

SENATE JOINT RESOLUTION NO. 25

INTRODUCED BY C. SMITH

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A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE USE OF A PATIENT COMPENSATION SYSTEM AS AN EXCLUSIVE REMEDY FOR INJURIES CAUSED BY MEDICAL CARE; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 65TH LEGISLATURE.

WHEREAS, the lack of legal representation and, thus, compensation for the majority of patients with legitimate medical injuries is creating a crisis in accessing courts; and

WHEREAS, seeking compensation through medical malpractice litigation is a costly and protracted process, resulting in legal counsel being able to afford to finance only a small number of legitimate claims; and

WHEREAS, even for patients who are able to obtain legal representation, the delay in obtaining compensation averages 5 years, creating a significant hardship for patients and their caregivers who often need access to immediate care and compensation; and

WHEREAS, because of continued exposure to liability, an overwhelming majority of physicians practice defensive medicine by ordering unnecessary tests and procedures, increasing the cost of health care for individuals covered by public and private health insurance coverage and exposing patients to unnecessary clinical risks; and

WHEREAS, recruiting physicians to practice in this state and ensuring that current physicians continue to practice in this state are overwhelming public necessities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, to study the use of a patient compensation system as an exclusive remedy for claims for injury or death related to medical care provided by health care providers and health care facilities.

BE IT FURTHER RESOLVED, that the study:

- (1) review Montana's existing system for handling claims involving medical malpractice, including but not limited to the use and results of the review process established under the Montana Medical Legal Panel Act



1 authorized in Title 27, chapter 6;

2 (2) review proposals and related research for patient compensation systems under consideration in other
3 states;

4 (3) determine to the extent possible whether a patient compensation system would reduce the number
5 of medical malpractice claims and the practice of defensive medicine;

6 (4) identify any statutory or constitutional barriers to establishing a patient compensation system and
7 propose potential solutions for overcoming any barriers that are identified;

8 (5) consider the optimal structure for a patient compensation system, including but not limited to the
9 review, payment, and appeals processes for claims made under the system; and

10 (6) identify potential funding sources for a patient compensation system, including but not limited to fees
11 to be paid by health care providers who participate in the system.

12 BE IT FURTHER RESOLVED, that the study include participation by health care providers, attorneys,
13 medical malpractice insurers, relevant state agencies, and other interested parties identified by the committee.

14 BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review
15 requirements, be concluded prior to September 15, 2016.

16 BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions,
17 comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

18 BE IT FURTHER RESOLVED, THAT IF BOTH HOUSE BILL NO. 614 AND THIS RESOLUTION ARE PASSED AND
19 APPROVED, THEN THIS RESOLUTION IS VOID.

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