

Amendments to House Bill No. 331
3rd Reading Copy

Requested by Senator Mike Wheat

For the Senate Judiciary Committee

Prepared by Pat Murdo
March 21, 2005 (9:09am)

1. Title, page 1, line 5.

Strike: "AND"

2. Title, page 1, line 6.

Following: "INSURANCE"

Insert: "; PROVIDING A PROCESS FOR DETERMINING AVAILABILITY OF
MEDICAL MALPRACTICE INSURANCE; AND CREATING A STABILIZATION
RESERVE FUND"

3. Page 1, line 10.

Following: "finds that"

Insert: "if"

4. Page 1, line 12.

Strike: "and lack of affordability"

5. Page 1, line 13.

Following: "policyholder"

Insert: ", alternative programs should be employed to help ensure
that medical malpractice insurance remains available to
Montana health care providers and health care facilities"

6. Page 1, line 14.

Strike: "14"

Insert: "20"

7. Page 1, line 15.

Strike: "14"

Insert: "20"

8. Page 1, line 19.

Strike: "14"

Insert: "20"

9. Page 1, line 22.

Strike: "14"

Insert: "20"

10. Page 1.

Following: line 22

Insert: "(2) "Committee" means a committee designated by the commissioner to coordinate the activities of the market assistance plan and composed of licensed insurance producers, insurers authorized to sell medical malpractice insurance in this state, and eligible surplus lines insurers."

Renumber: subsequent subsections

11. Page 1.

Following: line 23

Insert: "(4) "Market assistance plan" means a voluntary mechanism operated by a committee to assist health care providers and health care facilities to buy medical malpractice insurance when medical malpractice insurance is not reasonably available in the voluntary market."

Renumber: subsequent subsections

12. Page 1.

Following: line 30

Insert: "(7) "Voluntary market" means insurers authorized to write medical malpractice insurance in this state, captive insurers authorized to write medical malpractice insurance in this state, and eligible surplus lines insurers, if approved by the commissioner based on financial stability of the surplus lines insurer and the cost and coverage of the medical malpractice policies available from the surplus lines insurers."

13. Page 2.

Following: line 1

Insert: "NEW SECTION. **Section 3. Market review.** (1) After providing notice to all insurers eligible to sell medical malpractice insurance in this state, including eligible surplus lines insurers, the commissioner shall perform a market review to determine the availability of medical malpractice insurance before implementing a market assistance plan under [section 4] or a joint underwriting association under [section 5].

(2) The commissioner shall compile a list of insurers in the voluntary market.

(3) After holding a hearing, the commissioner shall determine whether medical malpractice insurance is reasonably available pursuant to subsection (4) for:

(a) health care providers, other than health care facilities; or

(b) health care facilities.

(4) In determining whether medical malpractice insurance is reasonably available, the commissioner shall consider whether:

(a) there is a significant likelihood of a lack of available health care services to the public because of the cost or unavailability of medical malpractice insurance;

(b) a significant portion of the members of a class of health care providers:

(i) cannot obtain medical malpractice insurance from medical malpractice insurers for reasons not attributable to negligence, neglect, oversight, or willfulness of the health care providers; or

(ii) is uninsured as a result of new underwriting restrictions unrelated to the acts or omissions of the health care providers or because of the insolvency of a medical malpractice insurer."

Insert: "NEW SECTION. **Section 4. Market assistance plan.** (1) If the commissioner determines under [section 3] that medical malpractice insurance is not reasonably available, the commissioner shall attempt to form a market assistance plan for medical malpractice insurance before implementing a joint underwriting association under [section 5].

(2) The commissioner may establish a market assistance plan only if the commissioner determines that there exists a sufficient number of insurers in the voluntary market willing to underwrite standard risks at adequate coverage limits.

(3) If an insurer in the voluntary market declines to participate in the market assistance plan, the insurer shall state both the business and the financial reasons for not participating in the market assistance plan.

(4) The commissioner, in consultation with the committee, shall develop a plan of operation for the market assistance plan.

(5) The market assistance plan may include a reasonable processing fee to applicants that seek medical malpractice insurance coverage through the market assistance plan.

(6) Licensed insurance producers may receive a reasonable commission for medical malpractice insurance placed in the market assistance plan. The plan of operation may allow a commission to be paid regardless of whether the producer is appointed or otherwise represents the insurer accepting the risk."

Renumber: subsequent sections

14. Page 2, lines 2 through 3.

Strike: "-- determination of" on line 2 through "insurance" on

line 3

15. Page 2, lines 10 through 13.

Following: "facilities" on line 10

Insert: ", "

Strike: ", after" on line 10 through "members" on line 13

Insert: "has conducted a market review under [section 3],
determined that medical malpractice insurance is not
reasonably available for health care providers, other than
health care facilities, in the voluntary market, and
attempted to establish a market assistance plan. Upon the
commissioner determining that the market assistance plan has
not achieved reasonably available medical malpractice
insurance, the commissioner shall notify the association
that it"

16. Page 2, line 14.

Following: "facilities"

Strike: ", but the"

Insert: ". The"

17. Page 2, lines 17 through 19.

Following: "commissioner"

Strike: ", after" on line 17 through "authorized to" on line 19

Insert: "has conducted a market review under [section 3],
determined that medical malpractice insurance is not
reasonably available for those facilities in the voluntary
market, and attempted to establish a market assistance plan.
Upon the commissioner determining that the market assistance
plan has not achieved reasonably available medical
malpractice insurance, the commissioner shall notify the
association that it may"

18. Page 2, line 20.

Following: "facilities"

Strike: ", but the"

Insert: ". The"

19. Page 2, line 27 through page 3, line 6.

Strike: subsection (5) in its entirety

20. Page 3.

Following: line 6

Insert: "(5) The association may operate for a period of 3 years.

At the end of the 3-year period, the association must be dissolved unless the commissioner, after notice and a hearing, reauthorizes the operations of the association. If the commissioner determines that adequate medical malpractice insurance is available in the voluntary market, the commissioner shall order the association to end its underwriting operations and shall supervise the dissolution of the association, including settlement of all financial and legal obligations and distribution of any remaining assets."

21. Page 3, line 9.

Strike: "\$3"

Insert: "\$2"

22. Page 3, line 10.

Strike: "\$9"

Insert: "\$4"

23. Page 3, line 17.

Strike: "14"

Insert: "20"

24. Page 3, line 26.

Strike: "final"

25. Page 4, line 2.

Strike: ", or by the commissioner"

26. Page 4, line 5.

Strike: "3(2)"

Insert: "5(2)"

27. Page 4, line 10.

Following: "then"

Strike: "an"

Insert: "the"

Following: "association"

Strike: "member"

28. Page 4, line 14.

Strike: "-- recoupment of deficit"

29. Page 4, line 16.

Strike: "members"

Following: "statistics"

Strike: "are subject" through "giving"

Insert: "pursuant to 33-1-501, 33-1-502, and Title 33, chapter 16, must give"

30. Page 4, line 18.

Strike: "the members of"

31. Page 4, line 19.

Strike: "members"

Insert: "association"

32. Page 4, lines 20 through 21.

Strike: "for" on line 20 through "commissioner" on line 21

33. Page 4, lines 22 through 24.

Strike: "members" on line 22 through "commissioner" on line 24

Insert: "pursuant to 33-1-501, 33-1-502, and Title 33, chapter 16"

34. Page 4, lines 25 through 29.

Strike: subsection (3) in its entirety

Renumber: subsequent subsection

35. Page 5, line 1.

Strike: "association members'"

Insert: "association's"

36. Page 5.

Following: line 4

Insert: "NEW SECTION. Section 10. Recoupment of deficit and member assessments. (1) (a) If the association experiences an underwriting deficit for any year, the deficit must be recouped as provided in the plan of operation and the rating plan must contain the procedures provided for in subsections (1) (b) and (1) (c).

(b) The board of directors shall certify the underwriting deficit to the commissioner. The certification is subject to the review of the commissioner.

(c) After review of the certification, the deficit must be recouped by:

(i) first, reimbursement of the deficit in the following order:

(A) from the stabilization reserve fund, as provided in [section 11];

(B) a premium contingency assessment on the association's policyholders, as provided in [section 12], if the reimbursement in subsection (1)(c)(i)(A) is insufficient; and

(C) an assessment upon the members, as provided in [section 15], if the reimbursement in subsections (1)(c)(i)(A) and (1)(c)(i)(B) is insufficient; and

(ii) second, a premium rate increase on the association's policyholders applicable prospectively, as provided in [section 9].

(2) Reimbursements from the stabilization reserve fund and premium contingency assessments imposed under this section and premiums collected under [sections 9 and 16] and subsection (1)(c)(ii) of this section must be sufficient to recoup all expenses of the association and to reimburse the members for all assessments imposed on them by the association."

Insert: "NEW SECTION. Section 11. Stabilization reserve fund.

(1) The commissioner shall establish a stabilization reserve fund.

(2) (a) Each policyholder shall pay to the association a stabilization reserve fund charge equal to 15% of each premium payment due for insurance through the association. The stabilization reserve fund charge must be stated separately in the policy and is payable with each premium payment. The association shall cancel the policy of any policyholder who fails to pay the premium stabilization reserve fund charge.

(b) The stabilization reserve fund charge does not constitute a part of the premium and is not subject to premium taxation, servicing fees, acquisition costs, commissions, or any other charges. The stabilization reserve fund charge may not be considered a premium for the purpose of any assessments levied under [section 15].

(3) (a) The association shall collect and administer the stabilization reserve fund charge. The stabilization reserve fund charge must be treated as a liability of the association along with and in the same manner as premium and loss reserves.

(b) All money received by the stabilization reserve fund must be held in trust by a corporate trustee selected by the association. The corporate trustee may invest the money held in trust, subject to the approval of the association. All investment income must be credited to the stabilization reserve fund. All expenses of administration of the stabilization reserve fund must be charged against the fund. The money held in trust may be used

only for the purpose of recoupment of any deficit sustained by the association, as provided in [section 10].

(c) Collections of the stabilization reserve fund charge continue throughout each calendar year for which the fund is established. However, a charge may not be assessed:

(i) during the next succeeding calendar year if the net balance in the stabilization reserve fund after recoupment of any prior year's deficit equals or exceeds the association's estimate of the projected sum of premiums to be written in the calendar year following the valuation date of the fund; or

(ii) in any year in which a premium contingency assessment is collected, as provided in [section 12].

(4) The stabilization reserve fund charge is not refundable if the policy is canceled after the 90th day of coverage.

(5) Upon dissolution of the association as provided in [section 5(5)], the commissioner shall order that any funds remaining in the stabilization reserve fund be reimbursed to the policyholders in proportion to the amounts of the stabilization reserve fund charges paid by the policyholders."

Renumber: subsequent sections

37. Page 5, line 7 through line 9.

Following: "year" on line 7

Strike: ", the board" on line 7 through "POLICYHOLDERS" on line 9

Insert: "and recoupment of the underwriting deficit by reimbursement, as provided in [section 10(1)(c)(i)(A)], is insufficient, each association policyholder"

38. Page 5, line 10.

Strike: "that bears"

Insert: "as provided in the plan of operation. The assessment must bear"

39. Page 5, line 13.

Following: "need not"

Insert: "defend or"

40. Page 5, lines 15 through 19.

Strike: "or policyholders" on line 15 through "ASSOCIATION" on line 19

41. Page 5, lines 20 through 21.

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

42. Page 5, lines 23 through 24.

Strike: "the members of" on line 23

Strike: "shall," on line 23 through "commissioner," on line 24

Insert: "may"

Strike: "their" on line 24

Insert: "its"

Following: "accordingly." on line 24

Insert: "

(3)"

43. Page 5.

Following: line 26

Insert: "(4) The association may not collect stabilization reserve assessments, as provided in [section 11], in any year in which premium contingency assessments are collected under this section."

44. Page 5, line 28.

Strike: "and occurrence-based policies"

Following: "The"

Insert: "association shall offer policies on a claims-made basis."

45. Page 5, lines 29 through 30.

Strike: "commissioner" on line 29 through "option." on line 30

Strike: "both" on line 30

46. Page 6, line 1.

Strike: "and occurrence-based"

Following: "basis"

Insert: "and as provided in Title 33, chapter 16"

47. Page 6.

Following: line 1

Insert: "NEW SECTION. **Section 14. Risk management.** (1) The association shall establish a risk management program for persons or entities insured by the association.

(2) The risk management program must include:

(a) standards for systematic investigation and reporting of claims and incidents; and

(b) a loss control program. The loss control program must include procedures for:

(i) analysis of claim frequency, severity, and causes of

loss;

(ii) identification of situations that may produce large losses;

(iii) development of measures to control losses;

(iv) monitoring of the effectiveness of the loss control measures that are implemented; and

(v) education of insured health care providers and health care facilities on methods to reduce or prevent losses.

(3) The commissioner shall appoint an advisory council consisting of three health care providers and three professional insurance risk managers to provide advice to the association on risk management activities."

Renumber: subsequent sections

48. Page 6, lines 12 through 13.

Strike: "a given" on line 12 through "and the" on line 13

Insert: "any calendar year in an amount greater than 2% of the member's net direct written premium for the preceding calendar year on policies written in this state for casualty insurance. The"

49. Page 6, line 16.

Strike: "for a"

Insert: "in any"

Strike: "1%" through "policyholders"

Insert: "2% of the member's net direct written premium for the preceding calendar year on policies written in this state for casualty insurance"

50. Page 6, line 18.

Following: "participation."

Insert: "A member may not be assessed an amount that would jeopardize that member's solvency."

51. Page 6.

Following: line 18

Insert: "NEW SECTION. Section 16. Recognition of assessments in rates. The rates and premiums charged for insurance policies to which [sections 1 through 20] apply must include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member less any amounts returned to the member by the association, and these rates may not be considered excessive because they contain an amount reasonably calculated to recoup assessments paid by the member."

Renumber: subsequent sections

52. Page 6, line 30.

Following: "insurance"

Strike: "insurer person, or insurer"

Insert: "insured health care provider or health care facility, or
association member"

53. Page 7, line 8.

Strike: "any"

Insert: "that"

54. Page 7, line 14.

Strike: "14"

Insert: "20"

55. Page 7, line 15.

Strike: "14"

Insert: "20"

- END -

