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SB BILL NO. 156

INTRODUCED BY

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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING HEALTH CARRIERS AND MANAGED CARE ORGANIZATIONS FROM INTERFERING WITH CERTAIN MEDICAL COMMUNICATIONS MADE BY PERSONS PROVIDING HEALTH CARE SERVICES IN A MANAGED CARE SETTING; PROVIDING DEFINITIONS; PROVIDING A PENALTY; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 4], unless the context requires otherwise, the following definitions apply:

(1) "Enrollee" means the individual to whom a health care service is provided or will be provided by a managed care organization.

(2) "Health care provider" or "provider" means an individual licensed or certified pursuant to Title 37 to provide health care services through a managed care organization.

(3) "Health carrier" means an entity that by policy, contract, certificate, or agreement agrees to provide, deliver, arrange for, pay for, or reimburse the costs of a health care service to an enrollee.

(4) "Health plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse the costs of a health care service to an enrollee.

(5) "Managed care organization" means an entity from which an enrollee agrees to use health care providers who are managed by, owned by, under contract with, or employed by a health carrier or managed care organization. The term includes a health maintenance organization.

(6) "Medical communication" means:

(a) a communication made by a health care provider to an enrollee or to the guardian or other legal representative of an enrollee receiving health care services from the provider:

(i) concerning the mental or physical health care needs or treatment of the enrollee and the provisions, terms, or requirements of the health plan or another health plan relating to the needs or treatment of the enrollee; and

1 (ii) including a communication concerning:

2 (A) a test, consultation, or treatment option and a risk or benefit associated with the test,
3 consultation, or option;

4 (B) variation among health care providers and health care facilities, as defined in 50-5-101, in
5 experience, quality of health care services, or health outcomes;

6 (C) the basis or standard for the decision of the enrollee's health carrier or managed care
7 organization or another health carrier or managed care organization to authorize or deny a health care
8 service;

9 (D) the process used by the enrollee's health carrier or managed care organization or another health
10 carrier or managed care organization to determine whether to authorize or deny a health care service;

11 (E) a financial incentive or disincentive provided by the enrollee's health carrier or managed care
12 organization or another health carrier or managed care organization to a health care provider to authorize
13 or deny a health care service; or

14 (F) the basis for termination of the contract to provide health care services made between the
15 provider and the health carrier or managed care organization;

16 (b) a communication made by a health care provider to another health care provider, an employee
17 or contractor of the enrollee's managed care organization, or an employee of the health carrier advocating
18 a particular method of treatment on behalf of an enrollee.

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20 **NEW SECTION. Section 2. Gag clauses and other action affecting medical communications**
21 **prohibited -- exceptions.** (1) A health carrier or managed care organization may not by an oral or written
22 contract, by an oral or written direction or requirement, or by a financial inducement or penalty prohibit or
23 discourage a provider from making a medical communication to an enrollee. A contract, direction,
24 requirement, or financial inducement or penalty violating this subsection is void.

25 (2) Subsection (1) does not apply to:

26 (a) an oral or written contract, direction, requirement, or financial inducement or penalty prohibiting
27 a provider from disclosing a trade secret, as defined in 30-14-402, to the same extent as other employees
28 or contractors of the health carrier or managed care organization are prohibited from disclosing the trade
29 secret;

30 (b) an oral or written contract, direction, requirement, or financial inducement or penalty prohibiting

1 a health care provider from referring an enrollee to another health plan or managed care organization in
2 which the provider making the referral has a direct financial interest; and

3 (c) the terms of an oral or written contract mutually agreed upon by a health carrier or managed
4 care organization and a provider requiring the provider to participate in and cooperate with all programs,
5 policies, and procedures implemented by the health carrier or managed care organization to ensure, review,
6 or improve the quality of health care.

7

8 **NEW SECTION. Section 3. Sanction because of medical communication prohibited.** A health
9 carrier or managed care organization may not take any of the following actions with regard to a health care
10 provider because the provider made a medical communication to an enrollee or to the guardian or legal
11 representative of the enrollee:

12 (1) terminate an agreement between the health carrier or managed care organization and the health
13 care provider to provide health care services;

14 (2) reduce compensation to the provider;

15 (3) demote the provider in regard to relative seniority within the managed care organization;

16 (4) transfer the provider to other duties within the managed care organization;

17 (5) deny the provider admitting or other privileges; or

18 (6) take other action against the provider in retaliation for a medical communication made by the
19 provider to an enrollee.

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21 **NEW SECTION. Section 4. Civil penalty -- civil action for collection of penalty.** (1) A health carrier
22 or a managed care organization violating [section 2 or 3] is subject to a civil penalty not to exceed \$10,000
23 for each violation. Each day of violation constitutes a separate violation for the purposes of this section.

24 (2) A health care provider making a medical communication to an enrollee in violation of a contract,
25 direction, requirement, or financial inducement or penalty prohibited by [section 2] may bring a civil action
26 to collect the penalty provided for in subsection (1) in the district court for the county in which the
27 communication was made.

28 (3) A health care provider with whom a contract to provide health care services to enrollees is
29 terminated in violation of [section 3] may bring a civil action to collect the penalty provided for in
30 subsection (1) in the district court for the county in which the provider resides.

1 (4) In addition to other enforcement methods provided by law, the commissioner may bring a civil
2 action in the district court of the first judicial district to collect the civil penalty provided for in subsection
3 (1) from a person violating a provision of [sections 1 through 4]. An amount collected by the commissioner
4 pursuant to this section must be deposited in the general fund.

5

6 NEW SECTION. **Section 5. Codification instruction.** [Sections 1 through 4] are intended to be
7 codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 4].

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9 NEW SECTION. **Section 6. Applicability.** [This act] applies to contracts entered into or renewed
10 after [the effective date of this act] between a health care provider and a health carrier or managed care
11 organization.

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