

WORKING DRAFT

SENATE FILE NO. _____

Medical malpractice insurance subsidy.

Sponsored by: Senator(s) MASSIE

A BILL

for

1 AN ACT relating to the provision of health medical care and
2 services; providing for the state payment of a portion of
3 physician medical malpractice premiums under specified
4 circumstances; establishing a medical insurance liability
5 fund account; providing appropriations; stating legislative
6 findings; providing definitions; providing a sunset date;
7 making conforming amendments; and providing for an
8 effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 26-33-201 through 26-33-206 are
13 created to read:

14

15

ARTICLE 2

1 MEDICAL INSURANCE LIABILITY FUND

2

3 **26-33-201 Legislative Findings.**

4

5 (a) The Wyoming legislature finds that:

6

7 (i) Physicians' medical malpractice insurance
8 premiums in Wyoming are increasing significantly. These
9 increases are such that some Wyoming physicians may be
10 unable to afford the increased premiums and may be forced
11 to limit or close their practices, or in some cases, to
12 leave the state;

13

14 (ii) Wyoming has difficulty recruiting and
15 retaining sufficient numbers of physicians to practice in
16 various parts of the state;

17

18 (iii) Sufficient availability of physicians
19 throughout the state is critical to the availability of
20 adequate medical care for Wyoming citizens, particularly
21 individuals under the Wyoming Medical Assistance and
22 Services Act and the Wyoming Uninsured Child Health
23 Insurance Program, as well as to other needy individuals;

24

1 **testimony presented. Significant differences are**
2 **noted in staff comments within 604.**
3

4 **26-33-202. Definitions.**

5
6 (a) As used in this article:

7
8 (i) "Account" means the medical insurance
9 liability account created by W.S. 26-33-203;

10
11 (ii) "Qualified physician" means an individual
12 who:

13
14 (A) Is duly licensed and in good standing
15 with the Wyoming Board of Medicine and whose license is
16 under no disciplinary restrictions, limitations or
17 conditions during the period for which he is under contract
18 with the state as provided in this article;

19 ***** STAFF COMMENTS *****
20 **This would include medical doctors, doctors of**
21 **osteopathy and physician assistants but would not**
22 **include dentists, podiatrists, optometrists or**
23 **chiropractors. The limitation that there can be**
24 **no restrictions on the license is not found in**
25 **either the Mockler or Robinson drafts.**
26
27

28 (B) Is actively engaged in the full or part
29 time practice of medicine within the state of Wyoming

1 during the entire contract period for which the physician
2 seeks reimbursement under this act;

3

4 (C) Possesses and maintains in force a
5 policy of medical professional liability insurance with an
6 authorized insurer with minimum limits of coverage of one
7 million dollars (\$1,000,000.00) per occurrence and three
8 million dollars (\$3,000,000.00) in the aggregate;

9

***** STAFF COMMENTS *****

10 **This requirement is not found in the Mockler or**
11 **Robinson drafts. As a practical matter the**
12 **testimony has been that this is standard (but not**
13 **required) coverage in the market today.**

14

15 (D) Has entered into a contract with the
16 state agreeing to provide medical care for the period of
17 the contract to any Wyoming resident who is qualified under
18 the Wyoming Medical Assistance and Services Act or the
19 Wyoming Uninsured Child Health Insurance Program and who
20 seeks medical care which the physician is qualified to
21 provide.

22

23 **26-33-203. Medical insurance liability account**
24 **created; use of funds.**

25

1 (a) There is created a medical insurance liability
2 account. Funds in the account shall be used as provided in
3 this article for a premium reimbursement program for
4 medical professional liability insurance policies issued by
5 authorized insurers.

6

7 (b) The account and any investment income earned from
8 the account shall be held in trust and invested and
9 reinvested by the state treasurer pursuant to W.S. 9-4-711.

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***** STAFF COMMENTS *****

**Unlike the Mockler bill, there is no continuous
appropriation of funds in the account.**

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***** STAFF COMMENTS *****

**The administration is overseen by the insurance
commissioner in this draft. In the Mockler
draft, it is the department of health. The
listing of the commissioner duties is more
extensive in this draft.**

21 (c) The commissioner shall oversee the administration
22 and management of the account. The commissioner's duties
23 shall include, but are not limited to:

24

25 (i) Fulfilling the purposes and objectives of
26 this article;

27

1 (ii) Ensuring the account remains financially
2 sound;

3

4 (iii) Minimizing transaction costs and
5 administrative expenses of this article;

6

7 (iv) Effectively reducing premiums for medical
8 malpractice insurance for qualified physicians under this
9 article;

10

11 (v) Providing the staff, resources and
12 administrative support necessary to implement this article;
13 and

14

15 (vi) Submitting reports on or before October 1
16 of each year this article is in effect to the joint interim
17 labor, health and social services interim committee, the
18 joint appropriations interim committee and the governor,
19 reporting the status of the account, payments made,
20 estimated future expenditures of the account and the
21 effectiveness of this article in maintaining medical care
22 for the needy, the poor and other residents of the state's
23 communities.

24

***** STAFF COMMENTS *****

1 **There is no reporting requirement in the Mockler**
2 **or Robinson drafts.**

3

4 **26-33-204. Fund administration.**

5

6 (a) Commencing August 1, 2004, and continuing through
7 June 30, 2006, a qualified physician shall become eligible
8 for the reimbursement payments contemplated by this
9 article.

10

***** STAFF COMMENTS *****

11 **There is no specific time period for contracting**
12 **and reimbursement schedule in the Mockler or**
13 **Robinson drafts; although Robinson has a cutoff**
14 **date for contracting.**

15

16 (b) Reimbursement payments to qualified physicians
17 shall:

18

19 (i) Offset up to twenty-five percent (25%) of
20 the cost of a qualified physician's annual medical
21 malpractice insurance premiums;

22

23 (ii) Not exceed thirty-five thousand dollars
24 (\$35,000.00) per year during the period of a contract
25 specified in W.S. 26-33-202(a)(i)(D);

26

1 (iii) Be made only for the benefit of a
2 qualified physician's medical malpractice insurance premium
3 and shall not be made for any other purpose or use.

4 ***** STAFF COMMENTS *****

5 **The Mockler draft provides for reimbursement of**
6 **exactly 50% of the malpractice premiums**
7 **attributable to care for medicaid and CHIPS**
8 **patients, with no cap. Robinson's is different**
9 **as explained in 604 comments.**
10

11 (c) The commissioner shall have authority to adopt
12 rules and regulations to implement this article. Pursuant
13 to those rules and regulations, the commissioner shall:

14
15 (i) Determine the information a qualified
16 physician must provide to qualify for payments under this
17 article and shall create forms to collect the required
18 information. The information submitted by a qualifying
19 physician to the commissioner shall not be open to public
20 inspection;

21 ***** STAFF COMMENTS *****

22 **The exclusion from the public records act is**
23 **different in the Mockler bill. Payments and**
24 **names of physicians receiving payments are public**
25 **in that bill. All other information is not.**
26 **There is no explicit exclusion from the public**
27 **records act in the Robinson bill.**
28

29 (ii) Have the authority to determine whether
30 payments, or any portion of a payment, should continue to

1 be paid to a qualifying physician. In this regard, the
2 commissioner shall take into account any relevant
3 information about the physician, the physician's personal
4 claims history, the regional cost of premiums, whether the
5 physician continues to qualify for the payments
6 contemplated by this act, and whether the physician has
7 failed to comply with any statutory and ethical
8 responsibilities connected with the practice of medicine.

9 ***** STAFF COMMENTS *****

10 **There is no such discretion in the Mockler draft.**
11 **A hard amount as opposed to "up to" is provided.**
12 **Robinson's is different as explained in 604.**
13

14 **26-33-205. Contract Enforcement.**

15
16 (a) The commissioner shall promulgate rules and
17 regulations providing for administration of contracts
18 required under this article and shall also promulgate the
19 form of contract required under this article.

20
21 (b) Any qualified physician who receives assistance
22 under this article, or who has entered into a contract
23 under this article, who thereafter fails or refuses to
24 fulfill the terms of the contract, shall be in breach of
25 the contract, and shall immediately reimburse the state for
26 any and all payments received under this article. The

1 provisions of this subsection shall be incorporated in any
2 contract entered into pursuant to this article.

3 ***** STAFF COMMENTS *****

4 **The language for repayment upon breach is a bit**
5 **different in all three drafts. No costs of**
6 **collection is provided for in this draft.**
7

8 (c) The commissioner shall obtain the assistance of
9 the attorney general in recovering any amount due to the
10 state in the event of any contract breach by a qualified
11 physician.
12

13 **26-33-206. Repeal.**
14

15 W.S. 26-33-201 through 26-33-206 are repealed
16 effective June 30, 2006.

17 ***** STAFF COMMENTS *****

18 **There is no sunset in the Mockler draft.**
19 **Robinson's contains a June 30, 2007.**
20

21 ***** STAFF COMMENTS *****

22 **The following section contains conforming**
23 **amendments added to the W1 version. They are**
24 **needed if the above remains in the insurance code**
25 **as 26-33-201 et. seq.**
26
27

28 **Section 2.** W.S. 26-33-101(a) (intro), 26-33-102(a) and
29 (b), 26-33-103, 26-33-105(a), 26-33-109 and 26-33-110(a)
30 are amended to read:

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2

26-33-101. Definitions.

3

4

(a) As used in this ~~chapter~~ article:

5

6

26-33-102. Qualification.

7

8

(a) To be qualified under this ~~chapter~~ article, a
9 physician shall annually purchase health care professional
10 liability insurance coverage of not less than fifty
11 thousand dollars (\$50,000.00) per occurrence for any act,
12 error or omission relating to medical care rendered during
13 the policy year and pay the surcharge pursuant to W.S.
14 26-33-105(c).

15

16

(b) A physician failing to qualify under this section
17 is not covered by this ~~chapter~~ article.

18

19

26-33-103. Insurance coverage.

20

21

A qualified physician shall be insured in a minimum amount
22 of fifty thousand dollars (\$50,000.00) against a claim for
23 malpractice. Any award or settlement adjudicated or
24 allowed on a malpractice claim in excess of fifty thousand

1 dollars (\$50,000.00) or limits of other underlying coverage
2 if greater occurring during any year in which the physician
3 is qualified under this ~~chapter~~ article shall be paid from
4 the account subject to the limitation that obligations from
5 the account shall not exceed one million dollars
6 (\$1,000,000.00) in any calendar year for one (1) or more
7 awards or settlements against an individual physician.

8
9 **26-33-105. Medical liability compensation fund.**

10
11 (a) There is created a medical liability compensation
12 account within the trust and agency fund, the monies of
13 which shall be collected by the commissioner for exclusive
14 use for the purposes stated in this ~~chapter~~ article. The
15 account and any investment income from it shall be held in
16 trust and invested and reinvested by the state treasurer
17 pursuant to W.S. 9-4-711.

18
19 **26-33-109. Contents of policies.**

20
21 Any policy issued under this ~~chapter~~ article is presumed to
22 comply with this ~~chapter~~ article. The insurer assumes all
23 obligations to pay an award imposed against its insured
24 under this ~~chapter~~ article and no policy termination by

1 cancellation is effective unless at least ninety (90) days
2 before the effective date of the cancellation both the
3 insured and the commissioner receive at their offices, a
4 written notice giving the date upon which termination is
5 effective.

6

7 **26-33-110. Failure to pay claims.**

8

9 (a) If a professional liability insurer, in the
10 regular course of business, fails to pay its portion of any
11 judgment rendered against any physician or any other person
12 insured under this ~~chapter~~ article, the commissioner shall
13 suspend that insurer's certificate of authority until the
14 portion of the judgment allocable to the insurer is paid in
15 full, provided the insurer has the right to a hearing in
16 accordance with W.S. 26-3-115(b).

17

18 **Section 3.**

19 (a) There is appropriated to the medical insurance
20 liability account created by W.S. 26-33-202, ten million
21 eight hundred thousand dollars (\$10,800,000.00) from the
22 budget reserve account for payments to qualified physicians
23 as provided under W.S. 26-33-201 through 26-33-206.

24

