

1 H ~~Bill~~ NO. 374 *Shah*
 2 INTRODUCED BY *Ramirez* ~~For~~ ~~FAG~~ *Theresa Conway*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING VOLUNTARY,
 5 CONTRACTUAL ARBITRATION OF DISPUTES ARISING FROM INJURY OR
 6 DEATH CAUSED BY PROFESSIONAL NEGLIGENCE OF A HEALTH CARE
 7 PROVIDER OR OTHER PROFESSIONAL OR HOSPITAL AND PROVIDING FOR
 8 A "POSITIVE OPTION" ON THE PART OF THE PATIENT OR CLIENT,
 9 WHEREBY THE PATIENT OR CLIENT MAY SUBSEQUENTLY WITHDRAW FROM
 10 THE AGREEMENT."

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

13 Section 1. Application. The provisions of this chapter
 14 are applicable to the arbitration of a dispute, controversy,
 15 or issue arising out of or resulting from injury to or the
 16 death of a person caused by an error, omission, or
 17 negligence in the performance of professional services by a
 18 health care provider or other professionals, hospital, or
 19 their agent or based on a claimed performance of such
 20 services without consent, in breach of warranty, or in
 21 violation of contract.

22 Section 2. Definitions. As used in this chapter, the
 23 following definitions apply:

24 (1) "Association" means the American arbitration
 25 association or other entity organized to arbitrate disputes

1 pursuant to this chapter.

2 (2) "Health care provider" means any person,
 3 corporation, facility, or institution of a governmental unit
 4 of the state of Montana duly licensed by the state of
 5 Montana to provide health care, including but not limited to
 6 physicians, osteopaths, registered nurses, licensed
 7 practical nurses, dentists, optometrists, podiatrists, and
 8 chiropractors, as defined by the statutes of the state of
 9 Montana.

10 (3) "Hospital" means a person, partnership, or
 11 corporation lawfully engaged in the operation of a hospital,
 12 clinic, health maintenance organization, sanitarium,
 13 hospital-related facility, or long-term care facility, as
 14 defined by the statutes of the state of Montana.

15 (4) "Other professionals" means attorneys, certified
 16 public accountants, public accountants, architects,
 17 veterinarians, pharmacists, and professional engineers, duly
 18 licensed or otherwise legally authorized within the state of
 19 Montana to render their professional services.

20 Section 3. Arbitration agreement between patient and
 21 health care provider or professional. (1) A person who
 22 receives professional services from a health care provider
 23 or professional services from other professionals may, if
 24 offered, execute an agreement to arbitrate a dispute,
 25 controversy, or issue arising out of health care or

1 treatment by a health care provider who is not an employee
2 of a hospital or the providing of professional services by
3 other professionals, whichever the case may be.

4 (2) The agreement shall provide that the person
5 receiving health care treatment or other professional
6 services or his legal representative may revoke the
7 agreement within 60 days after execution by notifying the
8 health care provider or other professional in writing. Such
9 written notice may be given by a guardian or parent of the
10 patient or client if the patient or client is incapacitated
11 or a minor. A health care provider or other professional may
12 not revoke the agreement after its execution.

13 (3) An agreement under this section shall expire 1
14 year after its execution and may be renewed by execution of
15 a new agreement. Any rights and obligations accruing under
16 an agreement are not extinguished because of the expiration.

17 (4) An agreement under this section shall contain the
18 following provision as the first article of the agreement,
19 which shall be expressed in the following language: "It is
20 understood that any dispute as to professional liability,
21 that is as to whether any professional services rendered
22 under this agreement were unnecessary or unauthorized or
23 were improperly, negligently, or incompetently rendered,
24 will be determined by submission to arbitration as provided
25 by Montana law and not by a lawsuit or resort to court

1 process except as Montana law provides for judicial review
2 or enforcement of arbitration proceedings. Both parties to
3 this contract, by entering into it, are giving up their
4 constitutional right to have any such dispute decided in a
5 court of law before a jury and instead are accepting the use
6 of arbitration."

7 (5) The agreement shall contain the following
8 provision in at least 10-point bold red type immediately
9 above the space for signature of the parties: "NOTICE: BY
10 SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY ISSUE OF
11 PROFESSIONAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND
12 YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE
13 ARTICLE 1 OF THIS CONTRACT. THIS AGREEMENT TO ARBITRATE MAY
14 BE REVOKED WITHIN 60 DAYS AFTER EXECUTION BY NOTIFICATION IN
15 WRITING."

16 (6) Such an agreement is not a contract of adhesion or
17 unconscionable or otherwise improper when it complies with
18 subsections (2), (4), and (5) of this section.

19 (7) An agreement to arbitrate which includes the
20 provisions of this section shall be presumed valid.

21 Section 4. Arbitration agreement between patient and
22 hospital. (1) A person who receives health care in a
23 hospital may execute an agreement to arbitrate a dispute,
24 controversy, or issue arising out of health care or
25 treatment rendered by the hospital.

1 (2) The agreement to arbitrate shall provide that the
 2 person receiving health care or treatment or his legal
 3 representative, but not the hospital, may revoke the
 4 agreement within 60 days after discharge from the hospital
 5 by notifying the hospital in writing. Such written notice
 6 may be given by a guardian or parent of the patient if the
 7 patient is incapacitated or a minor.

8 (3) An agreement under this section shall contain the
 9 following language: "It is understood that any dispute as to
 10 medical liability, that is as to whether any medical
 11 services rendered under this agreement were unnecessary or
 12 unauthorized or were improperly, negligently, or
 13 incompetently rendered, will be determined by submission to
 14 arbitration as provided by Montana law and not by a lawsuit
 15 or resort to court process except as Montana law provides
 16 for judicial review or enforcement of arbitration
 17 proceedings. Both parties to this contract, by entering into
 18 it, are giving up their constitutional right to have any
 19 such dispute decided in a court of law before a jury and
 20 instead are accepting the use of arbitration."

21 (4) The agreement shall contain the following
 22 provision in at least 10-point bold red type immediately
 23 above the space for signature of the parties: "NOTICE: BY
 24 SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY ISSUE OF
 25 MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU

1 ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE
 2 ARTICLE 1 OF THIS CONTRACT. THIS AGREEMENT TO ARBITRATE MAY
 3 BE REVOKED WITHIN 60 DAYS AFTER DISCHARGE BY NOTIFICATION IN
 4 WRITING."

5 (5) Such an agreement is not a contract of adhesion or
 6 unconscionable or otherwise improper when it complies with
 7 subsections (2), (3), and (4) of this section.

8 (6) Notwithstanding the continuing existence of a
 9 health care provider-patient arbitration agreement, all
 10 surgical and medical procedures performed by a participating
 11 health care provider in a hospital shall be covered by the
 12 terms and conditions applicable to the agreement between the
 13 patient and the hospital. Treatment in the health care
 14 provider's office subsequent to discharge from such
 15 institution will be governed by the terms of any existing
 16 health care provider-patient arbitration agreement.

17 (7) Each admission to a hospital shall be treated as
 18 separate and distinct for the purposes of an agreement to
 19 arbitrate, but a person receiving outpatient care may
 20 execute an agreement with the hospital which provides for
 21 continuation of the agreement for a specific or continuing
 22 program of health care or treatment under the provisions of
 23 [section 3].

24 (8) An agreement to arbitrate which includes the
 25 provisions of this section shall be presumed valid.

1 Section 5. Rights of parties. (1) In a proceeding
2 pursuant to this chapter:

3 (a) the parties may be represented by counsel, be
4 heard, present evidence material to the controversy, and
5 cross-examine any witness;

6 (b) the prevailing standard of duty, practice, or care
7 applicable in a civil action shall be the standard applied
8 in the arbitration.

9 (2) A party may appear without counsel and shall be
10 advised of such right and the right to retain counsel in a
11 manner calculated to inform the person of the nature of and
12 the complexity of a proceeding by a simple concise form to
13 be distributed by the association administering the
14 arbitration.

15 Section 6. Costs of proceeding -- initial selection of
16 arbitrators. (1) The association shall administer a
17 proceeding without charge to the claimant. The
18 administrative expense shall be \$200 per party per case or
19 as may be agreed between the parties and the association or
20 as may be approved by the commissioner of insurance pursuant
21 to law. The administrative costs on account of a claimant
22 shall be defrayed by the arbitration administration fund
23 established under the insurance code or shall be provided by
24 the respondent parties.

25 (2) An arbitration under this chapter shall be heard

1 by a panel of three arbitrators. One shall be an attorney
2 who shall be the chairperson and shall have jurisdiction
3 over prehearing procedures; one shall be a professional from
4 the respondent's profession, preferably but not necessarily
5 from the respondent's speciality under consideration; and
6 the third shall be a person who is neither a professional
7 nor a representative of a hospital or of an insurance
8 company. Where a case involves a hospital only, a hospital
9 administrator may be substituted for a professional.

10 (3) Except as otherwise provided in subsection (6),
11 arbitrator candidates shall be selected pursuant to the
12 rules and procedures of the association from a pool of
13 candidates generated by the association. The rules and
14 procedures of the association pertaining to selection of
15 arbitrators under this chapter shall require that the
16 association send simultaneously to each of the three
17 categories a list of candidates together with a brief
18 biographical statement on each candidate. A party may strike
19 from the list any name which is unacceptable and shall
20 number the remaining names in order of preference. When the
21 lists are returned to the association, they shall be
22 compared and the first mutually agreed-upon candidate in
23 each category shall be invited to serve.

24 (4) When no mutually agreed-upon arbitrator is
25 selected for any category, a second list of that category

1 shall be sent pursuant to subsection (3).

2 (5) If a complete panel is not selected by mutual
3 agreement of the parties pursuant to subsections (3) and
4 (4), then under the applicable rules and procedures of the
5 association, the association shall appoint the remainder of
6 the panel on whom agreement has not been reached by the
7 parties. The appointment by the association shall be subject
8 to challenge by any party for cause, which challenge may
9 allege facts to establish that unusual community or
10 professional pressures will unreasonably influence the
11 objectivity of the panelist. A request to strike an
12 arbitrator for cause shall be determined as provided by rule
13 of the commissioner of insurance pursuant to law.

14 (6) The parties shall not be restricted to the
15 arbitrator candidates submitted for consideration. If all
16 parties mutually agree upon a panelist within a designated
17 category, the panelist shall be invited to serve.

18 Section 7. Final selection of arbitrators. (1) The
19 association shall make an initial screening for bias as may
20 be appropriate and shall require a candidate for a
21 particular case to complete a current personal disclosure
22 statement under oath. In addition to other relevant
23 information, the statement shall disclose any personal
24 acquaintance with any of the parties or their counsel and
25 the nature of such acquaintance. If the statement reveals

1 facts which suggest the possibility of partiality, the
2 association shall communicate those facts to the parties if
3 the panelist is proposed by the arbitration association.

4 (2) Any party may propound reasonable questions to an
5 arbitrator candidate within 10 days of the receipt of the
6 candidate's name. Such questions shall be propounded through
7 the association, and the candidate shall respond to the
8 association promptly.

9 (3) A party shall not communicate with a candidate
10 directly except through the association at any time after
11 the filing of the demand for arbitration. Any candidate who
12 is aware of such communication shall immediately notify the
13 association.

14 Section 8. Parties — joinder of parties or issues.

15 (1) A party to the arbitration agreement may demand
16 arbitration of a claim, and the proceeding shall be
17 instituted as provided by rule of the association and upon
18 compliance with [section 6].

19 (2) A minor child shall be bound by a written
20 agreement to arbitrate disputes, controversies, or issues
21 upon the execution of an agreement on his behalf by a parent
22 or legal guardian. The minor child may not subsequently
23 disaffirm the agreement.

24 (3) In cases involving a common question of law or
25 fact, if separate arbitration agreements exist between a

1 plaintiff and a number of defendants or between defendants,
2 the disputes, controversies, and issues shall be
3 consolidated into a single arbitration proceeding.

4 (4) A person who is not a party to the arbitration
5 agreement may join in the arbitration at the request of any
6 party with all the rights and obligations of the original
7 parties. Each party to an arbitration under this chapter is
8 considered to be bound by the joinder of a new party.

9 Section 9. Offer of settlement or demand for
10 arbitration. (1) Prior to the institution of a proceeding or
11 claim by a patient or client, any offer of reparations and
12 all communications incidental thereto made in writing to a
13 patient or client by a health care provider or other
14 professional or hospital is privileged and may not be used
15 by any party to establish the liability or measure of
16 damages attributable to the offeror.

17 (2) Such an offer shall provide that a patient or
18 client has 30 days to accept or reject the offer or such
19 lesser period of time as may be necessitated by the
20 condition of health of the patient or client.

21 (3) After any rejection or the lapse of the applicable
22 time, any party may demand arbitration where an arbitration
23 agreement is in effect.

24 (4) Any such offer to a patient or client shall
25 include a statement that the patient or client may consult

1 legal counsel before rejecting or accepting the offer.

2 (5) In a case where a potential claim is identified by
3 a health care provider or other professional or hospital
4 where reparations, in its judgment, are not appropriate, the
5 provider may, at its option, file a demand for arbitration
6 which demand shall identify the potential claim and deny
7 liability.

8 Section 10. Discovery proceedings. (1) After the
9 appointment of the panel of arbitrators, the parties to the
10 arbitration may take depositions and obtain discovery
11 regarding the subject matter of the arbitration and, to that
12 end, use and exercise the same rights, remedies, and
13 procedures and be subject to the same duties, liabilities,
14 and obligations in the arbitration with respect to the
15 subject matter thereof as if the subject matter of the
16 arbitration were pending in a civil action before a district
17 court of this state.

18 (2) Discovery shall commence not later than 20 days
19 after all parties have received a copy of the demand for
20 arbitration and shall be completed within 6 months.

21 (3) A party may be granted an extension of time to
22 complete discovery upon a showing that the extension is not
23 the result of neglect and that the extension is necessary in
24 order to avoid substantial prejudice to the rights of the
25 party.

1 (4) A party is entitled to disclosure of the name of
2 any expert witness who will be called at the arbitration and
3 may depose the witness.

4 Section 11. Method of taking testimony — expert
5 testimony. (1) A proceeding shall be informal and the rules
6 of evidence shall be as provided under the rules of the
7 association except that the panel shall adhere to civil
8 rules of evidence where the failure to do so will result in
9 substantial prejudice to the rights of a party.

10 (2) Testimony shall be taken under oath and a record
11 of the proceedings shall be made by a tape recording. Any
12 party, at that party's expense, may have copies of the
13 recording made or may provide for a written transcript of
14 the proceedings. The cost of any transcript ordered by the
15 panel for its own use shall be considered part of the cost
16 of the proceedings.

17 (3) When expert testimony is used, it shall be
18 admitted under the same circumstances as in a civil trial
19 and be subject to cross-examination.

20 (4) The party with the burden of establishing a
21 standard of care and breach thereof shall establish such
22 standards either by the introduction of expert testimony or
23 by other competent proof of the standard and the breach
24 thereof.

25 (5) The panel shall accord such weight and probative

1 worth to expert evidence as it considers appropriate. The
2 panel may call a neutral expert on its own motion, which
3 expert witness shall be subject to cross-examination by the
4 parties. The cost of the expert will be considered a cost of
5 the proceeding.

6 Section 12. Subpoena power of panel. The panel or its
7 chairperson in the arbitration proceeding shall, upon
8 application by a party to the proceeding, and may, upon its
9 own determination, issue a subpoena requiring a person to
10 appear and be examined with reference to a matter within the
11 scope of the proceeding and to produce books, records, or
12 papers pertinent to the proceeding. In case of disobedience
13 to the subpoena, the chairperson or a majority of the
14 arbitration panel in the arbitration proceeding may petition
15 the district court of the county in which the witness
16 resides or the district court of the county in which the
17 inquiry is being held to require the attendance and
18 testimony of the witness and the production of books,
19 papers, and documents. A district court of the state, in
20 case of failure to obey a subpoena, may issue an order
21 requiring the person to appear and to produce books,
22 records, and papers and give evidence touching the matter in
23 question. Failure to obey the order of the court may be
24 punished by the court as contempt.

25 Section 13. General powers of the panel. (1) On

1 application of a party to the arbitration, the panel or its
 2 chairperson may order the deposition of a witness to be
 3 taken for use as evidence and not for discovery if the
 4 witness cannot be compelled to attend the hearing or if
 5 exceptional circumstances exist making it desirable, in the
 6 interest of justice and with due regard to the importance of
 7 presenting the testimony of witnesses orally at the hearing,
 8 to allow the deposition to be taken. The deposition shall
 9 be taken in the manner prescribed by law or court rule for
 10 the taking of depositions in civil actions.

11 (2) In addition to the power of determining the merits
 12 of the arbitration, the panel may enforce the rights,
 13 remedies, procedures, duties, liabilities, sanctions, and
 14 penalties which may be imposed in like circumstances in a
 15 civil action by a district court of this state, except the
 16 power to order the arrest or imprisonment of a person.

17 (3) For the purpose of enforcing the duty to make
 18 discovery, to produce evidence and information, including
 19 books and records, and to produce persons to testify at a
 20 deposition or at a hearing and to impose terms, conditions,
 21 consequences, liabilities, sanctions, and penalties upon a
 22 party for violation of duty, a "party" means every affiliate
 23 of the party as defined in this section and the files,
 24 books, and records of an affiliate shall be considered to be
 25 in the possession and control of, and capable of production

1 by, the party.

2 (4) As used in this section, "affiliate" of the party
 3 to the arbitration means a party or person for whose
 4 immediate benefit the action or proceeding is prosecuted or
 5 defended or an officer, director, superintendent, member,
 6 agent, employee, or managing agent of that party or person.

7 Section 14. Payment of fees and mileage. (1) Except
 8 for the parties to the arbitration and their agents,
 9 officers, and employees, all witnesses appearing pursuant to
 10 subpoena are entitled to receive fees and mileage in the
 11 same amount and under the same circumstances as prescribed
 12 by law for witnesses in civil actions in the district court.
 13 The fee and mileage of a witness subpoenaed upon the
 14 application of a party to the arbitration shall be paid by
 15 that party. The fee and mileage of a witness subpoenaed
 16 solely upon the determination of the majority of a panel of
 17 arbitrators shall be paid in the manner provided for the
 18 payment of the arbitrator's expenses.

19 (2) The cost of each arbitrator's fees and expenses,
 20 together with any administrative fee, may be assessed
 21 against any party to the award or may be assessed among
 22 parties in such proportions as may be determined in the
 23 arbitration award.

24 Section 15. Comparative fault. (1) The panel shall
 25 determine the degree to which each respondent party was at

1 fault for the total damages accruing to any party to the
2 arbitration, considering all sources of damage involving
3 parties to the arbitration but excluding the damages
4 attributable to persons not parties to the arbitration.

5 (2) The panel shall prepare a schedule of
6 contributions according to the relative fault of each party,
7 which schedule shall be binding as between those parties,
8 but such determination shall not affect a claimant's right
9 to recover jointly and severally from all parties where such
10 right otherwise exists in the law.

11 Section 16. Award. (1) A majority of the panel of
12 arbitrators may grant any relief considered equitable and
13 just.

14 (2) The panel may order submission of written briefs
15 within 30 days after the close of hearings. In written
16 briefs each party may summarize the evidence in testimony
17 and may propose a comprehensive award of remedial or
18 compensatory elements.

19 (3) The panel shall render its award and written
20 opinion within 30 days after the close of the hearing or the
21 receipt of briefs, if ordered. A panel member who disagrees
22 with the majority may write a dissenting opinion.

23 (4) The award of the arbitration proceeding shall be
24 in writing and shall be signed by the chairperson or by the
25 majority of a panel of arbitrators. The award shall include

1 a determination of all the questions submitted to
2 arbitration by each party, the resolution of which is
3 necessary to determine the dispute, controversy, or issue.

4 (5) Periodic payment of future damages shall be made
5 pursuant to law.

6 (6) The panel shall conclude the entire proceeding as
7 expeditiously as possible.

8 Section 17. Appeal. An appeal from the arbitration
9 award shall be under the procedure and for the grounds
10 permitted under the general arbitration law and applicable
11 court rules.

12 Section 18. Confirmation of award. (1) A court of
13 competent jurisdiction may confirm an arbitration award
14 rendered in this or another state and enter judgment
15 thereon.

16 (2) The court may modify, correct, vacate, or refuse
17 to confirm the award as provided by 93-201-7 and 93-201-8.

18 Section 19. Governing sections. In an arbitration
19 proceeding under this chapter, the provisions of those
20 sections shall govern if a conflict arises between those
21 sections and Title 93, chapter 201.

22 Section 20. Notice to commissioner of insurance and
23 licensing board. The association shall transmit to the state
24 commissioner of insurance and the applicable licensing board
25 of any respondent party a copy of the demand for arbitration

1 within 10 days of filing. The agencies shall receive a copy
 2 of the decision of the panel within 10 days of transmission
 3 of the decision to the parties. The reports shall be filed
 4 for informational purposes, and the making or filing of such
 5 a report shall not of itself be a ground for discipline.

6 Section 21. Review of arbitration program. Within 3
 7 years from the effective date of this chapter, a joint
 8 legislative committee shall be established to review the
 9 operation and experience of arbitration under this chapter
 10 in conjunction with the insurance commissioner, the
 11 arbitration advisory committee established under the
 12 insurance code, and other interested persons. The committee
 13 shall report recommendations for statutory changes, if any,
 14 to the entire legislature before the end of the fourth year
 15 from the effective date of this chapter.

16 Section 22. Refusal to insure because of participation
 17 in arbitration program prohibited. A professional liability
 18 insurer may not refuse to offer insurance to a health care
 19 provider or other professional or hospital on the grounds
 20 that the health care provider or other professional or
 21 hospital has entered or intends to enter into valid written
 22 agreements with patients or clients or prospective patients
 23 or clients for the arbitration of cases or controversies
 24 arising out of the professional or business relationships
 25 between a patient or client and the health care provider or

1 other professional or hospital.

2 Section 23. Insurance policy to require participation
 3 of insured in arbitration program. (1) As a condition of
 4 doing business in this state, a professional liability
 5 insurer shall not offer a policy of professional liability
 6 insurance to any hospital unless the policy contains a
 7 provision in the form and upon such other conditions as the
 8 commissioner shall approve, which requires the insured to
 9 offer a form of arbitration agreement to each patient
 10 treated or admitted.

11 (2) The commissioner shall approve the form of policy
 12 conditioned upon a finding that the arbitration agreement
 13 offered together with the procedures and other documents
 14 used in connection with any arbitration comply with the
 15 provisions of this chapter and rules as may be promulgated
 16 after consultation with the advisory committee.

17 Section 24. Refusal of treatment prohibited. No
 18 medical treatment shall be refused solely because a person
 19 refuses to sign the arbitration agreement herein provided.

20 Section 25. Arbitration advisory committee. (1) An
 21 arbitration advisory committee is created within the office
 22 of commissioner of insurance and shall be appointed by the
 23 commissioner and shall consist of 10 members. One-half of
 24 the advisory committee shall be broadly composed of licensed
 25 physicians and other health care providers, licensed

1 hospital or institutional health care providers, medical
 2 liability insurance carriers, and licensed legal
 3 practitioners. One-half shall be broadly composed of
 4 nongovernmental, nonattorney, nonhealth care provider and
 5 noninsurance carrier persons. The committee may appoint one
 6 or more specialized subcommittees with the approval of the
 7 commissioner.

8 (2) The composition of any subcommittee need not be
 9 restricted to persons who are members of the advisory
 10 committee.

11 (3) Advisory committee members shall serve a 3-year
 12 term without pay or per diem but shall receive actual
 13 expenses. Expenses shall be defrayed by the arbitration
 14 administration fund established under this chapter.

15 (4) Of the members first appointed, four shall be
 16 appointed for a term of 1 year, four for a term of 2 years,
 17 and two for a term of 3 years.

18 Section 26. Duties of advisory council. The advisory
 19 committee shall consult with the commissioner, health care
 20 providers, hospitals, other professionals, and any
 21 association administering arbitration proceedings and shall:

- 22 (1) provide policy input;
- 23 (2) review operation to suggest periodic changes;
- 24 (3) suggest criteria for arbitrator candidates;
- 25 (4) generate a pool of candidates and provide initial

1 screening in cooperation with the arbitration association;

2 (5) develop uniform model arbitration consent forms,
 3 informational brochures, and letters for office and hospital
 4 use which shall be subject to approval by the commissioner;
 5 and

6 (6) cooperate with insurers and health care providers
 7 as a technical resource for development of loss control and
 8 patient service systems.

9 Section 27. Arbitration administration fund. (1) There
 10 is created within the office of commissioner of insurance an
 11 arbitration administration fund which shall be annually
 12 funded by order of the commissioner in such amount as shall
 13 be sufficient to defray the actual expenses of the advisory
 14 committee and the administrative expense of the projected
 15 number of arbitration proceedings for that year.

16 (2) The administrative expense shall include the
 17 amount which would otherwise be payable by a claimant as a
 18 party to a proceeding together with the costs of
 19 arbitrators.

20 (3) The administrative expense may also include a
 21 provision for a consulting contract with the American
 22 arbitration association or similar agency for a limited and
 23 reasonable amount of technical and organizational advice and
 24 consultation in the implementation of this chapter.

25 (4) The administration of this act shall be funded by

1 an appropriation from the general fund.

2 Section 28. Rules. The commissioner may promulgate
3 rules after consultation with the advisory committee to
4 implement this chapter. The rules shall be consistent with
5 the requirements of the chapter.

6 Section 29. Forms. The commissioner, after
7 consultation with the advisory committee, shall also approve
8 recommended model forms of agreement and explanatory
9 brochures and materials for use by health care providers,
10 other professionals, and hospitals. The forms shall include
11 a provision for affirmative option for arbitration by the
12 patient or client, revocation, and such other conditions for
13 arbitration agreements as provided in this chapter.

14 Section 30. Hospital staff participation. (1) As a
15 condition of approval of the policy form under this chapter,
16 a liability policy issued to a hospital shall require that
17 all hospital personnel are bound by the terms of the
18 hospital's agreement to arbitrate.

19 (2) The commissioner shall require that the liability
20 insurer and the insured hospital have accomplished
21 substantial participation in arbitration by the independent
22 hospital staff of a hospital. Substantial participation
23 shall be considered established if within 1 year of the
24 effective date of the approval of the form of a liability
25 policy, a particular insured hospital has achieved

1 independent hospital staff participation accounting for 75%
2 of patient treatment or admissions; in the second year 85%
3 of such treatment or admissions; and in the third year 90%
4 of such treatment or admissions.

5 (3) The commissioner shall also find that the
6 liability insurer and the insured hospital, where it has
7 secured an agreement of independent staff to arbitrate, has
8 included in such agreements a provision that participation
9 by independent hospital staff who agree shall continue from
10 year to year unless the insured hospital is notified in
11 writing to the contrary within 30 days of the close of the
12 year and that any independent hospital staff withdrawal may
13 be prospective only.

14 Section 31. Review of policy forms and premium rates.
15 (1) Within 3 years after the approval of policy forms under
16 this chapter, the commissioner shall require a complete
17 review of experience under the forms approved including
18 experience of every liability insurer participating in
19 arbitration. If appropriate and warranted by experience, the
20 commissioner shall order a refund of premiums paid by
21 participating insureds or a prospective reduction of rates.

22 (2) The commissioner shall at the same time review the
23 experience and rate filings of health care and hospital care
24 corporations or other insurers providing health care
25 benefits by contract, and such review shall require that the

1 premium rates charged or to be charged by such corporations
2 or insurers adequately reflect any savings resulting from
3 the operation of arbitration under this chapter or
4 otherwise.

5 Section 32. Severability. If a part of this act is
6 invalid, all valid parts that are severable from the invalid
7 part remain in effect. If a part of this act is invalid in
8 one or more of its applications, the part remains in effect
9 in all valid applications that are severable from the
10 invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 214-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 19 77, there is hereby submitted a Fiscal Note for House Bill 374 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing voluntary, contractual arbitration of disputes arising from injury or death caused by professional negligence of a health care provider or other professional or hospital and providing for a "positive option" on the part of the patient or client whereby the patient or client may subsequently withdraw from the agreement.

ASSUMPTION:

Three (3) additional FTE would be required to administer the act, to include one full-time actuary, one attorney, and one secretary.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>	<u>TOTAL</u>
Personal services	\$ 80,000	\$ 80,000	\$160,000
Operating expenses	120,000	120,000	240,000
Equipment	<u>2,000</u>	<u>0</u>	<u>2,000</u>
Additional cost of proposed legislation	<u>\$202,000</u>	<u>\$200,000</u>	<u>\$402,000</u>

Richard L. Drury
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-1-77

STATE OF MONTANA

REQUEST NO. 217-77
~~600-77~~

(REVISED)

FISCAL NOTE

Form BD-15

In compliance with a written request received March 2, , 19 77 , there is hereby submitted a Fiscal Note for House Bill 374 Amended pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

THIS FISCAL NOTE REVISES THE ORIGINAL FISCAL NOTE ON HOUSE BILL 374.

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing voluntary, contractual arbitration of disputes arising from injury or death caused by professional negligence of a health care provider or other professional or hospital and providing for a "positive option" on the part of the patient or client, whereby the patient or client may subsequently withdraw from the agreement.

ASSUMPTIONS:

1. 2.00 FTE, an accountant and secretary, would be added to the staff of the State Auditor to administer the proposed legislation.
2. Operating expenses would be absorbed by the State Auditor's Office.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>	<u>TOTAL</u>
Personal services	\$27,125	\$28,481	\$55,606
Operating expenses	0	0	0
Equipment	<u>1,950</u>	<u>0</u>	<u>1,950</u>
Total additional cost of proposed legislation	<u>\$29,075</u>	<u>\$28,481</u>	<u>\$57,556</u>

LONG-RANGE IMPACT:

The Office of the Commissioner of Insurance suggests that a possibility exists that insurers nonacceptance of this legislation would adversely affect the market for liability insurance in Montana.

Richard L. Ziemer
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-7-77

Approved by Committee
on Judiciary

1 HOUSE BILL NO. 374
2 INTRODUCED BY RAMIREZ, PORTER,
3 FAGG, MOORE, CONROY, JOHNSTON
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING VOLUNTARY,
6 CONTRACTUAL ARBITRATION OF DISPUTES ARISING FROM INJURY OR
7 DEATH CAUSED BY PROFESSIONAL NEGLIGENCE OF A HEALTH CARE
8 PROVIDER OR OTHER PROFESSIONAL OR HOSPITAL AND PROVIDING FOR
9 A "POSITIVE OPTION" ON THE PART OF THE PATIENT OR CLIENT,
10 WHEREBY THE PATIENT OR CLIENT MAY SUBSEQUENTLY WITHDRAW FROM
11 THE AGREEMENT."
12

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

14 Section 1. Application. The provisions of this chapter
15 are applicable to the arbitration of a dispute, controversy,
16 or issue arising out of or resulting from injury to or the
17 death of a person caused by an error, omission, or
18 negligence in the performance of professional services by a
19 health care provider or other professionals, hospital, or
20 their agent or based on a claimed performance of such
21 services without consent, in breach of warranty, or in
22 violation of contract.

23 Section 2. Definitions. As used in this chapter, the
24 following definitions apply:

25 (1) "Association" means the American arbitration

1 association or other entity organized to arbitrate disputes
2 pursuant to this chapter.

3 (2) "Health care provider" means any person,
4 corporation, facility, or institution of a governmental unit
5 of the state of Montana duly licensed by the state of
6 Montana to provide health care, including but not limited to
7 physicians, osteopaths, registered nurses, licensed
8 practical nurses, dentists, optometrists, podiatrists, and
9 chiropractors, as defined by the statutes of the state of
10 Montana.

11 (3) "Hospital" means a person, partnership, or
12 corporation lawfully engaged in the operation of a hospital,
13 clinic, health maintenance organization, sanitarium,
14 hospital-related facility, or long-term care facility, as
15 defined by the statutes of the state of Montana.

16 (4) "Other professionals" means attorneys, certified
17 public accountants, public accountants, architects,
18 veterinarians, pharmacists, and professional engineers, duly
19 licensed or otherwise legally authorized within the state of
20 Montana to render their professional services.

21 Section 3. Arbitration agreement between patient OR
22 CLIENT and health care provider or professional. (1) A
23 person who receives professional services from a health care
24 provider or professional services from other professionals
25 may, if offered, execute an agreement to arbitrate a

1 dispute, controversy, or issue arising out of health care or
 2 treatment by a health care provider who is not an employee
 3 of a hospital or the providing of professional services by
 4 other professionals, whichever the case may be. ~~THE~~
 5 ~~AGREEMENT MAY NOT BE OFFERED TO THE PATIENT OR CLIENT BY THE~~
 6 ~~HEALTH CARE PROVIDER OR PROFESSIONAL BEFORE THE COMPLETION~~
 7 ~~OF THE INITIAL DAY'S TREATMENT OR SERVICE BUT MAY BE MADE~~
 8 ~~EFFECTIVE FROM THE TIME OF THE INITIAL TREATMENT OR SERVICE.~~

9 (2) ~~THE AGREEMENT TO ARBITRATE SHALL PROVIDE THAT ITS~~
 10 ~~EXECUTION IS NOT A PREREQUISITE TO ANY PROFESSIONAL~~
 11 ~~SERVICES.~~ The agreement shall provide that the person
 12 receiving health care treatment or other professional
 13 services or his legal representative may revoke the
 14 agreement within ~~60~~ 90 days after execution. ~~REVOCAION~~
 15 ~~SHALL BE MADE~~ by notifying the health care provider or other
 16 professional in writing. ~~Such written notice may be given by~~
 17 ~~a guardian or parent of the patient or client if the patient~~
 18 ~~or client is incapacitated or a minor. A health care~~
 19 ~~provider or other professional may not revoke the agreement~~
 20 ~~after its execution.~~

21 (3) An agreement under this section shall expire 1
 22 year after its execution EFFECTIVE DATE and may be renewed
 23 by execution of a new agreement. Any rights and obligations
 24 accruing under an agreement are not extinguished because of
 25 the expiration.

1 (4) An agreement under this section shall contain the
 2 following provision as the first article of the agreement,
 3 which shall be expressed in the following language: "It is
 4 understood that any dispute as to professional liability,
 5 that is as to whether any professional services rendered
 6 under this agreement were unnecessary or unauthorized or
 7 were improperly, negligently, or incompetently rendered,
 8 will be determined by submission to arbitration as provided
 9 by Montana law and not by a lawsuit or resort to court
 10 process except as Montana law provides for judicial review
 11 or enforcement of arbitration proceedings. Both parties to
 12 this contract, by entering into it, are giving up their
 13 constitutional right to have any such dispute decided in a
 14 court of law before a jury and instead are accepting the use
 15 of arbitration."

16 (5) The agreement shall contain the following
 17 provision in at least 10-point bold red type immediately
 18 above the space for signature of the parties: "NOTICE: YOU
 19 ARE NOT REQUIRED TO SIGN THIS CONTRACT TO RECEIVE
 20 PROFESSIONAL SERVICES. BY SIGNING THIS CONTRACT YOU ARE
 21 AGREEING TO HAVE ANY ISSUE OF PROFESSIONAL MALPRACTICE
 22 DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR
 23 RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE 1 OF THIS
 24 CONTRACT. THIS AGREEMENT TO ARBITRATE MAY BE REVOKED WITHIN
 25 60 90 DAYS AFTER EXECUTION BY NOTIFICATION IN WRITING."

1 (6) Such an agreement is not a contract of adhesion or
 2 unconscionable or otherwise improper when it complies with
 3 subsections (2), (4), and (5) of this section. BUT THE
 4 AGREEMENT IS VOID IF SERVICES ARE CONDITIONED UPON ENTERING
 5 INTO AN AGREEMENT COVERED BY THIS ACT.

6 (7) An agreement to arbitrate which includes the
 7 provisions of this section shall be presumed valid.

8 Section 4. Arbitration agreement between patient and
 9 hospital. (1) A person who receives health care in a
 10 hospital may, IF OFFERED, execute an agreement to arbitrate
 11 a dispute, controversy, or issue arising out of health care
 12 or treatment rendered by the hospital. THE AGREEMENT MAY NOT
 13 BE OFFERED TO THE PATIENT OR CLIENT BY THE HOSPITAL UNTIL
 14 THE DAY OF DISMISSAL FROM THE INITIAL HOSPITALIZATION BUT
 15 MAY BE MADE EFFECTIVE FROM THE TIME OF ADMISSION.

16 (2) THE AGREEMENT TO ARBITRATE SHALL PROVIDE THAT ITS
 17 EXECUTION IS NOT A PREREQUISITE TO HEALTH CARE OR TREATMENT.

18 The agreement to arbitrate shall provide that the person
 19 receiving health care or treatment or his legal
 20 representative, but not the hospital, may revoke the
 21 agreement within 60 90 days after discharge from the
 22 hospital. REVOCAION SHALL BE MADE by notifying the hospital
 23 in writing. Such written notice may be given by a guardian
 24 or parent of the patient if the patient is incapacitated or
 25 a minor.

1 (3) An agreement under this section shall contain the
 2 following language: "It is understood that any dispute as to
 3 medical liability, that is as to whether any medical
 4 services rendered under this agreement were unnecessary or
 5 unauthorized or were improperly, negligently, or
 6 incompetently rendered, will be determined by submission to
 7 arbitration as provided by Montana law and not by a lawsuit
 8 or resort to court process except as Montana law provides
 9 for judicial review or enforcement of arbitration
 10 proceedings. Both parties to this contract, by entering into
 11 it, are giving up their constitutional right to have any
 12 such dispute decided in a court of law before a jury and
 13 instead are accepting the use of arbitration."

14 (4) The agreement shall contain the following
 15 provision in at least 10-point bold red type immediately
 16 above the space for signature of the parties: "NOTICE: YOU
 17 ARE NOT REQUIRED TO SIGN THIS CONTRACT TO RECEIVE HEALTH
 18 CARE OR TREATMENT. BY SIGNING THIS CONTRACT YOU ARE AGREEING
 19 TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL
 20 ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR
 21 COURT TRIAL. SEE ARTICLE 1 OF THIS CONTRACT. THIS AGREEMENT
 22 TO ARBITRATE MAY BE REVOKED WITHIN 60 90 DAYS AFTER
 23 DISCHARGE BY NOTIFICATION IN WRITING."

24 (5) Such an agreement is not a contract of adhesion or
 25 unconscionable or otherwise improper when it complies with

1 subsections (2), (3), and (4) of this section, BUT THE
2 AGREEMENT IS VOID IF SERVICES ARE CONDITIONED UPON ENTERING
3 INTO AN AGREEMENT COVERED BY THIS ACT.

4 (6) Notwithstanding the continuing existence of a
5 health care provider-patient arbitration agreement, all
6 surgical and medical procedures performed by a participating
7 health care provider in a hospital shall be covered by the
8 terms and conditions applicable to the agreement between the
9 patient and the hospital. Treatment in the health care
10 provider's office subsequent to discharge from such
11 institution will be governed by the terms of any existing
12 health care provider-patient arbitration agreement.

13 (7) Each admission to a hospital shall be treated as
14 separate and distinct for the purposes of an agreement to
15 arbitrate, but a person receiving outpatient care may
16 execute an agreement with the hospital which provides for
17 continuation of the agreement for a specific or continuing
18 program of health care or treatment under the provisions of
19 [section 3].

20 (8) An agreement to arbitrate which includes the
21 provisions of this section shall be presumed valid.

22 Section 5. Rights of parties. (1) In a proceeding
23 pursuant to this chapter:

24 (a) the parties may be represented by counsel, be
25 heard, present evidence material to the controversy, and

1 cross-examine any witness;

2 (b) the prevailing standard of duty, practice, or care
3 applicable in a civil action shall be the standard applied
4 in the arbitration.

5 (2) A party may appear without counsel and shall be
6 advised of such right and the right to retain counsel in a
7 manner calculated to inform the person of the nature of and
8 the complexity of a proceeding by a simple concise form to
9 be distributed by the association administering the
10 arbitration.

11 Section 6. Costs of proceeding -- initial selection of
12 arbitrators. (1) The association shall administer a
13 proceeding without charge to the claimant. The
14 ~~administrative expense shall be \$200 per party per case or~~
15 ~~as may be agreed between the parties and the association or~~
16 ~~as may be approved by the commissioner of insurance pursuant~~
17 ~~to law. The administrative costs on account of a claimant~~
18 ~~shall be defrayed by the arbitration administration fund~~
19 ~~established under the insurance code or shall be provided by~~
20 ~~the respondent parties.~~ ADMINISTRATIVE COSTS ON ACCOUNT OF A
21 CLAIMANT SHALL BE PROVIDED BY THE RESPONDENT PARTIES.

22 (2) An arbitration under this chapter shall be heard
23 by a panel of three arbitrators. One shall be an attorney
24 who shall be the chairperson and shall have jurisdiction
25 over prehearing procedures; one shall be a professional from

1 the respondent's profession, preferably but not necessarily
 2 from the respondent's speciality under consideration; and
 3 the third shall be a person who is neither a professional
 4 nor a representative of a hospital or of an insurance
 5 company. Where a case involves a hospital only, a hospital
 6 administrator may be substituted for a professional.

7 (3) Except as otherwise provided in subsection (6),
 8 arbitrator candidates shall be selected pursuant to the
 9 rules and procedures of the association from a pool of
 10 candidates generated by the association. The rules and
 11 procedures of the association pertaining to selection of
 12 arbitrators under this chapter shall require that the
 13 association send simultaneously to each of--the--three
 14 categories--a list of candidates together with a brief PARTY
 15 A LIST OF CANDIDATES IN EACH OF THE THREE CATEGORIES
 16 TOGETHER WITH A BRIEF biographical statement on each
 17 candidate. A party may strike from the list any name which
 18 is unacceptable and shall number the remaining names in
 19 order of preference. When the lists are returned to the
 20 association, they shall be compared and the first mutually
 21 agreed-upon candidate in each category shall be invited to
 22 serve.

23 (4) When no mutually agreed-upon arbitrator is
 24 selected for any category, a second list of that category
 25 shall be sent pursuant to subsection (3).

1 (5) If a complete panel is not selected by mutual
 2 agreement of the parties pursuant to subsections (3) and
 3 (4), then under the applicable rules and procedures of the
 4 association, the association shall appoint the remainder of
 5 the panel on whom agreement has not been reached by the
 6 parties. The appointment by the association shall be subject
 7 to challenge by any party for cause, which challenge may
 8 allege facts to establish that unusual community or
 9 professional pressures will unreasonably influence the
 10 objectivity of the panelist. A request to strike an
 11 arbitrator for cause shall be determined as provided by rule
 12 of the commissioner of insurance pursuant to law.

13 (6) The parties shall not be restricted to the
 14 arbitrator candidates submitted for consideration. If all
 15 parties mutually agree upon a panelist within a designated
 16 category, the panelist shall be invited to serve.

17 Section 7. Final selection of arbitrators. (1) The
 18 association shall make an initial screening for bias as may
 19 be appropriate and shall require a candidate for a
 20 particular case to complete a current personal disclosure
 21 statement under oath. In addition to other relevant
 22 information, the statement shall disclose any personal
 23 acquaintance with any of the parties or their counsel and
 24 the nature of such acquaintance. If the statement reveals
 25 facts which suggest the possibility of partiality, the

1 association shall communicate those facts to the parties if
2 the panelist is proposed by the arbitration association.

3 (2) Any party may propound reasonable questions to an
4 arbitrator candidate within 10 days of the receipt of the
5 candidate's name. Such questions shall be propounded through
6 the association, and the candidate shall respond to the
7 association promptly.

8 (3) A party shall not communicate with a candidate
9 directly except through the association at any time after
10 the filing of the demand for arbitration. Any candidate who
11 is aware of such communication shall immediately notify the
12 association.

13 Section 8. Parties -- joinder of parties or issues.

14 (1) A party to the arbitration agreement may demand
15 arbitration of a claim, and the proceeding shall be
16 instituted as provided by rule of the association and upon
17 compliance with [section 6].

18 ~~(2) A minor child shall be bound by a written
19 agreement to arbitrate disputes, controversies, or issues
20 upon the execution of an agreement on his behalf by a parent
21 or next guardian. The minor child may not subsequently
22 disaffirm the agreement.~~

23 ~~(2)~~ In cases involving a common question of law or
24 fact, if separate arbitration agreements exist between a
25 plaintiff and a number of defendants or between defendants,

1 the disputes, controversies, and issues shall be
2 consolidated into a single arbitration proceeding.

3 ~~(3)~~ A person who is not a party to the arbitration
4 agreement may join in the arbitration at the request of any
5 party with all the rights and obligations of the original
6 parties. Each party to an arbitration under this chapter is
7 considered to be bound by the joinder of a new party.

8 Section 9. Offer of settlement or demand for
9 arbitration. (1) Prior to the institution of a proceeding or
10 claim by a patient or client, any offer of reparations and
11 all communications incidental thereto made in writing to a
12 patient or client by a health care provider or other
13 professional or hospital is privileged and may not be used
14 by any party to establish the liability or measure of
15 damages attributable to the offeror.

16 (2) Such an offer shall provide that a patient or
17 client has 30 days to accept or reject the offer or such
18 lesser period of time as may be necessitated by the
19 condition of health of the patient or client.

20 (3) After any rejection or the lapse of the applicable
21 time, any party may demand arbitration where an arbitration
22 agreement is in effect.

23 (4) Any such offer to a patient or client shall
24 include a statement that the patient or client may consult
25 legal counsel before rejecting or accepting the offer.

1 (5) In a case where a potential claim is identified by
 2 a health care provider or other professional or hospital
 3 where reparations, in its judgment, are not appropriate, the
 4 provider may, at its option, file a demand for arbitration
 5 which demand shall identify the potential claim and deny
 6 liability.

7 Section 10. Discovery proceedings. (1) After the
 8 appointment of the panel of arbitrators, the parties to the
 9 arbitration may take depositions and obtain discovery
 10 regarding the subject matter of the arbitration and, to that
 11 end, use and exercise the same rights, remedies, and
 12 procedures and be subject to the same duties, liabilities,
 13 and obligations in the arbitration with respect to the
 14 subject matter thereof as if the subject matter of the
 15 arbitration were pending in a civil action before a district
 16 court of this state.

17 (2) Discovery shall commence not later than 20 days
 18 after all parties have received a copy of the demand for
 19 arbitration and shall be completed within 6 months.

20 (3) A party may be granted an extension of time to
 21 complete discovery upon a showing that the extension is not
 22 the result of neglect and that the extension is necessary in
 23 order to avoid substantial prejudice to the rights of the
 24 party.

25 (4) A party is entitled to disclosure of the name of

1 any expert witness who will be called at the arbitration and
 2 may depose the witness.

3 Section 11. Method of taking testimony -- expert
 4 testimony. (1) A proceeding shall be informal and the rules
 5 of evidence shall be as provided under the rules of the
 6 association except that the panel shall adhere to civil
 7 rules of evidence where the failure to do so will result in
 8 substantial prejudice to the rights of a party.

9 (2) Testimony shall be taken under oath and a record
 10 of the proceedings shall be made by a tape recording. Any
 11 party, at that party's expense, may have copies of the
 12 recording made or may provide for a written transcript of
 13 the proceedings. The cost of any transcript ordered by the
 14 panel for its own use shall be considered part of the cost
 15 of the proceedings.

16 (3) When expert testimony is used, it shall be
 17 admitted under the same circumstances as in a civil trial
 18 and be subject to cross-examination.

19 (4) The party with the burden of establishing a
 20 standard of care and breach thereof shall establish such
 21 standards either by the introduction of expert testimony or
 22 by other competent proof of the standard and the breach
 23 thereof.

24 (5) The panel shall accord such weight and probative
 25 worth to expert evidence as it considers appropriate. The

1 panel may call a neutral expert on its own motion, which
 2 expert witness shall be subject to cross-examination by the
 3 parties. The cost of the expert will be considered a cost of
 4 the proceeding.

5 Section 12. Subpoena power of panel. The panel or its
 6 chairperson in the arbitration proceeding shall, upon
 7 application by a party to the proceeding, and may, upon its
 8 own determination, issue a subpoena requiring a person to
 9 appear and be examined with reference to a matter within the
 10 scope of the proceeding and to produce books, records, or
 11 papers pertinent to the proceeding. In case of disobedience
 12 to the subpoena, the chairperson or a majority of the
 13 arbitration panel in the arbitration proceeding may petition
 14 the district court of the county in which the witness
 15 resides or the district court of the county in which the
 16 inquiry is being held to require the attendance and
 17 testimony of the witness and the production of books,
 18 papers, and documents. A district court of the state, in
 19 case of failure to obey a subpoena, may issue an order
 20 requiring the person to appear and to produce books,
 21 records, and papers and give evidence touching the matter in
 22 question. Failure to obey the order of the court may be
 23 punished by the court as contempt.

24 Section 13. General powers of the panel. (1) On
 25 application of a party to the arbitration, the panel or its

1 chairperson may order the deposition of a witness to be
 2 taken for use as evidence and not for discovery if the
 3 witness cannot be compelled to attend the hearing or if
 4 exceptional circumstances exist making it desirable, in the
 5 interest of justice and with due regard to the importance of
 6 presenting the testimony of witnesses orally at the hearing,
 7 to allow the deposition to be taken. The deposition shall
 8 be taken in the manner prescribed by law or court rule for
 9 the taking of depositions in civil actions.

10 (2) In addition to the power of determining the merits
 11 of the arbitration, the panel may enforce the rights,
 12 remedies, procedures, duties, liabilities, sanctions, and
 13 penalties which may be imposed in like circumstances in a
 14 civil action by a district court of this state, except the
 15 power to order the arrest or imprisonment of a person.

16 (3) For the purpose of enforcing the duty to make
 17 discovery, to produce evidence and information, including
 18 books and records, and to produce persons to testify at a
 19 deposition or at a hearing and to impose terms, conditions,
 20 consequences, liabilities, sanctions, and penalties upon a
 21 party for violation of duty, a "party" means every affiliate
 22 of the party as defined in this section and the files,
 23 books, and records of an affiliate shall be considered to be
 24 in the possession and control of, and capable of production
 25 by, the party.

1 (4) As used in this section, "affiliate" of the party
 2 to the arbitration means a party or person for whose
 3 immediate benefit the action or proceeding is prosecuted or
 4 defended or an officer, director, superintendent, member,
 5 agent, employee, or managing agent of that party or person.

6 Section 14. Payment of fees and mileage. (1) Except
 7 for the parties to the arbitration and their agents,
 8 officers, and employees, all witnesses appearing pursuant to
 9 subpoena are entitled to receive fees and mileage in the
 10 same amount and under the same circumstances as prescribed
 11 by law for witnesses in civil actions in the district court.
 12 The fee and mileage of a witness subpoenaed upon the
 13 application of a party to the arbitration shall be paid by
 14 that party. The fee and mileage of a witness subpoenaed
 15 solely upon the determination of the majority of a panel of
 16 arbitrators shall be paid in the manner provided for the
 17 payment of the arbitrator's expenses.

18 (2) The cost of each arbitrator's fees and expenses,
 19 together with any administrative fee, ~~may be assessed~~
 20 ~~against any party to the award or may be assessed among~~
 21 ~~parties in such proportions as may be determined in the~~
 22 ~~arbitration award.~~ SHALL BE ASSESSED AGAINST THE RESPONDENT
 23 PARTIES IN SUCH PROPORTION AS MAY BE DETERMINED BY THE
 24 ARBITRATORS IN THE ARBITRATION AWARD.

25 Section 15. Comparative fault. (1) The panel shall

1 determine the degree to which each respondent party was at
 2 fault for the total damages accruing to any party to the
 3 arbitration, considering all sources of damage involving
 4 parties to the arbitration but excluding the damages
 5 attributable to persons not parties to the arbitration.

6 (2) The panel shall prepare a schedule of
 7 contributions according to the relative fault of each party,
 8 which schedule shall be binding as between those parties,
 9 but such determination shall not affect a claimant's right
 10 to recover jointly and severally from all parties where such
 11 right otherwise exists in the law.

12 Section 16. Award. (1) A majority of the panel of
 13 arbitrators may grant any relief considered equitable and
 14 just.

15 (2) The panel may order submission of written briefs
 16 within 30 days after the close of hearings. In written
 17 briefs each party may summarize the evidence in testimony
 18 and may propose a comprehensive award of remedial or
 19 compensatory elements.

20 (3) The panel shall render its award and written
 21 opinion within 30 days after the close of the hearing or the
 22 receipt of briefs, if ordered. A panel member who disagrees
 23 with the majority may write a dissenting opinion.

24 (4) The award of the arbitration proceeding shall be
 25 in writing and shall be signed by the chairperson or by the

1 majority of a panel of arbitrators. The award shall include
 2 a determination of all the questions submitted to
 3 arbitration by each party, the resolution of which is
 4 necessary to determine the dispute, controversy, or issue.

5 ~~{5}--Periodic-payment-of-future-damages-shall-be-made~~
 6 ~~pursuant-to-law~~

7 {6}{5} The panel shall conclude the entire proceeding
 8 as expeditiously as possible.

9 Section 17. Appeal. An appeal from the arbitration
 10 award shall be under the procedure and for the grounds
 11 permitted under the general arbitration law and applicable
 12 court rules.

13 Section 18. Confirmation of award. {1} A court of
 14 competent jurisdiction may confirm an arbitration award
 15 rendered in this or another state and enter judgment
 16 thereon.

17 {2} The court may modify, correct, vacate, or refuse
 18 to confirm the award as provided by 93-201-7 and 93-201-8.

19 Section 19. Governing sections. In an arbitration
 20 proceeding under this chapter, the provisions of those
 21 sections shall govern if a conflict arises between those
 22 sections and Title 93, chapter 201.

23 Section 20. Notice to commissioner of insurance and
 24 licensing board. The association shall transmit to the state
 25 commissioner of insurance and the applicable licensing board

1 of any respondent party a copy of the demand for arbitration
 2 within 10 days of filing. ~~The agencies shall receive a copy~~
 3 ~~of the decision of the panel within 10 days of transmission~~
 4 ~~of the decision to the parties.~~ THE ASSOCIATION SHALL
 5 TRANSMIT A COPY OF THE DECISION OF THE PANEL TO THE
 6 COMMISSIONER OF INSURANCE WITHIN 30 DAYS AFTER THE DECISION
 7 IS RENDERED. The reports shall be filed for informational
 8 purposes, and the making or filing of such a report shall
 9 not of itself be a ground for discipline.

10 Section 21. Review of arbitration program. Within 3
 11 years from the effective date of this chapter, a joint
 12 legislative committee shall be established to review the
 13 operation and experience of arbitration under this chapter
 14 in conjunction with the insurance commissioner, the
 15 arbitration advisory committee established under the
 16 insurance code, and other interested persons. The committee
 17 shall report recommendations for statutory changes, if any,
 18 to the entire legislature before the end of the fourth year
 19 from the effective date of this chapter.

20 Section 22. Refusal to insure because of participation
 21 in arbitration program prohibited. A professional liability
 22 insurer may not refuse to offer insurance to a health care
 23 provider or other professional or hospital on the grounds
 24 that the health care provider or other professional or
 25 hospital has entered or intends to enter into valid written

1 agreements with patients or clients or prospective patients
 2 or clients for the arbitration of cases or controversies
 3 arising out of the professional or business relationships
 4 between a patient or client and the health care provider or
 5 other professional or hospital.

6 ~~Section 23. Insurance policy to require participation~~
 7 ~~of insured in arbitration programs. (1) As a condition of~~
 8 ~~doing business in this state, a professional liability~~
 9 ~~insurer shall not offer a policy of professional liability~~
 10 ~~insurance to any hospital unless the policy contains a~~
 11 ~~provision in the form and upon such other conditions as the~~
 12 ~~commissioner shall approve which requires the insured to~~
 13 ~~offer a form of arbitration agreement to each patient~~
 14 ~~treated or admitted.~~

15 ~~(2) The commissioner shall approve the form of policy~~
 16 ~~conditioned upon a finding that the arbitration agreement~~
 17 ~~offered together with the procedures and other documents~~
 18 ~~used in connection with any arbitration comply with the~~
 19 ~~provisions of this chapter and rules as may be promulgated~~
 20 ~~after consultation with the advisory committees.~~

21 Section 23. Refusal of treatment prohibited. No
 22 medical treatment shall be refused solely because a person
 23 refuses to sign the arbitration agreement herein provided.

24 SHOULD ANY COURT OF THIS STATE OR FEDERAL COURT FIND THAT
 25 TREATMENT OR SERVICES WERE SO REFUSED, THE PERSON REFUSED

1 TREATMENT OR SERVICES SHALL RECOVER DAMAGES, IF ANY, COSTS
 2 OF THE ACTION, AND REASONABLE ATTORNEY'S FEES.

3 Section 24. Arbitration advisory committee. (1) An
 4 arbitration advisory committee is created within the office
 5 of commissioner of insurance and shall be appointed by the
 6 commissioner and shall consist of 10 members. One-half of
 7 the advisory committee shall be broadly composed of licensed
 8 physicians and other health care providers, licensed
 9 hospital or institutional health care providers, medical
 10 liability insurance carriers, and licensed legal
 11 practitioners. One-half shall be broadly composed of
 12 nongovernmental, nonattorney, nonhealth care provider and
 13 noninsurance carrier persons. The committee may appoint one
 14 or more specialized subcommittees with the approval of the
 15 commissioner.

16 (2) The composition of any subcommittee need not be
 17 restricted to persons who are members of the advisory
 18 committee.

19 (3) Advisory committee members shall serve a 3-year
 20 term without pay or per diem but shall receive actual
 21 expenses. Expenses shall be defrayed by the arbitration
 22 administration fund established under this chapter.

23 (4) Of the members first appointed, four shall be
 24 appointed for a term of 1 year, four for a term of 2 years,
 25 and two for a term of 3 years.

1 Section 25. Duties of advisory council. The advisory
 2 committee shall consult with the commissioner, health care
 3 providers, hospitals, other professionals, and any
 4 association administering arbitration proceedings and shall:

- 5 (1) provide policy input;
- 6 (2) review operation to suggest periodic changes;
- 7 (3) suggest criteria for arbitrator candidates;
- 8 (4) generate a pool of candidates and provide initial
 9 screening in cooperation with the arbitration association;
- 10 (5) develop uniform model arbitration consent forms,
 11 informational brochures, and letters for office and hospital
 12 use which shall be subject to approval by the commissioner;
 13 and
- 14 (6) cooperate with insurers and health care providers
 15 as a technical resource for development of loss control and
 16 patient service systems.

17 Section 26. Arbitration administration fund. (1) There
 18 is created within the office of commissioner of insurance an
 19 arbitration administration fund which shall be annually
 20 funded by order of the commissioner in such amount as shall
 21 be sufficient to defray the actual expenses of the advisory
 22 committee and the administrative expense of the projected
 23 number of arbitration proceedings for that year.

24 (2) The administrative expense shall include the
 25 amount which would otherwise be payable by a claimant as a

1 party to a proceeding together with the costs of
 2 arbitrators.

3 (3) The administrative expense may also include a
 4 provision for a consulting contract with the American
 5 arbitration association or similar agency for a limited and
 6 reasonable amount of technical and organizational advice and
 7 consultation in the implementation of this chapter.

8 ~~(4) The administration of this act shall be funded by~~
 9 ~~an appropriation from the general fund. FOR THE PRIVILEGE OF~~
 10 ~~DOING BUSINESS IN THIS STATE EVERY INSURER OFFERING~~
 11 ~~PROFESSIONAL LIABILITY INSURANCE SHALL REMIT TO THE~~
 12 ~~ARBITRATION ADMINISTRATION FUND SUCH AMOUNTS AS DESIGNATED~~
 13 ~~BY THE INSURANCE COMMISSIONER PURSUANT TO THIS SECTION. THE~~
 14 ~~COMMISSIONER SHALL ALLOCATE A PROJECTED COST AMONG~~
 15 ~~PROFESSIONAL LIABILITY INSURERS ON A PRO RATA BASIS~~
 16 ~~ACCORDING TO PREMIUM VOLUME AND SUCH OTHER RELEVANT FACTORS~~
 17 ~~AS THE COMMISSIONER MAY DESIGNATE BY RULE.~~

18 Section 27. Rules. The commissioner may promulgate
 19 rules after consultation with the advisory committee to
 20 implement this chapter. The rules shall be consistent with
 21 the requirements of the chapter.

22 Section 28. Forms. The commissioner, after
 23 consultation with the advisory committee, shall also approve
 24 recommended model forms of agreement and explanatory
 25 brochures and materials for use by health care providers,

1 other professionals, and hospitals. The forms shall include
 2 a provision for affirmative option for arbitration by the
 3 patient or client, revocation, and such other conditions for
 4 arbitration agreements as provided in this chapter.

5 ~~Section 30. Hospital staff participation. (1) As a~~
 6 ~~condition of approval of the policy form under this chapter,~~
 7 ~~a liability policy issued to a hospital shall require that~~
 8 ~~all hospital personnel are bound by the terms of the~~
 9 ~~hospital's agreement to arbitrate.~~

10 ~~(2) The commissioner shall require that the liability~~
 11 ~~insurer and the insured hospital have accomplished~~
 12 ~~substantial participation in arbitration by the independent~~
 13 ~~hospital staff of a hospital. Substantial participation~~
 14 ~~shall be considered established if within 1 year of the~~
 15 ~~effective date of the approval of the form of a liability~~
 16 ~~policy, a particular insured hospital has achieved~~
 17 ~~independent hospital staff participation accounting for 75%~~
 18 ~~of patient treatment or admissions; in the second year 85%~~
 19 ~~of such treatment or admissions; and in the third year 90%~~
 20 ~~of such treatment or admissions.~~

21 ~~(3) The commissioner shall also find that the~~
 22 ~~liability insurer and the insured hospital, where it has~~
 23 ~~secured an agreement of independent staff to arbitrate, has~~
 24 ~~included in such agreements a provision that participation~~
 25 ~~by independent hospital staff who agree shall continue from~~

1 ~~year to year unless the insured hospital is notified in~~
 2 ~~writing to the contrary within 30 days of the close of the~~
 3 ~~year and that any independent hospital staff withdrawal may~~
 4 ~~be prospective only.~~

5 ~~Section 31. Review of policy forms and premium rates.~~
 6 ~~(1) Within 3 years after the approval of policy forms under~~
 7 ~~this chapter, the commissioner shall require a complete~~
 8 ~~review of experience under the forms approved including~~
 9 ~~experience of every liability insurer participating in~~
 10 ~~arbitration. If appropriate and warranted by experience, the~~
 11 ~~commissioner shall order a refund of premiums paid by~~
 12 ~~participating insureds or a prospective reduction of rates.~~

13 ~~(2) The commissioner shall at the same time review the~~
 14 ~~experience and rate filings of health care and hospital care~~
 15 ~~corporations or other insurers providing health care~~
 16 ~~benefits by contract, and such review shall require that the~~
 17 ~~premium rates charged or to be charged by such corporations~~
 18 ~~or insurers adequately reflect any savings resulting from~~
 19 ~~the operation of arbitration under this chapter or~~
 20 ~~otherwise.~~

21 ~~Section 29. Severability. If a part of this act is~~
 22 ~~invalid, all valid parts that are severable from the invalid~~
 23 ~~part remain in effect. If a part of this act is invalid in~~
 24 ~~one or more of its applications, the part remains in effect~~
 25 ~~in all valid applications that are severable from the~~

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1 invalid applications.

-End-

1 HOUSE BILL NO. 374
 2 INTRODUCED BY KAMIREZ, PORTER,
 3 FAGG, MOORE, CONROY, JOHNSTON
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING VOLUNTARY,
 6 CONTRACTUAL ARBITRATION OF DISPUTES ARISING FROM INJURY OR
 7 DEATH CAUSED BY PROFESSIONAL NEGLIGENCE OF A HEALTH CARE
 8 PROVIDER OR OTHER PROFESSIONAL OR HOSPITAL AND PROVIDING FOR
 9 A "POSITIVE OPTION" ON THE PART OF THE PATIENT OR CLIENT,
 10 WHEREBY THE PATIENT OR CLIENT MAY SUBSEQUENTLY WITHDRAW FROM
 11 THE AGREEMENT."
 12

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

14 Section 1. Application. The provisions of this chapter
 15 are applicable to the arbitration of a dispute, controversy,
 16 or issue arising out of or resulting from injury to or the
 17 death of a person caused by an error, omission, or
 18 negligence in the performance of professional services by a
 19 health care provider or other professionals, hospital, or
 20 their agent or based on a claimed performance of such
 21 services without consent, in breach of warranty, or in
 22 violation of contract.

23 Section 2. Definitions. As used in this chapter, the
 24 following definitions apply:

25 (1) "Association" means the American arbitration

1 association or other entity organized to arbitrate disputes
 2 pursuant to this chapter.

3 (2) "Health care provider" means any person,
 4 corporation, facility, or institution of a governmental unit
 5 of the state of Montana duly licensed by the state of
 6 Montana to provide health care, including but not limited to
 7 physicians, osteopaths, registered nurses, licensed
 8 practical nurses, dentists, optometrists, podiatrists, and
 9 chiropractors, as defined by the statutes of the state of
 10 Montana.

11 (3) "Hospital" means a person, partnership, or
 12 corporation lawfully engaged in the operation of a hospital,
 13 clinic, health maintenance organization, sanitarium,
 14 hospital-related facility, or long-term care facility, as
 15 defined by the statutes of the state of Montana.

16 (4) "Other professionals" means attorneys, certified
 17 public accountants, public accountants, architects,
 18 veterinarians, pharmacists, and professional engineers, duly
 19 licensed or otherwise legally authorized within the state of
 20 Montana to render their professional services.

21 Section 3. Arbitration agreement between patient OR
 22 CLIENT and health care provider or professional. (1) A
 23 person who receives professional services from a health care
 24 provider or professional services from other professionals
 25 may, if offered, execute an agreement to arbitrate a

1 dispute, controversy, or issue arising out of health care or
 2 treatment by a health care provider who is not an employee
 3 of a hospital or the providing of professional services by
 4 other professionals, whichever the case may be. THE
 5 AGREEMENT MAY NOT BE OFFERED TO THE PATIENT OR CLIENT BY THE
 6 HEALTH CARE PROVIDER OR PROFESSIONAL BEFORE THE COMPLETION
 7 OF THE INITIAL DAY'S TREATMENT OR SERVICE BUT MAY BE MADE
 8 EFFECTIVE FROM THE TIME OF THE INITIAL TREATMENT OR SERVICE.

9 (2) THE AGREEMENT TO ARBITRATE SHALL PROVIDE THAT ITS
 10 EXECUTION IS NOT A PREREQUISITE TO ANY PROFESSIONAL
 11 SERVICES. The agreement shall provide that the person
 12 receiving health care treatment or other professional
 13 services or his legal representative may revoke the
 14 agreement within 60 20 days after execution. REVOCAION
 15 SHALL BE MADE by notifying the health care provider or other
 16 professional in writing. ~~Such written notice may be given by~~
 17 ~~a guardian or parent of the patient or client if the patient~~
 18 ~~or client is incapacitated or a minor. A health care~~
 19 ~~provider or other professional may not revoke the agreement~~
 20 ~~after its execution.~~

21 (3) An agreement under this section shall expire 1
 22 year after its execution EFFECTIVE DATE and may be renewed
 23 by execution of a new agreement. Any rights and obligations
 24 accruing under an agreement are not extinguished because of
 25 the expiration.

1 (4) An agreement under this section shall contain the
 2 following provision as the first article of the agreement,
 3 which shall be expressed in the following language: "It is
 4 understood that any dispute as to professional liability,
 5 that is as to whether any professional services rendered
 6 under this agreement were unnecessary or unauthorized or
 7 were improperly, negligently, or incompetently rendered,
 8 will be determined by submission to arbitration as provided
 9 by Montana law and not by a lawsuit or resort to court
 10 process except as Montana law provides for judicial review
 11 or enforcement of arbitration proceedings. Both parties to
 12 this contract, by entering into it, are giving up their
 13 constitutional right to have any such dispute decided in a
 14 court of law before a jury and instead are accepting the use
 15 of arbitration."

16 (5) The agreement shall contain the following
 17 provision in at least 10-point bold red type immediately
 18 above the space for signature of the parties: "NOTICE: YOU
 19 ARE NOT REQUIRED TO SIGN THIS CONTRACT TO RECEIVE
 20 PROFESSIONAL SERVICES. BY SIGNING THIS CONTRACT YOU ARE
 21 AGREEING TO HAVE ANY ISSUE OF PROFESSIONAL MALPRACTICE
 22 DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR
 23 RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE 1 OF THIS
 24 CONTRACT. THIS AGREEMENT TO ARBITRATE MAY BE REVOKED WITHIN
 25 60 20 DAYS AFTER EXECUTION BY NOTIFICATION IN WRITING."

1 (6) Such an agreement is not a contract of adhesion or
 2 unconscionable or otherwise improper when it complies with
 3 subsections (2), (4), and (5) of this section. BUT THE
 4 AGREEMENT IS VOID IF SERVICES ARE CONDITIONED UPON ENTERING
 5 INTO AN AGREEMENT COVERED BY THIS ACT.

6 (7) An agreement to arbitrate which includes the
 7 provisions of this section shall be presumed valid.

8 Section 4. Arbitration agreement between patient and
 9 hospital. (1) A person who receives health care in a
 10 hospital may, IF DEFERRED, execute an agreement to arbitrate
 11 a dispute, controversy, or issue arising out of health care
 12 or treatment rendered by the hospital. THE AGREEMENT MAY NOT
 13 BE DEFERRED TO THE PATIENT OR CLIENT BY THE HOSPITAL UNTIL
 14 THE DAY OF DISMISSAL FROM THE INITIAL HOSPITALIZATION BUT
 15 MAY BE MADE EFFECTIVE FROM THE TIME OF ADMISSION.

16 (2) THE AGREEMENT TO ARBITRATE SHALL PROVIDE THAT ITS
 17 EXECUTION IS NOT A PREREQUISITE TO HEALTH CARE OR TREATMENT.
 18 The agreement to ~~arbitrate~~ shall provide that the person
 19 receiving health care or treatment or his legal
 20 representative, but not the hospital, may revoke the
 21 agreement within ~~60~~ 90 days after discharge from the
 22 hospital. REVOCAION SHALL BE MADE by notifying the hospital
 23 in writing. ~~Such written notice may be given by a guardian~~
 24 ~~or parent of the patient if the patient is incapacitated or~~
 25 ~~a minor.~~

1 (3) An agreement under this section shall contain the
 2 following language: "It is understood that any dispute as to
 3 medical liability, that is as to whether any medical
 4 services rendered under this agreement were unnecessary or
 5 unauthorized or were improperly, negligently, or
 6 incompetently rendered, will be determined by submission to
 7 arbitration as provided by Montana law and not by a lawsuit
 8 or resort to court process except as Montana law provides
 9 for judicial review or enforcement of arbitration
 10 proceedings. Both parties to this contract, by entering into
 11 it, are giving up their constitutional right to have any
 12 such dispute decided in a court of law before a jury and
 13 instead are accepting the use of arbitration."

14 (4) The agreement shall contain the following
 15 provision in at least 10-point bold red type immediately
 16 above the space for signature of the parties: "**NOTICE: YOU**
 17 **ARE NOT REQUIRED TO SIGN THIS CONTRACT TO RECEIVE HEALTH**
 18 **CARE OR TREATMENT.** BY SIGNING THIS CONTRACT YOU ARE AGREEING
 19 TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL
 20 ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR
 21 COURT TRIAL. SEE ARTICLE 1 OF THIS CONTRACT. THIS AGREEMENT
 22 TO ARBITRATE MAY BE REVOKED WITHIN ~~60~~ 90 DAYS AFTER
 23 DISCHARGE BY NOTIFICATION IN WRITING."

24 (5) Such an agreement is not a contract of adhesion or
 25 unconscionable or otherwise improper when it complies with

1 subsections (2), (3), and (4) of this section, BUT THE
2 AGREEMENT IS VOID IF SERVICES ARE CONDITIONED UPON ENTERING
3 INTO AN AGREEMENT COVERED BY THIS ACT.

4 (6) Notwithstanding the continuing existence of a
5 health care provider-patient arbitration agreement, all
6 surgical and medical procedures performed by a participating
7 health care provider in a hospital shall be covered by the
8 terms and conditions applicable to the agreement between the
9 patient and the hospital. Treatment in the health care
10 provider's office subsequent to discharge from such
11 institution will be governed by the terms of any existing
12 health care provider-patient arbitration agreement.

13 (7) Each admission to a hospital shall be treated as
14 separate and distinct for the purposes of an agreement to
15 arbitrate, but a person receiving outpatient care may
16 execute an agreement with the hospital which provides for
17 continuation of the agreement for a specific or continuing
18 program of health care or treatment under the provisions of
19 [section 3].

20 (8) An agreement to arbitrate which includes the
21 provisions of this section shall be presumed valid.

22 Section 5. Rights of parties. (1) In a proceeding
23 pursuant to this chapter:

24 (a) the parties may be represented by counsel, be
25 heard, present evidence material to the controversy, and

1 cross-examine any witness;

2 (b) the prevailing standard of duty, practice, or care
3 applicable in a civil action shall be the standard applied
4 in the arbitration.

5 (2) A party may appear without counsel and shall be
6 advised of such right and the right to retain counsel in a
7 manner calculated to inform the person of the nature of and
8 the complexity of a proceeding by a simple concise form to
9 be distributed by the association administering the
10 arbitration.

11 Section 6. Costs of proceeding -- initial selection of
12 arbitrators. (1) The association shall administer a
13 proceeding without charge to the claimant. The
14 ~~administrative expense shall be \$200 per party per case or~~
15 ~~as may be agreed between the parties and the association or~~
16 ~~as may be approved by the commissioner of insurance pursuant~~
17 ~~to law. The administrative costs on account of a claimant~~
18 ~~shall be defrayed by the arbitration administration fund~~
19 ~~established under the insurance code or shall be provided by~~
20 ~~the respondent parties.~~ ADMINISTRATIVE COSTS ON ACCOUNT OF A
21 CLAIMANT SHALL BE PROVIDED BY THE RESPONDENT PARTIES.

22 (2) An arbitration under this chapter shall be heard
23 by a panel of three arbitrators. One shall be an attorney
24 who shall be the chairperson and shall have jurisdiction
25 over prehearing procedures; one shall be a professional from

1 the respondent's profession, preferably but not necessarily
 2 from the respondent's speciality under consideration; and
 3 the third shall be a person who is neither a professional
 4 nor a representative of a hospital or of an insurance
 5 company. Where a case involves a hospital only, a hospital
 6 administrator may be substituted for a professional.

7 (3) Except as otherwise provided in subsection (6),
 8 arbitrator candidates shall be selected pursuant to the
 9 rules and procedures of the association from a pool of
 10 candidates generated by the association. The rules and
 11 procedures of the association pertaining to selection of
 12 arbitrators under this chapter shall require that the
 13 association send simultaneously to each of ~~the three~~
 14 ~~categories--a list of candidates together with a brief~~ PARTY
 15 A LIST OF CANDIDATES IN EACH OF THE THREE CATEGORIES
 16 TOGETHER WITH A BRIEF biographical statement on each
 17 candidate. A party may strike from the list any name which
 18 is unacceptable and shall number the remaining names in
 19 order of preference. When the lists are returned to the
 20 association, they shall be compared and the first mutually
 21 agreed-upon candidate in each category shall be invited to
 22 serve.

23 (4) When no mutually agreed-upon arbitrator is
 24 selected for any category, a second list of that category
 25 shall be sent pursuant to subsection (3).

1 (5) If a complete panel is not selected by mutual
 2 agreement of the parties pursuant to subsections (3) and
 3 (4), then under the applicable rules and procedures of the
 4 association, the association shall appoint the remainder of
 5 the panel on whom agreement has not been reached by the
 6 parties. The appointment by the association shall be subject
 7 to challenge by any party for cause, which challenge may
 8 allege facts to establish that unusual community or
 9 professional pressures will unreasonably influence the
 10 objectivity of the panelist. A request to strike an
 11 arbitrator for cause shall be determined as provided by rule
 12 of the commissioner of insurance pursuant to law.

13 (6) The parties shall not be restricted to the
 14 arbitrator candidates submitted for consideration. If all
 15 parties mutually agree upon a panelist within a designated
 16 category, the panelist shall be invited to serve.

17 Section 7. Final selection of arbitrators. (1) The
 18 association shall make an initial screening for bias as may
 19 be appropriate and shall require a candidate for a
 20 particular case to complete a current personal disclosure
 21 statement under oath. In addition to other relevant
 22 information, the statement shall disclose any personal
 23 acquaintance with any of the parties or their counsel and
 24 the nature of such acquaintance. If the statement reveals
 25 facts which suggest the possibility of partiality, the

1 association shall communicate those facts to the parties if
2 the panelist is proposed by the arbitration association.

3 (2) Any party may propound reasonable questions to an
4 arbitrator candidate within 10 days of the receipt of the
5 candidate's name. Such questions shall be propounded through
6 the association, and the candidate shall respond to the
7 association promptly.

8 (3) A party shall not communicate with a candidate
9 directly except through the association at any time after
10 the filing of the demand for arbitration. Any candidate who
11 is aware of such communication shall immediately notify the
12 association.

13 Section 8. Parties -- joinder of parties or issues.

14 (1) A party to the arbitration agreement may demand
15 arbitration of a claim, and the proceeding shall be
16 instituted as provided by rule of the association and upon
17 compliance with [section 6].

18 ~~(2) A minor child shall be bound by a written~~
19 ~~agreement to arbitrate disputes, controversies, or issues~~
20 ~~upon the execution of an agreement on his behalf by a parent~~
21 ~~or legal guardian. The minor child may not subsequently~~
22 ~~disaffirm the agreement.~~

23 ~~(3)(2)~~ In cases involving a common question of law or
24 fact, if separate arbitration agreements exist between a
25 plaintiff and a number of defendants or between defendants,

1 the disputes, controversies, and issues shall be
2 consolidated into a single arbitration proceeding.

3 ~~(4)(3)~~ A person who is not a party to the arbitration
4 agreement may join in the arbitration at the request of any
5 party with all the rights and obligations of the original
6 parties. Each party to an arbitration under this chapter is
7 considered to be bound by the joinder of a new party.

8 Section 9. Offer of settlement or demand for
9 arbitration. (1) Prior to the institution of a proceeding or
10 claim by a patient or client, any offer of reparations and
11 all communications incidental thereto made in writing to a
12 patient or client by a health care provider or other
13 professional or hospital is privileged and may not be used
14 by any party to establish the liability or measure of
15 damages attributable to the offeror.

16 (2) Such an offer shall provide that a patient or
17 client has 30 days to accept or reject the offer or such
18 lesser period of time as may be necessitated by the
19 condition of health of the patient or client.

20 (3) After any rejection or the lapse of the applicable
21 time, any party may demand arbitration where an arbitration
22 agreement is in effect.

23 (4) Any such offer to a patient or client shall
24 include a statement that the patient or client may consult
25 legal counsel before rejecting or accepting the offer.

1 (5) In a case where a potential claim is identified by
 2 a health care provider or other professional or hospital
 3 where reparations, in its judgment, are not appropriate, the
 4 provider may, at its option, file a demand for arbitration
 5 which demand shall identify the potential claim and deny
 6 liability.

7 Section 10. Discovery proceedings. (1) After the
 8 appointment of the panel of arbitrators, the parties to the
 9 arbitration may take depositions and obtain discovery
 10 regarding the subject matter of the arbitration and, to that
 11 end, use and exercise the same rights, remedies, and
 12 procedures and be subject to the same duties, liabilities,
 13 and obligations in the arbitration with respect to the
 14 subject matter thereof as if the subject matter of the
 15 arbitration were pending in a civil action before a district
 16 court of this state.

17 (2) Discovery shall commence not later than 20 days
 18 after all parties have received a copy of the demand for
 19 arbitration and shall be completed within 6 months.

20 (3) A party may be granted an extension of time to
 21 complete discovery upon a showing that the extension is not
 22 the result of neglect and that the extension is necessary in
 23 order to avoid substantial prejudice to the rights of the
 24 party.

25 (4) A party is entitled to disclosure of the name of

1 any expert witness who will be called at the arbitration and
 2 may depose the witness.

3 Section 11. Method of taking testimony -- expert
 4 testimony. (1) A proceeding shall be informal and the rules
 5 of evidence shall be as provided under the rules of the
 6 association except that the panel shall adhere to civil
 7 rules of evidence where the failure to do so will result in
 8 substantial prejudice to the rights of a party.

9 (2) Testimony shall be taken under oath and a record
 10 of the proceedings shall be made by a tape recording. Any
 11 party, at that party's expense, may have copies of the
 12 recording made or may provide for a written transcript of
 13 the proceedings. The cost of any transcript ordered by the
 14 panel for its own use shall be considered part of the cost
 15 of the proceedings.

16 (3) When expert testimony is used, it shall be
 17 admitted under the same circumstances as in a civil trial
 18 and be subject to cross-examination.

19 (4) The party with the burden of establishing a
 20 standard of care and breach thereof shall establish such
 21 standards either by the introduction of expert testimony or
 22 by other competent proof of the standard and the breach
 23 thereof.

24 (5) The panel shall accord such weight and probative
 25 worth to expert evidence as it considers appropriate. The

1 panel may call a neutral expert on its own motion, which
 2 expert witness shall be subject to cross-examination by the
 3 parties. The cost of the expert will be considered a cost of
 4 the proceeding.

5 Section 12. Subpoena power of panel. The panel or its
 6 chairperson in the arbitration proceeding shall, upon
 7 application by a party to the proceeding, and may, upon its
 8 own determination, issue a subpoena requiring a person to
 9 appear and be examined with reference to a matter within the
 10 scope of the proceeding and to produce books, records, or
 11 papers pertinent to the proceeding. In case of disobedience
 12 to the subpoena, the chairperson or a majority of the
 13 arbitration panel in the arbitration proceeding may petition
 14 the district court of the county in which the witness
 15 resides or the district court of the county in which the
 16 inquiry is being held to require the attendance and
 17 testimony of the witness and the production of books,
 18 papers, and documents. A district court of the state, in
 19 case of failure to obey a subpoena, may issue an order
 20 requiring the person to appear and to produce books,
 21 records, and papers and give evidence touching the matter in
 22 question. Failure to obey the order of the court may be
 23 punished by the court as contempt.

24 Section 13. General powers of the panel. (1) On
 25 application of a party to the arbitration, the panel or its

1 chairperson may order the deposition of a witness to be
 2 taken for use as evidence and not for discovery if the
 3 witness cannot be compelled to attend the hearing or if
 4 exceptional circumstances exist making it desirable, in the
 5 interest of justice and with due regard to the importance of
 6 presenting the testimony of witnesses orally at the hearing,
 7 to allow the deposition to be taken. The deposition shall
 8 be taken in the manner prescribed by law or court rule for
 9 the taking of depositions in civil actions.

10 (2) In addition to the power of determining the merits
 11 of the arbitration, the panel may enforce the rights,
 12 remedies, procedures, duties, liabilities, sanctions, and
 13 penalties which may be imposed in like circumstances in a
 14 civil action by a district court of this state, except the
 15 power to order the arrest or imprisonment of a person.

16 (3) For the purpose of enforcing the duty to make
 17 discovery, to produce evidence and information, including
 18 books and records, and to produce persons to testify at a
 19 deposition or at a hearing and to impose terms, conditions,
 20 consequences, liabilities, sanctions, and penalties upon a
 21 party for violation of duty, a "party" means every affiliate
 22 of the party as defined in this section and the files,
 23 books, and records of an affiliate shall be considered to be
 24 in the possession and control of, and capable of production
 25 by, the party.

1 (4) As used in this section, "affiliate" of the party
2 to the arbitration means a party or person for whose
3 immediate benefit the action or proceeding is prosecuted or
4 defended or an officer, director, superintendent, member,
5 agent, employee, or managing agent of that party or person.

6 Section 14. Payment of fees and mileage. (1) Except
7 for the parties to the arbitration and their agents,
8 officers, and employees, all witnesses appearing pursuant to
9 subpoena are entitled to receive fees and mileage in the
10 same amount and under the same circumstances as prescribed
11 by law for witnesses in civil actions in the district court.
12 The fee and mileage of a witness subpoenaed upon the
13 application of a party to the arbitration shall be paid by
14 that party. The fee and mileage of a witness subpoenaed
15 solely upon the determination of the majority of a panel of
16 arbitrators shall be paid in the manner provided for the
17 payment of the arbitrator's expenses.

18 (2) The cost of each arbitrator's fees and expenses,
19 together with any administrative fee, ~~may be assessed~~
20 ~~against any party to the award or may be assessed among~~
21 ~~parties in such proportions as may be determined in the~~
22 ~~arbitration award~~ SHALL BE ASSESSED AGAINST THE RESPONDENT
23 PARTIES IN SUCH PROPORTION AS MAY BE DETERMINED BY THE
24 ARBITRATORS IN THE ARBITRATION AWARD.

25 Section 15. Comparative fault. (1) The panel shall

1 determine the degree to which each respondent party was at
2 fault for the total damages accruing to any party to the
3 arbitration, considering all sources of damage involving
4 parties to the arbitration but excluding the damages
5 attributable to persons not parties to the arbitration.

6 (2) The panel shall prepare a schedule of
7 contributions according to the relative fault of each party,
8 which schedule shall be binding as between those parties,
9 but such determination shall not affect a claimant's right
10 to recover jointly and severally from all parties where such
11 right otherwise exists in the law.

12 Section 16. Award. (1) A majority of the panel of
13 arbitrators may grant any relief considered equitable and
14 just.

15 (2) The panel may order submission of written briefs
16 within 30 days after the close of hearings. In written
17 briefs each party may summarize the evidence in testimony
18 and may propose a comprehensive award of remedial or
19 compensatory elements.

20 (3) The panel shall render its award and written
21 opinion within 30 days after the close of the hearing or the
22 receipt of briefs, if ordered. A panel member who disagrees
23 with the majority may write a dissenting opinion.

24 (4) The award of the arbitration proceeding shall be
25 in writing and shall be signed by the chairperson or by the

1 majority of a panel of arbitrators. The award shall include
2 a determination of all the questions submitted to
3 arbitration by each party, the resolution of which is
4 necessary to determine the dispute, controversy, or issue.

5 ~~(5) Periodic payment of future damages shall be made~~
6 ~~pursuant to law.~~

7 (6)(5) The panel shall conclude the entire proceeding
8 as expeditiously as possible.

9 Section 17. Appeal. An appeal from the arbitration
10 award shall be under the procedure and for the grounds
11 permitted under the general arbitration law and applicable
12 court rules.

13 Section 18. Confirmation of award. (1) A court of
14 competent jurisdiction may confirm an arbitration award
15 rendered in this or another state and enter judgment
16 thereon.

17 (2) The court may modify, correct, vacate, or refuse
18 to confirm the award as provided by 93-201-7 and 93-201-8.

19 Section 19. Governing sections. In an arbitration
20 proceeding under this chapter, the provisions of those
21 sections shall govern if a conflict arises between those
22 sections and Title 93, chapter 201.

23 Section 20. Notice to commissioner of insurance and
24 licensing board. The association shall transmit to the state
25 commissioner of insurance and the applicable licensing board

1 of any respondent party a copy of the demand for arbitration
2 within 10 days of filing. ~~The agencies shall receive a copy~~
3 ~~of the decision of the panel within 10 days of transmission~~
4 ~~of the decision to the parties. THE ASSOCIATION SHALL~~
5 TRANSMIT A COPY OF THE DECISION OF THE PANEL TO THE
6 COMMISSIONER OF INSURANCE WITHIN 30 DAYS AFTER THE DECISION
7 IS RENDERED. The reports shall be filed for informational
8 purposes, and the making or filing of such a report shall
9 not of itself be a ground for discipline.

10 Section 21. Review of arbitration program. Within 3
11 years from the effective date of this chapter, a joint
12 legislative committee shall be established to review the
13 operation and experience of arbitration under this chapter
14 in conjunction with the insurance commissioner, the
15 arbitration advisory committee established under the
16 insurance code, and other interested persons. The committee
17 shall report recommendations for statutory changes, if any,
18 to the entire legislature before the end of the fourth year
19 from the effective date of this chapter.

20 Section 22. Refusal to insure because of participation
21 in arbitration program prohibited. A professional liability
22 insurer may not refuse to offer insurance to a health care
23 provider or other professional or hospital on the grounds
24 that the health care provider or other professional or
25 hospital has entered or intends to enter into valid written

1 agreements with patients or clients or prospective patients
2 or clients for the arbitration of cases or controversies
3 arising out of the professional or business relationships
4 between a patient or client and the health care provider or
5 other professional or hospital.

6 ~~Section 23v--insurance policy to require participation
7 of--insured--in--arbitration programs--(1) As a condition of
8 doing business--in--this--state--a--professional--liability
9 insurer--shall--not--offer--a--policy--of--professional--liability
10 insurance--to--any--hospital--unless--the--policy--contains--a
11 provision--in--the--form--and--upon--such--other--conditions--as--the
12 commissioner--shall--approve--which--requires--the--insured--to
13 offer--a--form--of--arbitration--agreement--to--each--patient
14 treated--or--admitted~~

15 ~~(2) The commissioner shall approve the form of policy
16 conditioned--upon--a--finding--that--the--arbitration--agreement
17 offered--together--with--the--procedures--and--other--documents
18 used--in--connection--with--any--arbitration--comply--with--the
19 provisions--of--this--chapter--and--rules--as--may--be--promulgated
20 after--consultation--with--the--advisory--committees~~

21 Section 23. Refusal of treatment prohibited. No
22 medical treatment shall be refused solely because a person
23 refuses to sign the arbitration agreement herein provided.

24 SHOULD ANY COURT OF THIS STATE OR FEDERAL COURT FIND THAT
25 TREATMENT OR SERVICES WERE SO REFUSED, THE PERSON REFUSED

1 TREATMENT OR SERVICES SHALL RECOVER DAMAGES, IF ANY, COSTS
2 OF THE ACTION, AND REASONABLE ATTORNEY'S FEES.

3 Section 24. Arbitration advisory committee. (1) An
4 arbitration advisory committee is created within the office
5 of commissioner of insurance and shall be appointed by the
6 commissioner and shall consist of 10 members. One-half of
7 the advisory committee shall be broadly composed of licensed
8 physicians and other health care providers, licensed
9 hospital or institutional health care providers, medical
10 liability insurance carriers, and licensed legal
11 practitioners. One-half shall be broadly composed of
12 nongovernmental, nonattorney, nonhealth care provider and
13 noninsurance carrier persons. The committee may appoint one
14 or more specialized subcommittees with the approval of the
15 commissioner.

16 (2) The composition of any subcommittee need not be
17 restricted to persons who are members of the advisory
18 committee.

19 (3) Advisory committee members shall serve a 3-year
20 term without pay or per diem but shall receive actual
21 expenses. Expenses shall be defrayed by the arbitration
22 administration fund established under this chapter.

23 (4) Of the members first appointed, four shall be
24 appointed for a term of 1 year, four for a term of 2 years,
25 and two for a term of 3 years.

1 Section 25. Duties of advisory council. The advisory
 2 committee shall consult with the commissioner, health care
 3 providers, hospitals, other professionals, and any
 4 association administering arbitration proceedings and shall:

- 5 (1) provide policy input;
- 6 (2) review operation to suggest periodic changes;
- 7 (3) suggest criteria for arbitrator candidates;
- 8 (4) generate a pool of candidates and provide initial
 9 screening in cooperation with the arbitration association;
- 10 (5) develop uniform model arbitration consent forms,
 11 informational brochures, and letters for office and hospital
 12 use which shall be subject to approval by the commissioner;
 13 and
- 14 (6) cooperate with insurers and health care providers
 15 as a technical resource for development of loss control and
 16 patient service systems.

17 Section 26. Arbitration administration fund. (1) There
 18 is created within the office of commissioner of insurance an
 19 arbitration administration fund which shall be annually
 20 funded by order of the commissioner in such amount as shall
 21 be sufficient to defray the actual expenses of the advisory
 22 committee and the administrative expense of the projected
 23 number of arbitration proceedings for that year.

24 (2) The administrative expense shall include the
 25 amount which would otherwise be payable by a claimant as a

1 party to a proceeding together with the costs of
 2 arbitrators.

3 (3) The administrative expense may also include a
 4 provision for a consulting contract with the American
 5 arbitration association or similar agency for a limited and
 6 reasonable amount of technical and organizational advice and
 7 consultation in the implementation of this chapter.

8 ~~(4) The administration of this act shall be funded by~~
 9 ~~an appropriation from the general fund. FOR THE PRIVILEGE OF~~
 10 ~~DOING BUSINESS IN THIS STATE EVERY INSURER OFFERING~~
 11 ~~PROFESSIONAL LIABILITY INSURANCE SHALL REMIT TO THE~~
 12 ~~ARBITRATION ADMINISTRATION FUND SUCH AMOUNTS AS DESIGNATED~~
 13 ~~BY THE INSURANCE COMMISSIONER PURSUANT TO THIS SECTION. THE~~
 14 ~~COMMISSIONER SHALL ALLOCATE A PROJECTED COST AMONG~~
 15 ~~PROFESSIONAL LIABILITY INSURERS ON A PRO RATA BASIS~~
 16 ~~ACCORDING TO PREMIUM VOLUME AND SUCH OTHER RELEVANT FACTORS~~
 17 ~~AS THE COMMISSIONER MAY DESIGNATE BY RULE.~~

18 Section 27. Rules. The commissioner may promulgate
 19 rules after consultation with the advisory committee to
 20 implement this chapter. The rules shall be consistent with
 21 the requirements of the chapter.

22 Section 28. Forms. The commissioner, after
 23 consultation with the advisory committee, shall also approve
 24 recommended model forms of agreement and explanatory
 25 brochures and materials for use by health care providers.

1 other professionals, and hospitals. The forms shall include
 2 a provision for affirmative option for arbitration by the
 3 patient or client, revocation, and such other conditions for
 4 arbitration agreements as provided in this chapter.

5 ~~Section 30. Hospital staff participation. (1) As a~~
 6 ~~condition of approval of the policy form under this chapter~~
 7 ~~a liability policy issued to a hospital shall require that~~
 8 ~~all hospital personnel are bound by the terms of the~~
 9 ~~hospital's agreement to arbitrate.~~

10 ~~(2) The commissioner shall require that the liability~~
 11 ~~insurer and the insured hospital have accomplished~~
 12 ~~substantial participation in arbitration by the independent~~
 13 ~~hospital staff of a hospital. Substantial participation~~
 14 ~~shall be considered established if within 1 year of the~~
 15 ~~effective date of the approval of the form of a liability~~
 16 ~~policy a particular insured hospital has achieved~~
 17 ~~independent hospital staff participation accounting for 75%~~
 18 ~~of patient treatment or admissions in the second year 85%~~
 19 ~~of such treatment or admissions and in the third year 90%~~
 20 ~~of such treatment or admissions.~~

21 ~~(3) The commissioner shall also find that the~~
 22 ~~liability insurer and the insured hospital, where it has~~
 23 ~~secured an agreement of independent staff to arbitrate, has~~
 24 ~~included in such agreements a provision that participation~~
 25 ~~by independent hospital staff who agree shall continue from~~

1 ~~year-to-year unless the insured hospital is notified in~~
 2 ~~writing to the contrary within 30 days of the close of the~~
 3 ~~year and that any independent hospital staff withdrawal may~~
 4 ~~be prospective only.~~

5 ~~Section 31. Review of policy forms and premium rates.~~
 6 ~~(1) Within 3 years after the approval of policy forms under~~
 7 ~~this chapter the commissioner shall require a complete~~
 8 ~~review of experience under the forms approved including~~
 9 ~~experience of every liability insurer participating in~~
 10 ~~arbitrations. If appropriate and warranted by experience the~~
 11 ~~commissioner shall order a refund of premiums paid by~~
 12 ~~participating insureds or a prospective reduction of rates.~~

13 ~~(2) The commissioner shall at the same time review the~~
 14 ~~experience and rate filings of health care and hospital care~~
 15 ~~corporations or other insurers providing health care~~
 16 ~~benefits by contract and such review shall require that the~~
 17 ~~premium rates charged or to be charged by such corporations~~
 18 ~~or insurers adequately reflect any savings resulting from~~
 19 ~~the operation of arbitration under this chapter or~~
 20 ~~otherwise.~~

21 Section 29. Severability. If a part of this act is
 22 invalid, all valid parts that are severable from the invalid
 23 part remain in effect. If a part of this act is invalid in
 24 one or more of its applications, the part remains in effect
 25 in all valid applications that are severable from the

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1 invalid applications.

-End-