

HOUSE BILL NO. 738

INTRODUCED BY ADDY, KEYSER

IN THE HOUSE

February 9, 1985	Introduced and referred to Committee on Judiciary. Fiscal Note requested.
February 14, 1985	Fiscal Note returned.
February 20, 1985	Committee recommend bill do pass as amended. Report adopted. Bill printed and placed on members' desks.
February 21, 1985	Second reading, do pass.
February 22, 1985	Considered correctly engrossed.
February 23, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 4, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
March 21, 1985	Committee recommend bill be concurrent in. Report adopted.
March 23, 1985	Second reading, concurred in.
March 26, 1985	Third reading, concurred in. Ayes, 48; Noes, 2. Returned to House.

IN THE HOUSE

March 27, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 738
 2 INTRODUCED BY Ally Royson
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
 5 MEDICAL LEGAL PANEL ACT BY CLARIFYING THE DEFINITIONS OF
 6 "HEALTH CARE FACILITY", "MALPRACTICE CLAIM", AND
 7 "PHYSICIAN"; CLARIFYING THE ALLOCATION OF ASSESSMENTS AND
 8 DETERMINATION OF ASSESSMENTS; PROVIDING FOR A LATE FEE FOR
 9 DELINQUENT ASSESSMENTS; CLARIFYING THE COMPOSITION OF THE
 10 PANEL; CLARIFYING THE TOLLING OF THE STATUTE OF LIMITATIONS
 11 AGAINST PARTIES NOT PARTIES TO THE CLAIM AND PROVIDING FOR
 12 DISMISSAL OF CLAIMS AND THE RUNNING OF THE STATUTE OF
 13 LIMITATIONS; AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-301,
 14 27-6-303, 27-6-401, AND 27-6-702, MCA; AND PROVIDING AN
 15 IMMEDIATE EFFECTIVE DATE."

16
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 18 Section 1. Section 27-6-103, MCA, is amended to read:
 19 "27-6-103. Definitions. As used in this chapter, the
 20 following definitions apply:
 21 (1) "Health care facility" means a facility (other
 22 than a university, college, or governmental hospital-or
 23 infirmary) licensed as a health care facility under Title
 24 50, chapter 5.
 25 (2) "Health care provider" means a physician or a

1 health care facility.
 2 (3) "Hospital" means a hospital as defined in
 3 50-5-101.
 4 (4) "Malpractice claim" means any claim or potential
 5 claim of a claimant against a health care provider for
 6 medical treatment, lack of medical treatment, or other
 7 alleged departure from accepted standards of health care
 8 which proximately results in damage to the patient claimant,
 9 whether the patient's claimant's claim or potential claim
 10 sounds in tort or contract, and includes but is not limited
 11 to allegations of battery or wrongful death.
 12 (5) "Panel" means the Montana medical legal panel
 13 provided for in 27-6-104.
 14 (6) "Physician" means:
 15 (a) for purposes of the assessment of the annual
 16 surcharge, an individual licensed to practice medicine under
 17 the provisions of Title 37, chapter 3, who at the time of
 18 the assessment:
 19 (i) has as his principal residence or place of medical
 20 practice the state of Montana;
 21 (ii) is not employed full-time by any federal
 22 governmental agency or entity; and
 23 (iii) is not fully retired from the practice of
 24 medicine; or
 25 (b) for all other purposes, a person licensed to

1 practice medicine under the provisions of Title 37, chapter
 2 3, who at the time of the occurrence of the incident giving
 3 rise to the claim:

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

8 (ii) was a professional service corporation,
 9 partnership, or other business entity organized under the
 10 laws of any state to render medical services, whose
 11 shareholders, partners, or owners were individual physicians
 12 licensed to practice medicine under the provisions of Title
 13 37, chapter 3."

14 Section 2. Section 27-6-206, MCA, is amended to read:

15 "27-6-206. Funding. (1) There is created a pretrial
 16 review fund to be administered by the director exclusively
 17 for the purposes stated in this chapter. The fund and any
 18 income from it shall be held in trust, deposited in an
 19 account, and invested and reinvested by the director with
 20 the prior approval of the director of the Montana medical
 21 association. The fund may not become a part of or revert to
 22 the general fund of this state but shall be open to auditing
 23 by the legislative auditor.

24 (2) To create the fund, an annual surcharge shall be
 25 levied on all health care providers, ~~except physicians not~~

1 ~~engaged in the private practice of medicine.~~ The amount of
 2 the assessment must be annually set by the director, ~~who~~
 3 ~~shall allocate a projected cost~~ and must be apportioned
 4 among physicians, hospitals, and other health care
 5 ~~facilities~~ providers by group. ~~The amount of the assessment~~
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 10 ~~health care facility bears to the total number of claims~~
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 12 ~~facilities that have been filed with the panel since April~~
 13 ~~19, 1977, as that total number of claims is shown in the~~
 14 ~~annual reports of the panel. However, the assessment for an~~
 15 ~~individual hospital must also be determined by dividing the~~
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 17 ~~total number of hospital beds existing at the time of the~~
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 19 ~~in the hospital to be assessed. As to the group of all~~
 20 ~~physicians, the group of all hospitals, and the group of all~~
 21 ~~other health care facilities, the amount of the assessment~~
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 2 the year of assessment, as to all claims closed since April
 3 19, 1977. The amount of the assessment for the group of all
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 6 licensed hospital beds, whether used or not, as reflected in
 7 the most recent compilation of the department of health and
 8 environmental sciences. The amount of the assessment for the
 9 group of all physicians must be equally assessed against all
 10 physicians. The amount of the assessment for the group of
 11 all other health care facilities must be equally assessed
 12 against all other health care facilities. Surplus funds, if
 13 any, over and above the amount required for the annual
 14 administration of the chapter shall be retained by the
 15 director and used to finance the administration of this
 16 chapter in succeeding years, in which event the director
 17 shall reduce the annual assessment in subsequent years,
 18 commensurate with the proper administration of this chapter.

19 (3) The annual surcharge shall be paid on or before
 20 the date physicians' annual registration fees are due under
 21 37-3-313. All unpaid assessments bear a late charge fee
 22 equal to the judgment rate of interest. The late charge fee
 23 is part of the annual surcharge. The director has the same
 24 powers and duties in connection with the collection of and
 25 failure to pay the annual surcharge as the department of

1 commerce has under 37-3-313 in connection with physicians'
 2 annual registration fees."

3 Section 3. Section 27-6-301, MCA, is amended to read:
 4 "27-6-301. How cases submitted. Claimants shall submit
 5 a case for the consideration of the panel prior to filing a
 6 complaint in any district court or other court sitting in
 7 Montana by addressing an application, in writing, signed by
 8 the patient claimant or his attorney, to the director of the
 9 panel."

10 Section 4. Section 27-6-303, MCA, is amended to read:
 11 "27-6-303. Amendments to application. ~~Any--amendments~~
 12 Amendments to the application ~~must may~~ be ~~filed-not-less~~
 13 than-14-days-prior-to-the-hearing-date authorized by rule."

14 Section 5. Section 27-6-401, MCA, is amended to read:
 15 "27-6-401. Composition of panel. (1) Those eligible to
 16 sit on the panel are health care providers licensed pursuant
 17 to Montana law and residing in Montana and the members of
 18 the state bar of Montana. Six panel members shall sit in
 19 review of each case. Three panel members ~~from--the--health~~
 20 ~~care--provider's--profession~~ who are physicians and three
 21 panel members ~~from-the-state-bar~~ who are attorneys shall sit
 22 in review of each case in which the claim is heard only
 23 against one or more physicians. If the claim is heard only
 24 against one or more health care facilities, two of the panel
 25 members must be administrators of the same type of health

1 care facility or facilities, one panel member must be a
 2 physician, and three panel members must be attorneys.

3 (2) In those all other cases ~~where--the--theory--of~~
 4 ~~respondent--superior--or--some--other--derivative--theory-of~~
 5 ~~recovery-is-employed,~~ two of the panel members shall must be
 6 ~~chosen-from-the-individual-health-care-provider's-profession~~
 7 ~~and physicians,~~ one panel member shall must be ~~chosen--from~~
 8 ~~the--profession-of-the~~ an administrator of one of the health
 9 ~~care provider-named-a-respondent--as--employer--master--or~~
 10 principal facilities, and three panel members must be
 11 attorneys."

12 Section 6. Section 27-6-702, MCA, is amended to read:
 13 "27-6-702. Tolling of statute of limitations. The
 14 running of the applicable limitation period in a malpractice
 15 claim is tolled upon receipt by the director of the
 16 application for review and as to all health care providers
 17 named in the application as parties to the panel proceeding
 18 and as to all other persons or entities named in the
 19 application as necessary or proper parties for any court
 20 action which might subsequently arise out of the same
 21 factual circumstances set forth in the application. The
 22 running of the applicable limitation period in a malpractice
 23 claim does not begin again until 30 days after either an
 24 order of dismissal, with or without prejudice against
 25 refiling, is issued from the panel chairman or from the

1 director upon the consent of the parties to the claim or the
 2 panel's final decision, whichever occurs first, is entered
 3 in the permanent files of the panel and a copy is served
 4 upon the complainant and his attorney if he is represented
 5 by counsel, by certified mail."

6 NEW SECTION. Section 7. Effective date. This act is
 7 effective on passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. FNN380-85

FISCAL NOTE

Form BD-15

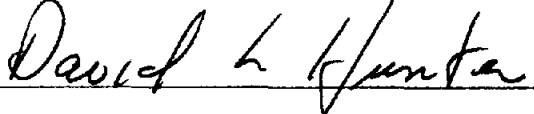
In compliance with a written request received February 9 19 85, there is hereby submitted a Fiscal Note for H.B. 738 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 738 revises the Montana Medical Legal Panel Act by clarifying the definitions of "Health Care Facility", "Malpractice Claim", and "Physician"; clarifying the allocation of assessments and determination of assessments; providing for a late fee for delinquent assessments; clarifying the composition of the panel; clarifying the tolling of the statute of limitations against parties not parties to the claim and providing for dismissal of claims and the running of the statute of limitations.

FISCAL IMPACT:

None



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 14, 1985

HB 738

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 738

INTRODUCED BY ADDY, KEYSER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA MEDICAL LEGAL PANEL ACT BY CLARIFYING THE DEFINITIONS OF "HEALTH CARE FACILITY", "MALPRACTICE CLAIM", AND "PHYSICIAN"; CLARIFYING THE ALLOCATION OF ASSESSMENTS AND DETERMINATION OF ASSESSMENTS; PROVIDING FOR A LATE FEE FOR DELINQUENT ASSESSMENTS; CLARIFYING THE COMPOSITION OF THE PANEL; CLARIFYING THE TOLLING OF THE STATUTE OF LIMITATIONS AGAINST PARTIES NOT PARTIES TO THE CLAIM AND PROVIDING FOR DISMISSAL OF CLAIMS AND THE RUNNING OF THE STATUTE OF LIMITATIONS; AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-301, 27-6-303, 27-6-401, AND 27-6-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

(6) "Physician" means:

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

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

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 22 in review of each case in which the claim is heard only
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 25 members must be administrators of the same type of health

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 9 TYPE OF health care provider--named--a--respondent--as--employer,
 10 master,--or--principal facilities FACILITY, and three panel
 11 members must be attorneys."

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 4 served upon the complainant and OR his attorney if he is
 5 represented by counsel, by certified mail."

6 NEW SECTION. Section 7. Effective date. This act is
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 9 TYPE OF health care provider-named-a-respondent-as-employer,
 10 master, or-principal facilities FACILITY, and three panel
 11 members must be attorneys."

12 Section 6. Section 27-6-702, MCA, is amended to read:

13 "27-6-702. Tolling of statute of limitations. The
 14 running of the applicable limitation period in a malpractice
 15 claim is tolled upon receipt by the director of the
 16 application for review and as to all health care providers
 17 named in the application as parties to the panel proceeding
 18 and as to all other persons or entities named in the
 19 application as necessary or proper parties for any court
 20 action which might subsequently arise out of the same
 21 factual circumstances set forth in the application. The
 22 running of the applicable limitation period in a malpractice
 23 claim does not begin again until 30 days after either an
 24 order of dismissal, with or without prejudice against
 25 refiling, is issued from the panel chairman, or from the

1 director upon the consent of the parties to the claim, or
 2 the panel's final decision, whichever occurs first, is
 3 entered in the permanent files of the panel and a copy is
 4 served upon the complainant and OR his attorney if he is
 5 represented by counsel, by certified mail."

6 NEW SECTION. Section 7. Effective date. This act is
 7 effective on passage and approval.

-End-

HOUSE BILL NO. 738

INTRODUCED BY ADDY, KEYSER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA MEDICAL LEGAL PANEL ACT BY CLARIFYING THE DEFINITIONS OF "HEALTH CARE FACILITY", "MALPRACTICE CLAIM", AND "PHYSICIAN"; CLARIFYING THE ALLOCATION OF ASSESSMENTS AND DETERMINATION OF ASSESSMENTS; PROVIDING FOR A LATE FEE FOR DELINQUENT ASSESSMENTS; CLARIFYING THE COMPOSITION OF THE PANEL; CLARIFYING THE TOLLING OF THE STATUTE OF LIMITATIONS AGAINST PARTIES NOT PARTIES TO THE CLAIM AND PROVIDING FOR DISMISSAL OF CLAIMS AND THE RUNNING OF THE STATUTE OF LIMITATIONS; AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-301, 27-6-303, 27-6-401, AND 27-6-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 27-6-103, MCA, is amended to read:

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

(1) "Health care facility" means a facility (other than a university, college, or governmental hospital-or infirmary) licensed as a health care facility under Title 50, chapter 5.

(2) "Health care provider" means a physician or a

health care facility.

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

(4) "Malpractice claim" means any claim or potential claim of a claimant 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 claimant, whether the patient's claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

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

(6) "Physician" means:

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

(i) has as his principal residence or place of medical practice the state of Montana;

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

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

(b) for all other purposes, a person licensed to



1 practice medicine under the provisions of Title 37, chapter
 2 3, who at the time of the occurrence of the incident giving
 3 rise to the claim:

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

8 (ii) was a professional service corporation,
 9 partnership, or other business entity organized under the
 10 laws of any state to render medical services, whose
 11 shareholders, partners, or owners were individual physicians
 12 licensed to practice medicine under the provisions of Title
 13 37, chapter 3."

14 Section 2. Section 27-6-206, MCA, is amended to read:

15 "27-6-206. Funding. (1) There is created a pretrial
 16 review fund to be administered by the director exclusively
 17 for the purposes stated in this chapter. The fund and any
 18 income from it shall be held in trust, deposited in an
 19 account, and invested and reinvested by the director with
 20 the prior approval of the director of the Montana medical
 21 association. The fund may not become a part of or revert to
 22 the general fund of this state but shall be open to auditing
 23 by the legislative auditor.

24 (2) To create the fund, an annual surcharge shall be
 25 levied on all health care providers, ~~except physicians not~~

1 ~~engaged in the private practice of medicine.~~ The amount of
 2 the assessment must be annually set by the director, ~~who~~
 3 ~~shall allocate a projected cost and must be apportioned~~
 4 among physicians, hospitals, and other health care
 5 facilities ~~providers by group.~~ ~~The amount of the assessment~~
 6 ~~for an individual physician, hospital, or other health care~~
 7 ~~facility must be that portion of the total assessment which~~
 8 ~~bears the same relationship to the total assessment as the~~
 9 ~~number of claims against such physician, hospital, or other~~
 10 ~~health care facility bears to the total number of claims~~
 11 ~~against physicians, hospitals, and other health care~~
 12 ~~facilities that have been filed with the panel since April~~
 13 ~~1977, as that total number of claims is shown in the~~
 14 ~~annual reports of the panel. However, the assessment for an~~
 15 ~~individual hospital must also be determined by dividing the~~
 16 ~~total percentage of the assessment for all hospitals by the~~
 17 ~~total number of hospital beds existing at the time of the~~
 18 ~~assessment and multiplying the result by the number of beds~~
 19 ~~in the hospital to be assessed. As to the group of all~~
 20 ~~physicians, the group of all hospitals, and the group of all~~
 21 ~~other health care facilities, the amount of the assessment~~
 22 ~~must be proportionate to the respective percentage of total~~
 23 ~~health care providers brought before the panel that each~~
 24 ~~group constitutes. The total number and group of health~~
 25 ~~care providers brought before the panel must be determined~~

1 from the annual report of the panel for the years preceding
 2 the year of assessment, as to all claims closed since April
 3 19, 1977. The amount of the assessment for the group of all
 4 hospitals must be proportionately assessed against each
 5 hospital on the basis of each hospital's total number of
 6 licensed hospital beds, whether used or not, as reflected in
 7 the most recent compilation of the department of health and
 8 environmental sciences. The amount of the assessment for the
 9 group of all physicians must be equally assessed against all
 10 physicians. The amount of the assessment for the group of
 11 all other health care facilities must be equally assessed
 12 against all other health care facilities. Surplus funds, if
 13 any, over and above the amount required for the annual
 14 administration of the chapter shall be retained by the
 15 director and used to finance the administration of this
 16 chapter in succeeding years, in which event the director
 17 shall reduce the annual assessment in subsequent years,
 18 commensurate with the proper administration of this chapter.

19 (3) The annual surcharge shall be paid on or before
 20 the date physicians' annual registration fees are due under
 21 37-3-313. All unpaid assessments bear a late charge fee
 22 equal to the judgment rate of interest. The late charge fee
 23 is part of the annual surcharge. The director has the same
 24 powers and duties in connection with the collection of and
 25 failure to pay the annual surcharge as the department of

1 commerce has under 37-3-313 in connection with physicians'
 2 annual registration fees."

3 Section 3. Section 27-6-301, MCA, is amended to read:
 4 "27-6-301. How cases submitted. Claimants shall submit
 5 a case for the consideration of the panel prior to filing a
 6 complaint in any district court or other court sitting in
 7 Montana by addressing an application, in writing, signed by
 8 the patient claimant or his attorney, to the director of the
 9 panel."

10 Section 4. Section 27-6-303, MCA, is amended to read:
 11 "27-6-303. Amendments to application. ~~Any--amendments~~
 12 ~~Amendments~~ to the application ~~must may be filed-not-less~~
 13 ~~than-14-days-prior-to-the-hearing-date~~ authorized by rule."

14 Section 5. Section 27-6-401, MCA, is amended to read:
 15 "27-6-401. Composition of panel. (1) Those eligible to
 16 sit on the panel are health care providers licensed pursuant
 17 to Montana law and residing in Montana and the members of
 18 the state bar of Montana. Six panel members shall sit in
 19 review of each case. Three panel members from--the--health
 20 care--provider's--profession who are physicians and three
 21 panel members from-the-state-bar who are attorneys shall sit
 22 in review of each case in which the claim is heard only
 23 against one or more physicians. If the claim is heard only
 24 against one or more health care facilities, two of the panel
 25 members must be administrators of the same type of health

1 care facility or facilities, one panel member must be a
 2 physician, and three panel members must be attorneys.

3 (2) In these all other cases ~~where--the--theory--of~~
 4 ~~respondeat--superior--or--some--other--derivative--theory--of~~
 5 ~~recovery-is-employed,~~ two of the panel members shall must be
 6 ~~chosen-from-the-individual-health-care-provider's-profession~~
 7 ~~and physicians,~~ one panel member shall must be chosen--from
 8 ~~the--profession--of--the~~ an administrator of one-of the SAME
 9 TYPE OF health care provider-named-a-respondent-as-employer,
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