

Montana AED Law

H.B. 126 - Effective July 1, 1999

1999 Montana Legislature

HOUSE BILL NO. 126

INTRODUCED BY R. JOHNSON

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

AN ACT PROVIDING FOR THE USE OF AUTOMATED EXTERNAL DEFIBRILLATORS (AEDS) BY PUBLIC AND PRIVATE ENTITIES; PROVIDING THAT USE OF AN AED IS NOT PROHIBITED AND A LICENSE IS NOT REQUIRED BY STATUTES PROHIBITING THE PRACTICE OF MEDICINE WITHOUT A LICENSE; REQUIRING THE PREPARATION OF AN AED PROGRAM PLAN; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING IMMUNITY FOR INDIVIDUALS AND ENTITIES PARTICIPATING IN AN AED PROGRAM; EXEMPTING CERTAIN USES OF AEDS; AMENDING SECTION 37-3-103, MCA; AND PROVIDING EFFECTIVE DATES.

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.

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

Section 1. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if ~~he~~ the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for ~~his~~ the physician's regular use, an office or other place for rendering the services, ~~he~~ the physician must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of

the United States department of veterans affairs of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if ~~he~~ the physician otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103; ~~and~~

(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(q) the use of an automated external defibrillator pursuant to [sections 2 through 7].

(2) Licensees referred to in subsection (1) ~~of this section~~ who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or

mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 2. Definitions. As used in [sections 2 through 7], 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.

Section 3. 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 [sections 2 through 7] and rules adopted by the department pursuant to [section 4]. 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 supervision 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;

(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; and

(i) 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) 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, [sections 2 through 7], and rules adopted by the department pursuant to [section 4] and reviews each case in which the AED is used;

(6) 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 supervising physician or the person designated by the physician and to the department as required by the written plan;

(7) 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

(8) comply with [sections 2 through 7] and rules adopted by the department pursuant to [section 4].

Section 4. Rulemaking. (1) The department shall adopt rules specifying the following:

(a) the contents of the written notice required by [section 3(7)];

(b) reporting requirements for each use of an AED;

(c) the contents of a plan prepared in accordance with [section 3] 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) requirements for medical supervision 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).

Section 5. Enforcement -- cessation order -- hearing -- injunction. (1) If the department receives information that an AED is being used in violation of [sections 2 through 7] or a rule adopted by the department pursuant to [section 4], it may send a written order to the entity responsible for use of the AED, as specified in the plan prepared pursuant to [section 3], 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 [sections 2 through 7] or a rule adopted pursuant to [section 4].

Section 6. Liability limitations. (1) An individual who provides emergency care or treatment by using an AED in compliance with [sections 2 through 7] and rules adopted by the department pursuant to [section 4] 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 [sections 2 through 7] and rules adopted by the department pursuant to [section 4] have been met by the individual or entity:

(a) the physician supervising the AED program or the person designated by a physician to supervise the program, either of whom are designated in the plan prepared pursuant to [section 3];

(b) the entity responsible for the AED program, as designated in the plan prepared pursuant to [section 3];

(c) an individual providing training to others on the use of an AED.

Section 7. Exemptions. [Sections 2 through 7] do 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 medical technician, whose scope of practice includes the use of an AED.

Section 8. Two-thirds vote required. Because [section 6] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 9. Effective dates. (1) [Section 4 and this section] are effective on passage and approval.

(2) [Sections 1 through 3 and 5 through 8] are effective July 1, 1999.