

MEDICAL BOARD LAWS

AS OF THE 2019 LEGISLATIVE SESSION

TITLE 50, CHAPTER 6

EMERGENCY MEDICAL SERVICES

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CHAPTER 6

EMERGENCY MEDICAL SERVICES

Chapter Cross-References

Good Samaritan law, 27-1-714, 41-1-405.

Validity of consent for medical treatment, Title 41, ch. 1, part 4.

Chapter Administrative Rules

ARM 37.5.117 Certain Title 50 programs — applicable hearing procedures.

Chapter Law Review Articles

Will EMTALA Changes Leave Emergency Patients Dying on the Hospital Doorstep? (Emergency Medical Treatment and Active Labor Act of 1985), McDonnell, 38 J. Health L. 77 (2005).

ER to Lockup: What Are the Standards?, McFadden, Fyfe, & Ward, 37 Trial 28 (2001).

The Emergency Medical Treatment and Active Labor Act: The Anomalous Right to Health Care (Symposium on EMTALA: The Emergency Medical Treatment and Active Labor Act), Dame, 8 Health Matrix 3 (1998).

Emergency! Says Who? Analysis of the Legal Issues Concerning Managed Care and Emergency Medical Services, Young, 13 J. Contemp. Health L. & Pol'y 553 (1997).

Part 1

Development of Program

50-6-101. Legislative purpose. (1) The public welfare requires the providing of assistance and encouragement for the development of an emergency care system for Montanans who each year are dying and suffering permanent disabilities needlessly because of inadequate medical services. The repeated loss of persons who die unnecessarily because necessary life-support personnel and equipment are not available to victims of accidents and sudden illness is a tragedy that can and must be eliminated.

(2) Community-integrated health care is necessary to improve the health of Montana citizens, to prevent illness and injury, to reduce the incidence of emergency calls and hospital emergency department visits made for the purpose of obtaining nonemergency, nonurgent medical care or services, and to provide community outreach, health education, and referral services within communities.

(3) The development of an emergency medical services program and community-integrated health care is in the interest of the social well-being and health and safety of the state and all of its people who require emergency and community-integrated medical care.

History: En. 69-7001 by Sec. 1, Ch. 311, L. 1974; R.C.M. 1947, 69-7001; amd. Sec. 14, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 in (1) near beginning substituted "an emergency care system" for "a comprehensive emergency medical services program" and in middle after "because of inadequate" deleted "emergency"; inserted (2) regarding purposes of community-integrated health care; in (3) after "an emergency medical services program" inserted "and community-integrated health care" and at end inserted "who require emergency and community-integrated medical care"; and made minor changes in style. Amendment effective July 1, 2019.

50-6-102. Department to establish and administer program. The department of public health and human services shall establish and administer an emergency medical services program.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part); amd. Sec. 95, Ch. 418, L. 1995; amd. Sec. 260, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Cross-References

Department of Public Health and Human Services, Title 2, ch. 15, part 22.

50-6-103. Powers of department. (1) The department of public health and human services is authorized to confer and cooperate with any other persons, organizations, and governmental agencies that have an interest in the emergency medical services program and community-integrated health care.

(2) The department is authorized to accept, receive, expend, and administer any funds that are now available or that may be donated, granted, or appropriated to the department.

(3) The department may, after consultation with the trauma care committee, the Montana committee on trauma of the American college of surgeons, the Montana hospital association, and the Montana medical association, adopt rules necessary to implement part 4 of this chapter.

(4) The department shall continually assess and, as needed, revise the functions and components that it regulates to improve the quality of emergency medical services and to ensure that the emergency medical services program adapts to the changing community-integrated health care needs of the citizens of Montana.

(5) The department shall collaborate with other components of the health care system to fully integrate the emergency medical services program into the overall health care system.

(6) As part of the collaboration under subsection (5), the department shall provide guidance to ambulance services and nontransporting medical units regarding their choice whether or not to engage in community-integrated health care beyond offering emergency medical services.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part); amd. Sec. 96, Ch. 418, L. 1995; amd. Sec. 261, Ch. 546, L. 1995; amd. Sec. 11, Ch. 579, L. 1995; amd. Sec. 3, Ch. 171, L. 1997; amd. Sec. 15, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 in (1) at end substituted "the emergency medical services program and community-integrated health care" for "emergency medical services problems and needs"; inserted (4) requiring continual assessment by the department and revision as needed to adapt to changing community-integrated health care needs; inserted (5) requiring the department to collaborate with other components of the health care system; and inserted (6) requiring the department to provide guidance to ambulance services and nontransporting medical units. Amendment effective July 1, 2019.

1997 Amendment: Chapter 171 in (3), near beginning after "consultation with", deleted "the emergency medical services advisory council".

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

1995 Amendments — Composite Section: Chapter 418 in (1) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 at beginning of (1) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 579 inserted (3) concerning adoption of rules to implement Title 50, chapter 6, part 4; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-6-104. Interdepartmental cooperation required. The department of public health and human services, the board of medical examiners, and other interested departments or divisions shall develop in writing a mutually agreeable plan of cooperation so that governmental efforts are not duplicated and governmental resources are applied on a reasonable priority basis.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part); amd. Sec. 8, Ch. 274, L. 1981; amd. Sec. 97, Ch. 418, L. 1995; amd. Sec. 262, Ch. 546, L. 1995; amd. Sec. 1, Ch. 150, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 150 near beginning substituted "the board of medical examiners" for "the department of justice"; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1981 Amendment: Substituted "department of justice" for "department of community affairs, highway safety division".

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

Department of Public Health and Human Services, Title 2, ch. 15, part 22.

50-6-105. Emergency medical care standards — review process. (1) The board of medical examiners shall establish patient care standards for:

- (a) out-of-hospital emergency medical treatment and interfacility transportation; and
- (b) community-integrated health care.

(2) (a) Complaints involving out-of-hospital care, interfacility care, community-integrated health care, or the operation of an emergency medical service, as defined in 50-6-302, must be filed with the board and reviewed by a screening panel pursuant to 37-1-307.

(b) If a complaint is initially filed with the department of public health and human services, the department shall refer the complaint to the board for review by a screening panel.

(3) (a) When a complaint involves the operation or condition of an emergency medical service, the screening panel shall refer the complaint to the department for investigation as provided in 50-6-323.

(b) When a complaint involves patient care provided by an emergency care provider, the screening panel shall:

(i) refer the complaint to the board for investigation as provided in 37-1-308 and 50-6-203; and
(ii) forward to the department the complaint and the results of the screening panel's initial review as soon as the review is completed.

(c) When a complaint involves a combination of patient care and emergency medical service matters, the screening panel shall refer the complaint to both the department and the board for matters that fall within the jurisdiction of each entity.

(4) For a complaint involving patient care, the board shall:

(a) immediately share with the department any information indicating:

(i) a potential violation of department rules; or

(ii) that the existing policies or practices of an emergency medical service may be jeopardizing patient care; and

(b) notify the department when:

(i) a sanction is imposed on an emergency care provider; or

- (ii) the complaint is resolved.
- (5) For a complaint involving an emergency medical service, the department shall:
 - (a) immediately share with the board any information indicating:
 - (i) a potential violation of board rules; or
 - (ii) that the practices of an emergency care provider may be jeopardizing patient care; and
 - (b) notify the board when:
 - (i) a sanction is imposed on an emergency medical service; or
 - (ii) the complaint is resolved.

History: En. Sec. 2, Ch. 150, L. 2009; amd. Sec. 16, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 in (1)(a) substituted "out-of-hospital emergency medical treatment and interfacility transportation" for "prehospital and interfacility emergency medical treatment and transportation"; inserted (1)(b) regarding community-integrated health care; in (2)(a) near beginning substituted "out-of-hospital care" for "prehospital care" and after "interfacility care" inserted "community-integrated health care"; in (3)(b) after "care provided by an emergency" substituted "care provider" for "medical technician"; in (4)(b)(i) and in (5)(a)(ii) substituted "emergency care provider" for "emergency medical technician"; and made minor changes in style. Amendment effective July 1, 2019.

Effective Date: This section is effective October 1, 2009.

Part 2

Emergency Care Providers

Part Cross-References

Workers' compensation — regulation of fees, 39-71-704.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Part Administrative Rules

Title 24, chapter 156, subchapter 27, ARM Emergency medical technicians.

50-6-201. Legislative findings — duty of board. (1) The legislature finds and declares that a program for emergency care providers is required in order to provide the safest and most efficient delivery of emergency and community-integrated health care.

(2) The legislature further finds that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is important in reducing the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition.

(3) The legislature further finds that community-integrated health care can prevent illness and injury and can help fill gaps in the state's health care system, particularly in rural communities with limited health care services and providers.

(4) The board has a duty to ensure that emergency care providers are properly licensed and provide proper treatment to patients in their care.

History: En. 69-7003 by Sec. 1, Ch. 84, L. 1975; R.C.M. 1947, 69-7003; amd. Sec. 3, Ch. 150, L. 2009; amd. Sec. 17, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 in (1) substituted current language regarding emergency and community-integrated health care for former language that read: "The legislature finds and declares that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is an important ingredient necessary for reduction of the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition and that a program for emergency medical technicians is required in order to provide the safest and most efficient delivery of emergency care"; inserted (2) regarding prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility; inserted (3) regarding the use of community-integrated health care to prevent illness and injury and to help fill gaps in the state's

health care system; in (4) in middle substituted "emergency care providers are properly licensed and" for "emergency medical technicians"; and made minor changes in style. Amendment effective July 1, 2019.

2009 Amendment: Chapter 150 inserted (2) concerning duty of board; and made minor changes in style. Amendment effective October 1, 2009.

50-6-202. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

(2) "Emergency care provider" means a person licensed by the board, including but not limited to an emergency medical responder, an emergency medical technician, an advanced emergency medical technician, or a paramedic. An emergency care provider with an endorsement may provide community-integrated health care.

(3) "Volunteer emergency care provider" means an individual who is licensed pursuant to this part and provides out-of-hospital, emergency medical, or community-integrated health care or interfacility transport:

(a) on the days and at the times of the day chosen by the individual; and

(b) for an emergency medical service other than:

(i) a private ambulance company unless the care is provided without compensation and outside of the individual's regular work schedule; or

(ii) a private business or a public agency, as defined in 7-1-4121, that employs the individual on a regular basis with a regular, hourly wage to provide emergency medical or community-integrated health care as part of the individual's job duties.

History: En. 69-7004 by Sec. 2, Ch. 84, L. 1975; R.C.M. 1947, 69-7004; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 377, L. 1991; amd. Sec. 157, Ch. 483, L. 2001; (3)En. Sec. 1, Ch. 82, L. 2009; amd. Sec. 18, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 substituted definition of emergency care provider for former definition that read: ""Emergency medical technician" means a person who has been specially trained in emergency care in a training program approved by the board and certified by the board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition"; in definition of volunteer emergency care provider substituted ""Volunteer emergency care provider" means" for ""Volunteer emergency medical technician" means", after "pursuant to this part and provides" inserted "out-of-hospital", substituted "emergency medical, or community-integrated health care or interfacility transport" for "emergency medical care", and in (b)(ii) after "provide emergency medical" inserted "or community-integrated health"; and made minor changes in style. Amendment effective July 1, 2019.

Effective Date: Section 4, Ch. 82, L. 2009, provided that subsection (3) is effective on passage and approval. Approved March 25, 2009.

2001 Amendment: Chapter 483 in definition of board substituted "Montana state board of medical examiners provided for in 2-15-1731" for "board of medical examiners, department of commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1991 Amendment: In definition of emergency medical technician, after "technician", deleted "basic" and after "means" substituted "a person" for "personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services"; deleted definition of emergency medical technician—advanced; and made minor changes in style.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (3).

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

Case Notes

Unpaid Emergency Medical Technician Trainees, Volunteers, and Students Not Considered Employees: The definition of emergency medical services personnel in this section does not include an unpaid emergency medical technician (EMT) trainee. Therefore, an unpaid EMT trainee who has not been certified to provide medical services is not considered an employee, as defined in 39-71-118, for workers' compensation purposes. Further, because volunteers are generally not considered employees unless designated by law, a volunteer involved in ambulance services is also not considered an employee, as defined in 39-71-118, for workers' compensation purposes. Similarly, an unpaid student,

such as an unpaid EMT trainee, who is learning skills in a work environment is considered a volunteer and is not considered an employee, as defined in 39-71-118, for workers' compensation purposes. The general statement of public policy in Great W. Sugar Co. v. District Court, 188 M 1, 610 P2d 717 (1980), that all forms of employment are subject to the Workers' Compensation Act, does not apply to unpaid EMT trainees and volunteers because those persons are not considered employees. Dyess v. Meagher County, 2003 MT 78, 315 M 35, 67 P3d 281 (2003).

50-6-203. Rules. (1) The board, after consultation with the department of public health and human services and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to:

- (a) training and licensure of emergency care providers;
- (b) the administration of drugs by emergency care providers; and
- (c) the handling of complaints involving patient care provided by emergency care providers.

(2) The board may, by rule, establish various levels of emergency care provider licensure and shall specify for each level the training requirements, acts allowed, relicensure requirements, and any other requirements regarding the training, performance, or licensure of that level of emergency care provider that it considers necessary, subject to the provisions of 37-1-138.

History: En. 69-7008 by Sec. 6, Ch. 84, L. 1975; R.C.M. 1947, 69-7008; amd. Sec. 8, Ch. 274, L. 1981; amd. Sec. 2, Ch. 377, L. 1991; amd. Sec. 98, Ch. 418, L. 1995; amd. Sec. 263, Ch. 546, L. 1995; amd. Sec. 60, Ch. 271, L. 2003; amd. Sec. 4, Ch. 150, L. 2009; amd. Sec. 19, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 in (1)(a), (1)(b), (1)(c), and (2) in two places substituted references to emergency care provider for references to emergency medical technician. Amendment effective July 1, 2019.

2009 Amendment: Chapter 150 in (1) following "human services" deleted "the department of justice"; in (1)(a) substituted "licensure" for "certification"; in (1)(b) inserted language concerning the adoption of rules for the administration of drugs by emergency medical technicians; inserted (1)(c) concerning complaints; in (2) following "medical technician" substituted "licensure" for "certification", following "acts allowed" substituted "relicensure" for "recertification", and following "performance or" substituted "licensure" for "certification"; and made minor changes in style. Amendment effective October 1, 2009.

2003 Amendment: Chapter 271 in (2) at end inserted "subject to the provisions of 37-1-138". Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1995 Amendments: Chapter 418 in (1) substituted "department of public health" for "department of health and environmental sciences"; and at end of (2) deleted "or desirable". Amendment effective July 1, 1995.

Chapter 546 in (1) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Near end of (1), after "certification of" substituted "emergency medical technicians and" for "personnel" and at end, after "drugs", deleted "and other acts as allowed herein"; and inserted (2) authorizing Board to adopt rules establishing levels of certification and training and certification requirements. Amendment effective April 6, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 377, L. 1991, provided: "A statement of intent is required for this bill because [section 2] [50-6-203] gives the board of medical examiners authority to adopt rules specifying various certification levels for emergency medical technicians and requires the board to establish training, certification, and performance requirements for each level of certification. It is the intent of the legislature that the board define several certification levels for emergency medical technicians, which will differ in the amount of training required and in the acts allowed to be performed. It is also intended that the board specify the training needed by each level, the

acts and procedures each level is allowed to perform, the standards that must be met to be certified and recertified at each level, and procedural requirements necessary to enforce and implement certification and training."

1981 Amendment: Substituted "department of justice" for "department of community affairs".

Cross-References

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

Department of Justice, Title 2, ch. 15, part 20.

Department of Public Health and Human Services, Title 2, ch. 15, part 22.

Attorney General's Opinions

Fee From Applicants for Certification: The Board of Medical Examiners may charge a fee from applicants for certification as emergency medical technicians. The fee may be in an amount that is sufficient to defray administrative costs, as provided in ARM 8.28.1005, 8.28.1006, 8.28.1104, and 8.28.1105 (rules now repealed). 37 A.G. Op. 174 (1978).

50-6-204. Repealed. Sec. 4, Ch. 377, L. 1991.

History: En. 69-7005 by Sec. 3, Ch. 84, L. 1975; R.C.M. 1947, 69-7005.

50-6-205. Repealed. Sec. 4, Ch. 377, L. 1991.

History: En. 69-7006, 69-7007 by Secs. 4, 5, Ch. 84, L. 1975; R.C.M. 1947, 69-7006, 69-7007.

50-6-206. Consent. An emergency care provider may not be subject to civil liability for failure to obtain consent in performing acts as authorized in this part to any individual regardless of age when the patient is unable to give consent and there is no other person present legally authorized to consent, provided that the acts are in good faith and without knowledge of facts negating consent.

History: En. 69-7009 by Sec. 7, Ch. 84, L. 1975; R.C.M. 1947, 69-7009; amd. Sec. 20, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 at beginning substituted "An emergency care provider may not" for "No emergency medical technician may", after "performing acts as authorized" substituted "in this part" for "herein", and after "regardless of age" substituted "when" for "where"; and made minor changes in style. Amendment effective July 1, 2019.

Cross-References

Good Samaritan law, 27-1-714, 41-1-405.

50-6-207. Construction. This part may not be construed to detract from the powers granted to the department of public health and human services to regulate emergency medical services provided for in part 3 of this chapter.

History: En. 69-7010 by Sec. 8, Ch. 84, L. 1975; R.C.M. 1947, 69-7010; amd. Sec. 3, Ch. 377, L. 1991; amd. Sec. 99, Ch. 418, L. 1995; amd. Sec. 264, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: After "regulate" substituted "emergency medical services" for "ambulance service as".

Part 3

Ambulance Service Licensing

Part Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 387, L. 1989, provided: "A statement of intent is required for this bill because [section 3] [50-6-323] grants authority to the department of health and environmental sciences [now department of public health and human services] to adopt rules necessary to carry out the provisions of Title 50, chapter 6, part 3.

In adopting rules, the department should consider the following:

(1) It is the intent of the legislature that the department adopt rules to regulate emergency medical services. These rules may include minimum licensing standards for various types and levels of prehospital and interhospital emergency medical services. The rules may also include other requirements to assure the quality, safety, and proper operation of emergency medical services in Montana.

(2) In addition to rules governing operation of ground ambulance services, which are currently regulated, it is intended that the department adopt rules to regulate other types of emergency medical transportation and treatment services not currently subject to regulation by the department. Examples of such services include air ambulance services, such as fixed-wing aircraft which provide life support services, including medical personnel and medical equipment; initial response rotary-wing aircraft; and nontransporting medical units. The department shall exclude from regulation air transportation services, such as charter or fixed-based operators, regulated by the federal aviation administration that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) It is further intended that the department adopt rules to regulate various levels of emergency services that have evolved in recent years (such as basic life support, defibrillation, and advanced life support) without minimum standards, rules, or licensing to assure the health and safety of the public. Rules to regulate these various levels of service should recognize the differences in personnel, equipment, and operational requirements for each type and level of service.

(4) The department should assure minimum statewide standards for prehospital emergency medical care; however, the rules should not be so stringent that the provision of emergency medical care in smaller communities will be made unreasonably difficult or expensive. If a licensed emergency medical service is not reasonably available, department rules should not preclude the occasional and infrequent transportation of patients by other means available. Nevertheless, rules should not conflict with any regulations issued by a federal agency, such as the federal aviation administration.

(5) The legislature intends that the department establish an advisory committee to make recommendations to the department or to the board of health and environmental sciences [now board of environmental review] concerning matters described in [section 12] [50-6-324]. Creation of this committee and its composition should be established by rule. Any such rule adopted by the department should assure that persons actively providing emergency medical care be included as members of the committee."

Saving Clause: Section 19, Ch. 387, L. 1989, was a saving clause.

Severability: Section 20, Ch. 387, L. 1989, was a severability clause.

Severability Clause: Section 11, Ch. 387, L. 1971, was a severability clause.

Part Cross-References

Establishment of ambulance services by county, city, or town, Title 7, ch. 34, part 1.

Balance billing information — notification to ambulance companies, 30-14-2602.

Discrimination in licensing prohibited, 49-3-204.

Part Administrative Rules

Title 37, chapter 104, subchapter 2, ARM Licensing of ambulance services.

Title 37, chapter 104, subchapter 3, ARM Specific ambulance licensure requirements.

50-6-301. Findings. The legislature finds and declares that:

- (1) the public welfare requires the establishment of minimum uniform standards for the operation of emergency medical services;
- (2) the control, inspection, and regulation of persons providing emergency medical services or community-integrated health care is necessary to prevent or eliminate improper care that may endanger the health of the public; and
- (3) the regulation of emergency medical services is in the interest of the social well-being and the health and safety of the state and all its people.

History: En. Sec. 1, Ch. 387, L. 1971; R.C.M. 1947, 69-3604; amd. Sec. 1, Ch. 387, L. 1989; amd. Sec. 21, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 in (2) after "emergency medical services" inserted "or community-integrated health care"; and in (3) after "emergency medical" deleted "care". Amendment effective July 1, 2019.

1989 Amendment: At beginning inserted "legislature finds and declares that: (1) the"; in (1) substituted "emergency medical services" for "ambulance services" and after "services" deleted "as defined in 50-6-302"; in (2) substituted "providing emergency medical services is necessary" for "engaged therein in order"; in (3) substituted "emergency medical care services" for "establishments providing such service"; and made minor changes in style. Amendment effective January 1, 1990.

50-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Aircraft" has the meaning provided in 67-1-101. The term includes any fixed-wing airplane or helicopter.
- (2) (a) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.
 - (b) The term does not include:
 - (i) a motor vehicle or aircraft owned by or operated under the direct control of the United States; or
 - (ii) air transportation services, such as charter or fixed-based operators, that are regulated by the federal aviation administration and that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.
- (3) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.
- (4) "Community-integrated health care" means the provision of out-of-hospital medical services that an emergency care provider with an endorsement may provide as determined by board rule.
- (5) "Department" means the department of public health and human services provided for in 2-15-2201.
- (6) "Emergency medical service" means an out-of-hospital health care treatment service or interfacility emergency medical transportation provided by an ambulance or nontransporting medical unit that is licensed by the department to provide out-of-hospital health care treatment services or interfacility emergency medical transportation, including community-integrated health care.
- (7) "Nonemergency ambulance transport" means the use of an ambulance to transport a patient between health care facilities, as defined in 50-5-101, including federal facilities, when the patient's medical condition requires special transportation considerations, supervision, or handling but does not indicate a need for medical treatment during transit or for emergency medical treatment upon arrival at the receiving health care facility.
- (8) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.
- (9) "Offline medical direction" means the function of a board-licensed physician or physician assistant in providing:
 - (a) medical oversight and supervision for an emergency medical service or an emergency care provider; and
 - (b) review of patient care techniques, emergency medical service procedures, and quality of care.

(10) "Online medical direction" means the function of a board-licensed physician or physician assistant or the function of a designee of the physician or physician assistant in providing direction, advice, or orders to an emergency care provider for interfacility emergency medical transportation or out-of-hospital emergency medical or community-integrated health care as identified in a plan for offline medical direction.

(11) (a) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(b) Unless otherwise defined by rule for community-integrated health care, the term does not include an individual who is nonambulatory and who needs transportation assistance solely because that individual is confined to a wheelchair as the individual's usual means of mobility.

(12) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States.

(13) "Volunteer emergency care provider" means an individual who is licensed pursuant to Title 50, chapter 6, part 2, and provides out-of-hospital, emergency medical, or community-integrated health care or interfacility emergency medical transportation:

(a) on the days and at the times of the day chosen by the individual; and

(b) for an emergency medical service other than:

(i) a private ambulance company, unless the care is provided without compensation and outside of the individual's regular work schedule; or

(ii) a private business or a public agency, as defined in 7-1-4121, that employs the individual on a regular basis with a regular, hourly wage to provide emergency medical or community-integrated health care as part of the individual's job duties.

History: En. Sec. 2, Ch. 387, L. 1971; amd. Sec. 11, Ch. 349, L. 1974; amd. Sec. 1, Ch. 86, L. 1977; R.C.M. 1947, 69-3605; amd. Sec. 2, Ch. 387, L. 1989; amd. Sec. 1, Ch. 304, L. 1991; amd. Sec. 100, Ch. 418, L. 1995; amd. Sec. 265, Ch. 546, L. 1995; amd. Sec. 5, Ch. 150, L. 2009; amd. Sec. 1, Ch. 354, L. 2009; amd. Sec. 22, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 inserted definition of community-integrated health care; in definition of emergency medical service substituted "an out-of-hospital health care treatment service" for "a prehospital", after "interfacility emergency medical transportation" deleted "or treatment service", and after "licensed by the department" inserted "to provide out-of-hospital health care treatment services or interfacility emergency medical transportation, including community-integrated health care"; in definition of offline medical direction in (a) at end substituted "emergency care provider" for "emergency medical technician"; in definition of online medical direction near end substituted "emergency care provider for interfacility emergency medical transportation or out-of-hospital emergency medical or community-integrated health care" for "emergency medical technician for prehospital and interfacility emergency care"; in definition of patient in (b) at beginning inserted exception clause; in definition of volunteer emergency care provider at beginning substituted "Volunteer emergency care provider" for "Volunteer emergency medical technician", after "Title 50, chapter 6, part 2, and provides" substituted "out-of-hospital, emergency medical, or community-integrated health care or interfacility emergency medical transportation" for "emergency medical care", and in (b)(ii) after "provide emergency medical" inserted "or community-integrated health"; and made minor changes in style. Amendment effective July 1, 2019.

2009 Amendments — Composite Section: Chapter 150 inserted definition of board; in definition of emergency medical service substituted "interfacility" for "interhospital" and at end of sentence following "unit" inserted "that is licensed by the department"; deleted definition of medical control that read: ""Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider"; inserted definitions of offline medical direction and online medical direction and deleted definition of offline medical director that read: ""Offline medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers the physician's services as an offline medical director or whose total reimbursement for those services in any 12-month period does not exceed \$5,000"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 354 inserted definitions of nonemergency ambulance transport and volunteer emergency medical technician; and made minor changes in style. Amendment effective April 24, 2009.

1995 Amendments — Composite Section: Chapter 418 in definition of Board substituted "board of public health" for "board of health and environmental sciences"; in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 deleted definition of Board that read: ""Board" means the board of health and environmental sciences, provided for in 2-15-2104"; in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences, provided for in Title 2, chapter 15, part 21"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Inserted definition of off-line medical director. Amendment effective April 1, 1991.

1989 Amendment: Inserted definitions of aircraft, emergency medical service, medical control, and nontransporting medical unit; in definition of ambulance, after "vehicle", inserted "or aircraft", after "that" deleted "is especially designed, constructed, and equipped which", after "patients" deleted language concerning dual purpose vehicles, at beginning of second sentence inserted "The term", after "vehicle" inserted "or aircraft", after "States" deleted "or this state", and inserted third sentence excluding from definition certain operators regulated by federal government; deleted former definitions of ambulance service, attendant, attendant driver, driver, and dual purpose police patrol car; and made minor changes in style. Amendment effective January 1, 1990.

Case Notes

Unpaid Emergency Medical Technician Trainees, Volunteers, and Students Not Considered Employees: The definition of emergency medical services personnel in 50-6-202 does not include an unpaid emergency medical technician (EMT) trainee. Therefore, an unpaid EMT trainee who has not been certified to provide medical services is not considered an employee, as defined in 39-71-118, for workers' compensation purposes. Further, because volunteers are generally not considered employees unless designated by law, a volunteer involved in ambulance services is also not considered an employee, as defined in 39-71-118, for workers' compensation purposes. Similarly, an unpaid student, such as an unpaid EMT trainee, who is learning skills in a work environment is considered a volunteer and is not considered an employee, as defined in 39-71-118, for workers' compensation purposes. The general statement of public policy in Great W. Sugar Co. v. District Court, 188 M 1, 610 P2d 717 (1980), that all forms of employment are subject to the Workers' Compensation Act, does not apply to unpaid EMT trainees and volunteers because those persons are not considered employees. Dyess v. Meagher County, 2003 MT 78, 315 M 35, 67 P3d 281 (2003).

50-6-303. Repealed. Sec. 17, Ch. 387, L. 1989.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(1), (2).

50-6-304. Cooperative agreements — gifts, grants, and donations. (1) The department may enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this part.

(2) The department may accept and administer any gift, grant, or donation of funds to carry out the purposes of this part.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(3); amd. Sec. 4, Ch. 387, L. 1989.

Compiler's Comments

1989 Amendment: At end of (1) deleted "or any part thereof"; and inserted (2) authorizing Department to accept and administer gift, grant, or donated funds. Amendment effective January 1, 1990.

50-6-305. Repealed. Sec. 17, Ch. 387, L. 1989.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(4).

50-6-306. License required. (1) A person may not conduct or operate an emergency medical service without first obtaining a license from the department. A separate license is required for each type and level of service.

(2) Applications for a license must be made in writing to the department on forms specified by the department.

(3) Each license must be issued for a specific term not to exceed 2 years. Renewal may be obtained by paying the required license fee and demonstrating compliance with department rules.

(4) The license is not transferable.

(5) The department shall notify an ambulance service at the time of licensing or licensing renewal of the reporting limitation of 30-14-2602.

History: En. Secs. 3, 4, Ch. 387, L. 1971; R.C.M. 1947, 69-3606, 69-3607(2); amd. Sec. 5, Ch. 387, L. 1989; amd. Sec. 2, Ch. 315, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 315 inserted (5) concerning notification of ambulance service. Amendment effective May 4, 2017.

Retroactive Applicability: Section 5, Ch. 315, L. 2017, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to reports as of [the effective date of this act] of ambulance bills incurred for services provided in the state prior to [the effective date of this act] and paid in part to the extent of an insurance policy or for which a record exists of a complaint made to the insurance commissioner's office prior to [the effective date of this act]." Effective May 4, 2017.

Preamble: The preamble attached to Ch. 315, L. 2017, provided: "WHEREAS, individuals in a medical crisis that requires ambulance services may be faced with unexpectedly high bills with the potential to propel them into bankruptcy even after their insurance, if they have any, has paid on the ambulance bills; and

WHEREAS, individuals are responsible for paying ambulance bills with vendors they have selected themselves but often individuals in highly critical medical emergencies are unable to make the decisions on who is providing their ambulance service yet they still are expected to pay a bill over which they had no control."

1989 Amendment: In (1) substituted "may not conduct or operate an emergency medical service without first obtaining" for "conducting or operating an ambulance service shall procure", after "license" substituted "from" for "issued by", and in second sentence, after "each", substituted "type and level of service" for "establishment"; deleted former (3) requiring licenses to be granted as matter of right; deleted (4) allowing applicant to apply for hearing and review upon license denial or cancellation; in first sentence of (3) substituted "must be issued for a specific term not to exceed 2 years" for "shall expire on December 31 following its date of issue unless canceled for cause" and in second sentence, before "license fee", deleted "annual" and at end inserted "and demonstrating compliance with department rules"; in (4), after "transferable", deleted "or be applicable to any premises other than that for which originally issued"; and made minor changes in grammar and style. Amendment effective January 1, 1990.

Administrative Rules

ARM 37.104.105 License types and levels.

ARM 37.104.106 License application requirements.

50-6-307. License fee. (1) There must be paid to the department, with each application for a license or for renewal of a license, a license fee of \$35.

(2) The department shall deposit fees with the state treasurer to the credit of the state general fund.

(3) Payment of the license fee stipulated in this part must be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this part.

History: En. Secs. 4, 10, Ch. 387, L. 1971; R.C.M. 1947, 69-3607(1), 69-3613; amd. Sec. 1, Ch. 592, L. 1983; amd. Sec. 6, Ch. 387, L. 1989.

Compiler's Comments

1989 Amendment: Near end of (1) deleted "an annual"; and made minor changes in grammar. Amendment effective January 1, 1990.

1983 Amendment: At end of (1), increased annual license fee from \$5 to \$35.

Cross-References

Fund structure, Title 17, ch. 2.

50-6-308. Cancellation of license. The department may cancel a license if it finds that the licensee has:

(1) violated any provision of this part or any rule of the department or order of the department; and

(2) failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part); amd. Sec. 7, Ch. 387, L. 1989; amd. Sec. 266, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 at end of (1) substituted "department" for "department or board". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: In (1) inserted reference to order of the Department or Board; at beginning of (2) deleted "the licensee has"; and made minor changes in style. Amendment effective January 1, 1990.

50-6-309. Repealed. Sec. 17, Ch. 387, L. 1989.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).

50-6-310. Notice and hearing required. (1) The department may not deny or cancel a license without:

(a) delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation or the charge involved;

(b) an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled.

(2) The licensee shall make written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part); amd. Sec. 267, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in two places substituted "department" for "board". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-6-311. Return of license for destruction or deletion. On cancellation of a license, the license certificate shall be returned to the department for destruction or deletion as the department may direct in its notice of cancellation.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(3).

50-6-312. Repealed. Sec. 17, Ch. 387, L. 1989.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).

50-6-313. Inspections. (1) The department shall make necessary investigations and inspections for enforcement of this part.

(2) The department shall make regular inspections as the rules of the department may direct and special inspections that it considers necessary.

(3) The department has free access at all reasonable hours to the place of business of any person operating an emergency medical service in order to make necessary inspections. These inspections may include the inspection of any equipment or records pertaining to the activities of the emergency medical service.

(4) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials and requests entry for the purpose of conducting an inspection necessitated under this section. A person may not obstruct, hamper, or interfere with an inspection that is properly conducted pursuant to this section.

(5) Upon request, the owner or operator of an emergency medical service must receive a report stating all facts that relate to the owner's or operator's compliance with the provisions of this part as determined by the department, based upon its inspection.

History: En. Sec. 7, Ch. 387, L. 1971; amd. Sec. 13, Ch. 349, L. 1974; R.C.M. 1947, 69-3610; amd. Sec. 9, Ch. 387, L. 1989; amd. Sec. 1817, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Near end of (2) substituted "it considers" for "the department may consider"; in (3) substituted "the place of business of any person operating an emergency medical service in order" for "the establishments listed and defined in 50-6-302", after "make" inserted "necessary", and inserted second sentence expanding inspections to include equipment or records of medical service; inserted (4) prohibiting person from refusing entry or access to Department for inspection or interfering with inspection; and inserted (5) requiring Department, upon request, to provide operator with inspection report. Amendment effective January 1, 1990.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Injunctions, Title 27, ch. 19.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-6-314. Authority of department to compel and take testimony. In any proceeding under this part, the department may administer oaths, issue subpoenas, summon witnesses, and take testimony of any person within the state.

History: En. Sec. 8, Ch. 387, L. 1971; R.C.M. 1947, 69-3611; amd. Sec. 13, Ch. 387, L. 1989; amd. Sec. 268, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department" for "board or department". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: After "board" inserted "or department". Amendment effective January 1, 1990.

Cross-References

Subpoenas and enforcement — compelling testimony, 2-4-104.

50-6-315. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person violating this part or any rule of the department or order issued by the department.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(4); amd. Sec. 14, Ch. 387, L. 1989; amd. Sec. 269, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 at end substituted "department" for "department or board". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: At end substituted "any rule of the department or order issued by the department or board" for "the rules adopted under this part". Amendment effective January 1, 1990.

Cross-References

Duties of County Attorney relating to state matters, 7-4-2716.

50-6-316. Criminal and civil penalties. (1) Any person violating any provision of this part or any rule of the department or order issued by the department is guilty of a misdemeanor and upon conviction shall be fined not less than \$50 or more than \$100 for the first offense, not less than \$75 or more than \$200 for the second offense, and for third and subsequent offenses, not less than \$200 or more than \$500 or imprisoned in the county jail not to exceed 90 days.

(2) A person who violates any provision of this part or any rule of the department or order issued by the department is subject to a civil penalty not to exceed \$1,000 for each violation. Each day of violation constitutes a separate violation.

(3) An action commenced under subsections (2) through (6) does not bar administrative enforcement of this part as provided in 50-6-327 or an injunction as provided in 50-6-326.

(4) If the department has reason to believe that a person has violated any provision of this part or any rule of the department or order issued by the department, it shall bring an action in the name of the state against the person to impose, assess, and recover the civil penalties as provided in subsection (2).

(5) Any civil penalty collected under subsections (2) through (6) is in lieu of the criminal penalty provided for in subsection (1).

(6) All penalties collected under subsections (2) through (5) must be transmitted to the state treasurer for deposit in the state general fund.

History: En. Sec. 9, Ch. 387, L. 1971; R.C.M. 1947, 69-3612; amd. Sec. 15, Ch. 387, L. 1989; (2) thru (6)En. Sec. 16, Ch. 387, L. 1989; amd. Sec. 270, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1), (2), and (4) substituted "department" for "department or board"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: In (1), after "part or", substituted "any rule of the department or order issued by the department or board" for "regulation made hereunder"; and inserted (2), (3), (4), (5), and (6) concerning civil penalties (see sec. 16, Ch. 387, L. 1989, for text). Amendment effective January 1, 1990.

50-6-317. Liability protection. (1) A physician, physician assistant, or registered nurse licensed under the laws of this state who provides online medical direction to a member of an emergency medical service without compensation or for compensation not exceeding \$5,000 in any 12-month period and whose professional practice is not primarily in an emergency or trauma room or ward is not liable for civil damages for an injury resulting from the instructions, except damages for an injury resulting from the gross negligence of the physician, physician assistant, or nurse, if the instructions given by the physician, physician assistant, or nurse are:

(a) consistent with the protocols and the offline medical direction plan approved by the department in licensing the emergency medical service; and

(b) consistent with the level of licensure of the emergency medical services personnel instructed by the physician, physician assistant, or nurse.

(2) An individual who volunteers or who is reimbursed \$5,000 or less in any 12-month period for providing offline medical direction is not liable for civil damages for an injury resulting from the

performance of the individual's offline medical direction duties, except damages for an injury resulting from the gross negligence of the individual.

History: En. Sec. 2, Ch. 304, L. 1991; amd. Sec. 1818, Ch. 56, L. 2009; amd. Sec. 6, Ch. 150, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral. Amendment effective October 1, 2009. The amendment by Ch. 150 rendered the amendment by Ch. 56 void.

Chapter 150 in (1) in three places and (1)(b) following "physician" inserted "physician assistant"; in (1) near beginning substituted "provides online medical direction" for "gives instructions for medical care"; in (1)(a) substituted "offline medical direction" for "medical control"; in (1)(b) following "consistent with the level of" deleted "certification or"; in (2) at beginning substituted "An individual who volunteers or who is reimbursed \$5,000 or less in any 12-month period for providing offline medical direction" for "An offline medical director", and at end substituted "individual" for "director"; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: Section 4, Ch. 304, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 1, 1991.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Licensing of nurses, Title 37, ch. 8, part 4.

50-6-318 and 50-6-319 reserved.

50-6-320. Private air ambulance service — findings — exemptions from insurance code. (1) The legislature finds that there is a need to assist Montana consumers with regard to the availability and affordability of air ambulance service.

(2) Except as provided in subsection (3), a private air ambulance service that solicits membership subscriptions, accepts membership applications, charges membership fees, and provides air ambulance services to subscription members and designated members of their households is not an insurer as defined in 33-1-201, a health carrier as defined in 33-36-103, a health service corporation as defined in 33-30-101, or a health maintenance organization as defined in 33-31-102 if the private air ambulance service:

- (a) is licensed in accordance with 50-6-306;
- (b) has been in operation in Montana for at least 2 years; and
- (c) has submitted evidence of its compliance with this section to the department.

(3) The provisions of Title 33 prescribed in 33-2-2212 apply to a private air ambulance service that offers a membership program covering out-of-pocket expenses in excess of deductibles, copays, and coinsurance incurred for out-of-network services using the private air ambulance service or to private air ambulance services that are out-of-network and with which the membership program has reciprocity.

(4) A private air ambulance service membership program must have reciprocity agreements with all other air ambulance service providers in Montana with air ambulance service membership programs to ensure maximum geographic coverage within the state for the subscribers to the program.

History: En. Sec. 1, Ch. 237, L. 2011; amd. Sec. 11, Ch. 210, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 210 in (2) at beginning inserted exception clause; inserted (3) regarding applicability of the provisions of Title 33 prescribed in 33-2-2212 to certain private air ambulance services; in (4) after "membership program must have" substituted "reciprocity agreements with all other air ambulance service providers" for "arrangements with other air ambulance service providers" and after "providers in Montana" substituted "with air ambulance service membership programs" for "to the extent reasonably possible"; and made minor changes in style. Amendment effective April 20, 2017.

Applicability: Section 14, Ch. 210, L. 2017, provided that this section is applicable to private air ambulance membership agreements sold, solicited, or negotiated on or after April 20, 2017, for purposes of out-of-network coverage of out-of-pocket expenses in excess of deductibles, copays, and coinsurance.

Severability: Section 13, Ch. 210, L. 2017, was a severability clause.

Preamble: The preamble attached to Ch. 237, L. 2011, provided: "WHEREAS, consumer expenses associated with life saving air ambulance service can be substantial and only a portion of the costs are typically eligible to be paid by insurers, leaving significant costs to the patient; and

WHEREAS, air ambulance service membership programs implemented in other states have provided protection to consumers from substantial out-of-pocket expenses for air ambulance services; and

WHEREAS, the Legislature believes it is appropriate to allow Montana consumers a choice on whether they want to participate in air ambulance service membership programs as a means to offset the costs of air ambulance services, while supporting the continued availability of these services in their communities."

Effective Date: Section 4, Ch. 237, L. 2011, provided: "[This act] is effective on passage and approval." Effective April 20, 2011.

50-6-321 reserved.

50-6-322. Staffing — nonemergency ambulance transports — transports in rural areas. An emergency medical service that is staffed primarily by volunteer emergency care providers may staff an ambulance with one emergency care provider licensed at an emergency medical technician-basic level or higher and one driver trained in the operation of emergency vehicles for the following types of responses:

(1) nonemergency ambulance transports;

(2) emergency medical service provided by an ambulance company located in a county with a population of fewer than 20,000 residents; and

(3) emergency medical service provided by an ambulance company located in a county with a population of 20,000 residents or more if the ambulance company is transporting a patient from a community within that county that has a population of 1,500 residents or less to the nearest health care facility that is able to meet the patient's medical needs.

History: En. Sec. 2, Ch. 354, L. 2009; amd. Sec. 23, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 in first sentence near beginning substituted "volunteer emergency care providers" for "volunteer emergency medical technicians" and in middle substituted "emergency care provider" for "emergency medical technician". Amendment effective July 1, 2019.

Effective Date: Section 4, Ch. 354, L. 2009, provided that this section is effective April 24, 2009.

50-6-323. Powers and duties of department. (1) The department has general authority to supervise and regulate emergency medical services in Montana.

(2) Upon referral by a screening panel pursuant to 50-6-105, the department shall review and may investigate complaints relating to the operation of any emergency medical service.

(3) In investigating a complaint, the department may review:

(a) the type and condition of equipment and procedures used by an emergency medical service to provide care at the scene during prehospital or interfacility transportation or in other out-of-hospital care settings;

(b) the condition of any vehicle or aircraft used as an ambulance;

(c) general performance by an emergency medical service; and

(d) the results of any investigation conducted by the board concerning patient care by an emergency care provider who was, at the time of the complaint, providing care through the emergency medical service that is the subject of a complaint under investigation by the department.

(4) Upon completion of an investigation as provided in subsection (3), the department shall take appropriate action, including sharing information regarding complaints with the board as provided in 50-6-105 and initiating any necessary legal proceedings as authorized under this part.

(5) In order to carry out the provisions of this part, the department shall prescribe and enforce rules for emergency medical services. Rules of the department may include but are not limited to the following:

- (a) the classification and identification of specific types and levels of interfacility medical transportation or out-of-hospital treatment services;
- (b) procedures for issuing, denying, renewing, and canceling licenses issued under this part;
- (c) minimum licensing standards for each type and level of service, including requirements for personnel, offline medical direction, online medical direction, maintenance, equipment, reporting, recordkeeping, sanitation, and minimum insurance coverage as determined appropriate by the department; and
- (d) other requirements necessary and appropriate to ensure the quality, safety, and proper operation and administration of emergency medical services.

(6) A rule adopted pursuant to this section must comply with Title 2, chapter 4.

History: En. Sec. 3, Ch. 387, L. 1989; amd. Sec. 7, Ch. 150, L. 2009; amd. Sec. 24, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 in (3)(a) after "provide care at the scene" deleted "or" and after "during prehospital or interfacility transportation" inserted "or in other out-of-hospital care settings"; in (3)(d) substituted "emergency care provider" for "emergency medical technician"; in (5)(a) after "specific types and levels of" deleted "prehospital and" and after "interfacility medical transportation or" inserted "out-of-hospital"; in (5)(b) at end inserted "issued under this part"; in (6) substituted current language for former (6) that read: "(6) A rule adopted pursuant to this section is not effective until:

- (a) a public hearing has been held for review of the rule; and
- (b) notice of the public hearing and a copy of the proposed rules have been sent to all persons licensed under 50-6-306 to conduct or operate an emergency medical service. Notice must be sent at least 30 days prior to the date of the public hearing"; and made minor changes in style. Amendment effective July 1, 2019.

2009 Amendment: Chapter 150 in (2) at beginning inserted "Upon referral by a screening panel pursuant to 50-6-105", near middle substituted "review and may" for "receive and", and at end deleted "including complaints concerning"; in (3) inserted introductory clause regarding investigation of complaints; in (3)(a) substituted language regarding use of equipment and procedures by an emergency medical service for "patient care provided by an emergency medical service"; in (3)(c) at beginning substituted "general" for "individual" and at end deleted "provider"; inserted (3)(d) regarding the department's ability to review the board's investigation; in (4) near middle inserted "sharing information regarding complaints with the board as provided in 50-6-105 and"; in (5)(a) near middle substituted "interfacility" for "interhospital"; in (5)(c) near middle substituted "offline medical direction, online medical direction" for "medical control"; in (6) in introductory clause substituted "adopted pursuant to" for "under"; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective March 30, 1989.

Cross-References

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

Administrative Rules

Title 37, chapter 104, subchapter 1, ARM Emergency medical services — general provisions.

Title 37, chapter 104, subchapter 2, ARM Licensing of ambulance services.

Title 37, chapter 104, subchapter 3, ARM Specific ambulance licensure requirements.

Title 37, chapter 104, subchapter 4, ARM Specific nontransporting services license requirements.

Case Notes

Unpaid Emergency Medical Technician Trainees, Volunteers, and Students Not Considered Employees: The definition of emergency medical services personnel in 50-6-202 does not include an unpaid emergency medical technician (EMT) trainee. Therefore, an unpaid EMT trainee who has not been certified to provide medical services is not considered an employee, as defined in 39-71-118, for workers' compensation purposes. Further, because volunteers are generally not considered employees unless designated by law, a volunteer involved in ambulance services is also not considered an employee, as defined in 39-71-118, for workers' compensation purposes. Similarly, an unpaid student, such as an unpaid EMT trainee, who is learning skills in a work environment is considered a volunteer and is not considered an employee, as defined in 39-71-118, for workers' compensation purposes. The general statement of public policy in Great W. Sugar Co. v. District Court, 188 M 1, 610 P2d 717 (1980),

that all forms of employment are subject to the Workers' Compensation Act, does not apply to unpaid EMT trainees and volunteers because those persons are not considered employees. *Dyess v. Meagher County*, 2003 MT 78, 315 M 35, 67 P3d 281 (2003).

50-6-324. Advisory committee. (1) The department may establish an advisory committee to assist in making determinations regarding:

- (a) a request for waiver of licensing requirements as provided in 50-6-325;
- (b) the resolution of a complaint as described in 50-6-323; and
- (c) issuance of an order authorized under this part.

(2) The advisory committee must be established pursuant to rules adopted by the department.

History: En. Sec. 12, Ch. 387, L. 1989; amd. Sec. 271, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 at beginning of (1) substituted "department" for "board or department". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective January 1, 1990.

50-6-325. Waiver of licensing requirements. (1) The department may waive any licensing requirements under this part upon submission and approval of a written application for waiver by a person subject to licensing under this part.

(2) The department may waive a licensing requirement if the person provides sufficient justification to allow a finding by the department that:

- (a) the waiver is necessary to avoid significant financial or other hardship; and
- (b) granting the waiver would not jeopardize patient care or the public health and safety.

(3) A waiver must be issued on a temporary basis, not exceeding 6 months, and may be renewed by the department upon submission and approval of an additional application for waiver of licensing requirements.

(4) A waiver granted by the department may be revoked for good cause after notice and an opportunity for a hearing before the department have been provided to the person affected by the department's action.

History: En. Sec. 8, Ch. 387, L. 1989; amd. Sec. 272, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 deleted (5) that read: "(5) The decision of the department to deny or revoke a waiver under this section may be appealed to the board." Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective January 1, 1990.

50-6-326. Injunction to require compliance. (1) The department may seek an injunction from an appropriate district court to require compliance with this part or to require compliance with a rule of the department or an order issued by the department. The court to which the department applies for an injunction may issue a temporary restraining order if there is reasonable cause to believe that the allegations of the department are true.

(2) An action for injunctive relief initiated by the department pursuant to subsection (1) may be commenced in the district court of the county in which the defendant is located, resides, or is doing business. If the defendant cannot be located in Montana, the action may be commenced in the county where the violation is alleged to occur or have occurred, and the court has jurisdiction to restrain the violation and require compliance.

History: En. Sec. 10, Ch. 387, L. 1989; amd. Sec. 273, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1), at end of first sentence, substituted "department" for "department or board". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective January 1, 1990.

Cross-References

Injunctions, Title 27, ch. 19.

50-6-327. Administrative enforcement. (1) If the department believes that there is a violation of this part or a violation of a rule of the department, it may serve notice of the violation upon the alleged violator or the alleged violator's agent. Service of notice must be by certified mail and is complete on the date of mailing.

(2) Notice required under subsection (1) must:

(a) specify the provision of this part or the rule alleged to be violated;

(b) contain a statement of the facts alleged to constitute a violation; and

(c) include an order that the alleged violator take necessary corrective action within a reasonable period of time as stated in the order. The order may include corrective action, such as decertification of a specific vehicle or aircraft from use as an ambulance or restriction on the use of a specific individual or type of or level of service in providing emergency medical service.

(3) An order issued pursuant to subsection (2) becomes final unless the person named in the order requests a hearing before the department. The request for a hearing must be made in writing to the department at least 30 days after the date of service of notice of an alleged violation. On receipt of the request, the department shall schedule a date for a hearing.

(4) If, after a hearing, the department finds that a violation has occurred, it shall either affirm or modify the corrective action order. An order issued by the department after hearing may prescribe the date by which the violation must cease and may prescribe time limits for corrective action. If, after a hearing, the department finds a violation has not occurred, it shall rescind the corrective action order.

History: En. Sec. 11, Ch. 387, L. 1989; amd. Sec. 274, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (3), in three places, substituted "department" for "board"; in (4), in first and third sentences, substituted "department" for "board", at end of first sentence substituted "modify the corrective action order" for "modify the order issued by the department", near beginning of second sentence substituted "issued by the department after hearing" for "issued by the board", and at end of last sentence substituted "rescind the corrective action order" for "rescind the department's order"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective January 1, 1990.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Part 4

State Trauma Care System

Part Compiler's Comments

Preamble: The preamble attached to Ch. 579, L. 1995, provided: "WHEREAS, the Legislature recognizes that trauma is the leading cause of death and disability for Montanans under 44 years of age and causes the loss of more years of human life than all other causes of death combined; and

WHEREAS, the death rate from injury in Montana is higher than the national norm, resulting in an economic loss to the state because of the productive years of life lost and the cost of treatment and rehabilitation; and

WHEREAS, organized systems of trauma care have been shown to reduce the number of deaths and disabilities resulting from trauma; and

WHEREAS, the people of the State of Montana would benefit from establishment and coordination of a statewide trauma care system."

1995 Statement of Intent: The statement of intent attached to Ch. 579, L. 1995, provided: "A statement of intent is required for this bill because [section 4(2)] [56-4-402(2)] requires the department of health and environmental sciences [now department of public health and human services] to adopt rules to implement a statewide trauma care system. It is the intent of the legislature that the rules adopted by the department:

- (1) determine trauma regions by existing patient flow patterns;
- (2) specify procedures that ensure due process in the designation and revocation of designation of trauma facilities;
- (3) adopt protocols that will be used to screen and classify trauma patients to ensure that they are sent to the most appropriate treatment facilities and receive the most appropriate treatment;
- (4) adopt standards for the state and hospital trauma registers in order to ensure that data on trauma cases is collected and organized in a manner allowing analysis of the quality of trauma care and the improvement of that care; and
- (5) establish four levels of trauma care facilities, each having a different capacity for trauma treatment:
 - (a) regional centers capable of providing advanced trauma care to a region;
 - (b) area trauma hospitals capable of handling most trauma patients within their ordinary service areas;
 - (c) community trauma hospitals with limited emergency and surgical coverage; and
 - (d) trauma receiving facilities, such as hospitals with no surgical coverage and medical assistance facilities."

Part Administrative Rules

Title 37, chapter 104, subchapter 30, ARM Trauma facility designation.

50-6-401. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

- (1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.
- (2) "Emergency medical service" means an emergency medical service as defined by 50-6-302.
- (3) "Health care facility" or "facility" means a hospital, critical access hospital, or medical assistance facility as defined in 50-5-101.
- (4) "Hospital trauma register" means patient-specific trauma data that is maintained by a health care facility, in a format prescribed by department rule, and that has the primary purpose of facilitating peer review and quality improvement at the health care facility.
- (5) "Quality improvement" means the process of defining trauma care system performance standards, collecting data against which the standards may be applied, using the data to determine compliance with the standards, and using the data and compliance information in a nonpunitive manner, including peer review, that will continuously improve performance and facilitate compliance with the standards.
- (6) "State trauma register" means trauma data relating to a specific patient or health care facility that is maintained by the department in an electronic format and that has the primary purpose of facilitating peer review and quality improvement for a health care facility or a trauma care system.
- (7) "Trauma" means a severe, abrupt injury to the human body that is caused by mechanical, environmental, thermal, or other physical force.
- (8) "Trauma care committee" means the trauma care committee created in 2-15-2216.
- (9) "Trauma care system" means a state or regional system for the prevention of trauma and the provision of optimal medical care to trauma victims that includes both provision of appropriate health care services and provision of emergency medical care, equipment, and personnel for effective and coordinated prehospital, hospital, interhospital, and rehabilitative care for trauma patients.
- (10) "Trauma facility" means a health care facility designated by the department pursuant to 50-6-410 as providing a specialized program in trauma care with appropriately trained personnel, equipment, and other facility resources that are specifically organized to provide optimal care to a trauma patient at the facility.

(11) "Trauma region" means a geographic area, designated by department rule pursuant to 50-6-402, within which trauma services are coordinated and evaluated through a regional trauma care system.

History: En. Sec. 3, Ch. 579, L. 1995; amd. Sec. 4, Ch. 171, L. 1997; amd. Sec. 6, Ch. 192, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 192 in definition of health care facility after "means a hospital" inserted "critical access hospital"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendment: Chapter 171 deleted definition of Emergency Medical Services Advisory Council that read: ""Emergency medical services advisory council" means the emergency medical services advisory council created in 2-15-2215"; and made minor changes in style.

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

Code Commissioner Change: Pursuant to sec. 3, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Health and Environmental Sciences.

50-6-402. Department duties — rules. (1) The department shall plan, coordinate, implement, and administer a statewide trauma care system that involves all health care facilities and emergency medical services within the state. The department shall also develop and adopt a statewide trauma care system plan and a state trauma register.

(2) The department shall adopt rules to:

(a) establish and coordinate the statewide trauma care system, including rules that establish:

(i) various levels of trauma facilities and the standards each facility is required to meet concerning personnel, equipment, resources, data collection, and organizational capabilities;

(ii) procedures for, standards for, and the duration of designation and revocation of designation of a trauma facility, including application procedures, site survey procedures, complaint investigation, and emergency suspension of designation;

(iii) operational procedures and criteria for the regional trauma advisory committees;

(iv) prehospital emergency medical services triage and treatment protocols for trauma patients;

(v) triage and treatment protocols for the transfer of injured persons between health care facilities;

(vi) requirements for collection and release of trauma register data;

(vii) quality improvement standards for emergency medical services and trauma care facilities;

and

(viii) the duties, responsibilities, and functions of the trauma care committee created by 2-15-2216 and the regional trauma care advisory committees created pursuant to 50-6-411;

(b) designate trauma regions throughout Montana, taking into consideration geographic distance from available trauma care, transportation modalities available, population location and density, health care facility resources, historical patterns of patient referral, and other considerations relevant to optimum provision of emergency medical care;

(c) establish the procedure to be followed by a health care facility to appeal to the department a decision by the department pursuant to 50-6-410 affecting the facility's designation as a trauma facility;

(d) specify the information that must be submitted to the department, including information from health care facilities, for statistical evaluation of the state and regional trauma care systems, planning prevention programs, assessing trauma-related educational priorities, and determining how trauma facilities and emergency medical services may comply with protocols and standards adopted by the department; and

(e) establish the electronic format and other standards that a health care facility trauma data system is required to meet in order to qualify as a hospital trauma register.

(3) The department shall submit a report to each session of the legislature concerning the effectiveness of the trauma care system established under this part.

(4) This part does not restrict any other provisions of law allowing or requiring a health care facility or health care provider to provide health care services.

History: En. Sec. 4, Ch. 579, L. 1995; amd. Sec. 5, Ch. 171, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 171 in (2)(a)(viii), after "functions of", deleted "the emergency medical services advisory council created by 2-15-2215".

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

Effective Date: Section 13(1), Ch. 579, L. 1995, provided that subsection (2) of this section is effective May 1, 1995. The remainder of the section is effective October 1, 1995.

Cross-References

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

Health care information, Title 50, ch. 16.

50-6-403. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. Sec. 5, Ch. 579, L. 1995.

50-6-404. Duties of trauma care committee. The trauma care committee provided for in 2-15-2216 shall:

(1) provide recommendations and guidance to the department concerning:

(a) trauma care, including suggestions for changes to the statewide trauma care system;

(b) the implementation of a hospital data collection system; and

(c) the design and implementation of a statewide and regional quality improvement system for trauma care that considers the standards recommended by the American college of surgeons and the joint commission on accreditation of healthcare organizations;

(2) assist the department in conducting statewide quality improvement and peer review functions by regularly analyzing the effect of the statewide trauma care system on patient care, morbidity, and mortality; and

(3) provide recommendations to and oversight and coordination of the activities of the regional trauma care advisory committees.

History: En. Sec. 6, Ch. 579, L. 1995; amd. Sec. 6, Ch. 171, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 171 deleted (4) that read: "(4) provide recommendations to the emergency medical services advisory committee concerning the statewide trauma care system and the integration of trauma care with the emergency medical services delivery system"; and made minor changes in style.

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

50-6-405 through 50-6-409 reserved.

50-6-410. Department designation of trauma facility — revocation of designation — appeal. (1)

In order to be designated as a trauma facility, a health care facility shall submit to the department an application, on a form specified by the department, that provides the information required by department rule.

(2) Upon receipt of a completed application for designation as a trauma facility, the department shall review the application for compliance with standards adopted by the department for designation of trauma care facilities. If the facility meets the standards adopted by the department, the department shall designate the facility as a trauma care facility, specifying the level of trauma care determined by the department to be appropriate for the facility.

(3) The department may revoke a designation as a trauma care facility if the facility no longer meets the requirements for designation or otherwise violates a department standard required to maintain designation.

(4) The department shall notify the applicant in writing of the department's decision to approve, deny, or revoke a health care facility's designation as a trauma facility.

(5) A health care facility that submitted an application pursuant to subsection (1) may appeal a department decision refusing to designate the facility, a decision designating the facility for a different level of trauma care than requested by the facility, or a decision to revoke a designation as a trauma facility. In order to appeal the decision, the health care facility shall submit a written request for a hearing to the department within 30 days after the facility receives notice of the department's decision. The hearing on the appeal must be conducted pursuant to 2-4-604.

(6) Unless the appellant agrees to an extension of time, the department shall, within 30 days of its decision in an appeal pursuant to subsection (5), serve the appellant with written findings and conclusions that form the basis for the department's decision.

History: En. Sec. 7, Ch. 579, L. 1995.

Cross-References

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

50-6-411. Regional trauma care advisory committees. (1) Each trauma facility designated by the department pursuant to 50-6-410 shall appoint one representative to a regional trauma care advisory committee for the region in which the facility is located.

(2) Members of a regional trauma care advisory committee serve 4-year terms, except that one-half of the members initially appointed shall, as determined by lot, serve 2-year terms. If a vacancy occurs, the appointing authority shall appoint a replacement to fill the unexpired term. Members may be reappointed and may be removed for cause by the appointing authority.

(3) Members of a regional trauma care advisory committee shall elect a presiding officer who shall serve a term of 2 years.

(4) Members of a regional trauma care advisory committee do not receive compensation from the state and may not be reimbursed by the state for their expenses.

(5) Regional trauma care advisory committees have the duties provided in 50-6-412.

History: En. Sec. 8, Ch. 579, L. 1995.

50-6-412. Duties of regional trauma care advisory committees. A regional trauma care advisory committee shall:

(1) establish standards, policies, procedures, and protocols for the regional trauma care system;

(2) conduct regional trauma care quality improvement, including receipt of reports prepared by the department containing trauma care data and making recommendations to trauma care facilities within the region based upon those reports;

(3) advise the trauma care committee concerning the statewide trauma care system;

(4) establish trauma education and injury prevention programs;

(5) provide advice concerning trauma care to health care facilities and other providers of health care;

(6) perform other duties required by department rule; and

(7) conduct other activities needed to ensure optimal delivery of trauma care services within the region.

History: En. Sec. 9, Ch. 579, L. 1995.

50-6-413 and 50-6-414 reserved.

50-6-415. Confidentiality. (1) Data in a health care facility's hospital trauma register and reports developed from that data pertaining to quality of trauma care may be given by the facility only to:

- (a) the facility's peer review committee;
- (b) the regional trauma care advisory committee of the region in which the facility is located;
- (c) the trauma care committee; or
- (d) the department.

(2) Data in the state trauma register and hospital trauma registers is not subject to discovery in a civil action and may not be introduced into evidence in a judicial or administrative proceeding.

(3) Data and reports concerning peer review, quality improvement, or the quality of the trauma care provided by a health care facility or a health care provider that are produced by a regional trauma care advisory committee or the trauma care committee or provided by a health care facility to a regional trauma care advisory committee or the trauma care committee, as well as the proceedings of those committees concerning peer review and quality improvement, are not subject to discovery in a civil action and may not be introduced into evidence in a judicial or administrative proceeding.

(4) A statistical report on trauma and trauma care developed by the department that does not identify specific health care facilities, health care providers, or patients is not confidential and is considered public information.

(5) A statistical report developed by a health care facility from information in its hospital trauma register that does not pertain to peer review or quality improvement is not confidential and is considered public information.

(6) Information in a department record or report that is used to evaluate and improve the quality of emergency medical service and trauma care by a health care facility or emergency medical service is not subject to discovery and may not be introduced in evidence in a judicial or administrative proceeding.

(7) Information in a department record or report that is used to determine whether a health care facility will be designated or lose its designation as a trauma care facility is not confidential and is considered public information.

(8) A standard or protocol adopted by the department pursuant to this part may not be used to demonstrate negligence or lack of negligence by a health care provider or health care facility to whom the standard or protocol applies.

History: En. Sec. 10, Ch. 579, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Health care information, Title 50, ch. 16.

Part 5 **Automated External Defibrillator Programs**

Part Compiler's Comments

Preamble: The preamble attached to Ch. 335, L. 1999, provided: "WHEREAS, the Montana Legislature finds that each year more than 250,000 Americans die from out-of-hospital, sudden cardiac arrest; and

WHEREAS, the American Heart Association estimates that more than 20,000 deaths could be prevented each year if early defibrillation were more widely available; and

WHEREAS, while many communities have invested in 9-1-1 emergency notification systems and emergency medical services systems that include well-trained emergency personnel, in other communities there are insufficient numbers of strategically placed defibrillators and persons properly trained to operate them.

THEREFORE, the Legislature finds that in order to improve the access of Montana's citizens to early defibrillation, the Legislature should authorize and regulate the establishment of early defibrillation programs by many different public and private entities in careful coordination with emergency medical services systems."

Part Administrative Rules

Title 37, chapter 104, subchapter 6, ARM Automated external defibrillators.

50-6-501. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

- (1) "Automated external defibrillator" or "AED" means a medical device that:
 - (a) has received approval for marketing from the U.S. food and drug administration;
 - (b) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and of determining, without intervention by an operator, whether defibrillation should be performed;
 - (c) upon determining that defibrillation should be performed, automatically charges and indicates that it is ready to deliver an electrical impulse to an individual's heart; and
 - (d) may be used by an operator of the device to deliver an electrical impulse to an individual's heart.
- (2) "Department" means the department of public health and human services provided for in 2-15-2201.
- (3) "Emergency medical service" means an emergency medical service as defined by 50-6-302.
- (4) "Entity" means a public agency, department, office, board, or commission or other governmental organization or a private corporation, partnership, group, or business or other private organization.
- (5) "Physician" means an individual licensed to practice medicine pursuant to Title 37, chapter 3, part 3.
- (6) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and that may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

History: En. Sec. 2, Ch. 335, L. 1999.

Compiler's Comments

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

Cross-References

State emergency telephone system, Title 10, ch. 4.

50-6-502. AED program — requirements for AED use. In order for an entity to use or allow the use of an automated external defibrillator, the entity shall:

- (1) establish a program for the use of an AED that includes a written plan that complies with this part and rules adopted by the department pursuant to 50-6-503. The plan must specify:
 - (a) where the AED will be placed;
 - (b) the individuals who are authorized to operate the AED;
 - (c) how AED use will be coordinated with an emergency medical service providing services in the area where the AED is located;
 - (d) the medical oversight that will be provided;
 - (e) the maintenance that will be performed on the AED;
 - (f) records that will be kept by the program;
 - (g) reports that will be made of AED use; and
 - (h) other matters as specified by the department;
- (2) adhere to the written plan required by subsection (1);
- (3) ensure that before using the AED, an individual authorized to operate the AED receives appropriate training approved by the department in cardiopulmonary resuscitation and the proper use of an AED;

(4) maintain, test, and operate the AED according to the manufacturer's guidelines and maintain written records of all maintenance and testing performed on the AED;

(5) each time an AED is used for an individual in cardiac arrest, require that an emergency medical service is summoned to provide assistance as soon as possible and that the AED use is reported to the department as required by the written plan;

(6) before allowing any use of an AED, provide the following to all licensed emergency medical services and any public safety answering point or emergency dispatch center providing services to the area where the AED is located:

- (a) a copy of the plan prepared pursuant to this section; and
- (b) written notice, in a format prescribed by department rules, stating:

- (i) that an AED program is established by the entity;
- (ii) where the AED is located; and

- (iii) how the use of the AED is to be coordinated with the local emergency medical service system; and

(7) comply with this part and rules adopted by the department pursuant to 50-6-503.

History: En. Sec. 3, Ch. 335, L. 1999; amd. Sec. 1, Ch. 291, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 291 in (1)(d) substituted "oversight" for "supervision"; deleted former (1)(h) that read: "(h) the name, location, and telephone number of a physician, or other individual designated by the physician, designated to provide medical supervision of the AED program"; deleted former (5) that read: "(5) ensure that the physician or other individual designated by the physician to supervise the AED program supervises the AED program to ensure compliance with the written plan, this part, and rules adopted by the department pursuant to 50-6-503 and reviews each case in which the AED is used"; in (5) near end after "reported to the" deleted "supervising physician or the person designated by the physician and to the"; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

Cross-References

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

50-6-503. Rulemaking. (1) The department shall adopt rules specifying the following:

- (a) the contents of the written notice required by 50-6-502(6);
- (b) reporting requirements for each use of an AED;
- (c) the contents of a plan prepared in accordance with 50-6-502 and requirements applicable to the subject matter of the plan;
- (d) training requirements in cardiopulmonary resuscitation and AED use for any individual authorized by an AED program plan to use an AED;
- (e) guidelines for medical oversight of an AED program;
- (f) minimum requirements for a medical protocol for use of an AED;
- (g) performance requirements for an AED in order for the AED to be used in an AED program;

and

- (h) a list of the AED training programs approved by the department.

(2) The department may not adopt rules for any purpose other than those in subsection (1).

History: En. Sec. 4, Ch. 335, L. 1999; amd. Sec. 2, Ch. 291, L. 2007; amd. Sec. 84, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 in (1)(a) at end substituted "50-6-502(6)" for "50-6-502(7)". Amendment effective October 1, 2009.

2007 Amendment: Chapter 291 in (1)(e) substituted "guidelines for medical oversight" for "requirements for medical supervision". Amendment effective July 1, 2007.

Effective Date: Section 9(1), Ch. 335, L. 1999, provided that this section is effective on passage and approval. Approved April 19, 1999.

Cross-References

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

Administrative Rules

Title 37, chapter 104, subchapter 6, ARM Automated external defibrillators.

50-6-504. Enforcement — cessation order — hearing — injunction. (1) If the department receives information that an AED is being used in violation of this part or a rule adopted by the department pursuant to 50-6-503, it may send a written order to the entity responsible for use of the AED, as specified in the plan prepared pursuant to 50-6-502, ordering the entity to cease the violation immediately. The order is effective upon receipt by the entity, and the entity shall comply with the terms of the order. If the department receives information that the violation has been corrected, the department may rescind its order by sending a notice to that effect to the entity. The rescission is effective upon its receipt by the entity.

(2) The entity may request a hearing to contest an order issued by the department pursuant to subsection (1) by submitting a written request to the department within 30 days after receipt of the order. A request for a hearing does not stay the enforceability of the department's order. The hearing must be held within 30 days after the department receives the request, unless the hearings officer sets a later date for good cause. The hearing must be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

(3) Either the county attorney for the county in which the violation occurred or the department may bring an action in the district court of the county where the violation occurred or in the district court for Lewis and Clark County to enforce the department's order or to directly enjoin a violation of this part or a rule adopted pursuant to 50-6-503.

History: En. Sec. 5, Ch. 335, L. 1999.

Compiler's Comments

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Injunctions, Title 27, ch. 19.

50-6-505. Liability limitations. (1) An individual who provides emergency care or treatment by using an AED in compliance with this part and rules adopted by the department pursuant to 50-6-503 and an individual providing cardiopulmonary resuscitation to an individual upon whom an AED is or may be used are immune from civil liability for a personal injury that results from that care or treatment or from civil liability as a result of any act or failure to act in providing or arranging further medical treatment for the individual upon whom the AED was used unless the individual using the AED or the person providing cardiopulmonary resuscitation, as applicable, acts with gross negligence or with willful or with wanton disregard for the care of the person upon whom the AED is or may be used.

(2) The following individuals or entities are immune from civil liability for any personal injury that results from an act or omission that does not amount to willful or wanton misconduct or gross negligence if applicable provisions of this part and rules adopted by the department pursuant to 50-6-503 have been met by the individual or entity:

- (a) a person providing medical oversight of the AED program, as designated in the plan prepared pursuant to 50-6-502;
- (b) the entity responsible for the AED program, as designated in the plan prepared pursuant to 50-6-502;
- (c) an individual providing training to others on the use of an AED.

History: En. Sec. 6, Ch. 335, L. 1999; amd. Sec. 3, Ch. 291, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 291 in (2)(a) at beginning substituted "a person providing medical oversight of the AED program" for "the physician supervising the AED program or the person designated by a physician to supervise the program, either of whom are"; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

Cross-References

Willfully defined, 1-1-204.

Availability of remedies, Title 27, ch. 1.

50-6-506. Exemptions. This part does not apply to the use of an AED by:

- (1) a patient or the patient's caretaker if use of the AED is ordered by a physician; or
- (2) a licensed health care professional, including an emergency care provider, whose scope of practice includes the use of an AED.

History: En. Sec. 7, Ch. 335, L. 1999; amd. Sec. 25, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 in (2) substituted "emergency care provider" for "emergency medical technician". Amendment effective July 1, 2019.

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

Cross-References

Licensing of medical doctors, Title 37, ch. 3.

Licensing of nurses, Title 37, ch. 8.

Licensing of physician assistants, Title 37, ch. 20.

Emergency care providers, Title 50, ch. 6, part 2.