

HOUSE BILL NO. HB0193

Tort reform-2.

Sponsored by: Representative(s) Parady and Osborn

A BILL

for

1 AN ACT relating to health care providers; limiting health
2 care providers liability for noneconomic damages; providing
3 for settlement of claims against health care providers;
4 requiring reporting of closed claims by medical malpractice
5 insurers to the insurance commissioner; requiring an annual
6 report and analysis of health care claims by the insurance
7 commissioner; providing for public rate hearings for health
8 care malpractice premium increases, as specified; amending
9 nonrenewal or premium notice requirements for medical
10 malpractice insurance, as specified; providing for
11 mandatory reporting of safety events by health care
12 facilities to the department of health, as specified;
13 requiring an annual report of safety events by the
14 department of health; providing definitions; providing a
15 statement of intent; and providing for an effective date.

16

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

2

3 **Section 1.** W.S. 1-1-201 through 1-1-203 and 35-2-912
4 are created to read:

5

6

ARTICLE 2

7

ACTIONS AGAINST HEALTH CARE PROVIDERS

8

9 **1-1-201. Civil actions against health care providers;**
10 **definitions.**

11

12 (a) As used in this article:

13

14 (i) "Health care facility" means a hospital,
15 clinic or nursing home where a health care practitioner
16 provides health care to patients;

17

18 (ii) "Noneconomic damages" means nonfinancial
19 losses that would not have occurred but for the injury
20 giving rise to the cause of action, including pain and
21 suffering, inconvenience, physical impairment, mental
22 anguish, disfigurement, loss of capacity for enjoyment of
23 life and other nonfinancial losses to the extent the

1 claimant is entitled to recover such damages under general
2 law;

3
4 (iii) "Practitioner" means any person licensed
5 under Wyoming statutes and practicing within the scope of
6 that license as a podiatrist, chiropractor, dentist, nurse,
7 optometrist, pharmacist, physical therapist, physician,
8 surgeon, psychologist or respiratory care practitioner. For
9 the purpose of determining the limitations on noneconomic
10 damages set forth in this article, the term "practitioner"
11 includes any person or entity for whom a practitioner is
12 vicariously liable and any person or entity whose liability
13 is based solely on such person or entity being vicariously
14 liable for the actions of a practitioner.

15

16 **1-1-202. Actions against health care practitioners**
17 **and facilities; limitation on noneconomic damages.**

18

19 (a) With respect to a cause of action for personal
20 injury or wrongful death arising from medical negligence of
21 practitioners, regardless of the number of such practitioner
22 defendants:

23

1 (i) Noneconomic damages shall not exceed five
2 hundred thousand dollars (\$500,000.00) per claimant. No
3 practitioner shall be liable for more than five hundred
4 thousand dollars (\$500,000.00) in noneconomic damages,
5 regardless of the number of claimants;

6
7 (ii) Notwithstanding paragraph (i) of this
8 subsection, if the negligence resulted in death, the total
9 noneconomic damages recoverable from all practitioners,
10 regardless of the number of claimants, under this subsection
11 shall not exceed one million dollars (\$1,000,000.00). In
12 cases that do not involve death, the patient injured by
13 medical negligence may recover noneconomic damages not to
14 exceed one million dollars (\$1,000,000.00) if:

15
16 (A) The trial court determines that a
17 manifest injustice would occur unless increased noneconomic
18 damages are awarded, based on a finding that because of the
19 special circumstances of the case, the noneconomic harm
20 sustained by the injured patient was particularly severe;
21 and

22

1 (B) The trier of fact determines that the
2 defendant's negligence caused a catastrophic injury to the
3 patient.

4
5 (iii) The total noneconomic damages recoverable
6 by all claimants from all practitioner defendants under this
7 subsection shall not exceed one million dollars
8 (\$1,000,000.00) in the aggregate.

9
10 (b) With respect to a cause of action for personal
11 injury or wrongful death arising from medical negligence of
12 a health care facility, regardless of the number of health
13 care facility defendants:

14
15 (i) Noneconomic damages shall not exceed seven
16 hundred fifty thousand dollars (\$750,000.00) per claimant;

17
18 (ii) Notwithstanding paragraph (i) of this
19 subsection, if the negligence resulted in death, the total
20 noneconomic damages recoverable by such claimant from all
21 health care facility defendants under this subsection shall
22 not exceed one million five hundred thousand dollars
23 (\$1,500,000.00). The patient injured by medical negligence
24 of a health care facility defendant may recover noneconomic

1 damages not to exceed one million five hundred thousand
2 dollars (\$1,500,000.00) if:

3

4 (A) The trial court determines that a
5 manifest injustice would occur unless increased noneconomic
6 damages are awarded, based on a finding that because of the
7 special circumstances of the case, the noneconomic harm
8 sustained by the injured patient was particularly severe;
9 and

10

11 (B) The trier of fact determines that the
12 defendant's negligence caused a catastrophic injury to the
13 patient.

14

15 (iii) Health care facility defendants are subject
16 to the cap on noneconomic damages provided in this
17 subsection regardless of the theory of liability, including
18 vicarious liability;

19

20 (iv) The total noneconomic damages recoverable by
21 all claimants from all health care facility defendants under
22 this subsection shall not exceed one million five hundred
23 thousand dollars (\$1,500,000.00) in the aggregate.

24

1 (c) The maximum amounts authorized for noneconomic
2 damages under this section shall be adjusted by the
3 legislature to offset the effects of inflation every ten
4 (10) years, beginning January 1, 2010.

5

6 **1-1-203. Actions against health care facilities**
7 **providing emergency care; limitation on noneconomic**
8 **damages.**

9

10 (a) Notwithstanding W.S. 1-1-202, with respect to a
11 cause of action for personal injury or wrongful death
12 arising from medical negligence of a health care facility
13 providing emergency services and care to persons with whom
14 the facility does not have a then existing relationship for
15 that medical condition:

16

17 (i) Regardless of the number of health care
18 facility defendants, noneconomic damages shall not exceed
19 seven hundred fifty thousand dollars (\$750,000.00) per
20 claimant;

21

22 (ii) Notwithstanding paragraph (i) of this
23 subsection, the total noneconomic damages recoverable by all
24 claimants from all health care facility defendants shall not

1 exceed one million five hundred thousand dollars
2 (\$1,500,000.00);

3

4 (iii) The limitation provided by this subsection
5 applies only to noneconomic damages awarded as a result of
6 any act or omission of providing medical care or treatment,
7 including diagnosis that occurs prior to the time the
8 patient is stabilized and is capable of receiving medical
9 treatment as a nonemergency patient, unless surgery is
10 required as a result of the emergency within a reasonable
11 time after the patient is stabilized, in which case the
12 limitation provided by this subsection applies to any act or
13 omission of providing medical care or treatment which occurs
14 prior to the stabilization of the patient following the
15 surgery.

16

17 (b) The maximum amounts authorized for noneconomic
18 damages under this section shall be adjusted by the
19 legislature to offset the effects of inflation every ten
20 (10) years, beginning January 1, 2010.

21

22 **35-2-912. Mandatory reporting of safety events.**

23

1 (a) For purposes of this section, "safety event" means
2 an unexpected occurrence involving death or serious physical
3 or psychological injury or the risk thereof, including,
4 without limitation, any process variation for which a
5 recurrence would carry a significant chance of a serious
6 adverse outcome. The term includes loss of limb or function.

7

8 (b) Each licensed health care facility that is located
9 within this state shall designate a patient safety officer.

10

11 (c) A patient safety officer shall, not later than
12 seven (7) days after discovering or becoming aware of a
13 safety event that occurred at the medical facility, provide
14 notice of that fact to each patient who was involved in that
15 safety event and separately to the physician of record for
16 each patient.

17

18 (d) A person who is employed by a health care facility
19 shall, within twenty-four (24) hours after becoming aware of
20 a safety event that occurred at the health care facility,
21 notify the patient safety officer of the facility of the
22 safety event and the patient safety officer shall, within
23 seven (7) days after receiving notification, report the

1 date, the time and a brief description of the safety event
2 to the department.

3

4 (e) If the patient safety officer of a health care
5 facility personally discovers or becomes aware, in the
6 absence of notification by another employee, of a safety
7 event that occurred at the health care facility, the patient
8 safety officer shall, within seven (7) days after
9 discovering or becoming aware of the safety event, report
10 the date, time and brief description of the safety event to
11 the department.

12

13 (f) Any notice, report, document and any other
14 information compiled or disseminated pursuant to the
15 provisions of this section is confidential, is not
16 admissible in evidence in any administrative or legal
17 proceeding conducted in this state and is not a public
18 record.

19

20 (g) The department shall collect and maintain reports
21 received pursuant to this section. On or before March 30
22 of each year, the department shall prepare and publish a
23 report and analysis of all reported safety events for the
24 previous year, including a trend analysis to the extent

1 previous years' data is available. The report shall be
2 forwarded to the governor, the health care commission and
3 the legislature's management council. In its annual report
4 and any other public document, the department shall ensure
5 that all referenced information is aggregated so as not to
6 reveal the identity of a specific person or health care
7 facility.

8

9 (h) No person is subject to any criminal penalty or
10 civil liability for libel, slander or any similar cause of
11 action in tort if he, without malice:

12

13 (i) Reports a safety event to a safety officer, a
14 supervisor or quality control committee within the same
15 health care facility, to the department or to another
16 governmental entity with appropriate jurisdiction;

17

18 (ii) Compiles, prepares or disseminates
19 information regarding a safety event or events as required
20 by this section; or

21

22 (iii) Performs any other act authorized or
23 required by this section.

24

1 **Section 2.** W.S. 9-2-1502, 9-2-1503(a) (iii),
2 9-2-1505(c), 9-2-1506(a), 9-2-1507(a) (i), (ii), (c) and
3 (d), 26-3-124(a) (intro) and by creating new paragraphs (iv)
4 and (v) and (b), 26-14-106 by creating new subsections (g)
5 and (h), 26-35-203(b) and 26-35-204(b) are amended to read:

6

7 **9-2-1502. Purpose of provisions.**

8

9 The purpose of this act is to prevent where possible the
10 filing in court of actions against health care providers
11 and their employees for professional liability in
12 situations where the facts do not permit at least a
13 reasonable inference of malpractice and to make possible
14 the fair and equitable disposition of ~~such~~ medical
15 malpractice claims against health care providers as are, or
16 reasonably may be, well founded.

17

18 **9-2-1503. Definitions.**

19

20 (a) As used in this act:

21

22 (iii) "Health care provider" means:

23

1 (A) A physician, dentist, nurse,
 2 podiatrist, pharmacist, chiropractor or optometrist;

3

4 (B) A health care facility; or

5

6 (C) Any person employed by a health care
 7 facility ~~who, acting in the course and scope of employment~~
 8 and in accordance with ~~law or~~ a license granted by a state
 9 agency; ~~provides health care;~~

10

11 **9-2-1505. Panel created; compensation; director of**
 12 **panel; appointment and duties; rulemaking.**

13

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

23

1 **9-2-1506. Claims to be reviewed by panel; prohibition**
2 **on filing claims in court; tolling of statute of**
3 **limitation; immunity of panel and witnesses;**
4 **administration.**

5
6 (a) The panel shall review all malpractice claims
7 against health care providers filed with the panel except
8 those claims subject to a valid arbitration agreement
9 allowed by law or upon which suit has been filed prior to
10 ~~July 1, 1986~~ January 1, 2005. No complaint alleging
11 malpractice shall be filed in any court against a health
12 care provider before a claim is made to the panel and its
13 decision is rendered. The running of the applicable
14 limitation period in a malpractice action is tolled upon
15 receipt by the director of the application for review and
16 does not begin again until thirty (30) days after the
17 panel's final decision is served upon the claimant.

18
19 **9-2-1507. Claim review procedure; contents of claim;**
20 **service of claim on provider; answer.**

21
22 (a) Claimants shall submit a case for the
23 consideration of the panel prior to filing a complaint in
24 any court in this state by addressing a claim, in writing,

1 signed by the claimant or his attorney, to the director of
2 the panel. The claim shall contain:

3

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

11

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

21

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

1

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

10

11 **26-3-124. Annual statement; mandatory reporting of**
12 **claims against health care providers; confidentiality;**
13 **abstract of statistics.**

14

15 (a) Any insurer writing coverage for health care
16 malpractice in this state, ~~by March 1 of each year~~ within
17 thirty (30) days after the end of each calendar quarter,
18 shall file with the commissioner a report of all claims
19 against a health care provider and a report of all awards
20 or settlements given in cases against health care
21 providers. The report shall contain the following
22 information only for the preceding calendar year:

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24 (iv) For each claim:

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(A) Specialty coverage of the insured;

(B) Insured's policy number;

(C) Nature and substance of the claim;

(D) Date on which the claim arose;

(E) Age of the claimant or plaintiff;

(F) After final disposition of the claim, the date and manner of disposition, whether by judgment, settlement or otherwise, and an itemization of the amounts paid, if any, for:

(I) Medical and prescription costs;

(II) Economic damages;

(III) Noneconomic damages;

(IV) Attorneys fees, costs and expenses.

1

2

(G) Expenses incurred, including costs of attorneys and experts; and

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5

(H) Any additional information required by the commissioner.

7

8

(v) The number of claims against an insured if more than one (1) claim has been filed against the insured in the preceding calendar year, without revealing the identity of the insured.

12

13

(b) The names of health care providers ~~and shall not~~ be disclosed in information reported under subsection (a) of this section. Any records pertaining thereto are confidential. The commissioner shall prepare an abstract of all pertinent statistics for inclusion in his annual report to the governor pursuant to W.S. 9-2-1014, and shall in addition prepare and publish by March 30 of each year a trend analysis of closed claim data, financial reports and rate filings for health care malpractice insurance for the previous calendar year.

23

24

26-14-106. Rate regulation.

1

2 (g) For rates regulated pursuant to subsection (b) of
3 this section, there shall be a public hearing if requested
4 by at least ten (10) policyholders affected by a proposed
5 rate increase or an association representing at least ten
6 (10) policyholders affected by a proposed rate increase.
7 The hearing shall be held within sixty (60) days of the
8 request for approval unless the commissioner delays the
9 hearing for good cause.

10

11 (h) Any professional liability insurance for any
12 health care provider licensed under title 33 of the Wyoming
13 statutes shall be deemed a noncompetitive market pursuant
14 to subsection (b) of this section.

15

16 **26-35-203. Nonrenewal; notice.**

17

18 (b) A policy may be nonrenewed by the insurer at its
19 expiration or anniversary date by giving written notice of
20 nonrenewal as provided in W.S. 26-35-101, not less than
21 forty-five (45) days, or if the policy is a professional
22 malpractice liability policy not less than ninety (90)
23 days, prior to the expiration or anniversary date of the
24 policy.

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26-35-204. Renewal with altered terms; notice.

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(b) The renewal terms and statement of premium due shall be given pursuant to W.S. 26-35-101 not less than forty-five (45) days, or if the policy is a professional malpractice liability policy not less than sixty (60) days, prior to the expiration or anniversary date of the original policy.

Section 3. It is the intent of the legislature in enacting this legislation, if a constitutional amendment authorizing limitation of damages is approved by the electors of the state, to overrule the effect of the Wyoming supreme court decision in Hoem v. State, 756 P.2d 780 (Wyo. 1988) and to make effective the provisions of the Wyoming Medical Review Panel Act.

1 **Section 4.** This act is effective immediately upon
2 certification by the Secretary of State that the amendment
3 to the Wyoming Constitution authorizing the legislature to
4 provide by general law for the limitation of damages and
5 the use of medical review panels has been approved by the
6 electors of the state in the manner required by Article 20,
7 Section 1 of the Wyoming Constitution.

8

9

(END)