

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCESS FOR ESTABLISHING MEDICAL
5 MALPRACTICE INSURANCE RATES AND PREMIUMS; REQUIRING THE PRIOR APPROVAL BY THE
6 INSURANCE COMMISSIONER OF MEDICAL MALPRACTICE INSURANCE RATES AND PREMIUMS;
7 PROVIDING STANDARDS FOR MEDICAL MALPRACTICE INSURANCE RATES; SPECIFYING PROCEDURES
8 FOR FILING AND REVIEWING RATES; AUTHORIZING PARTICIPATION IN RATE HEARINGS AND
9 PROCEEDINGS; AND AUTHORIZING JUDICIAL REVIEW."

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

12
13 **NEW SECTION. Section 1. Filing of rate and premium information -- approval authority.** (1) A
14 medical malpractice insurer shall file with the commissioner any of the following that it proposes to use in this
15 state:

- 16 (a) each manual of classifications, rules, and rates;
- 17 (b) each rating plan;
- 18 (c) each modification of the manual listed in subsection (1)(a) or the plan listed in subsection (1)(b); and
- 19 (d) any schedules or alternative methods used to determine premiums, as provided in [section 6].

20 (2) The information in the rate filing must include provisions for:

- 21 (a) expenses that reflect the operating methods of the insurer. The insurer may include its actual
22 expense experience to the extent that the experience is credible and its anticipated expense experience to the
23 extent that the experience is reasonable.

24 (b) contingencies; and

25 (c) a reasonable rate of return. In determining a reasonable rate of return, consideration must be given
26 to all investment income reasonably attributable to medical malpractice insurance.

27 (3) A filing of rate and premium information must include:

- 28 (a) the proposed effective date;
- 29 (b) the character and extent of proposed coverage;
- 30 (c) supporting information, which may include but is not limited to:



- 1 (i) the experience or judgment of the insurer making the filing;
2 (ii) the insurer's interpretation of any statistical data relied upon for the filing;
3 (iii) the experience of other insurers;
4 (iv) schedules and data that are required under [section 6(2)]; and
5 (v) any other factors that the insurer considers relevant.

6 (4) After reviewing the information in [section 3] and subsections (1) through (3) of this section, the
7 commissioner shall approve, disapprove, or approve with conditions a rate proposed under this section if the rate
8 meets the standards in [section 2].

9 (5) A medical malpractice insurer may not use a rate or charge a premium that has not received approval
10 from the commissioner as provided in subsection (4).

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12 **NEW SECTION. Section 2. Standards for medical malpractice insurance rates -- use.** (1) Rates
13 for medical malpractice insurance may not be excessive, inadequate, or unfairly discriminatory. The provisions
14 of 33-16-201 and 33-16-1021, if not in conflict with the following criteria, may be used to determine whether rates
15 are excessive, inadequate, or unfairly discriminatory:

16 (a) A rate is excessive if the rate is unreasonably high for the insurance provided or if the medical
17 malpractice insurer's expenses are unreasonably high in relation to services rendered by the medical malpractice
18 insurer.

19 (b) A rate is inadequate if the rate is unreasonably low for the insurance provided and if the continued
20 use of the rate endangers the solvency of the medical malpractice insurer using the rate.

21 (c) A rate is unfairly discriminatory if price differentials fail to reflect equitably the difference in expected
22 losses and expenses.

23 (2) (a) Except as provided in subsection (2)(b), a medical malpractice insurer shall consider past and
24 prospective loss experience and catastrophic hazards, if any, solely within this state.

25 (b) (i) If there is insufficient experience within this state upon which to base a rate, the insurer may
26 consider experiences within any other state that has a similar cost of claims and frequency of claim experience
27 as this state.

28 (ii) If insufficient experience is available as provided in subsection (2)(b)(i), the insurer may use
29 nationwide experience.

30 (c) In considering experience under subsection (2)(b), an insurer shall include and give as much weight

1 as possible to any experience in this state.

2 (3) The insurer shall expressly show the rate experience it is using in its rate filing and in its records.

3
4 **NEW SECTION. Section 3. Rate administration -- rulemaking.** (1) Each medical malpractice insurer
5 shall record and report its loss and expense experience and other data, including reserves, that are necessary
6 to determine whether rates comply with the standards in [section 2].

7 (2) A medical malpractice insurer shall provide to the commissioner the information required under
8 subsection (1) in a form that the commissioner specifies.

9 (3) A medical malpractice insurer shall maintain for at least 6 years all reports required under this section
10 in the manner provided in 33-16-105.

11 (4) The commissioner shall consider the reports required under this section in determining whether the
12 premium rates for medical malpractice insurance meet the standards in [section 2].

13 (5) The commissioner may:
14 (a) require that the insurer's annual report and any supplemental report that contains information about
15 an insurer's loss and loss adjustment reserves be accompanied by an opinion signed and sworn to by a qualified
16 and independent actuary:

17 (i) verifying that the actuary conducted a review and analysis of the insurer's loss and loss adjustment
18 reserves within the 9 months prior to the submission of the report; and

19 (ii) declaring whether the reserves were computed in accordance with accepted loss reserving standards
20 and were stated fairly in accordance with sound loss reserving principles;

21 (b) examine and review the assignment and assessment of risk for different classifications for different
22 specialties or practices of medicine;

23 (c) hold a public hearing on any filing that contains a risk assignment for medical malpractice insurance
24 to determine whether the risk assignment is reasonable; and

25 (d) issue orders concerning the reasonableness of risk assignments for which a public hearing was held
26 as provided in subsection (5)(c).

27 (6) The commissioner shall adopt rules to implement this section.

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29 **NEW SECTION. Section 4. Review of filings -- hearing -- open participation -- judicial review.** (1)
30 Except as otherwise provided in this section, a rate that is filed with the commissioner by a medical malpractice

1 insurer is subject to the requirements of Title 33, chapter 1, parts 5 through 7, and this section.

2 (2) Notice provided by the insurer under 33-23-302 to the insured must also be provided to the
3 commissioner. A notice must include the date on which it was originally transmitted.

4 (3) (a) Any person may request that the commissioner hold a hearing if the proposed rate increase filed
5 under [section 1] is 10% or more. The hearing must be requested within 30 days of the date of original notification
6 as provided in subsection (2).

7 (b) The commissioner shall hold a hearing requested under subsection (3)(a) within 30 days of receiving
8 the request and shall post notice of the hearing on the commissioner's website.

9 (c) Any person, including the person requesting a hearing, has a right to participate in the hearing and
10 may:

11 (i) serve informational requests upon any party;

12 (ii) call witnesses;

13 (iii) offer evidence, including rebuttal evidence;

14 (iv) cross-examine any witness that another party or the commissioner calls; and

15 (v) present summation and arguments.

16 (d) The commissioner shall take action on the filing within 10 days of the conclusion of the hearing by
17 approving the filing, disapproving the filing, or approving the filing subject to specified conditions.

18 (4) Any disposition of a rate filing by the commissioner pursuant to this section is subject to judicial
19 review in a district court for Lewis and Clark County.

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21 **NEW SECTION. Section 5. Consumer rights -- award of fees.** (1) Any person may initiate or
22 intervene in any proceeding permitted or established under [section 4] and may challenge any action of the
23 commissioner under [sections 1 and 4], including enforcement of [sections 1 through 6].

24 (2) The commissioner or a court shall award reasonable advocacy and witness fees and expenses to
25 any person who participates in a successful challenge upon a demonstration that the person:

26 (a) represented the interests of consumers; and

27 (b) made a substantial contribution to the adoption of an order, regulation, or decision made by the
28 commissioner or by a court.

29 (3) If the advocacy in subsection (2) occurs in response to a rate application, the awarded fees and
30 expenses must be paid by the medical malpractice insurer responsible for the filing.

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2 **NEW SECTION. Section 6. Premium adjustments.** (1) In determining the premium paid by any health
3 care provider, a medical malpractice insurer shall:

4 (a) apply a credit or debit based on the provider's loss experience; or

5 (b) establish an alternative method giving due consideration to the provider's loss experience.

6 (2) A medical malpractice insurer shall include a schedule of all credits, debits, and alternative methods
7 used to determine premiums in rate filings submitted to the commissioner.

8 (3) The commissioner shall review the schedules and alternative methods filed in subsection (2) and
9 approve, disapprove, or approve with conditions as provided in [section 1(4)].

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11 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified
12 as an integral part of Title 33, chapter 23, and the provisions of Title 33, chapter 23, apply to [sections 1 through
13 6].

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