

## HOUSE BILL NO. HB0102

Medical malpractice panel.

Sponsored by: Representative(s) Simpson, Baker, Childers,  
Harvey, Ross and Wostenberg and Senator(s)  
Coe and Meier

A BILL

for

1 AN ACT relating to administration of government; modifying  
2 the Wyoming medical review act; providing an alternative  
3 means to resolve medical malpractice claims; providing for  
4 funding of the medical review panel; authorizing an  
5 additional part-time position; and providing for an  
6 effective date.

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

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10 **Section 1.** W.S. 9-2-1501, 9-2-1502, 9-2-1503(a)(iii),  
11 (v) and by creating a new paragraph (vii) and by  
12 renumbering (vii) as (viii), 9-2-1505(a) and (c),  
13 9-2-1506(a) and by creating a new subsection (d),  
14 9-2-1507(a), (c) and (d), 9-2-1512(a)(intro) and (b) and  
15 26-4-102(b)(i), (ii) and by creating a new paragraph (iii)  
16 are amended to read:

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2

## ARTICLE 15

3

## MEDICAL MALPRACTICE PANEL

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**9-2-1501. Short title.**

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This act may be cited as the "Wyoming Medical ~~Review~~  
Malpractice Panel Act".

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**9-2-1502. Purpose of provisions.**

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The purpose of this act is to provide an alternative means  
to resolve medical malpractice claims 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~~ medical  
malpractice claims ~~against health care providers as are, or  
reasonably may be, well founded~~ that have been filed in  
court and are appropriate for alternative dispute  
resolution.

**9-2-1503. Definitions.**

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2 (a) As used in this act:

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

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10 (A) A physician, dentist, nurse,  
11 podiatrist, pharmacist, chiropractor, optometrist or health  
12 care facility; and

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14 (B) An officer, employee or agent of a  
15 person listed in subparagraph (A) of this paragraph acting  
16 in the course and scope of employment.

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18 (v) "Panel" means the medical ~~review~~ malpractice  
19 panel provided for under this act;

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21 (vii) "Health care facility" means a hospital,  
22 clinic or nursing home where a health care provider  
23 provides health care to patients;

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1                   ~~(vii)~~ (viii) "This act" means W.S. 9-2-1501  
2 through 9-2-1512.

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4                   **9-2-1505. Panel created; compensation; director of**  
5 **panel; appointment and duties; rulemaking.**

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7                   (a) There is created the Wyoming medical ~~review~~  
8 malpractice panel.

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10                  (c) Members of the panel shall receive compensation  
11 while engaged in the business of the board of ~~forty dollars~~  
12 ~~(\$40.00)~~ sixty dollars (\$60.00) per hour for any hour  
13 during which a hearing or part of a hearing is held.  
14 Compensation for travel and other services shall be as  
15 provided in W.S. 9-3-102 and 9-3-103. Compensation to any  
16 panel member under this subsection shall not exceed ~~three~~  
17 ~~hundred twenty dollars (\$320.00)~~ four hundred eighty  
18 dollars (\$480.00) per day.

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20                  **9-2-1506. Claims to be reviewed by panel; tolling of**  
21 **statute of limitation; immunity of panel and witnesses;**  
22 **administration.**

23

1           (a) The panel shall review ~~all~~ malpractice claims  
2 against health care providers filed with the panel ~~except~~  
3 ~~those claims subject to a valid arbitration agreement~~  
4 ~~allowed by law or upon which suit has been filed prior to~~  
5 ~~July 1, 1986. No complaint alleging malpractice shall be~~  
6 ~~filed in any court against a health care provider before a~~  
7 ~~claim is made to the panel and its decision is rendered.~~  
8 ~~The running of the applicable limitation period in a~~  
9 ~~malpractice action is tolled upon receipt by the director~~  
10 ~~of the application for review and does not begin again~~  
11 ~~until thirty (30) days after the panel's final decision is~~  
12 ~~served upon the claimant.~~ as follows:

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14           (i) With the voluntary agreement of both the  
15 complainant and the health care provider; or

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17           (ii) At the request of either the complainant or  
18 the health care provider, provided the court determines  
19 pursuant to Rule 40, Wyoming Rules of Civil Procedure, that  
20 alternative dispute resolution by the medical malpractice  
21 panel is appropriate.

22  
23           (d) Unless an action has been filed, the running of  
24 the applicable limitation period in a malpractice action is

1 tolled upon receipt by the director of the application for  
2 review and does not begin again until thirty (30) days  
3 after the panel's final decision is served upon the  
4 claimant.

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6 **9-2-1507. Claim review procedure; contents of claim;**  
7 **service of claim on provider; answer.**

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9 (a) ~~Claimants shall~~ With agreement of the health care  
10 provider against whom a claim is asserted, a claimant may  
11 submit a case for the consideration of the panel prior to  
12 filing a complaint in any court in this state by addressing  
13 a claim, in writing, signed by the claimant or his  
14 attorney, to the director of the panel. The claim shall  
15 contain:

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17 (i) A statement in reasonable detail of the  
18 elements of the health care provider's conduct which are  
19 believed to constitute a malpractice claim, the dates the  
20 conduct occurred, and the names and addresses of all  
21 ~~physicians, dentists and hospitals~~ health care providers  
22 having contact with the claimant relevant to the claim and  
23 all witnesses;

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1 (ii) A statement, signed by the claimant,  
2 authorizing the panel to obtain access to all medical,  
3 ~~dental and hospital~~ records, including hospital records,  
4 and information pertaining to the claim and, for the  
5 purposes of its consideration of this matter only, waiving  
6 any privilege as to the contents of those records. Nothing  
7 in the statement may in any way be construed as waiving  
8 that privilege for any other purpose or in any other  
9 context, in or out of court; ~~;~~

10  
11 (iii) Written authorization of the health care  
12 provider for submission of the claim for review under this  
13 act.

14  
15 (c) Upon receipt of a claim, the director shall cause  
16 a true copy of the claim to be served on the health care  
17 ~~providers~~ provider against whom the claim has been filed.

18  
19 (d) The health care provider shall answer the claim  
20 within thirty (30) days after service and shall submit a  
21 statement authorizing the panel to inspect all medical,  
22 ~~dental and hospital~~ records, including hospital records,  
23 and information pertaining to the claim except those  
24 records which are privileged pursuant to W.S. 35-17-105.

1 The answer shall be filed with the director who shall serve  
2 a copy on the claimant.

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4 **9-2-1512. Panel funding; medical review account;**  
5 **expenditures .**

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7 (a) The panel shall be funded from ~~assessments levied~~  
8 ~~against and~~ insurance premium taxes paid ~~by each health~~  
9 ~~care provider covered by this act.~~ ~~The director shall~~  
10 ~~promulgate rules in accordance with the Wyoming~~  
11 ~~Administrative Procedure Act to annually establish~~  
12 ~~appropriate assessments based on the following guidelines:~~  
13 in accordance with W.S. 26-4-103 and deposited into the  
14 medical review account as provided in subsection (b) of  
15 this section.

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17 (b) ~~The director shall certify the amount of each~~  
18 ~~assessment to the appropriate licensing board, agency or~~  
19 ~~authority, and the board, agency or authority shall levy~~  
20 ~~and collect the assessments annually at the same time as~~  
21 ~~annual license fees are collected.~~ ~~Assessments collected~~  
22 ~~under this subsection shall be remitted to the director not~~  
23 ~~later than thirty (30) days from the date of collection and~~  
24 ~~paid immediately by the director to~~ The state treasurer for

1 shall deposit in an account, to be known as the medical  
2 review account, within the earmarked revenue fund one  
3 hundred thousand dollars (\$100,000.00) annually as provided  
4 by W.S. 26-4-102(b)(iii).

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6 **26-4-102. Record of receipts; payment to treasurer;**  
7 **credit to fund.**

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9 (b) The commissioner shall promptly pay all monies he  
10 receives from any charges to the state treasurer for credit  
11 to the general fund, except that:

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13 (i) Fees received pursuant to W.S.  
14 26-4-101(a)(v)(A)(I) and (B)(I) and (xiii) shall be paid  
15 and credited as provided in W.S. 26-10-107; ~~and~~

16

17 (ii) Fifty percent (50%) of the gross premium  
18 tax levied upon fire insurance premiums shall be deposited  
19 by the state treasurer in the volunteer firemen's pension  
20 account pursuant to W.S. 35-9-604. For purposes of this  
21 paragraph, the gross premium tax levied upon fire insurance  
22 premiums is equal to twenty-six percent (26%) of the total  
23 gross premium tax levied upon all property, casualty and  
24 multiple line insurers; ~~and~~ and

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(iii) One hundred thousand dollars (\$100,000.00) annually from premium taxes paid pursuant to W.S. 26-4-103 shall be deposited by the treasurer to the medical review account for expenditure pursuant to W.S. 9-2-1512.

**Section 2.** W.S. 9-2-1512(a)(i) through (iii) is repealed.

**Section 3.** The office of the attorney general is authorized one (1) additional part-time position for purposes of carrying out the duties of that office under the Wyoming Medical Review Panel Act.

**Section 4.** This act is effective July 1, 2004.

(END)