

1 SENATE BILL NO. 207

2 INTRODUCED BY B. TUTVEDT

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA HEALTH CARE COST CONTAINMENT
5 ACT; AND CONTROLLING THE COSTS OF DEFENSIVE MEDICINE BY LIMITING THE LIABILITY OF HEALTH
6 CARE PROVIDERS WHO EXERCISE THEIR MEDICAL JUDGMENT IN SELECTING AN ACCEPTABLE
7 COURSE OF TREATMENT AND DOCUMENT THEIR RATIONALE."

8

9 WHEREAS, it is in the interest of all Montanans to contain health care costs and provide for the effective
10 use of medical treatments; and

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

14 WHEREAS, defensive medicine also impacts the efficacy of medical treatments. For example, the
15 overuse of antibiotics by providers and patients results in bacteria becoming drug resistant to medications sooner
16 than expected.

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

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

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

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

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

30 WHEREAS, under Montana law, if there are two or more appropriate methods of diagnosing or treating

1 a particular condition or ailment, a health care provider may properly select and follow one of the approved
2 methods; and

3 WHEREAS, in an effort to contain costs by addressing defensive medicine and in accordance with
4 Montana law as to medical judgment, it is in the interest of all Montanans to preclude a finding of negligence
5 against a health care provider who uses medical judgment and selects, after discussion with the patient, a
6 medically acceptable course of treatment and documents the rationale, at the time of treatment, for prescribing
7 or not prescribing, recommending or not recommending, or ordering or not ordering a given test, procedure,
8 treatment, consultation, or other therapeutic intervention and whose rationale meets the standard of care; and

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

14

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

16

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

19

20 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 4], the following definitions
21 apply:

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

26 (2) "Health care provider" means a physician licensed under Title 37, chapter 3, a dentist licensed under
27 Title 37, chapter 4, a podiatrist licensed under Title 37, chapter 6, an advanced practice registered nurse licensed
28 under 37-8-409, an optometrist licensed under Title 37, chapter 10, a physician assistant licensed under Title 37,
29 chapter 20, or a health care facility licensed under Title 50, chapter 5.

30 (3) "Medical malpractice claim" means a claim based on an alleged negligent act or omission by a health

1 care provider in the rendering of professional services that is the proximate cause of a personal injury or death.

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

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

11
12 **NEW SECTION. Section 4. Construction.** [Sections 1 through 4] may not be construed to impose any
13 additional duties on a health care provider.

14
15 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified
16 as an integral part of Title 27, chapter 1, and the provisions of Title 27, chapter 1, apply to [sections 1 through 4].

17
18 **NEW SECTION. Section 6. Saving clause.** [This act] does not affect rights and duties that matured,
19 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

20 - END -