

1 House BILL NO. 647
2 INTRODUCED BY Sully

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A
5 MANDATORY PRETRIAL REVIEW PANEL TO HEAR AND DETERMINE CLAIMS
6 FOR MEDICAL LIABILITY; TO ESTABLISH RULES, PROCEDURES, AND
7 FACILITIES TO IMPLEMENT AND ACCOMPLISH THE PURPOSE OF THE
8 ACT; TO PROVIDE FOR A SCHEDULE OF COMPENSATION AND BENEFITS
9 FOR AWARDS; TO GUARANTEE THE FINANCIAL RESPONSIBILITY OF
10 HEALTH CARE PROVIDERS AND TO PROVIDE THE SOURCE FOR THE
11 FUNDING OF THE ADMINISTRATION OF THE ACT AND THE PAYMENT OF
12 AWARDS; AND OTHERWISE AMENDING THE INSURANCE LAWS WITH
13 RESPECT TO SUCH PANEL; PROVIDING A DELAYED EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Definitions. As used in this act, the
17 following definitions apply:

18 (1) "Health care provider" means any physician
19 licensed to practice medicine in the state of Montana or a
20 hospital, hospital-related facility, or long-term care
21 facility.

22 (2) "Medical liability" means liability arising out of
23 the injury or death of any person as the result of
24 negligence or breach of contract in the rendering of
25 professional services by a health care provider.

1 (3) "Professional liability insurer" means any company
2 authorized to do business in Montana or doing business in
3 Montana and offering policies of professional liability
4 insurance to health care providers and includes any
5 insurance trust, joint underwriting association, mutual
6 insurer, reciprocal insurer or any other entity or person
7 offering such liability coverage, including any state
8 insurance fund.

9 Section 2. Establishment of panel. A pretrial review
10 panel is created to review all medical liability claims,
11 except as provided in [section 5].

12 Section 3. Precondition to suit. No action for medical
13 liability against a health care provider may be commenced in
14 any court of this state before the claimant has filed his
15 claim with the secretary of the panel as herein provided and
16 a final decision on the claim is rendered by the panel,
17 unless otherwise provided herein.

18 Section 4. Tolling of statute of limitations. The
19 filing of the claim shall toll the applicable statute of
20 limitations to and including a period of 90 days following
21 the rendering of a final decision by the panel.

22 Section 5. Applicability of the act. The provisions of
23 this act are not applicable to any claim in which suit has
24 been filed in a district court of this state prior to the
25 effective date of this act or if the claim is subject to a

1 valid arbitration agreement allowed by law.

2 Section 6. Creation of panel — hearing panels —
3 compensation — terms of service — method of selection. (1)
4 The pretrial review panel shall consist of 12 full-time
5 members.

6 (2) Six of the full-time members of the panel shall be
7 physicians licensed to practice in the state of Montana, and
8 six shall be attorneys licensed to practice in the state of
9 Montana.

10 (3) The panel is divided into two hearing panels, one
11 of which shall hear and determine each claim, and each one
12 of which shall be composed of three attorneys and three
13 physicians and chaired by an attorney.

14 (4) Full-time members of the panel are interchangeable
15 between the two hearing panels and shall be assigned to a
16 hearing panel on a claim-by-claim basis at the direction of
17 the secretary.

18 (5) At least two attorneys and two physicians shall be
19 necessary for a quorum for the transaction of any hearing or
20 the rendering of any decision required by this act to be
21 final.

22 (6) In a case involving a health care provider other
23 than a physician, a part-time panel member practicing the
24 same profession as involved in the claim shall sit on the
25 hearing panel in place of a physician. In any case involving

1 both a physician and a health care provider other than a
2 physician, the representative of such other profession shall
3 additionally sit on the hearing panel and shall be a
4 part-time member.

5 (7) Each full-time member of the panel, except those
6 first appointed, shall hold office for 3 years and until his
7 successor is appointed and qualified. On or before January
8 1, 1978, and effective on that date, the governor shall
9 appoint four members to a term of 1 year, four members to a
10 term of 2 years, and four members to a term of 3 years.
11 Future appointments to fill expired terms shall be for a
12 period of 3 years.

13 (8) Appointment of attorney and physician members
14 shall be made by the governor from a list of three nominees
15 for each vacancy selected and nominated by the state bar of
16 Montana and the Montana medical association, respectively.

17 (9) The governor shall, with regard to any vacancy,
18 make his appointments from the lists as provided above
19 within 30 days following the day the position becomes
20 vacant.

21 Section 7. Removal of panel members — vacancies. (1)
22 Any member of the panel may be removed by the governor at
23 any time for incompetency, neglect of duty, misconduct in
24 office, or other good cause, which is to be stated in
25 writing in the order of removal.

1 (2) In the case of a vacancy in the membership of the
2 panel, the governor shall appoint for the unexpired term
3 from nominees in the same manner as for original
4 appointments.

5 Section 8. Compensation of the panel and staff —
6 facilities for offices and hearings. (1) All full-time
7 members of the panel shall be paid a salary in the amount of
8 \$35 an hour, under guidelines promulgated by the secretary.
9 Part-time members shall be paid a salary equal to that
10 allowed to members of the Montana legislature while the
11 legislature is in session.

12 (2) All members of the panel and its assistants are
13 entitled to receive their actual and necessary expenses
14 while traveling on the business of the panel. Expenses shall
15 be approved by the secretary of the panel before payment is
16 made.

17 (3) The panel shall appoint a secretary and may remove
18 such secretary. The secretary shall administer oaths,
19 receive claims filed, promulgate forms required hereunder,
20 issue subpoenas in connection with the administration of
21 this act, and perform all other duties required to fairly
22 and effectively administer this act.

23 (4) The panel, subject to the approval of the
24 governor, may employ and fix the compensation of such
25 clerical and other assistants as it may consider necessary.

1 (5) The panel shall provide itself with adequate
2 offices in the city of Helena, in which the records shall be
3 kept and its official business be transacted. It shall also
4 provide the necessary office furniture, stationery, and
5 other supplies.

6 (6) Panel hearings shall be conducted in the county
7 where the injury allegedly occurred but may, within the
8 sound discretion of the hearing panel, be held in any other
9 county if the panel considers it necessary or advisable. The
10 county commissioners or other governing authority shall
11 provide, upon the request of the secretary of the panel,
12 suitable facilities for any such hearing.

13 Section 9. Notice — how served. Notice of all
14 hearings, orders, determinations, and proceedings of the
15 hearing panels required by this act to be served, shall be
16 given by certified mail, return receipt requested, at the
17 last known address of the person to be so served.

18 Section 10. Evidence to be considered. (1) Unless
19 directed otherwise by the hearing panel, the evidence to be
20 considered by a hearing panel must be submitted by the
21 respective parties in documentary form only. The evidence
22 may consist of medical charts, x-rays, laboratory tests,
23 depositions of witnesses, and any other form of evidence
24 allowable by the hearing panel.

25 (2) All parties shall be allowed to use any discovery

1 procedure provided for by the Montana rules of civil
 2 procedure, and in the manner provided for therein.
 3 Depositions may be introduced into evidence without regard
 4 to the availability of the witness to testify. Discovery as
 5 to expert witnesses is not admissible unless such expert
 6 witness was in practice in the same or a similar community
 7 in the state of Montana, in the same profession, and at the
 8 same time as the alleged incident occurred as the health
 9 care provider whose standard of care is at issue.

10 (3) Any motion for relief arising out of the use of
 11 such discovery procedures shall be decided by the chairman
 12 of the hearing panel, who may in his discretion make
 13 reasonable limitations on the extent and scope of discovery.

14 Section 11. Hearings and final determinations. (1) The
 15 secretary shall, with the advice and cooperation of the
 16 parties and the hearing panels, fix the date and time for
 17 all hearings on claims before a hearing panel. A final
 18 decision on each claim shall be made within 120 days of the
 19 date the claim is filed with the secretary, unless for good
 20 cause shown, upon order of the chairman of a hearing panel,
 21 such time is extended.

22 (2) If a final decision on a claim is not made within
 23 10 months of the date the claim is filed, the jurisdiction
 24 of the panel on the subject matter shall terminate and the
 25 parties may proceed in accordance with the law.

1 Section 12. Law and rules applicable — powers of the
 2 panel. (1) Except as provided in this act, the panel will be
 3 bound by the common and statutory law and by the Montana
 4 rules of civil procedure but will conduct hearings and make
 5 all determinations as in its judgment are best adapted to
 6 ascertain and determine the rights of the parties
 7 expeditiously and accurately to carry out justly the spirit
 8 of this act.

9 (2) The panel may:

10 (a) adopt rules to carry out the provisions of this
 11 act;

12 (b) prescribe the means, methods, and practices
 13 necessary to effectuate such provisions;

14 (c) approve settlement agreements on claims of medical
 15 liability;

16 (d) order physical examinations;

17 (e) apply to any district court having requisite
 18 jurisdiction to enforce the production and examination of
 19 books, papers, and records; and

20 (f) exercise all other powers and duties conferred
 21 upon the panel hereafter by law or provided in this act.

22 (3) The panel may, upon the application of either
 23 party or upon its own motion, appoint a disinterested and
 24 qualified physician or other professional person or expert
 25 to make necessary professional or expert examination of the

1 claimant or relevant evidentiary matter and to report in
2 writing in respect thereto.

3 (4) The panel may subpoena any witness to testify
4 pursuant to the rules appropriate to civil actions with
5 respect to parties to a controversy and may apply to any
6 district court of this state for enforcement of such
7 subpoenas.

8 Section 13. Votes of hearing panel. A majority vote of
9 those present at a hearing panel is sufficient to make any
10 determination. The chairman of a hearing panel may vote only
11 to break a tie vote of the hearing panel.

12 Section 14. Compensation for medical liability. The
13 claim shall be heard as one for compensation for medical
14 liability. The hearing panel shall review the evidence
15 submitted and hear any testimony to be elicited with
16 reasonable dispatch and shall make one of the following
17 determinations, which determination shall be sent to the
18 parties:

19 (1) The evidence supports the conclusion that the
20 defendant or defendants failed to comply with the
21 appropriate standard of care as charged in the complaint and
22 that the conduct complained of was a substantial factor of
23 any resultant damage.

24 (2) The evidence supports the conclusion that the
25 defendant or defendants failed to comply with the

1 appropriate standard of care as charged in the complaint but
2 that the conduct complained of was not a substantial factor
3 of any resultant damage.

4 (3) The evidence does not support the conclusion that
5 the defendant or defendants failed to meet the applicable
6 standard of care as charged in the complaint.

7 Section 15. Award schedule for medical liability. (1)
8 If the determination of the hearing panel is that the
9 evidence supports the conclusion that the defendant or
10 defendants failed to comply with the appropriate standard of
11 care as charged in the complaint and that the conduct
12 complained of was a substantial factor of any resultant
13 damage, then the hearing panel shall make a final award
14 within the following limits as to the nature of the award
15 but without limit as to amount:

16 (a) For death of a minor without dependents, the
17 compensation recoverable shall be the reasonable value of
18 the minor's services to his parents or legal guardian,
19 during minority, less the reasonable cost of the maintenance
20 of the minor, which compensation shall inure to the
21 exclusive benefit of the parent or guardian, plus any
22 reasonable medical, hospital, funeral, burial, or related
23 expense. The sole right to institute the claim or claims
24 provided for in this subsection is in the personal
25 representative of the deceased, for the exclusive benefit

1 cf:

2 (i) such parent or parents or legal guardian; and
 3 (ii) the persons incurring such medical, hospital,
 4 funeral, burial, and related expense.

5 (b) For death of an adult without dependents, the
 6 compensation recoverable shall be the reasonable value of
 7 all hospital, medical, or other related expense plus the
 8 reasonable cost of funeral and burial, plus an amount which
 9 the hearing panel may determine reasonable for the cost of
 10 prosecuting the claim. The sole right to institute the claim
 11 under this subsection is in the personal representative of
 12 the deceased for the exclusive benefit of those incurring
 13 such expense.

14 (c) For the death of a minor or adult with dependents,
 15 the compensation recoverable may include the actual or
 16 prospective loss of earnings for the working life expectancy
 17 of such deceased less the reasonable cost of the maintenance
 18 of the deceased, plus the reasonable cost of the deceased's
 19 medical, hospital, funeral, and burial expense, plus an
 20 amount the hearing panel may determine reasonable for the
 21 cost of prosecuting such claim. The sole right to institute
 22 the claim provided for in this subsection is in the personal
 23 representative of the deceased dependents and for those
 24 incurring such expense.

25 (d) For bodily injury to an adult or minor not

1 resulting in death, the hearing panel may allow for any
 2 injury or damage, general or special, allowed by law,
 3 including loss of earnings to be based on the work
 4 expectancy of the claimant without regard to his injured
 5 condition; the reasonable medical, hospital, and related
 6 expense, past, present, and future; and pain and suffering,
 7 past, present, and future. Provided, however, that all
 8 damages for pain and suffering must have a basis in the
 9 evidence submitted to support the claim thereof, in a fair
 10 and reasonable amount, free from sentiment and taking into
 11 account the nature and extent of the injuries and the
 12 suffering occasioned by them, the duration and prospective
 13 duration thereof, the age, health, habits, and condition of
 14 the injured party before the injury as compared with his
 15 condition in consequence thereof. Future pain and
 16 suffering may be awarded only to the extent that there is
 17 requisite certainty or probability that such pain and
 18 suffering will result from the injury received based upon
 19 the claimant's life expectancy in his injured condition.

20 (2) The compensation and benefits awarded by this act
 21 shall be reduced by any collateral source of compensation
 22 benefits as provided by law.

23 Section 16. Payment of awards. The hearing panel shall
 24 order all payments of future damages as provided by law.

25 Section 17. Award and taxing of costs. In all

1 proceedings before the hearing panels, the costs shall be
 2 awarded and taxed as provided by law in ordinary civil
 3 actions, with the exception that if, in the opinion of the
 4 hearing panel, a claim for medical liability was filed
 5 without probable cause for the claimant to believe he was
 6 legally entitled to relief, then the cost shall include the
 7 cost of defense, including a reasonable attorney's fee.

8 Section 18. Claims not assignable — exempt from
 9 creditors' claims. No claims for compensation under this act
 10 may be assignable, and all compensation and claims therefor
 11 shall be exempt from all claims of creditors, assignees, or
 12 subrogees.

13 Section 19. Designation of parties — joinder of
 14 parties — separate hearings. The person filing the claim is
 15 the claimant, and the adverse party or parties is the
 16 respondent or respondents. The rules for joinder of parties
 17 are as otherwise allowed by law. The hearing panel may make
 18 orders to prevent a party from being embarrassed, delayed,
 19 or put to expense by the inclusion of parties against him
 20 and may order separate hearings or make other orders to
 21 prevent delay or prejudice.

22 Section 20. Filing and service of claims. All claims
 23 shall be filed on forms provided by the secretary. The
 24 claimant must attach to the forms the proposed complaint,
 25 which shall be prepared and served upon the health care

1 providers named therein by the claimant, in the same manner
 2 and form provided by law for civil actions. The summons
 3 shall conform to the requirements of the panel. The
 4 secretary shall notify concerned health care providers.

5 Section 21. Additional pleadings. All health care
 6 providers served with a proposed complaint shall, within 20
 7 days from the date of service thereof, answer in the form
 8 and manner provided by law for civil actions. Any health
 9 care provider who fails to so answer is subject to liability
 10 under the law without regard to the provisions of this act.
 11 There may be no other pleadings.

12 Section 22. Attorney fees. The amount of attorney fees
 13 to be paid shall be included in the record of the trial and
 14 shall be paid to the attorney by the respondent or his
 15 insurer in addition to any award made to the claimant. If
 16 the respondent is awarded attorney fees, the amount shall be
 17 included in the record of the trial. The district court in
 18 the county in which the claim is heard shall, at the request
 19 of any party, determine the reasonableness of each party's
 20 attorney fees ordered paid by the other party. The court
 21 shall take into consideration the following:

22 (1) the time and labor required, the novelty and
 23 difficulty of the questions involved, and the skill
 24 requisite to perform the legal services properly;

25 (2) the likelihood, if apparent to the client, that

1 the acceptance of the particular employment would have
2 precluded other employment by the attorney;

3 (3) the fee customarily charged in the locality for
4 similar legal services;

5 (4) the amount involved and the results obtained;

6 (5) the time limitations imposed by the client or by
7 other circumstances;

8 (6) the nature and length of the professional
9 relationship with the attorney and client; and

10 (7) the experience, reputation, and ability of the
11 attorney performing the services.

12 Section 23. Proof of financial responsibility —
13 insurance, cash or surety bond. (1) Each health care
14 provider subject to the terms of this act shall, within 30
15 days after this act takes effect, file with the secretary,
16 in a manner prescribed thereby, proof of financial
17 responsibility.

18 (2) Each health care provider, except as provided by
19 [section 24] shall acquire and maintain in force
20 professional liability insurance of not less than \$250,000
21 for each occurrence and \$500,000 in the aggregate for all
22 claims occurring in any one policy year or, as an
23 alternative, qualify as a self-insurer upon making proper
24 application and being approved by the commissioner of
25 insurance.

1 (3) Self-insurance subject to approval by the
2 commissioner of insurance is effected by filing with the
3 commissioner in satisfactory form:

4 (a) a continued undertaking by the health care
5 provider to pay any award rendered under this act, except as
6 provided by [section 24], to the first \$250,000 for each
7 incident and to \$500,000 in the aggregate for all claims
8 occurring in any one year; and

9 (b) evidence that appropriate provision exists for
10 prompt and efficient administration of all claims; and

11 (c) evidence that reliable financial arrangements,
12 deposits, or commitments exist providing coverage
13 substantially equivalent to that afforded by a policy of
14 insurance required in subsection (2) of this section for the
15 payment of medical liability claims.

16 Section 24. Failure to provide proof of financial
17 responsibility — failure or refusal to accept panel
18 determination. (1) A health care provider is subject to
19 liability under the laws of this state with respect to a
20 claim, without regard to the provisions of this act, except
21 as provided in [section 26] if he fails or refuses to:

22 (a) provide proof of financial responsibility as
23 provided in [section 23];

24 (b) pay the annual assessment provided for in [section
25 26], in a manner and amount fixed by the secretary; or

STATE OF MONTANA

REQUEST NO. 357-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 3, 19 77, there is hereby submitted a Fiscal Note for House Bill 647 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:

House Bill 647 proposes to establish a mandatory pretrial review panel to hear and determine claims for medical liability, to establish rules, procedures and facilities to implement and accomplish the purpose of the act, to provide for a schedule of compensation and benefits for awards, to guarantee the financial responsibility of health care providers and to provide the source for the funding of the administration of the act and the payment of awards.

ASSUMPTIONS:

1. Each six member review panel will hear approximately twenty medical malpractice claims per year.
2. The hearing on each claim will take approximately four days on the average.
3. Each panel member will spend approximately 640 hours per year hearing claims.
4. The twelve-man pretrial review panel will meet as a single group at least five days a year for initial discussions, rule-making, and general business meetings which adds an additional 480 man hours to its workload.
5. The full-time executive secretary would be classified at approximately Grade 17.
6. Two full-time legal secretaries would be required at approximately Grade 8 each.

FISCAL IMPACT:

Revenue: Funding for the administration of this act is to be provided by an assessment to each health care provider.

Expenditure:

	<u>FY 78</u>	<u>FY 79</u>
Personal services	\$325,559	\$326,390
Operating expenses	67,100	73,450
Capital outlay	<u>11,000</u>	<u>2,500</u>
Additional cost of proposed legislation	<u>\$403,659</u>	<u>\$402,340</u>

TECHNICAL NOTE:

Medical malpractice review board is not attached to any state agency, nor does it appear to constitute the 20th department of state government under the Executive Reorganization Act.

Richard L. Young for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-5-77

Approved by Committee
on Judiciary

HOUSE BILL NO. 647
INTRODUCED BY SCULLY

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A MANDATORY PRETRIAL REVIEW PANEL TO HEAR AND DETERMINE CLAIMS FOR MEDICAL LIABILITY; TO ESTABLISH RULES, PROCEDURES, AND FACILITIES TO IMPLEMENT AND ACCOMPLISH THE PURPOSE OF THE ACT; ~~TO PROVIDE FOR A SCHEDULE OF COMPENSATION AND BENEFITS FOR AWARDS; TO GUARANTEE THE FINANCIAL RESPONSIBILITY OF HEALTH CARE PROVIDERS TO REQUIRE PROFESSIONAL LIABILITY INSURANCE FOR HEALTH CARE PROVIDERS;~~ AND TO PROVIDE THE SOURCE FOR THE FUNDING OF THE ADMINISTRATION OF THE ACT ~~AND THE PAYMENT OF AWARDS; AND OTHERWISE AMENDING THE INSURANCE LAWS WITH RESPECT TO SUCH PANEL;~~ PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Definitions. As used in this act, the following definitions apply:

(1) "Health care provider" means any physician licensed to practice medicine in the state of Montana or a hospital, hospital-related facility, or long-term care facility.

(2) "Medical liability" means liability arising out of the injury or death of any person as the result of

negligence or breach of contract in the rendering of professional services by a health care provider.

(3) "Professional liability insurer" means any company authorized to do business in Montana or doing business in Montana and offering policies of professional liability insurance to health care providers and includes any insurance trust, joint underwriting association, mutual insurer, reciprocal insurer or any other entity or person offering such liability coverage, including any state insurance fund.

Section 2. Establishment of panel. A pretrial review panel is created to review all medical liability claims, except as provided in [section 5].

Section 3. Precondition to suit. No action for medical liability against a health care provider may be commenced in any court of this state before the claimant has filed his claim with the secretary of the panel as herein provided and a final decision on the claim is rendered by the panel, unless otherwise provided herein.

Section 4. Tolling of statute of limitations. The filing of the claim shall toll the applicable statute of limitations to and including a period of 90 days following the rendering of a final decision by the panel.

Section 5. Applicability of the act. The provisions of this act are not applicable to any claim in which suit has

1 been filed in a district court of this state prior to the
 2 effective date of this act or if the claim is subject to a
 3 valid arbitration agreement allowed by law.

4 Section 6. Creation of panel -- hearing panels --
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6 (1) ~~The pretrial review panel shall consist of 12 full-time~~
 7 ~~members.~~

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 9 ~~physicians licensed to practice in the state of Montana and~~
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 13 ~~of which shall hear and determine each claim, and each one~~
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 8 ~~first appointed, shall hold office for 3 years and until his~~
 9 ~~successor is appointed and qualified. On or before January~~
 10 ~~1, 1978, and effective on that date, the governor shall~~
 11 ~~appoint four members to a term of 1 year, four members to a~~
 12 ~~term of 2 years, and four members to a term of 3 years.~~
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 16 ~~shall be made by the governor from a list of three nominees~~
 17 ~~for each vacancy selected and nominated by the state bar of~~
 18 ~~Montana and the Montana medical association, respectively.~~

19 (9) ~~The governor shall, with regard to any vacancies~~
 20 ~~make his appointments from the lists as provided above~~
 21 ~~within 30 days following the day the position becomes~~
 22 ~~vacant.~~ METHOD OF SELECTION -- HEARINGS. (1) THE PRETRIAL
 23 REVIEW PANEL CONSISTS OF THREE PHYSICIANS LICENSED TO
 24 PRACTICE IN MONTANA AND THREE ATTORNEYS LICENSED TO PRACTICE
 25 IN MONTANA.

1 (2) THE ATTORNEY MEMBERS SHALL BE APPOINTED BY THE
 2 STATE BAR OF MONTANA AND THE PHYSICIAN MEMBERS BY THE
 3 MONTANA MEDICAL ASSOCIATION.

4 (3) THE THREE ATTORNEY MEMBERS SHALL SELECT ONE OF
 5 THEIR NUMBER AS CHAIRMAN OF THE PANEL.

6 (4) PANEL MEMBERS SHALL BE APPOINTED WITHIN 30 DAYS
 7 AFTER RECEIPT BY THE RESPECTIVE ASSOCIATIONS OF A CLAIM FOR
 8 REVIEW. PANEL MEMBERS SHALL SERVE UNTIL THE PANEL HAS
 9 COMMUNICATED ITS DETERMINATION TO THE PARTIES INVOLVED AND
 10 APPROVED ANY SETTLEMENT AGREEMENT OR DETERMINED THAT
 11 SETTLEMENT DISCUSSIONS HAVE OR SHOULD BE TERMINATED.

12 (5) A PANEL MEMBER SHALL DISQUALIFY HIMSELF FROM
 13 CONSIDERATION OF ANY CASE IN WHICH THE MEMBER DETERMINES HIS
 14 PRESENCE WOULD BE INAPPROPRIATE. THE SECRETARY MAY EXCUSE
 15 AN APPOINTED PANELIST FROM SERVING.

16 (6) AT LEAST TWO ATTORNEYS AND TWO PHYSICIANS ARE
 17 NECESSARY FOR A QUORUM FOR HOLDING A HEARING OR RENDERING A
 18 FINAL DECISION UNDER THIS ACT.

19 (7) IN A CASE INVOLVING A HEALTH CARE PROVIDER OTHER
 20 THAN A PHYSICIAN, A PANEL MEMBER PRACTICING THE SAME
 21 PROFESSION AS INVOLVED IN THE CLAIM SHALL SIT ON THE PANEL
 22 IN PLACE OF A PHYSICIAN. IN A CASE INVOLVING A PHYSICIAN AND
 23 A HEALTH CARE PROVIDER OTHER THAN A PHYSICIAN, A
 24 REPRESENTATIVE PRACTICING THE SAME PROFESSION AS THE HEALTH
 25 CARE PROVIDER INVOLVED SHALL SIT ON THE PANEL IN ADDITION TO

1 THE SIX REGULAR MEMBERS. SUCH ADDITIONAL MEMBER SHALL BE
 2 APPOINTED BY THE PANEL MEMBERS.

3 ~~Section 7. Removal of panel members--vacancies--(1)~~
 4 ~~Any member of the panel may be removed by the governor at~~
 5 ~~any time for incompetency, neglect of duty, misconduct in~~
 6 ~~office or other good cause which is to be stated in~~
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12 Section 7. Compensation of the panel and staff --
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 16 ~~Part-time members shall be paid a salary equal to that~~
 17 ~~allowed to members of the Montana legislature while the~~
 18 ~~legislature is in session.~~

19 (2) All members of the panel and its assistants are
 20 entitled to receive their actual and necessary expenses
 21 while traveling on the business of the panel. Expenses shall
 22 be approved by the secretary of the panel before payment is
 23 made.

24 (3) ~~The panel shall appoint~~ DIRECTOR OF THE MONTANA
 25 MEDICAL ASSOCIATION SHALL APPOINT AND SET THE SALARY OF A

1 secretary and may remove such secretary. The secretary
 2 shall administer oaths, receive claims filed, promulgate
 3 forms required hereunder, issue subpoenas in connection with
 4 the administration of this act, and perform all other duties
 5 required to fairly and effectively administer this act.

6 (4) The ~~panel~~ ~~subject to the approval of the~~
 7 ~~governor~~ SECRETARY may employ and fix the compensation of
 8 such clerical and other assistants as it may consider
 9 necessary.

10 (5) The ~~panel~~ SECRETARY shall ~~provide itself with~~
 11 ~~OBTAIN ON BEHALF OF THE PRETRIAL REVIEW PANEL~~ adequate
 12 offices in the city of Helena, in which the records shall be
 13 kept and its official business be transacted; ~~it~~ AND shall
 14 also provide the necessary office furniture, stationery, and
 15 other supplies.

16 (6) Panel hearings shall be conducted in the county
 17 where the injury allegedly occurred but may, within the
 18 sound discretion of the hearing panel, be held in any other
 19 county if the panel considers it necessary or advisable. The
 20 county commissioners or other governing authority shall
 21 provide, upon the request of the secretary of the panel,
 22 suitable facilities for any such hearing.

23 Section 8. Notice -- how served. Notice of all
 24 hearings, orders, determinations, and proceedings of the
 25 hearing ~~panels~~ PANEL, required by this act to be served,

1 shall be given by certified mail, return receipt requested,
 2 at the last known address of the person to be so served.

3 Section 9. Evidence to be considered. (1) Unless
 4 directed otherwise by the hearing panel, the evidence to be
 5 considered by a hearing panel must be submitted by the
 6 respective parties in documentary form only. The evidence
 7 may consist of medical charts, x-rays, laboratory tests,
 8 depositions of witnesses, and any other form of evidence
 9 allowable by the hearing panel.

10 (2) All parties shall be allowed to use any discovery
 11 procedure provided for by the Montana rules of civil
 12 procedure, and in the manner provided for therein.
 13 Depositions may be introduced into evidence without regard
 14 to the availability of the witness to testify. ~~Discovery as~~
 15 ~~to expert witnesses is not admissible unless such expert~~
 16 ~~witness was in practice in the same or a similar community~~
 17 ~~in the state of Montana, in the same profession, and at the~~
 18 ~~same time as the alleged incident occurred as the health~~
 19 ~~care provider whose standard of care is at issue~~

20 (3) Any motion for relief arising out of the use of
 21 such discovery procedures shall be decided by the chairman
 22 of the hearing panel, who may in his discretion make
 23 reasonable limitations on the extent and scope of discovery.

24 Section 10. Hearings and final determinations. (1) The
 25 secretary shall, with the advice and cooperation of the

1 parties and the hearing panel~~s~~ PANEL, fix the date and time
 2 for all hearings on claims before a hearing panel. A final
 3 decision on each claim shall be made within 120 days of the
 4 date the claim is filed with the secretary, unless for good
 5 cause shown, upon order of the chairman of a hearing panel,
 6 such time is extended.

7 (2) If a final decision on a claim is not made within
 8 10 months of the date the claim is filed, the jurisdiction
 9 of the panel on the subject matter shall terminate and the
 10 parties may proceed in accordance with the law.

11 Section 11. Law and rules applicable — powers of the
 12 panel. (1) Except as provided in this act, the panel will be
 13 bound by the common and statutory law and by the Montana
 14 rules of civil procedure but ~~will~~ SHALL conduct INFORMAL
 15 hearings and make all determinations as in its judgment are
 16 best adapted to ascertain and determine the rights of the
 17 parties expeditiously and accurately to carry out justly the
 18 spirit of this act.

19 (2) The panel SECRETARY, SUBJECT TO THE APPROVAL OF
 20 THE SUPREME COURT, may:

21 (a) adopt rules to carry out the provisions of this
 22 act; ~~and~~

23 (b) prescribe the means, methods, and practices
 24 necessary to effectuate such provisions~~;~~

25 (3) THE PANEL MAY:

1 ~~(c)(A)~~ approve settlement agreements on claims of
 2 medical liability;

3 ~~(d)(B)~~ order physical examinations;

4 ~~(e)(C)~~ apply to any district court having requisite
 5 jurisdiction to enforce the production and examination of
 6 books, papers, and records; and

7 ~~(f)(D)~~ exercise all other powers and duties conferred
 8 upon the panel hereafter by law or provided in this act.

9 ~~(3)(4)~~ The panel may, upon the application of either
 10 party or upon its own motion, appoint a disinterested and
 11 qualified physician or other professional person or expert
 12 to make necessary professional or expert examination of the
 13 claimant or relevant evidentiary matter and to report in
 14 writing in respect thereto.

15 ~~(4)(5)~~ The panel may subpoena any witness to testify
 16 pursuant to the rules appropriate to civil actions with
 17 respect to parties to a controversy and may apply to any
 18 district court of this state for enforcement of such
 19 subpoenas.

20 Section 12. Votes of hearing panel. A majority vote of
 21 those present at a hearing panel is sufficient to make any
 22 determination. ~~The chairman of a hearing panel may vote only~~
 23 ~~to break a tie vote of the hearing panel.~~

24 Section 13. Compensation for medical liability. The
 25 claim shall be heard as one for compensation for medical

1 liability. The hearing panel shall review the evidence
2 submitted and hear any testimony to be elicited with
3 reasonable dispatch and shall make one of the following
4 determinations, which determination shall be sent to the
5 parties:

6 (1) The evidence supports the conclusion that the
7 defendant--or-defendants RESPONDENT OR RESPONDENTS failed to
8 comply with the appropriate standard of care as charged in
9 the complaint and that the conduct complained of was a
10 substantial-factor PROXIMATE CAUSE of any resultant damage.

11 (2) The evidence supports the conclusion that the
12 defendant--or-defendants RESPONDENT OR RESPONDENTS failed to
13 comply with the appropriate standard of care as charged in
14 the complaint but that the conduct complained of was not a
15 substantial--factor PROXIMATE CAUSE of any resultant damage.

16 (3) The evidence does not support the conclusion that
17 the defendant--or-defendants RESPONDENT OR RESPONDENTS failed
18 to meet the applicable standard of care as charged in the
19 complaint.

20 Section 14. Award schedule for medical liability. (i)
21 If the determination of the hearing panel is that the
22 evidence supports the conclusion that the defendant--or
23 defendants RESPONDENT OR RESPONDENTS failed to comply with
24 the appropriate standard of care as charged in the complaint
25 and that the conduct complained of was a substantial-factor

1 of--any--resultant PROXIMATE CAUSE OF ANY damage, then the
2 hearing panel shall--make-a-final-award-within-the--following
3 limits--as-to-the-nature-of-the-award-but-without-limit-as-to
4 amount: MAY RECOMMEND AN AWARD AND APPROVE SETTLEMENT
5 AGREEMENTS. ALL APPROVED SETTLEMENT AGREEMENTS ARE FINAL AND
6 BINDING ON ALL PARTIES THERETO.

7 (a)--For-death-of--a--minor--without--dependents--the
8 compensation--recoverable--shall--be-the-reasonable-value-of
9 the-minor's-services--to--his--parents--or--legal-guardians
10 during-minority--less-the-reasonable-cost-of-the-maintenance
11 of--the-minor--which--compensation--shall--inure--to--the
12 exclusive-benefit-of--the--parent--or--guardian--plus--any
13 reasonable--medical--hospital--funeral--burial--or-related
14 expense--The-sole-right-to-institute--the--claim--or--claims
15 provided--for--in--this--subsection--is--in--the--personal
16 representative-of-the-deceased--for--the--exclusive--benefit
17 of

18 (i)--such-parent-or-parents-or-legal-guardian--and
19 (ii)--the--persons--incurring--such--medical--hospital
20 funeral--burial--and-related-expenses

21 (b)--For-death-of--an--adult--without--dependents--the
22 compensation--recoverable--shall--be-the-reasonable-value-of
23 all-hospital--medical--or--other--related--expense--plus--the
24 reasonable--cost-of-funeral-and-burial--plus-an-amount-which
25 the-hearing-panel-may-determine-reasonable-for-the--cost--of

1 prosecuting the claims the sole right to institute the claim
2 under this subsection is in the personal representative of
3 the deceased for the exclusive benefit of those incurring
4 such expense.

5 (c) For the death of a minor or adult with dependents,
6 the compensation recoverable may include the actual or
7 prospective loss of earnings for the working life expectancy
8 of such deceased less the reasonable cost of the maintenance
9 of the decedent plus the reasonable cost of the decedent's
10 medical, hospital, funeral, and burial expense plus an
11 amount the hearing panel may determine reasonable for the
12 cost of prosecuting such claims. The sole right to institute
13 the claim provided for in this subsection is in the personal
14 representative of the deceased dependents and for those
15 incurring such expense.

16 (d) For bodily injury to an adult or minor not
17 resulting in death, the hearing panel may allow for any
18 injury or damages, general or special, allowed by law,
19 including loss of earnings to be based on the work
20 expectancy of the claimant without regard to his injured
21 condition; the reasonable medical, hospital, and related
22 expense, past, present, and future; and pain and suffering,
23 past, present, and future. Provided, however, that all
24 damages for pain and suffering must have a basis in the
25 evidence submitted to support the claim thereof in a fair

1 and reasonable amount, free from sentiment and taking into
2 account the nature and extent of the injuries and the
3 suffering occasioned by them, the duration and prospective
4 duration thereof, the age, healthy habits, and condition of
5 the injured party before the injury as compared with his
6 condition in consequence thereof, future pain and
7 suffering may be awarded only to the extent that there is
8 requisite certainty or probability that such pain and
9 suffering will result from the injury received based upon
10 the claimant's life expectancy in his injured condition.

11 (2) The compensation and benefits awarded by this act
12 shall be reduced by any collateral source of compensation
13 benefits as provided by law.

14 Section 16. Payment of awards. The hearing panel
15 shall order all payments of future damages as provided by
16 law.

17 Section 17. Award and taxing of costs. In all
18 proceedings before the hearing panels, the costs shall be
19 awarded and taxed as provided by law in ordinary civil
20 actions, with the exception that if in the opinion of the
21 hearing panel a claim for medical liability was filed
22 without probable cause for the claimant to believe he was
23 legally entitled to relief, then the cost shall include the
24 cost of defense including a reasonable attorney's fee.

25 Section 18. Claims not assignable. Exempt from

1 ~~creditors' claims. No claims for compensation under this~~
 2 ~~act may be assignable, and all compensation and claims~~
 3 ~~therefor shall be exempt from all claims of creditors,~~
 4 ~~assignees, or subrogees.~~

5 Section 15. Designation of parties -- joinder of
 6 parties -- separate hearings. The person filing the claim is
 7 the claimant, and the adverse party or parties is the
 8 respondent or respondents. The rules for joinder of parties
 9 are as otherwise allowed by law. The hearing panel may make
 10 orders to prevent a party from being embarrassed, delayed,
 11 or put to expense by the inclusion of parties against him
 12 and may order separate hearings or make other orders to
 13 prevent delay or prejudice.

14 Section 16. Filing and service of claims. All claims
 15 shall be filed on forms provided by the secretary. The
 16 claimant must attach to the forms the proposed complaint,
 17 which shall be prepared and served upon the health care
 18 providers named therein by the claimant, in the same manner
 19 and form provided by law for civil actions. The summons
 20 shall conform to the requirements of the panel. The
 21 secretary shall ~~notify concerned health care providers~~
 22 PROVIDE ALL CONCERNED PARTIES WITH COPIES OF THE PLEADINGS
 23 AND OTHER DOCUMENTS FILED WITH THE SECRETARY AND PROVIDE THE
 24 RELEVANT PROFESSIONAL ASSOCIATIONS WITH COPIES OF CLAIMS
 25 FILED.

1 Section 17. Additional pleadings. All health care
 2 providers served with a proposed complaint shall, within 20
 3 days from the date of service thereof, answer in the form
 4 and manner provided by law for civil actions. Any health
 5 care provider who fails to so answer is subject to liability
 6 under the law without regard to the provisions of this act.
 7 There may be no other pleadings.

8 ~~Section 22. Attorney fees. The amount of attorney~~
 9 ~~fees to be paid shall be included in the record of the trial~~
 10 ~~and shall be paid to the attorney by the respondent or his~~
 11 ~~insurer in addition to any award made to the claimant. If~~
 12 ~~the respondent is awarded attorney fees, the amount shall be~~
 13 ~~included in the record of the trial. The district court in~~
 14 ~~the county in which the claim is heard shall, at the request~~
 15 ~~of any party, determine the reasonableness of each party's~~
 16 ~~attorney fees ordered paid by the other party. The court~~
 17 ~~shall take into consideration the following:~~

18 (1) ~~the time and labor required, the novelty and~~
 19 ~~difficulty of the questions involved, and the skill~~
 20 ~~required to perform the legal services properly;~~

21 (2) ~~the likelihood, if apparent to the client, that~~
 22 ~~the acceptance of the particular employment would have~~
 23 ~~precluded other employment by the attorney;~~

24 (3) ~~the fee customarily charged in the locality for~~
 25 ~~similar legal services;~~

1 ~~(4) the amount involved and the results obtained;~~
2 ~~(5) the time limitations imposed by the client or by~~
3 ~~other circumstances;~~

4 ~~(6) the nature and length of the professional~~
5 ~~relationship with the attorney and client; and~~

6 ~~(7) the experience, reputation, and ability of the~~
7 ~~attorney performing the services.~~

8 Section 18. ~~Proof of financial responsibility~~
9 ~~insurance, cash or surety bond~~ REQUIREMENT FOR INSURANCE OR
10 SELF-INSURANCE. ~~(1) Each health care provider subject to the~~
11 ~~terms of this act shall, within 30 days after this act takes~~
12 ~~effect, file with the secretary, in a manner prescribed~~
13 ~~thereby, proof of financial responsibility.~~

14 ~~(2)(A) Each health care provider, except as provided~~
15 ~~by [section 24], shall acquire and maintain in force~~
16 ~~professional liability insurance of not less than \$250,000~~
17 ~~for each occurrence and \$500,000 in the aggregate for all~~
18 ~~claims occurring in any one policy year or, as an~~
19 ~~alternative, qualify as a self-insurer upon making proper~~
20 ~~application and being approved by the commissioner of~~
21 ~~insurance.~~

22 ~~(2)(B) Self-insurance subject to approval by the~~
23 ~~commissioner of insurance is effected by filing with the~~
24 ~~commissioner in satisfactory form:~~

25 (a) a continued undertaking by the health care

1 provider to pay any award rendered under this act, ~~except as~~
2 ~~provided by [section 24],~~ to the first \$250,000 for each
3 incident and to \$500,000 in the aggregate for all claims
4 occurring in any one year; and

5 (b) evidence that appropriate provision exists for
6 prompt and efficient administration of all claims; and

7 (c) evidence that reliable financial arrangements,
8 deposits, or commitments exist providing coverage
9 substantially equivalent to that afforded by a policy of
10 insurance required in subsection (2) of this section for the
11 payment of medical liability claims.

12 Section 19. ~~Failure to provide proof of financial~~
13 ~~responsibility~~ ~~failure~~ or refusal to accept panel
14 determination. (1) A health care provider is subject to a
15 liability under the laws of this state with respect to a
16 claim, without regard to the provisions of this act, ~~except~~
17 ~~as provided in [section 26]~~ if he fails or refuses to:

18 ~~(a) provide proof of financial responsibility as~~
19 ~~provided in [section 23];~~

20 ~~(b)(A) pay the annual assessment provided for in~~
21 ~~[section 26(2)], in a manner and amount fixed by the~~
22 ~~secretary; or~~

23 ~~(b)(B) within 10 days of receipt of the final~~
24 ~~determination of the panel, communicate in writing to the~~
25 ~~secretary his acceptance of the final determination of the~~

1 panel.

2 (2) Any claimant who fails or refuses to, within 10
3 days of receipt of the final determination of the panel,
4 communicate in writing to the secretary his acceptance of
5 the determination of the panel may proceed with the claim as
6 otherwise allowed by the laws of this state, without regard
7 to the provisions of this act, ~~except as provided in~~
8 ~~[section 26].~~

9 ~~Section 25v--Bond in the event of subsequent suits--(1)~~
10 ~~It suit in a court of competent jurisdiction is available to~~
11 ~~any party under the terms of this act, the party may pursue~~
12 ~~the claim after filing of the complaint only upon filing~~
13 ~~bond in the amount of \$2,000, secured by cash or its~~
14 ~~equivalent with the clerk of court in the court in which~~
15 ~~the claim is filed, payable to the opposing party or parties~~
16 ~~for costs assessed, including witness and experts' fee and~~
17 ~~any other costs allowed by law, if the party pursuing the~~
18 ~~claim does not prevail in the final judgment.~~

19 ~~(2) The court may, upon motion of either of the~~
20 ~~parties, increase the amount of the bond required to be~~
21 ~~filed. Upon motion filed by the claimant and a determination~~
22 ~~by the court after hearing that the claimant is indigent,~~
23 ~~the court may reduce the amount of the bond so required, but~~
24 ~~may not eliminate the requirement therefor. If the bond is~~
25 ~~not posted within 30 days of the filing of the complaint, or~~

1 ~~the determination of the court as to a larger or smaller~~
2 ~~bond, whichever is later, the action shall be dismissed with~~
3 ~~prejudice to the claimant.~~

4 ~~Section 26v--Admissibility of determination of hearing~~
5 ~~panel--The determination of the hearing panel required by~~
6 ~~[section 14] may be admitted into evidence in any subsequent~~
7 ~~trial. However, no specific finding of fact or any~~
8 ~~determination as to damages may be admitted into evidence at~~
9 ~~trial. Parties may, in the opening statement or argument to~~
10 ~~the court or jury, comment on the panel's conclusion in the~~
11 ~~same manner as any other evidence introduced at trial. The~~
12 ~~numerical vote of the panel is admissible. Panel members may~~
13 ~~not be called to testify as to the merits of the case. The~~
14 ~~jury shall be instructed that the determination of the~~
15 ~~hearing panel required by [section 14] raises a rebuttal~~
16 ~~presumption in favor of its conclusion, which may be~~
17 ~~controverted by other evidence, direct or indirect, but~~
18 ~~unless so controverted the jury is bound to find according~~
19 ~~to the presumption.~~

20 ~~Section 27v--Payment of awards and funding of act--(1)~~
21 ~~The administration of this act shall be funded from an~~
22 ~~annual assessment, which shall be paid by each health care~~
23 ~~provider. The amount of assessment shall be set by the~~
24 ~~secretary, who shall collect and receive the funds for~~
25 ~~exclusive use for the purposes stated in this act, based~~

1 upon the experience rating of the classification of the
 2 various health care providers surplus funds, if any, over
 3 and above the amount required for the annual administration
 4 of the act shall be retained by the secretary and used to
 5 finance the administration of this act in succeeding years,
 6 in which event the secretary shall reduce the annual
 7 assessment in subsequent years commensurate with the proper
 8 administration of this act.

9 (2) Payment of all awards accepted by the parties as
 10 provided in [section 24] shall be from the professional
 11 liability insurance or from satisfaction of the undertaking
 12 provided for in [section 23], to the extent such insurance
 13 or undertaking is insufficient to pay the full amount of the
 14 awards; the balance shall be paid from a fund established for
 15 such deficiencies by appropriation from the general fund of
 16 this state.

17 SECTION 20. PANEL DETERMINATION NOT ADMISSIBLE. THE
 18 DETERMINATION OF THE HEARING PANEL IS NOT ADMISSIBLE AS
 19 EVIDENCE IN ANY ACTION SUBSEQUENTLY BROUGHT IN ANY COURT OF
 20 LAW. PANELISTS MAY NOT BE CALLED TO TESTIFY IN ANY ACTION
 21 SUBSEQUENTLY BROUGHT IN ANY COURT OF LAW, AND PANELISTS AND
 22 WITNESSES ARE IMMUNE FROM CIVIL LIABILITY FOR ALL
 23 COMMUNICATIONS, FINDINGS, OPINIONS, AND CONCLUSIONS MADE IN
 24 THE COURSE AND SCOPE OF THE DUTIES PRESCRIBED BY THIS ACT.
 25 NO STATEMENT MADE BY ANY PERSON DURING A HEARING BEFORE THE

1 PANEL MAY BE USED AS IMPEACHING EVIDENCE IN COURT.

2 SECTION 21. FUNDING. (1) THERE IS CREATED A PRETRIAL
 3 REVIEW PANEL FUND TO BE COLLECTED BY THE SECRETARY FOR
 4 EXCLUSIVE USE FOR THE PURPOSES STATED IN THIS ACT. THE FUND
 5 AND ANY INCOME FROM IT SHALL BE HELD IN TRUST, DEPOSITED IN
 6 AN ACCOUNT, INVESTED AND REINVESTED BY THE SECRETARY WITH
 7 THE PRIOR APPROVAL OF THE DIRECTOR OF THE MONTANA MEDICAL
 8 ASSOCIATION, AND MAY NOT BECOME A PART OF OR REVERT TO THE
 9 GENERAL FUND OF THIS STATE, BUT SHALL BE OPEN TO INSPECTION
 10 AND AUDITING BY THE LEGISLATIVE AUDITOR.

11 (2) TO ESTABLISH THE FUND, AN ANNUAL SURCHARGE SHALL
 12 BE LEVIED ON ALL HEALTH CARE PROVIDERS. THE AMOUNT OF THE
 13 ASSESSMENT SHALL BE SET BY THE SECRETARY, WHO SHALL ALLOCATE
 14 A PROJECTED COST AMONG HEALTH CARE PROVIDERS ON A PER CAPITA
 15 BASIS AND SUCH OTHER RELEVANT FACTORS AS THE SECRETARY
 16 DESIGNATES BY RULE. SURPLUS FUNDS, IF ANY, OVER AND ABOVE
 17 THE AMOUNT REQUIRED FOR THE ANNUAL ADMINISTRATION OF THIS
 18 ACT SHALL BE RETAINED BY THE SECRETARY AND USED TO FINANCE
 19 THE ADMINISTRATION OF THIS ACT IN SUCCEEDING YEARS, IN WHICH
 20 EVENT THE SECRETARY SHALL REDUCE THE ANNUAL ASSESSMENT IN
 21 SUBSEQUENT YEARS, COMMENSURATE WITH THE PROPER
 22 ADMINISTRATION OF THIS ACT.

23 (3) THE ANNUAL SURCHARGE IS DUE AND PAYABLE ON THE
 24 SAME DATE AS LICENSE FEES PAYABLE TO THE STATE OF MONTANA
 25 ARE DUE.

1 Section 22. Conflict. The provisions of this act shall
2 govern if a conflict arises between this act and other
3 provisions of the laws of Montana.

4 Section 23. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 24. Effective date. This act is effective
11 January 1, 1978.

-End-

1 HOUSE BILL NO. 647
2 INTRODUCED BY SCULLY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A
5 MANDATORY PRETRIAL REVIEW PANEL TO HEAR AND DETERMINE CLAIMS
6 FOR MEDICAL LIABILITY; TO ESTABLISH RULES, PROCEDURES, AND
7 FACILITIES TO IMPLEMENT AND ACCOMPLISH THE PURPOSE OF THE
8 ACT; ~~TO PROVIDE FOR A SCHEDULE OF COMPENSATION AND BENEFITS~~
9 ~~FOR AWARDS; TO GUARANTEE THE FINANCIAL RESPONSIBILITY OF~~
10 ~~HEALTH CARE PROVIDERS TO REQUIRE PROFESSIONAL LIABILITY~~
11 ~~INSURANCE FOR HEALTH CARE PROVIDERS; AND TO PROVIDE THE~~
12 ~~SOURCE FOR THE FUNDING OF THE ADMINISTRATION OF THE ACT AND~~
13 ~~THE PAYMENT OF AWARDS; AND OTHERWISE AMENDING THE INSURANCE~~
14 ~~LAWS WITH RESPECT TO SUCH PANEL; PROVIDING A DELAYED~~
15 ~~EFFECTIVE DATE."~~

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Definitions. As used in this act, the
19 following definitions apply:

20 (1) "Health care provider" means any physician
21 licensed to practice medicine in the state of Montana or a
22 hospital, hospital-related facility, or long-term care
23 facility.

24 (2) "Medical liability" means liability arising out of
25 the injury or death of any person as the result of

1 negligence or breach of contract in the rendering of
2 professional services by a health care provider.

3 (3) "Professional liability insurer" means any company
4 authorized to do business in Montana or doing business in
5 Montana and offering policies of professional liability
6 insurance to health care providers and includes any
7 insurance trust, joint underwriting association, mutual
8 insurer, reciprocal insurer or any other entity or person
9 offering such liability coverage, including any state
10 insurance fund.

11 Section 2. Establishment of panel. A pretrial review
12 panel is created to review all medical liability claims,
13 except as provided in [section 5].

14 Section 3. Precondition to suit. No action for medical
15 liability against a health care provider may be commenced in
16 any court of this state before the claimant has filed his
17 claim with the secretary of the panel as herein provided and
18 a final decision on the claim is rendered by the panel,
19 unless otherwise provided herein.

20 Section 4. Tolling of statute of limitations. The
21 filing of the claim shall toll the applicable statute of
22 limitations to and including a period of 90 days following
23 the rendering of a final decision by the panel.

24 Section 5. Applicability of the act. The provisions of
25 this act are not applicable to any claim in which suit has

1 been filed in a district court of this state prior to the
 2 effective date of this act or if the claim is subject to a
 3 valid arbitration agreement allowed by law.

4 Section 6. Creation of panel -- ~~hearing panels---~~

5 ~~compensation-----terms--of--service----method-of-selectionv~~
 6 ~~{1}--The pretrial review panel shall consist of 12 full-time~~
 7 ~~membersv~~

8 ~~{2}--Six of the full-time members of the panel shall be~~
 9 ~~physicians licensed to practice in the state of Montana, and~~
 10 ~~six shall be attorneys licensed to practice in the state of~~
 11 ~~Montana, v~~

12 ~~{3}--The panel is divided into two hearing panels, one~~
 13 ~~of which shall hear and determine each claim, and each one~~
 14 ~~of which shall be composed of three attorneys and three~~
 15 ~~physicians and chaired by an attorney, v~~

16 ~~{4}--Full-time members of the panel are interchangeable~~
 17 ~~between the two hearing panels and shall be assigned to a~~
 18 ~~hearing panel on a claim-by-claim basis at the direction of~~
 19 ~~the secretary, v~~

20 ~~{5}--At least two attorneys and two physicians shall be~~
 21 ~~necessary for a quorum for the transaction of any hearing or~~
 22 ~~the rendering of any decision required by this act to be~~
 23 ~~final, v~~

24 ~~{6}--In a case involving a health care provider other~~
 25 ~~than a physician, a part-time panel member practicing the~~

1 ~~same profession as involved in the claim shall sit on the~~
 2 ~~hearing panel in place of a physician. In any case involving~~
 3 ~~both a physician and a health care provider other than a~~
 4 ~~physician, the representative of such other profession shall~~
 5 ~~additionally sit on the hearing panel and shall be a~~
 6 ~~part-time member, v~~

7 ~~{7}--Each full-time member of the panel, except those~~
 8 ~~first appointed, shall hold office for 3 years and until his~~
 9 ~~successor is appointed and qualified. On or before January~~
 10 ~~1, 1978, and effective on that date, the governor shall~~
 11 ~~appoint four members to a term of 1 year, four members to a~~
 12 ~~term of 2 years, and four members to a term of 3 years, v~~
 13 ~~future appointments to fill expired terms shall be for a~~
 14 ~~period of 3 years, v~~

15 ~~{8}--Appointment of attorney and physician members~~
 16 ~~shall be made by the governor from a list of three nominees~~
 17 ~~for each vacancy selected and nominated by the state bar of~~
 18 ~~Montana and the Montana medical association, respectively, v~~

19 ~~{9}--The governor shall, with regard to any vacancy, v~~
 20 ~~make his appointments from the lists as provided above~~
 21 ~~within 30 days following the day the position becomes~~
 22 ~~vacant. METHOD OF SELECTION -- HEARINGS. (1) THE PRETRIAL~~
 23 ~~REVIEW PANEL CONSISTS OF THREE PHYSICIANS LICENSED TO~~
 24 ~~PRACTICE IN MONTANA AND THREE ATTORNEYS LICENSED TO PRACTICE~~
 25 ~~IN MONTANA.~~

1 (2) ~~THE ATTORNEY MEMBERS SHALL BE APPOINTED BY THE~~
2 ~~STATE BAR OF MONTANA AND THE PHYSICIAN MEMBERS BY THE~~
3 ~~MONTANA MEDICAL ASSOCIATION.~~

4 (3) ~~THE THREE ATTORNEY MEMBERS SHALL SELECT ONE OF~~
5 ~~THEIR NUMBER AS CHAIRMAN OF THE PANEL.~~

6 (4) ~~PANEL MEMBERS SHALL BE APPOINTED WITHIN 30 DAYS~~
7 ~~AFTER RECEIPT BY THE RESPECTIVE ASSOCIATIONS OF A CLAIM FOR~~
8 ~~REVIEW. PANEL MEMBERS SHALL SERVE UNTIL THE PANEL HAS~~
9 ~~COMMUNICATED ITS DETERMINATION TO THE PARTIES INVOLVED AND~~
10 ~~APPROVED ANY SETTLEMENT AGREEMENT OR DETERMINED THAT~~
11 ~~SETTLEMENT DISCUSSIONS HAVE OR SHOULD BE TERMINATED.~~

12 (5) ~~A PANEL MEMBER SHALL DISQUALIFY HIMSELF FROM~~
13 ~~CONSIDERATION OF ANY CASE IN WHICH THE MEMBER DETERMINES HIS~~
14 ~~PRESENCE WOULD BE INAPPROPRIATE. THE SECRETARY MAY EXCUSE~~
15 ~~AN APPOINTED PANELIST FROM SERVING.~~

16 (6) ~~AT LEAST TWO ATTORNEYS AND TWO PHYSICIANS ARE~~
17 ~~NECESSARY FOR A QUORUM FOR HOLDING A HEARING OR RENDERING A~~
18 ~~FINAL DECISION UNDER THIS ACT.~~

19 (7) ~~IN A CASE INVOLVING A HEALTH CARE PROVIDER OTHER~~
20 ~~THAN A PHYSICIAN, A PANEL MEMBER PRACTICING THE SAME~~
21 ~~PROFESSION AS INVOLVED IN THE CLAIM SHALL SIT ON THE PANEL~~
22 ~~IN PLACE OF A PHYSICIAN. IN A CASE INVOLVING A PHYSICIAN AND~~
23 ~~A HEALTH CARE PROVIDER OTHER THAN A PHYSICIAN, A~~
24 ~~REPRESENTATIVE PRACTICING THE SAME PROFESSION AS THE HEALTH~~
25 ~~CARE PROVIDER INVOLVED SHALL SIT ON THE PANEL IN ADDITION TO~~

1 ~~THE SIX REGULAR MEMBERS. SUCH ADDITIONAL MEMBER SHALL BE~~
2 ~~APPOINTED BY THE PANEL MEMBERS.~~

3 ~~Section 7. Removal of panel members--vacancies--(1)~~
4 ~~Any member of the panel may be removed by the governor at~~
5 ~~any time for incompetency, neglect of duty, misconduct in~~
6 ~~office or other good cause which is to be stated in~~
7 ~~writing in the order of removal.~~

8 ~~(2) In the case of a vacancy in the membership of the~~
9 ~~panel, the governor shall appoint for the unexpired term~~
10 ~~from nominees in the same manner as for original~~
11 ~~appointments.~~

12 ~~Section 7. Compensation of the panel and staff --~~
13 ~~facilities for offices and hearings. (1) All full-time~~
14 ~~members of the panel shall be paid a salary in the amount of~~
15 ~~\$35 an hour, under guidelines promulgated by the secretary.~~
16 ~~Part-time members shall be paid a salary equal to that~~
17 ~~allowed to members of the Montana legislature while the~~
18 ~~legislature is in session.~~

19 (2) All members of the panel and its assistants are
20 entitled to receive their actual and necessary expenses
21 while traveling on the business of the panel. Expenses shall
22 be approved by the secretary of the panel before payment is
23 made.

24 (3) ~~The panel shall appoint DIRECTOR OF THE MONTANA~~
25 ~~MEDICAL ASSOCIATION. SHALL APPOINT AND SET THE SALARY OF A~~

1 secretary and may remove such secretary. The secretary
2 shall administer oaths, receive claims filed, promulgate
3 forms required hereunder, issue subpoenas in connection with
4 the administration of this act, and perform all other duties
5 required to fairly and effectively administer this act.

6 (4) The ~~panel~~ ~~subject to the approval of the~~
7 ~~governor~~ SECRETARY may employ and fix the compensation of
8 such clerical and other assistants as it may consider
9 necessary.

10 (5) The panel SECRETARY shall ~~provide itself with~~
11 ~~OBTAIN ON BEHALF OF THE PRETRIAL REVIEW PANEL~~ adequate
12 offices in the city of Helena, in which the records shall be
13 kept and its official business be transacted. ~~It~~ AND shall
14 also provide the necessary office furniture, stationery, and
15 other supplies.

16 (6) Panel hearings shall be conducted in the county
17 where the injury allegedly occurred but may, within the
18 sound discretion of the hearing panel, be held in any other
19 county if the panel considers it necessary or advisable. The
20 county commissioners or other governing authority shall
21 provide, upon the request of the secretary of the panel,
22 suitable facilities for any such hearing.

23 Section 8. Notice -- how served. Notice of all
24 hearings, orders, determinations, and proceedings of the
25 hearing panels PANEL, required by this act to be served,

1 shall be given by certified mail, return receipt requested,
2 at the last known address of the person to be so served.

3 Section 9. Evidence to be considered. (1) Unless
4 directed otherwise by the hearing panel, the evidence to be
5 considered by a hearing panel must be submitted by the
6 respective parties in documentary form only. The evidence
7 may consist of medical charts, x-rays, laboratory tests,
8 depositions of witnesses, and any other form of evidence
9 allowable by the hearing panel.

10 (2) All parties shall be allowed to use any discovery
11 procedure provided for by the Montana rules of civil
12 procedure, and in the manner provided for therein.
13 Depositions may be introduced into evidence without regard
14 to the availability of the witness to testify. ~~Discovery as~~
15 ~~to expert witnesses is not admissible unless such expert~~
16 ~~witness was in practice in the same or a similar community~~
17 ~~in the state of Montana, in the same profession, and at the~~
18 ~~same time as the alleged incident occurred as the health~~
19 ~~care provider whose standard of care is at issue.~~

20 (3) Any motion for relief arising out of the use of
21 such discovery procedures shall be decided by the chairman
22 of the hearing panel, who may in his discretion make
23 reasonable limitations on the extent and scope of discovery.

24 Section 10. Hearings and final determinations. (1) The
25 secretary shall, with the advice and cooperation of the

1 parties and the hearing panels ~~PANEL~~, fix the date and time
 2 for all hearings on claims before a hearing panel. A final
 3 decision on each claim shall be made within 120 days of the
 4 date the claim is filed with the secretary, unless for good
 5 cause shown, upon order of the chairman of a hearing panel,
 6 such time is extended.

7 (2) If a final decision on a claim is not made within
 8 10 months of the date the claim is filed, the jurisdiction
 9 of the panel on the subject matter shall terminate and the
 10 parties may proceed in accordance with the law.

11 Section 11. Law and rules applicable -- powers of the
 12 panel. (1) Except as provided in this act, the panel will be
 13 bound by the common and statutory law and by the Montana
 14 rules of civil procedure but ~~will~~ **SHALL** conduct **INFORMAL**
 15 hearings and make all determinations as in its judgment are
 16 best adapted to ascertain and determine the rights of the
 17 parties expeditiously and accurately to carry out justly the
 18 spirit of this act.

19 (2) The panel ~~SECRETARY, SUBJECT TO THE APPROVAL OF~~
 20 ~~THE SUPREME COURT,~~ may:

21 (a) adopt rules to carry out the provisions of this
 22 act; ~~AND~~

23 (b) prescribe the means, methods, and practices
 24 necessary to effectuate such provisions.

25 (3) THE PANEL MAY:

1 ~~(c)(A)~~ approve settlement agreements on claims of
 2 medical liability;

3 ~~(d)(B)~~ order physical examinations;

4 ~~(e)(C)~~ apply to any district court having requisite
 5 jurisdiction to enforce the production and examination of
 6 books, papers, and records; and

7 ~~(f)(D)~~ exercise all other powers and duties conferred
 8 upon the panel hereafter by law or provided in this act.

9 ~~(g)(4)~~ The panel may, upon the application of either
 10 party or upon its own motion, appoint a disinterested and
 11 qualified physician or other professional person or expert
 12 to make necessary professional or expert examination of the
 13 claimant or relevant evidentiary matter and to report in
 14 writing in respect thereto.

15 ~~(h)(5)~~ The panel may subpoena any witness to testify
 16 pursuant to the rules appropriate to civil actions with
 17 respect to parties to a controversy and may apply to any
 18 district court of this state for enforcement of such
 19 subpoenas.

20 Section 12. Votes of hearing panel. A majority vote of
 21 those present at a hearing panel is sufficient to make any
 22 determination. ~~The chairman of a hearing panel may vote only~~
 23 ~~to break a tie vote of the hearing panels.~~

24 Section 13. Compensation for medical liability. The
 25 claim shall be heard as one for compensation for medical

1 liability. The hearing panel shall review the evidence
2 submitted and hear any testimony to be elicited with
3 reasonable dispatch and shall make one of the following
4 determinations, which determination shall be sent to the
5 parties:

6 (1) The evidence supports the conclusion that the
7 ~~defendant--or-defendants~~ RESPONDENT OR RESPONDENTS failed to
8 comply with the appropriate standard of care as charged in
9 the complaint and that the conduct complained of was a
10 ~~substantial-factor~~ PROXIMATE CAUSE of any resultant damage.

11 (2) The evidence supports the conclusion that the
12 ~~defendant-or-defendants~~ RESPONDENT OR RESPONDENTS failed to
13 comply with the appropriate standard of care as charged in
14 the complaint but that the conduct complained of was not a
15 ~~substantial-factor~~ PROXIMATE CAUSE of any resultant damage.

16 (3) The evidence does not support the conclusion that
17 the ~~defendant-or-defendants~~ RESPONDENT OR RESPONDENTS failed
18 to meet the applicable standard of care as charged in the
19 complaint.

20 Section 14. Award schedule for medical liability. (i)
21 If the determination of the hearing panel is that the
22 evidence supports the conclusion that the ~~defendant--or-~~
23 ~~defendants~~ RESPONDENT OR RESPONDENTS failed to comply with
24 the appropriate standard of care as charged in the complaint
25 and that the conduct complained of was a ~~substantial-factor~~

1 ~~of-any-resultant~~ PROXIMATE CAUSE OF ANY damage, then the
2 hearing panel shall ~~make a final award within the following~~
3 ~~limits as to the nature of the award but without limit as to~~
4 ~~amount.~~ MAY RECOMMEND AN AWARD AND APPROVE SETTLEMENT
5 AGREEMENTS. ALL APPROVED SETTLEMENT AGREEMENTS ARE FINAL AND
6 BINDING ON ALL PARTIES THERETO.

7 (a) ~~For death of a minor without dependents, the~~
8 ~~compensation recoverable shall be the reasonable value of~~
9 ~~the minor's services to his parents or legal guardian~~
10 ~~during minority, less the reasonable cost of the maintenance~~
11 ~~of the minor, which compensation shall inure to the~~
12 ~~exclusive benefit of the parent or guardian plus any~~
13 ~~reasonable medical, hospital, funeral, burial, or related~~
14 ~~expenses. The sole right to institute the claim or claims~~
15 ~~provided for in this subsection is in the person~~
16 ~~representative of the deceased for the exclusive benefit~~
17 ~~of:~~

18 (i) ~~such parent or parents or legal guardian and~~
19 (ii) ~~the persons incurring such medical, hospital,~~
20 ~~funeral, burial, and related expenses~~

21 (b) ~~For death of an adult without dependents, the~~
22 ~~compensation recoverable shall be the reasonable value of~~
23 ~~all hospital, medical, or other related expense plus the~~
24 ~~reasonable cost of funeral and burial plus an amount which~~
25 ~~the hearing panel may determine reasonable for the cost of~~

1 prosecuting the claim. The sole right to institute the claim
2 under this subsection is in the personal representative of
3 the deceased for the exclusive benefit of those incurring
4 such expense.

5 (c) For the death of a minor or adult with dependents,
6 the compensation recoverable may include the actual or
7 prospective loss of earnings for the working life expectancy
8 of such deceased less the reasonable cost of the maintenance
9 of the deceased, plus the reasonable cost of the deceased's
10 medical, hospital, funeral, and burial expense plus an
11 amount the hearing panel may determine reasonable for the
12 cost of prosecuting such claim. The sole right to institute
13 the claim provided for in this subsection is in the personal
14 representative of the deceased dependents and for those
15 incurring such expense.

16 (d) For bodily injury to an adult or minor not
17 resulting in death, the hearing panel may allow for any
18 injury or damage, general or special, allowed by law,
19 including loss of earnings to be based on the work
20 expectancy of the claimant without regard to his injured
21 conditions, the reasonable medical, hospital, and related
22 expense, past, present, and future, and pain and suffering,
23 past, present, and future. Provided, however, that all
24 damages for pain and suffering must have a basis in the
25 evidence submitted to support the claim thereof in a fair

1 and reasonable amount, free from sentiment and taking into
2 account the nature and extent of the injuries and the
3 suffering occasioned by them, the duration and prospective
4 duration thereof, the age, health, habits, and condition of
5 the injured party before the injury as compared with his
6 condition in consequence thereof. Future pain and
7 suffering may be awarded only to the extent that there is
8 requisite certainty or probability that such pain and
9 suffering will result from the injury received based upon
10 the claimant's life expectancy in his injured condition.

11 (2) The compensation and benefits awarded by this act
12 shall be reduced by any collateral source of compensation
13 benefits as provided by law.

14 Section 16. Payment of awards. The hearing panel
15 shall order all payments of future damages as provided by
16 law.

17 Section 17. Award and taxing of costs. In all
18 proceedings before the hearing panels, the costs shall be
19 awarded and taxed as provided by law in ordinary civil
20 actions, with the exception that if, in the opinion of the
21 hearing panel, a claim for medical liability was filed
22 without probable cause for the claimant to believe he was
23 legally entitled to relief, then the cost shall include the
24 cost of defense, including a reasonable attorney's fee.

25 Section 18. Claims not assignable. Exempt from

1 ~~creditors' claims. No claims for compensation under this~~
 2 ~~act may be assignable, and all compensation and claims~~
 3 ~~therefor shall be exempt from all claims of creditors,~~
 4 ~~assignees, or subrogees.~~

5 Section 15. Designation of parties -- joinder of
 6 parties -- separate hearings. The person filing the claim is
 7 the claimant, and the adverse party or parties is the
 8 respondent or respondents. The rules for joinder of parties
 9 are as otherwise allowed by law. The hearing panel may make
 10 orders to prevent a party from being embarrassed, delayed,
 11 or put to expense by the inclusion of parties against him
 12 and may order separate hearings or make other orders to
 13 prevent delay or prejudice.

14 Section 16. Filing and service of claims. All claims
 15 shall be filed on forms provided by the secretary. The
 16 claimant must attach to the forms the proposed complaint,
 17 which shall be prepared and served upon the health care
 18 providers named therein by the claimant, in the same manner
 19 and form provided by law for civil actions. The summons
 20 shall conform to the requirements of the panel. The
 21 secretary shall ~~notify concerned health care providers~~
 22 PROVIDE ALL CONCERNED PARTIES WITH COPIES OF THE PLEADINGS
 23 AND OTHER DOCUMENTS FILED WITH THE SECRETARY AND PROVIDE THE
 24 RELEVANT PROFESSIONAL ASSOCIATIONS WITH COPIES OF CLAIMS
 25 FILED.

1 Section 17. Additional pleadings. All health care
 2 providers served with a proposed complaint shall, within 20
 3 days from the date of service thereof, answer in the form
 4 and manner provided by law for civil actions. Any health
 5 care provider who fails to so answer is subject to liability
 6 under the law without regard to the provisions of this act.
 7 There may be no other pleadings.

8 ~~Section 22. Attorney fees. The amount of attorney~~
 9 ~~fees to be paid shall be included in the record of the trial~~
 10 ~~and shall be paid to the attorney by the respondent or his~~
 11 ~~insurer in addition to any award made to the claimant. If~~
 12 ~~the respondent is awarded attorney fees, the amount shall be~~
 13 ~~included in the record of the trial. The district court in~~
 14 ~~the county in which the claim is heard shall, at the request~~
 15 ~~of any party, determine the reasonableness of each party's~~
 16 ~~attorney fees ordered paid by the other party. The court~~
 17 ~~shall take into consideration the following:~~

18 ~~(1) the time and labor required, the novelty and~~
 19 ~~difficulty of the questions involved, and the skill~~
 20 ~~requisite to perform the legal services properly;~~

21 ~~(2) the likelihood, if apparent to the clients, that~~
 22 ~~the acceptance of the particular employment would have~~
 23 ~~precluded other employment by the attorney;~~

24 ~~(3) the fee customarily charged in the locality for~~
 25 ~~similar legal services;~~

1 ~~(4) the amount involved and the results obtained;~~
 2 ~~(5) the time limitations imposed by the client or by~~
 3 ~~other circumstances;~~
 4 ~~(6) the nature and length of the professional~~
 5 ~~relationship with the attorney and clients; and~~
 6 ~~(7) the experience, reputation, and ability of the~~
 7 ~~attorney performing the services.~~

8 Section 18. ~~Proof of financial responsibility and~~
 9 ~~insurance, cash or surety bond~~ REQUIREMENT FOR INSURANCE OR
 10 SELF-INSURANCE. ~~(1) Each health care provider subject to the~~
 11 ~~terms of this act shall, within 30 days after this act takes~~
 12 ~~effect, file with the secretary, in a manner prescribed~~
 13 ~~thereby, proof of financial responsibility.~~

14 ~~(2)(1)~~ Each health care provider, ~~except as provided~~
 15 ~~by [section 24]~~ shall acquire and maintain in force
 16 professional liability insurance of not less than \$250,000
 17 for each occurrence and \$500,000 in the aggregate for all
 18 claims occurring in any one policy year or, as an
 19 alternative, qualify as a self-insurer upon making proper
 20 application and being approved by the commissioner of
 21 insurance.

22 ~~(3)(2)~~ Self-insurance subject to approval by the
 23 commissioner of insurance is effected by filing with the
 24 commissioner in satisfactory form:

25 (a) a continued undertaking by the health care

1 provider to pay any award rendered under this act, ~~except as~~
 2 ~~provided by [section 24]~~ to the first \$250,000 for each
 3 incident and to \$500,000 in the aggregate for all claims
 4 occurring in any one year; and

5 (b) evidence that appropriate provision exists for
 6 prompt and efficient administration of all claims; and

7 (c) evidence that reliable financial arrangements,
 8 deposits, or commitments exist providing coverage
 9 substantially equivalent to that afforded by a policy of
 10 insurance required in subsection (2) of this section for the
 11 payment of medical liability claims.

12 Section 19. ~~Failure to provide proof of financial~~
 13 ~~responsibility and failure or refusal to accept panel~~
 14 ~~determination.~~ (1) A health care provider is subject to
 15 liability under the laws of this state with respect to a
 16 claim, without regard to the provisions of this act, ~~except~~
 17 ~~as provided in [section 26]~~ if he fails or refuses to:

18 ~~(a) provide proof of financial responsibility as~~
 19 ~~provided in [section 23];~~

20 ~~(b)(A)~~ pay the annual assessment provided for in
 21 [section 2621], in a manner and amount fixed by the
 22 secretary; or

23 ~~(c)(B)~~ within 10 days of receipt of the final
 24 determination of the panel, communicate in writing to the
 25 secretary his acceptance of the final determination of the

1 panel.

2 (2) Any claimant who fails or refuses to, within 10
3 days of receipt of the final determination of the panel,
4 communicate in writing to the secretary his acceptance of
5 the determination of the panel may proceed with the claim as
6 otherwise allowed by the laws of this state, without regard
7 to the provisions of this act, ~~except as provided in~~
8 ~~[section 26].~~

9 ~~Section 25. Bond in the event of subsequent suits. (1)~~
10 ~~If suit in a court of competent jurisdiction is available to~~
11 ~~any party under the terms of this act, the party may pursue~~
12 ~~the claim after filing of the complaint only upon filing~~
13 ~~bond in the amount of \$2,000, secured by cash or its~~
14 ~~equivalent, with the clerk of court in the court in which~~
15 ~~the claim is filed, payable to the opposing party or parties~~
16 ~~for costs assessed, including witness and experts' fee and~~
17 ~~any other costs allowed by law, if the party pursuing the~~
18 ~~claim does not prevail in the final judgment.~~

19 ~~(2) The court may, upon motion of either of the~~
20 ~~parties, increase the amount of the bond required to be~~
21 ~~filed. Upon motion filed by the claimant and a determination~~
22 ~~by the court after hearing that the claimant is indigent,~~
23 ~~the court may reduce the amount of the bond so required, but~~
24 ~~may not eliminate the requirement therefor, if the bond is~~
25 ~~not posted within 30 days of the filing of the complaint or~~

1 ~~the determination of the court as to a larger or smaller~~
2 ~~bond, whichever is later, the action shall be dismissed with~~
3 ~~prejudice to the claimant.~~

4 ~~Section 26. Admissibility of determination of hearing~~
5 ~~panels. The determination of the hearing panel required by~~
6 ~~[section 14] may be admitted into evidence in any subsequent~~
7 ~~trials. However, no specific finding of fact or any~~
8 ~~determination as to damages may be admitted into evidence at~~
9 ~~trials. Parties may, in the opening statement or argument to~~
10 ~~the court or jury, comment on the panel's conclusion in the~~
11 ~~same manner as any other evidence introduced at trials. The~~
12 ~~numerical vote of the panel is admissible. Panel members may~~
13 ~~not be called to testify as to the merits of the case. The~~
14 ~~jury shall be instructed that the determination of the~~
15 ~~hearing panel required by [section 14] raises a rebuttal~~
16 ~~presumption in favor of its conclusion, which may be~~
17 ~~controverted by other evidence, direct or indirect, but~~
18 ~~unless so controverted the jury is bound to find according~~
19 ~~to the presumption.~~

20 ~~Section 27. Payment of awards and funding of act. (1)~~
21 ~~The administration of this act shall be funded from an~~
22 ~~annual assessment, which shall be paid by each health care~~
23 ~~provider. The amount of assessment shall be set by the~~
24 ~~secretary, who shall collect and receive the funds for~~
25 ~~exclusive use for the purposes stated in this act, based~~

1 upon the experience rating of the classification of the
 2 various health care providers surplus funds, if any, over
 3 and above the amount required for the annual administration
 4 of the act shall be retained by the secretary and used to
 5 finance the administration of this act in succeeding years,
 6 in which event the secretary shall reduce the annual
 7 assessment in subsequent years commensurate with the proper
 8 administration of this act.

9 (2) Payment of all awards accepted by the parties as
 10 provided in [section 24] shall be from the professional
 11 liability insurance or from satisfaction of the undertaking
 12 provided for in [section 23]. To the extent such insurance
 13 or undertaking is insufficient to pay the full amount of the
 14 award, the balance shall be paid from a fund established for
 15 such deficiencies by appropriation from the general fund of
 16 this state.

17 SECTION 20. PANEL DETERMINATION NOT ADMISSIBLE. THE
 18 DETERMINATION OF THE HEARING PANEL IS NOT ADMISSIBLE AS
 19 EVIDENCE IN ANY ACTION SUBSEQUENTLY BROUGHT IN ANY COURT OF
 20 LAW. PANELISTS MAY NOT BE CALLED TO TESTIFY IN ANY ACTION
 21 SUBSEQUENTLY BROUGHT IN ANY COURT OF LAW, AND PANELISTS AND
 22 WITNESSES ARE IMMUNE FROM CIVIL LIABILITY FOR ALL
 23 COMMUNICATIONS, FINDINGS, OPINIONS, AND CONCLUSIONS MADE IN
 24 THE COURSE AND SCOPE OF THE DUTIES PRESCRIBED BY THIS ACT.
 25 NO STATEMENT MADE BY ANY PERSON DURING A HEARING BEFORE THE

1 PANEL MAY BE USED AS IMPEACHING EVIDENCE IN COURT.

2 SECTION 21. FUNDING. (1) THERE IS CREATED A PRETRIAL
 3 REVIEW PANEL FUND TO BE COLLECTED BY THE SECRETARY FOR
 4 EXCLUSIVE USE FOR THE PURPOSES STATED IN THIS ACT. THE FUND
 5 AND ANY INCOME FROM IT SHALL BE HELD IN TRUST, DEPOSITED IN
 6 AN ACCOUNT, INVESTED AND REINVESTED BY THE SECRETARY WITH
 7 THE PRIOR APPROVAL OF THE DIRECTOR OF THE MONTANA MEDICAL
 8 ASSOCIATION, AND MAY NOT BECOME A PART OF OR REVERT TO THE
 9 GENERAL FUND OF THIS STATE, BUT SHALL BE OPEN TO INSPECTION
 10 AND AUDITING BY THE LEGISLATIVE AUDITOR.

11 (2) TO ESTABLISH THE FUND, AN ANNUAL SURCHARGE SHALL
 12 BE LEVIED ON ALL HEALTH CARE PROVIDERS. THE AMOUNT OF THE
 13 ASSESSMENT SHALL BE SET BY THE SECRETARY, WHO SHALL ALLOCATE
 14 A PROJECTED COST AMONG HEALTH CARE PROVIDERS ON A PER CAPITA
 15 BASIS AND SUCH OTHER RELEVANT FACTORS AS THE SECRETARY
 16 DESIGNATES BY RULE. SURPLUS FUNDS, IF ANY, OVER AND ABOVE
 17 THE AMOUNT REQUIRED FOR THE ANNUAL ADMINISTRATION OF THIS
 18 ACT SHALL BE RETAINED BY THE SECRETARY AND USED TO FINANCE
 19 THE ADMINISTRATION OF THIS ACT IN SUCCEEDING YEARS, IN WHICH
 20 EVENT THE SECRETARY SHALL REDUCE THE ANNUAL ASSESSMENT IN
 21 SUBSEQUENT YEARS, COMMENSURATE WITH THE PROPER
 22 ADMINISTRATION OF THIS ACT.

23 (3) THE ANNUAL SURCHARGE IS DUE AND PAYABLE ON THE
 24 SAME DATE AS LICENSE FEES PAYABLE TO THE STATE OF MONTANA
 25 ARE DUE.

1 Section 22. Conflict. The provisions of this act shall
2 govern if a conflict arises between this act and other
3 provisions of the laws of Montana.

4 Section 23. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 24. Effective date. This act is effective
11 January 1, 1978.

-End-

April 2, 1977

STANDING COMMITTEE REPORT
Senate Committee on Judiciary

That House Bill No. 647 be amended as follows:

1. Amend title, lines 5 through 12.

Following: "PANEL"

Strike: lines 5 through 12 in their entirety

Insert: "FOR MEDICAL MALPRACTICE CLAIMS"

2. Amend title, line 14.

Following: "PROVIDING"

Strike: " A DELAYED"

Insert: "AN IMMEDIATE"

3. Amend page 1, line 18, through page 23, line 11.

Following: line 17

Strike: all of the bill following the enacting clause

Insert: (see attached)

"Section 1. Short title. This act may be cited as the "Montana Medical Malpractice Panel Act".

Section 2. Purpose. The purpose of this act is to prevent where possible the filing in court of actions against health care providers and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice and to make possible the fair and equitable disposition of such claims against health care providers as are or reasonably may be well founded.

Section 3. Definitions. As used in this act, the following definitions apply:

(1) "Health care provider" means a physician licensed to practice medicine in Montana or a hospital, hospital-related facility, or long-term care facility.

(2) "Malpractice claim" means any claim or potential claim against a health care provider for medical treatment, lack of medical treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the patient, whether the patient's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(3) "Panel" means the Montana medical malpractice panel provided for in [section 4].

Section 4. Montana medical malpractice panel. (1) The Montana medical malpractice panel is created. The panel is attached to the Montana supreme court for administrative purposes only, except that 82A-108(2) does not apply. The panel shall review all malpractice claims or potential claims against health care providers covered by this act, except those claims subject to a valid arbitration agreement allowed by law or upon which suit has been filed prior to the effective date of this act.

(2) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana.

(3) Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by the patient or his attorney, to the director of the panel.

(4) The director of the panel shall be appointed by the executive director of the Montana medical association, subject to the approval of the chief justice of the Montana supreme court. The director shall serve at the pleasure of, and the director's salary shall be set by, the executive director of the Montana medical association, subject to the approval of the chief justice.

Section 5. Compensation of the panel and staff -- facilities for offices and hearings. (1) All members of the panel shall be paid a salary in the amount of \$40 an hour, under guidelines promulgated by the Montana supreme court.

(2) All members of the panel, the director, and his staff are entitled to travel expenses incurred while on the business of the panel, as provided in 59-538, 59-539, and 59-801, but such expenses shall be approved by the director before payment is made.

(3) The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by this act, the issuance of subpoenas in connection with the administration of this act, and the performance of all other acts required to fairly and effectively administer this act.

(4) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants as he considers necessary.

(5) The panel shall maintain adequate offices, in which its records shall be kept and its official business transacted.

(6) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall provide, upon request of the director of the panel, suitable facilities for any such hearing.

Section 6. Funding of act. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this act. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers. The amount of the assessment shall be set by the director, who shall allocate a projected cost among health care providers on a per capita

basis. The director may provide a different allocation upon approval by the supreme court. Surplus funds, if any, over and above the amount required for the annual administration of the act shall be retained by the director and used to finance the administration of this act in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this act.

(3) The annual surcharge for 1977 shall be paid on or before September 1, 1977, and annually thereafter on or before the date physicians' annual registration fees are due under 66-1042. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of professional and occupational licensing has under 66-1042 in connection with physicians' annual registration fees.

Section 7. Panel decision required -- application. (1) No malpractice claim may be filed in any court against a health care provider before an application is made to the panel and its decision is rendered.

(2) The application shall contain the following:

(a) a statement in reasonable detail of the elements of the health care provider's conduct which are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all physicians and hospitals having contact with the claimant and all witnesses. Any amendments to the application must be filed not less than 14 days prior to the hearing date.

(b) a statement authorizing the panel to obtain access to all medical and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. Nothing in that statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court.

Section 8. Application procedure. (1) Upon receipt of an application for review, the director or his delegate shall cause to be served a true copy of the application on the health care providers involved. Service shall be effected pursuant to the Montana rules of civil procedure. If a health care provider involved chooses to retain legal counsel, his attorney shall informally enter his appearance with the director.

(2) The health care provider shall answer the application for review and shall submit a statement authorizing the panel to inspect all medical and hospital records and information pertaining to the application and, for the purposes of such inspection only, waiving any privilege as to the contents of those records. Nothing in the statement waives that privilege for any other purpose.

(3) In instances where applications are received employing a theory of respondeat superior or some other derivative theory of recovery, the director shall forward the application to the state professional societies, associations, or licensing boards of both the individual

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health care provider whose alleged malpractice caused the application to be filed and the health care provider named a respondent as employer, master, or principal.

(4) The panel director shall cooperate fully with the claimant in retaining a physician qualified in the field of medicine involved, who will consult with the claimant upon payment of a reasonable fee by the claimant.

Section 9. Panel selection. (1) Application for review shall be promptly transmitted by the director to the directors of the health care provider's state professional society or association and the state bar, which shall each select three panelists within 30 days from the date of transmittal of the application.

(2) If no state professional society or association exists or if the health care provider does not belong to such a society or association, the director shall transmit the application to the health care provider's state licensing board, which shall in turn select three persons from the health care provider's profession, and where applicable, to persons specializing in the same field or discipline as the health care provider.

(3) Whenever there are multiple defendants, the case against each health care provider may be reviewed by a separate panel, or at the discretion of the panel initially appointed or by stipulation of the parties, a single combined panel may review all the claims against all parties defendant.

(4) Three panel members from the health care provider's profession and three panel members from the state bar shall sit in review of each case.

(5) In those cases where the theory of respondeat superior or some other derivative theory of recovery is employed, two of the panel members shall be chosen from the individual health care provider's profession and one panel member shall be chosen from the profession of the health care provider named a respondent as employer, master, or principal.

(6) Any member shall disqualify himself from consideration of any case in which, by virtue of his circumstances, he feels his presence on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a proposed panelist from serving.

(7) Whenever a party makes and files an affidavit that a panel member selected pursuant to this section cannot, according to the belief of the party making the affidavit, sit in review of the application with impartiality, that panel member may proceed no further. Another panel member must be selected by the health care provider's professional association, state licensing board, or the state bar, as the case may be. A party may not disqualify more than three panel members in this manner in any single malpractice claim, and the affidavit must be filed at least 20 days prior to the date of hearing.

Section 10. Time and place of hearing. A date, time, and place for hearing shall be fixed by the director subject to [section 5(6) of this act], and prompt notice thereof shall be given to the parties involved, the attorneys, and the members of the panel. In no instance may the date set be more than 120 days after the transmittal by the director of the application for review unless the panel finds good cause exists for extending the period.

Section 11. Hearing procedures. (1) At the time set for hearing, the claimant submitting the case for review shall be present and shall make a brief introduction of his case, including a resume of the facts constituting the alleged professional malpractice which he is prepared to prove. The health care provider against whom the claim is brought and his attorney may be present and may make an introductory statement of his case.

(2) Both parties may call witnesses to testify before the panel, which witnesses shall be sworn. Medical texts, journals, studies, and other documentary evidence relied upon by either party may be offered and admitted if relevant. Written statements of facts by treating health care providers may be reviewed.

(3) The hearing will be informal, and no official transcript may be made.

(4) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing, which shall be set for a date and time certain, not longer than 30 days from the date of the original hearing unless the attorney bringing the matter for review consents in writing to a longer period.

(5) Any supplemental hearing shall be held in the same manner as the original hearing, and the parties concerned and their attorneys may be present.

(6) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(7) No statement made by any person during a hearing before the panel may be used as impeaching evidence in court.

(8) At least 10 days prior to the hearing, the director shall furnish to each panel member copies of all claims, briefs, medical records, and other documents the director considers necessary.

Section 12. Panel deliberations and decisions. (1) At or prior to the time set for the hearing, the attorney members of the panel shall select a chairman who shall be an attorney and who shall preside over the panel deliberations. The deliberations of the panel are confidential. Upon consideration of all the relevant material, the panel shall decide:

(a) whether there is substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(b) whether there is a reasonable medical probability that the patient was injured thereby.

(2) All votes of the panel on the questions for discussion shall be by secret ballot. The decision shall be by a majority vote of those voting members of the panel who sat on the entire case. The decision shall be communicated in writing to the parties and attorneys concerned, and a copy thereof shall be retained in the permanent files of the panel.

(3) The decision shall in every case be signed for the panel by the chairman and shall contain only the conclusions reached by a majority of its members and shall list the number of members, if any, dissenting therefrom. The majority may briefly explain the reasoning and the basis for their decision, and the dissenters may likewise explain the reason for disagreement.

(4) The report of the medical review panel is not admissible as evidence in any action subsequently brought in any court of law. The copy of the report shall be sent to the health care provider's professional licensing board.

(5) Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by this act.

(6) The panel's decision is without administrative or judicial authority and is not binding upon any party. The panel may recommend an award, approve settlement agreements, and discuss the same, all in a manner not inconsistent with this section, and all such approved settlement agreements are binding on the parties.

Section 13. Director -- rules of procedure. The director, in consultation with the state bar of Montana and subject to approval of the supreme court, is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the medical review panel. No rules may be adopted, however, which require a party to make a monetary payment as a condition to bringing a malpractice claim before the medical review panel.

Section 14. Tolling of the statute of limitations. The running of the applicable limitation period in a malpractice claim is tolled upon receipt by the director of the application for review and does not begin again until 30 days after the panel's final decision is entered in the permanent files of the panel and a copy is served upon the complainant and his attorney by certified mail.

Section 15. Maintenance of records. The director shall maintain records of all proceedings before the panel which must include the nature of the act or omissions complained of, a brief summary of the evidence expressed, the decision of the panel, and any majority or dissenting opinions filed. Any records which may identify any party to the proceedings may not be made public and are not subject to subpoena, but are to be used solely for the purpose of compiling statistical data and facilitating ongoing studies of medical malpractice in Montana.

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Section 16. Saving clause. This act does not apply to acts of malpractice occurring prior to its effective date.

Section 17. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 18. Effective date. This act is effective upon its passage and approval. "

1 HOUSE BILL NO. 647

2 INTRODUCED BY SCULLY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A
5 MANDATORY PRETRIAL REVIEW PANEL ~~TO HEAR AND DETERMINE CLAIMS~~
6 ~~FOR MEDICAL LIABILITY; TO ESTABLISH RULES, PROCEDURES, AND~~
7 ~~FACILITIES TO IMPLEMENT AND ACCOMPLISH THE PURPOSE OF THE~~
8 ~~ACT; TO PROVIDE FOR A SCHEDULE OF COMPENSATION AND BENEFITS~~
9 ~~FOR AWARDS; TO GUARANTEE THE FINANCIAL RESPONSIBILITY OF~~
10 ~~HEALTH CARE PROVIDERS TO REQUIRE PROFESSIONAL LIABILITY~~
11 ~~INSURANCE FOR HEALTH CARE PROVIDERS; AND TO PROVIDE THE~~
12 ~~SOURCE FOR THE FUNDING OF THE ADMINISTRATION OF THE ACT AND~~
13 ~~THE PAYMENT OF AWARDS; AND OTHERWISE AMENDING THE INSURANCE~~
14 ~~LAWS WITH RESPECT TO SUCH PANEL FOR MEDICAL MALPRACTICE~~
15 ~~CLAIMS; PROVIDING A DELAYED AN IMMEDIATE EFFECTIVE DATE."~~

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Refer to Third Reading Bill

19 (Strike everything after enacting clause and insert:)

20 Section 1. Short title. This act may be cited as the
21 "Montana Medical Malpractice Panel Act".

22 Section 2. Purpose. The purpose of this act is to
23 prevent where possible the filing in court of actions
24 against health care providers and their employees for
25 professional liability in situations where the facts do not

1 permit at least a reasonable inference of malpractice and to
2 make possible the fair and equitable disposition of such
3 claims against health care providers as are or reasonably
4 may be well founded.

5 Section 3. Definitions. As used in this act, the
6 following definitions apply:

7 (1) "Health care provider" means a physician licensed
8 to practice medicine in Montana or a hospital,
9 hospital-related facility, or long-term care facility.

10 (2) "Malpractice claim" means any claim or potential
11 claim against a health care provider for medical treatment,
12 lack of medical treatment, or other alleged departure from
13 accepted standards of health care which proximately results
14 in damage to the patient, whether the patient's claim or
15 potential claim sounds in tort or contract, and includes but
16 is not limited to allegations of battery or wrongful death.

17 (3) "Panel" means the Montana medical malpractice
18 panel provided for in [section 4].

19 Section 4. Montana medical malpractice panel. (1) The
20 Montana medical malpractice panel is created. The panel is
21 attached to the Montana supreme court for administrative
22 purposes only, except that 82A-108(2) does not apply. The
23 panel shall review all malpractice claims or potential
24 claims against health care providers covered by this act,
25 except those claims subject to a valid arbitration agreement

1 allowed by law or upon which suit has been filed prior to
2 the effective date of this act.

3 (2) Those eligible to sit on the panel are health care
4 providers licensed pursuant to Montana law and residing in
5 Montana and the members of the state bar of Montana.

6 (3) Claimants shall submit a case for the
7 consideration of the panel prior to filing a complaint in
8 any district court or other court sitting in Montana by
9 addressing an application, in writing, signed by the patient
10 or his attorney, to the director of the panel.

11 (4) The director of the panel shall be appointed by
12 the executive director of the Montana medical association,
13 subject to the approval of the chief justice of the Montana
14 supreme court. The director shall serve at the pleasure of,
15 and the director's salary shall be set by, the executive
16 director of the Montana medical association, subject to the
17 approval of the chief justice.

18 Section 5. Compensation of the panel and staff --
19 facilities for offices and hearings. (1) All members of the
20 panel shall be paid a salary in the amount of \$40 an hour,
21 under guidelines promulgated by the Montana supreme court.

22 (2) All members of the panel, the director, and his
23 staff are entitled to travel expenses incurred while on the
24 business of the panel, as provided in 59-538, 59-539, and
25 59-801, but such expenses shall be approved by the director

1 before payment is made.

2 (3) The panel may provide for the administration of
3 oaths, the receipt of claims filed, the promulgation of
4 forms required by this act, the issuance of subpoenas in
5 connection with the administration of this act, and the
6 performance of all other acts required to fairly and
7 effectively administer this act.

8 (4) The director, subject to the approval of the chief
9 justice, may employ and fix the compensation for clerical
10 and other assistants as he considers necessary.

11 (5) The panel shall maintain adequate offices, in
12 which its records shall be kept and its official business
13 transacted.

14 (6) Panel hearings may be held in any county the panel
15 considers necessary or advisable. The county commissioners
16 or other governing authority shall provide, upon request of
17 the director of the panel, suitable facilities for any such
18 hearing.

19 Section 6. Funding of act. (1) There is created a
20 pretrial review fund to be administered by the director
21 exclusively for the purposes stated in this act. The fund
22 and any income from it shall be held in trust, deposited in
23 an account, and invested and reinvested by the director with
24 the prior approval of the director of the Montana medical
25 association. The fund may not become a part of or revert to

1 the general fund of this state but shall be open to auditing
2 by the legislative auditor.

3 (2) To create the fund, an annual surcharge shall be
4 levied on all health care providers. The amount of the
5 assessment shall be set by the director, who shall allocate
6 a projected cost among health care providers on a per capita
7 basis. The director may provide a different allocation upon
8 approval by the supreme court. Surplus funds, if any, over
9 and above the amount required for the annual administration
10 of the act shall be retained by the director and used to
11 finance the administration of this act in succeeding years,
12 in which event the director shall reduce the annual
13 assessment in subsequent years, commensurate with the proper
14 administration of this act.

15 (3) The annual surcharge for 1977 shall be paid on or
16 before September 1, 1977, and annually thereafter on or
17 before the date physicians' annual registration fees are due
18 under 66-1042. The director has the same powers and duties
19 in connection with the collection of and failure to pay the
20 annual surcharge as the department of professional and
21 occupational licensing has under 66-1042 in connection with
22 physicians' annual registration fees.

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24 No malpractice claim may be filed in any court against a
25 health care provider before an application is made to the

1 panel and its decision is rendered.

2 (2) The application shall contain the following:

3 (a) a statement in reasonable detail of the elements
4 of the health care provider's conduct which are believed to
5 constitute a malpractice claim, the dates the conduct
6 occurred, and the names and addresses of all physicians and
7 hospitals having contact with the claimant and all
8 witnesses. Any amendments to the application must be filed
9 not less than 14 days prior to the hearing date.

10 (b) a statement authorizing the panel to obtain access
11 to all medical and hospital records and information
12 pertaining to the claim and, for the purposes of its
13 consideration of this matter only, waiving any privilege as
14 to the contents of those records. Nothing in that statement
15 may in any way be construed as waiving that privilege for
16 any other purpose or in any other context, in or out of
17 court.

18 Section 8. Application procedure. (1) Upon receipt of
19 an application for review, the director or his delegate
20 shall cause to be served a true copy of the application on
21 the health care providers involved. Service shall be
22 effected pursuant to the Montana rules of civil procedure.
23 If a health care provider involved chooses to retain legal
24 counsel, his attorney shall informally enter his appearance
25 with the director.

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 2 application for review and shall submit a statement
 3 authorizing the panel to inspect all medical and hospital
 4 records and information pertaining to the application and,
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8 (3) In instances where applications are received
 9 employing a theory of respondeat superior or some other
 10 derivative theory of recovery, the director shall forward
 11 the application to the state professional societies,
 12 associations, or licensing boards of both the individual
 13 health care provider whose alleged malpractice caused the
 14 application to be filed and the health care provider named a
 15 respondent as employer, master, or principal.

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 17 claimant in retaining a physician qualified in the field of
 18 medicine involved, who will consult with the claimant upon
 19 payment of a reasonable fee by the claimant.

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 3 such a society or association, the director shall transmit
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 6 from the health care provider's profession, and where
 7 applicable, to persons specializing in the same field or
 8 discipline as the health care provider.

9 (3) Whenever there are multiple defendants, the case
 10 against each health care provider may be reviewed by a
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 13 combined panel may review all the claims against all parties
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 16 provider's profession and three panel members from the state
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 19 superior or some other derivative theory of recovery is
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1 consideration of any case in which, by virtue of his
2 circumstances, he feels his presence on the panel would be
3 inappropriate, considering the purpose of the panel. The
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5 (7) Whenever a party makes and files an affidavit that
6 a panel member selected pursuant to this section cannot,
7 according to the belief of the party making the affidavit,
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22 the application for review unless the panel finds good cause
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22 that the patient was injured thereby.

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24 discussion shall be by secret ballot. The decision shall be
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-End-