

deleted former (2) that read: "(2) A profession, occupation, or health care facility that generates or transports infectious waste or that operates treatment, storage, or disposal facilities regulated by this part that is not already licensed by a board or department under subsection (1) must obtain a permit annually from the department. The department shall adopt rules to implement this part and may establish an annual fee commensurate with the costs of regulation. Fees collected under the provisions of this part must be deposited in the solid waste management account established in 75-10-117"; and made minor changes in style. Amendment effective October 1, 2007.

**75-10-1007. Criminal penalty.** A person who violates this part or a rule adopted pursuant to this part is guilty of a misdemeanor. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

**History: En. Sec. 5, Ch. 97, L. 2007.**

#### **Compiler's Comments**

*Effective Date:* This section is effective October 1, 2007.