

**WORKING DRAFT**

HOUSE BILL NO. \_\_\_\_\_

Medical review panel

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to the medical review panel; repealing  
 2 existing statutes relating to the medical review panel;  
 3 recreating the medical review panel; specifying the  
 4 creation of the panel is pursuant to article 10, section 4  
 5 of the Wyoming Constitution, as amended; and providing for  
 6 an effective date.

7

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

9

10 **Section 1.** W.S. 9-2-1513 through 9-2-1524 are created  
 11 to read:

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13 **9-2-1513. Short title.**

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1 This act may be cited as the "Wyoming Medical Review Panel  
2 Act".

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4 **9-2-1514. Purpose of provisions.**

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6 (a) The purposes of this act are to:

7 (i) To create a medical review panel, as  
8 authorized by article 10, section 4, of the Wyoming  
9 Constitution, as amended pursuant to 2004 House Joint  
10 Resolution No. 0011, which was ratified by a majority of  
11 the electors voting at the 2004 general election;

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13 (ii) To prevent where possible the filing in  
14 court of actions against health care providers and their  
15 employees for professional liability in situations where  
16 the facts do not permit at least a reasonable inference of  
17 malpractice; and,

18

19 (iii) To make possible the fair and equitable  
20 disposition of such claims against health care providers as  
21 are, or reasonably may be, well founded.

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23 **9-2-1515. Definitions.**

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1 (a) As used in this act:

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3 (i) "Dentist" means a person licensed under W.S.  
4 33-15-108;

5

6 (ii) "Health care provider" means a physician,  
7 dentist, health care facility or any person employed by a  
8 health care facility who, in accordance with law or a  
9 license granted by a state agency, provides health care;

10

11 (iii) "Malpractice claim" means any claim  
12 against a health care provider for alleged medical  
13 treatment, alleged lack of medical treatment, or other  
14 alleged departure from accepted standards of health care  
15 which results in damage to the patient;

16

17 (iv) "Panel" means the medical review panel  
18 provided for under this act;

19

20 (v) "Physician" means a person licensed under  
21 W.S. 33-26-303;

22

23 (vi) "This act" means W.S. 9-2-1513 through  
24 9-2-1524.

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2

**9-2-1516. Service of pleadings; computation of time.**

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(a) The claim, answer, decision and all other pleadings required to be served under this act shall be served in accordance with the Wyoming Rules of Civil Procedure.

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(b) Computation of time periods prescribed or allowed under this act shall be in accordance with rule 6 of the Wyoming Rules of Civil Procedure.

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**9-2-1517. Panel created; compensation; director of panel; appointment and duties; rulemaking.**

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(a) There is created the Wyoming medical review panel.

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(b) The panel shall have a director who shall be the attorney general or his designee and shall conduct the administrative business of the panel and otherwise implement this act. The director may employ personnel or contract for services necessary to implement this act. The director shall promulgate rules and regulations in

1 accordance with the Wyoming Administrative Procedure Act to  
2 implement this act.

3

4 (c) Members of the panel shall receive compensation  
5 while engaged in the business of the board of forty dollars  
6 (\$40.00) per hour for any hour during which a hearing or  
7 part of a hearing is held. Compensation for travel and  
8 other services shall be as provided in W.S. 9-3-102 and  
9 9-3-103. Compensation to any panel member under this  
10 subsection shall not exceed three hundred twenty dollars  
11 (\$320.00) per day.

12

13 **9-2-1518. Claims to be reviewed by panel; prohibition**  
14 **on filing claims in court; tolling of statute of**  
15 **limitation; immunity of panel and witnesses;**  
16 **administration.**

17

18 (a) The panel shall review all malpractice claims  
19 against health care providers filed with the panel except  
20 those claims subject to a valid arbitration agreement  
21 allowed by law or upon which suit has been filed prior to  
22 July 1, 2005. No complaint alleging malpractice shall be  
23 filed in any court against a health care provider before a  
24 claim is made to the panel and its decision is rendered.

1 The running of the applicable limitation period in a  
2 malpractice action is tolled upon receipt by the director  
3 of the application for review and does not begin again  
4 until thirty (30) days after the panel's final decision is  
5 served upon the claimant.

6

7 (b) Panel members and witnesses are absolutely immune  
8 from civil liability for all acts in the course and scope  
9 of the duties under this act, including but not limited to  
10 communications, findings, opinions and conclusions.

11

12 (c) The panel may provide for the administration of  
13 oaths, the receipt of claims filed, the promulgation of  
14 forms required under this act, the issuance of subpoenas in  
15 connection with the administration of this act, and the  
16 performance of all other acts required to fairly and  
17 effectively administer this act. A party requesting a  
18 subpoena shall bear all costs of mileage and witness fees.

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20 **9-2-1519. Claim review procedure; contents of claim;**  
21 **service of claim on provider; answer.**

22

23 (a) Claimants shall submit a case for the  
24 consideration of the panel prior to filing a complaint in

1 any court in this state by addressing a claim, in writing,  
2 signed by the claimant or his attorney, to the director of  
3 the panel. The claim shall contain:

4

5

6 (i) A statement in reasonable detail of the  
7 elements of the health care provider's conduct which are  
8 believed to constitute a malpractice claim, the dates the  
9 conduct occurred, and the names and addresses of all  
10 physicians, dentists and hospitals having contact with the  
11 claimant relevant to the claim and all witnesses;

12

13 (ii) A statement, signed by the claimant,  
14 authorizing the panel to obtain access to all medical,  
15 dental and hospital records and information pertaining to  
16 the claim and, for the purposes of its consideration of  
17 this matter only, waiving any privilege as to the contents  
18 of those records. Nothing in the statement may in any way  
19 be construed as waiving that privilege for any other  
20 purpose or in any other context, in or out of court.

21

22 (b) The claim may be amended by filing an amendment  
23 not less than fourteen (14) days prior to the hearing date.

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1           (c) Upon receipt of a claim, the director shall cause  
2 a true copy of the claim to be served on the health care  
3 providers against whom the claim has been filed.

4

5           (d) The health care provider shall answer the claim  
6 within thirty (30) days after service and shall submit a  
7 statement authorizing the panel to inspect all medical,  
8 dental and hospital records and information pertaining to  
9 the claim except those records which are privileged  
10 pursuant to W.S. 35-17-105. The answer shall be filed with  
11 the director who shall serve a copy on the claimant.

12

13           **9-2-1520. Panel composition; selection;**  
14 **disqualification of panelist; multiple defendants.**

15

16           (a) The panel for each claim reviewed under this act  
17 shall consist of two (2) health care providers licensed in  
18 this state, two (2) members of the state bar and one (1)  
19 lay person who is not a lawyer, health care provider or an  
20 employee of a health care provider. All panel members  
21 shall be residents of this state. If feasible one (1)  
22 member of the panel shall be from the health care  
23 provider's profession or specialty. In those cases where  
24 the theory of respondeat superior or some other derivative



1 theory of recovery is employed, if feasible one (1) member  
2 shall be from the individual health care provider's  
3 profession or specialty and one (1) member shall be from  
4 the profession or specialty of the health care provider  
5 named as employer, master or principal.

6

7 (b) Within five (5) days of receipt, the director  
8 shall notify the state licensing agency of the health care  
9 provider involved and the state bar of the filing of the  
10 claim. Within fourteen (14) days of notification, the  
11 state licensing agency and the state bar shall each provide  
12 the director a list of twelve (12) of its members as  
13 proposed panelists. To the extent possible, the state  
14 licensing agency shall include on the list persons  
15 specializing in the same field or discipline as the health  
16 care provider against whom the claim is made. The director  
17 shall select two (2) from each list to serve as panelists  
18 and shall notify the parties and the panel members selected  
19 of their selection. The four (4) professional panelists  
20 shall unanimously select and appoint one (1) person as a  
21 lay panelist. The director shall notify the parties of the  
22 name of the lay panelist.

23

1           (c) At or prior to the hearing, the panel shall  
2 select a chairman from among its members. The chairman  
3 shall preside over the panel proceedings.

4  
5           (d) If, within fifteen (15) days of receipt of the  
6 notice of selection of the professional panelists, the  
7 claimant or the health care provider against whom the claim  
8 is made files an affidavit stating his belief that a  
9 professional panelist selected by the director cannot be  
10 impartial in reviewing the claim, the panel member is  
11 disqualified, and the director shall select another from  
12 the list. Each party may disqualify not more than three (3)  
13 professional panel members under this subsection.

14  
15           (e) The director may excuse a panelist from serving  
16 if the panelist feels his presence on the panel would be  
17 inappropriate under the circumstances of the case.

18  
19           (f) When a claim is filed against two (2) or more  
20 health care providers, the claim against each health care  
21 provider shall be consolidated for hearing unless by  
22 stipulation of all parties or at the discretion of the  
23 panel, the claims are heard separately.

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1           **9-2-1521. Hearing procedure; review of decision**  
2 **prohibited.**

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4           (a) The director shall set a time and place for the  
5 hearing and provide notice to all parties at least thirty  
6 (30) days prior to the hearing. The proper place for  
7 hearing shall be the county in which an action is required  
8 to be brought according to W.S. 1-5-101 through 1-5-109.  
9 The hearing date shall not be more than one hundred twenty  
10 (120) days after the director receives the claim unless the  
11 director or panel finds good cause to delay the hearing.  
12 At least fifteen (15) days before the hearing the director  
13 shall provide each panel member copies of all claims,  
14 briefs, records and other documents the director considers  
15 necessary.

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17           (b) The hearing shall be conducted in accordance with  
18 rules and regulations promulgated by the director. The  
19 hearing shall be informal, and the Wyoming Rules of  
20 Evidence and, except as specified in this act, the Wyoming  
21 Administrative Procedure Act do not apply. No decision of  
22 the director or the panel is subject to review in a court.  
23 A record of the hearing may be made if so stipulated by all  
24 the parties and the panel. The panel may issue subpoenas

1 to compel the attendance of witnesses as provided under the  
2 Administrative Procedure Act.

3

4 (c) The panel may take the case under advisement or  
5 may request that additional facts, records, witnesses or  
6 other information be obtained and presented to it at a  
7 supplemental hearing, which shall be set for a date not  
8 later than thirty (30) days from the date of the original  
9 hearing unless the claimant or his attorney consents in  
10 writing to a longer period.

11

12 **9-2-1522. Panel deliberations and decision; decision**  
13 **not binding.**

14

15 (a) Upon consideration of all the relevant material,  
16 the panel shall determine whether there is:

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18 (i) Substantial evidence that the acts  
19 complained of occurred and that they constitute  
20 malpractice; and

21

22 (ii) A reasonable probability that the patient  
23 was injured as a result of the acts complained of.

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1           (b) The deliberations of the panel are confidential.  
2 All votes of the panel on the questions for discussion  
3 shall be by secret ballot. The decision shall be by a  
4 majority vote of the panel and shall be signed by the  
5 chairman.

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7           (c) The decision shall be in writing and forwarded to  
8 the director who shall serve copies on the parties. A copy  
9 of the decision shall be sent to the health care provider's  
10 state licensing board.

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12           (d) The panel's decision is not binding upon any  
13 party. The panel may by stipulation of the parties  
14 recommend an award.

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16           **9-2-1523. Confidentiality of panel proceedings;**  
17 **privilege; decision not admissible.**

18

19           (a) The director shall maintain records of all  
20 proceedings before the panel, which shall include the  
21 nature of the act or omissions alleged in the claim, a  
22 brief summary of the evidence presented, the decision of  
23 the panel and any majority or minority opinions filed.  
24 Except as otherwise required by law, any records which may

1 identify any party to the proceedings shall not be made  
2 public and are not subject to subpoena but are to be used  
3 solely for the purpose of compiling statistical data and  
4 facilitating ongoing studies of medical malpractice in this  
5 state.

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

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11 (c) The decision of the panel is not admissible as  
12 evidence in any action.

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14 **9-2-1524. Panel funding; assessments; collection;**  
15 **rulemaking; medical review account; expenditures.**

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17 (a) The panel shall be funded from assessments levied  
18 against and paid by each health care provider covered by  
19 this act. The director shall promulgate rules in  
20 accordance with the Wyoming Administrative Procedure Act to  
21 annually establish appropriate assessments based on the  
22 following guidelines:

23

1           (i) The total amount of the panel's proposed  
2 annual budget shall be prorated among the classes of health  
3 care providers covered by this act based on the number of  
4 cases reviewed by the panel during the immediately  
5 preceding calendar year involving each such class of health  
6 care providers;

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8           (ii) The prorated amount determined for each  
9 class of health care providers shall be divided by the  
10 number of practicing providers within each class of health  
11 care providers to determine the individual assessment;

12

13           (iii) The first four (4) annual assessments for  
14 each resident practicing provider shall be equal to one and  
15 one-fourth (1 1/4) the assessment determined pursuant to  
16 paragraphs (i) and (ii) of this subsection. Thereafter  
17 annual assessments shall be in the amount determined  
18 pursuant to those paragraphs.

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20           (b) The director shall certify the amount of each  
21 assessment to the appropriate licensing board, agency or  
22 authority, and the board, agency or authority shall levy  
23 and collect the assessments annually at the same time as  
24 annual license fees are collected. Assessments collected

1 under this subsection shall be remitted to the director not  
2 later than thirty (30) days from the date of collection and  
3 paid immediately by the director to the state treasurer for  
4 deposit in an account, to be known as the medical review  
5 account, within the earmarked revenue fund.

6

7 (c) Monies in the medical review account shall be  
8 expended by the panel to carry out the purposes of this  
9 section.

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11 **Section 2.** W.S. 9-2-1501 through 9-2-1512 are  
12 repealed.

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14 **Section 3.** This act is effective July 1, 2005.

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(END)