

SENATE BILL NO. 218

INTRODUCED BY TAYLOR, TUTVEDT

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA HEALTH CARE COST CONTAINMENT ACT; ~~AND~~ CONTROLLING THE COSTS OF DEFENSIVE MEDICINE BY LIMITING THE LIABILITY OF HEALTH CARE PROVIDERS WHO EXERCISE THEIR MEDICAL JUDGMENT IN SELECTING; REQUIRING HEALTH CARE PROVIDERS TO SELECT AN ACCEPTABLE COURSE OF TREATMENT AND DOCUMENT THEIR RATIONALE; REQUIRING A SURVEY AND REPORT; AND PROVIDING A TERMINATION DATE."

WHEREAS, it is in the interest of all Montanans to contain health care costs; and

WHEREAS, defensive medicine is the practice of ordering medical tests, procedures, treatments, therapeutic interventions, or consultations of limited clinical value, often at the request of the patient, in an effort to avoid litigation; and

WHEREAS, in response to a national survey, 91% of responding physicians reported practicing defensive medicine; and

WHEREAS, in order to contain costs, the law should encourage health care providers to avoid practicing defensive medicine and to provide patients with the medical care needed based on the health care provider's medical judgment made at the point of care and following discussion with the patient if that medical judgment meets the standard of care; and

WHEREAS, nationally the costs of defensive medicine as a subset of medical costs are substantial, and a review by PricewaterhouseCoopers estimates that the annual cost of defensive medicine is \$210 billion; and

WHEREAS, the costs of defensive medicine will begin to be contained when health care providers are allowed to make decisions based on sound medical judgment, even though the treatment may ultimately prove not to be as successful as hoped; and

WHEREAS, the medical record is used by health care providers to document information related to patient encounters, including the health care provider's assessment and plan for patient care; and

WHEREAS, under Montana law, if there are two or more appropriate methods of diagnosing or treating a particular condition or ailment, a health care provider may properly select and follow one of the approved methods; and

WHEREAS, in an effort to contain costs by addressing defensive medicine and in accordance with

1 Montana law as to medical judgment, it is in the interest of all Montanans to preclude a finding of negligence
 2 against a health care provider who uses medical judgment and selects, after discussion with the patient, a
 3 medically acceptable course of treatment and documents the rationale, at the time of treatment, for prescribing
 4 or not prescribing, recommending or not recommending, or ordering or not ordering a given test, procedure,
 5 treatment, consultation, or other therapeutic intervention and whose rationale meets the standard of care; and

6 WHEREAS, under Montana law, when a health care provider who uses medical judgment selects a
 7 medically appropriate course of treatment after discussion with the patient, the health care provider may not be
 8 found negligent because of the health care provider's medical judgment with regard to the selected course of
 9 treatment, because the course of treatment followed was ultimately not successful, or because the patient did
 10 not experience the desired outcome or result.

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

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14 NEW SECTION. Section 1. Short title. [Sections 1 through 4 5] may be cited as the "Montana Health
 15 Care Cost Containment Act".

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17 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 4 5], the following definitions
 18 apply:

19 (1) "Documented rationale" means a brief, comprehensive statement made in the patient's medical
 20 record at the time of treatment that includes the health care provider's medical rationale for prescribing or not
 21 prescribing, recommending or not recommending, or ordering or not ordering a given test, procedure, treatment,
 22 consultation, or other therapeutic intervention.

23 (2) "Health care provider" means a physician licensed under Title 37, chapter 3, a dentist licensed under
 24 Title 37, chapter 4, a physician assistant licensed under Title 37, chapter 20, an advanced practice registered
 25 nurse licensed under 37-4-409, AN OPTOMETRIST LICENSED UNDER TITLE 37, CHAPTER 10, A PODIATRIST LICENSED
 26 UNDER TITLE 37, CHAPTER 6, or a health care facility licensed under Title 50, chapter 5.

27 (3) "Medical malpractice claim" means a claim based on an alleged negligent act or omission by a health
 28 care provider in the rendering of professional services that is the proximate cause of a personal injury or death.

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30 NEW SECTION. Section 3. Negligence against health care provider precluded when using

1 **medical judgment.** (1) In a medical malpractice claim, a health care provider may not be found negligent if in
 2 exercising the health care provider's medical judgment, the health care provider selects, after discussion with the
 3 patient, patient's guardian, or patient's representative, if applicable, a medically acceptable course of treatment
 4 and includes in the medical record the health care provider's documented rationale.

5 (2) A health care provider who acts in accordance with subsection (1) may not be found negligent
 6 because the course of treatment followed ultimately was not successful or the patient did not experience the
 7 desired outcome or result.

8 (3) A HEALTH CARE PROVIDER WHO FAILS TO SELECT A MEDICALLY ACCEPTABLE COURSE OF TREATMENT AND
 9 INCLUDE IN THE MEDICAL RECORD THE HEALTH CARE PROVIDER'S DOCUMENTED RATIONALE MAY BE FOUND NEGLIGENT.

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 11 NEW SECTION. Section 4. Survey to track effectiveness-- report. (1) THE MONTANA MEDICAL LEGAL
 12 PANEL SHALL DEVELOP A SURVEY IN ORDER TO DETERMINE WHETHER [SECTIONS 1 THROUGH 5] ARE ACHIEVING THE
 13 DESIRED EFFECTS OF REDUCING THE PRACTICE OF DEFENSIVE MEDICINE BY PHYSICIANS AND TO QUANTIFY THE SAVINGS
 14 TO MEDICAID, THE HEALTHY MONTANA KIDS PLAN, MEDICARE, AND PRIVATE INSURERS IN MONTANA AND SHALL SUBMIT
 15 THE SURVEY TO THE BOARD OF MEDICAL EXAMINERS FOR ITS APPROVAL.

16 (2) ONCE THE SURVEY IS APPROVED BY THE BOARD OF MEDICAL EXAMINERS, THE MONTANA MEDICAL LEGAL
 17 PANEL SHALL SUBMIT THE SURVEY ON AN ANNUAL BASIS TO ALL PHYSICIANS ACTIVELY PRACTICING MEDICINE IN THE STATE
 18 OF MONTANA.

19 (3) THE RESULTS OF THE SURVEY ARE A PUBLIC RECORD AND MUST BE PROVIDED TO THE CHILDREN, FAMILIES,
 20 HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE DURING EACH INTERIM ENDING IN 2016.

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 22 NEW SECTION. Section 5. Construction. [Sections 1 through 4 5] may not be construed to impose
 23 any additional duties on a health care provider.

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 25 NEW SECTION. Section 6. Codification instruction. [Sections 1 through 4 5] are intended to be
 26 codified as an integral part of Title 27, chapter 1, and the provisions of Title 27, chapter 1, apply to [sections 1
 27 through 4 5].

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 29 NEW SECTION. Section 7. Saving clause. [This act] does not affect rights and duties that matured,
 30 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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2 NEW SECTION. SECTION 8. TERMINATION. [THIS ACT] TERMINATES DECEMBER 31, 2017.

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