

1 HOUSE BILL NO. 313

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10 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR INDEPENDENT PRACTICE OF PHYSICIAN

11 ASSISTANTS; CLARIFYING COVERAGE OF PHYSICIAN ASSISTANTS UNDER HEALTHY MONTANA

12 KIDS, HEALTH MAINTENANCE ORGANIZATIONS, AND MULTIPLE WELFARE EMPLOYER

13 ARRANGEMENTS; AMENDING SECTIONS 25-9-411, 27-6-103, 27-6-401, 33-22-114, 33-31-111, 33-35-306,

14 37-20-101, 37-20-104, 37-20-301, 37-20-401, 37-20-403, 37-20-404, 37-20-405, 37-20-410, 37-20-411, 50-5-

15 1301, 50-12-102, 50-19-403, 50-20-109, AND 53-4-1005, MCA; AND PROVIDING AN IMMEDIATE

16 EFFECTIVE DATE."

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

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20 **Section 1.** Section 25-9-411, MCA, is amended to read:

21 **"25-9-411. (Temporary) Medical malpractice noneconomic damages limitation.** (1) (a) In a

22 malpractice claim or claims against one or more health care providers based on a single incident of

23 malpractice, an award for past and future damages for noneconomic loss may not exceed \$250,000. All claims

24 for noneconomic loss deriving from injuries to a patient are subject to an award not to exceed \$250,000. This

25 limitation applies whether:

26 (i) based on the same act or a series of acts that allegedly caused the injury, injuries, death, or

27 deaths on which the action or actions are based; or

28 (ii) the act or series of acts were by one or more health care providers.

1 (b) If a single incident of malpractice injures multiple, unrelated patients, the limitation on awards
2 contained in subsection (1)(a) applies to each patient and all claims deriving from injuries to that patient.

3 (2) (a) For purposes of the limitation on awards contained in subsection (1), a claimant has the
4 burden of proving separate injuries, each arising from a different act or series of acts. An award or combination
5 of awards in excess of \$250,000 must be reduced to \$250,000, after which the court shall make other
6 reductions that are required by law. If a combination of awards for past and future noneconomic loss is reduced
7 in the same action, future noneconomic loss must be reduced first and, if necessary to reach the \$250,000 limit,
8 past noneconomic loss must then be reduced. If a combination of awards is reduced to \$250,000, a claimant's
9 share of the \$250,000 must be the same percentage as the claimant's share of the combined awards before
10 reduction.

11 (b) For each claimant, further reductions must be made in the following order:

12 (i) first, reductions under 27-1-702;

13 (ii) second, reductions under 27-1-703; and

14 (iii) third, setoffs and credits to which a defendant is entitled.

15 (3) An award of future damages for noneconomic loss may not be discounted to present value.

16 (4) The \$250,000 limit provided for in subsection (1) may not be disclosed to a jury.

17 (5) As used in this section, the following definitions apply:

18 (a) "Claimant" includes but is not limited to:

19 (i) a person suffering bodily injury;

20 (ii) a person making a claim as a result of bodily injury to or the death of another;

21 (iii) a person making a claim on behalf of someone who suffered bodily injury or death;

22 (iv) the representative of the estate of a person who suffered bodily injury or death; or

23 (v) a person bringing a wrongful death action.

24 (b) "Health care provider" means a physician, dentist, podiatrist, optometrist, chiropractor, physical
25 therapist, ~~or nurse, or physician assistant~~ licensed under Title 37 or a health care facility licensed under Title
26 50, chapter 5.

27 (c) "Malpractice claim" means a claim based on a negligent act or omission by a health care
28 provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful

1 death.

2 (d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:

3 (i) physical and mental pain or suffering;

4 (ii) emotional distress;

5 (iii) inconvenience;

6 (iv) subjective, nonmonetary loss arising from physical impairment or disfigurement;

7 (v) loss of society, companionship, and consortium, other than household services;

8 (vi) injury to reputation; and

9 (vii) humiliation.

10 (e) "Patient" means a person who receives services from a health care provider. (Terminates on
11 occurrence of contingency--sec. 11(2), Ch. 429, L. 1997.)

12 **25-9-411. (Effective on occurrence of contingency) Medical malpractice noneconomic**

13 **damages limitation.** (1) (a) In a malpractice claim or claims against one or more health care providers based
14 on a single incident of malpractice, an award for past and future damages for noneconomic loss may not
15 exceed \$250,000. All claims for noneconomic loss deriving from injuries to a patient are subject to an award not
16 to exceed \$250,000. This limitation applies whether:

17 (i) based on the same act or a series of acts that allegedly caused the injury, injuries, death, or
18 deaths on which the action or actions are based; or

19 (ii) the act or series of acts were by one or more health care providers.

20 (b) If a single incident of malpractice injures multiple, unrelated patients, the limitation on awards
21 contained in subsection (1)(a) applies to each patient and all claims deriving from injuries to that patient.

22 (2) (a) For purposes of the limitation on awards contained in subsection (1), a claimant has the
23 burden of proving separate injuries, each arising from a different act or series of acts. An award or combination
24 of awards in excess of \$250,000 must be reduced to \$250,000, after which the court shall make other
25 reductions that are required by law. If a combination of awards for past and future noneconomic loss is reduced
26 in the same action, future noneconomic loss must be reduced first and, if necessary to reach the \$250,000 limit,
27 past noneconomic loss must then be reduced. If a combination of awards is reduced to \$250,000, a claimant's
28 share of the \$250,000 must be the same percentage as the claimant's share of the combined awards before

- 1 reduction.
- 2 (b) For each claimant, further reductions must be made in the following order:
- 3 (i) first, reductions under 27-1-702; and
- 4 (ii) second, setoffs and credits to which a defendant is entitled.
- 5 (3) An award of future damages for noneconomic loss may not be discounted to present value.
- 6 (4) The \$250,000 limit provided for in subsection (1) may not be disclosed to a jury.
- 7 (5) As used in this section, the following definitions apply:
- 8 (a) "Claimant" includes but is not limited to:
- 9 (i) a person suffering bodily injury;
- 10 (ii) a person making a claim as a result of bodily injury to or the death of another;
- 11 (iii) a person making a claim on behalf of someone who suffered bodily injury or death;
- 12 (iv) the representative of the estate of a person who suffered bodily injury or death; or
- 13 (v) a person bringing a wrongful death action.
- 14 (b) "Health care provider" means a physician, dentist, podiatrist, optometrist, chiropractor, physical
- 15 therapist, ~~or nurse, or physician assistant~~ licensed under Title 37 or a health care facility licensed under Title
- 16 50, chapter 5.
- 17 (c) "Malpractice claim" means a claim based on a negligent act or omission by a health care
- 18 provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful
- 19 death.
- 20 (d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:
- 21 (i) physical and mental pain or suffering;
- 22 (ii) emotional distress;
- 23 (iii) inconvenience;
- 24 (iv) subjective, nonmonetary loss arising from physical impairment or disfigurement;
- 25 (v) loss of society, companionship, and consortium, other than household services;
- 26 (vi) injury to reputation; and
- 27 (vii) humiliation.
- 28 (e) "Patient" means a person who receives services from a health care provider."

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Section 2. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as the individual's principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) (a) "Health care facility" means a facility licensed as a health care facility under Title 50, chapter 5.

(b) For the purposes of this chapter, a health care facility does not include:

(i) an end-stage renal dialysis facility;

(ii) a home infusion therapy agency;

(iii) a residential care facility; or

(iv) a governmental infirmary, except a university or college infirmary.

(3) "Health care provider" means a physician, a dentist, a podiatrist, or a health care facility.

(4) "Hospital" means a hospital as defined in 50-5-101.

(5) "Malpractice claim" means a claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care that proximately results in damage to the claimant, whether the claimant's

1 claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or
2 wrongful death.

3 (6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

4 (7) "Physician" means:

5 (a) for purposes of the assessment of the annual surcharge, an individual licensed to practice
6 medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

7 (i) has as the individual's principal residence or place of medical practice the state of Montana or
8 practices telemedicine as defined in 37-3-102;

9 (ii) is not employed full-time by any federal governmental agency or entity; and

10 (iii) is not fully retired from the practice of medicine; or

11 (b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37,
12 chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

13 (i) was an individual who had as the principal residence or place of medical practice the state of
14 Montana or practiced telemedicine as defined in 37-3-102 and was not employed full-time by any federal
15 governmental agency or entity; or

16 (ii) was a professional service corporation, partnership, or other business entity organized under
17 the laws of any state to render medical services and whose shareholders, partners, or owners were individual
18 physicians licensed to practice medicine under the provisions of Title 37, chapter 3.

19 (8) "Physician assistant" means:

20 (a) for purposes of the assessment of the annual surcharge, an individual licensed as a physician
21 assistant under the provisions of Title 37, chapter 20, who at the time of the assessment:

22 (i) has as the individual's principal residence or place of medical practice the state of Montana or
23 practices telemedicine as defined in 37-3-102;

24 (ii) is not employed full-time by any federal governmental agency or entity; and

25 (iii) is not fully retired from the practice of medicine; or

26 (b) for all other purposes, a person licensed as a physician assistant under the provisions of Title
27 37, chapter 20, who at the time of the occurrence of the incident giving rise to the claim:

28 (i) was an individual who had as the principal residence or place of medical practice the state of

1 Montana or practiced telemedicine as defined in 37-3-102 and was not employed full-time by any federal
 2 governmental agency or entity; or
 3 (ii) was a professional service corporation, partnership, or other business entity organized under
 4 the laws of any state to render medical services and whose shareholders, partners, or owners were individual
 5 physician assistants licensed under the provisions of Title 37, chapter 20.

6 ~~(8)~~(9) "Podiatrist" means:

7 (a) for purposes of the assessment of the annual surcharge, an individual licensed to practice
 8 podiatry under the provisions of Title 37, chapter 6, who at the time of the assessment:

- 9 (i) has as the individual's principal residence or place of podiatric practice the state of Montana;
- 10 (ii) is not employed full-time by any federal governmental agency or entity; and
- 11 (iii) is not fully retired from the practice of podiatry; or

12 (b) for all other purposes, a person licensed to practice podiatry under the provisions of Title 37,
 13 chapter 6, who at the time of the occurrence of the incident giving rise to the claim:

14 (i) was an individual who had as the principal residence or place of podiatric practice the state of
 15 Montana and was not employed full-time by any federal governmental agency or entity; or

16 (ii) was a professional service corporation, partnership, or other business entity organized under
 17 the laws of any state to render podiatric services and whose shareholders, partners, or owners were individual
 18 podiatrists licensed to practice podiatry under the provisions of Title 37, chapter 6."

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 20 **Section 3.** Section 27-6-401, MCA, is amended to read:

21 **"27-6-401. Composition of panel.** (1) Those eligible to sit on the panel are health care providers
 22 licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana. Six
 23 panel members shall sit in review of each case. Three panel members who are physicians and three panel
 24 members who are attorneys shall sit in review of each case in which the claim is heard only against one or
 25 more physicians. Three panel members who are dentists and three panel members who are attorneys shall sit
 26 in review of each case in which the claim is heard only against one or more dentists. Three panel members who
 27 are podiatrists and three panel members who are attorneys shall sit in review of each case in which the claim is
 28 heard only against one or more podiatrists. Three panel members who are physician assistants and three panel

1 members who are attorneys shall sit in review of each case in which the claim is heard only against one or
 2 more physician assistants. If the claim is heard only against one or more health care facilities, two of the panel
 3 members must be administrators of the same type of health care facility or facilities, one panel member must be
 4 a physician, and three panel members must be attorneys.

5 (2) In all other cases, two of the panel members must be physicians, one panel member must be
 6 an administrator of the same type of health care facility, and three panel members must be attorneys, except
 7 that when a claim is heard against a dentist, a dentist must be substituted for one of the physicians on the panel
 8 and when a claim is heard against a podiatrist, a podiatrist must be substituted for one of the physicians on the
 9 panel."

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 11 **Section 4.** Section 33-22-114, MCA, is amended to read:

12 **"33-22-114. Coverage required for services provided by physician assistants, advanced**
 13 **practice registered nurses, and registered nurse first assistants.** An insurer, a health service corporation,
 14 or any employee health and welfare fund that provides accident or health insurance benefits to residents of this
 15 state shall provide, in group and individual insurance contracts, coverage as well as payment or reimbursement
 16 for health services provided by:

17 (1) a physician assistant as normally covered by contracts for services supplied by a physician if
 18 health care services that the physician assistant is approved to perform ~~perform~~ performs are covered by the contract;

19 (2) an advanced practice registered nurse, defined in 37-8-102, as normally covered by contracts
 20 for services supplied by a physician or a physician assistant if health care services that the advanced practice
 21 registered nurse is approved to perform are covered by the contract; and

22 (3) a registered nurse first assistant, licensed under Title 37, chapter 8, as normally covered by
 23 contracts for surgical services supplied by a physician, a physician assistant, or an advanced practice
 24 registered nurse if surgical services that the registered nurse first assistant is approved to perform are covered
 25 by the contract."

26
 27 **Section 5.** Section 33-31-111, MCA, is amended to read:

28 **"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise