

HOUSE BILL NO. HB0083

Medical review panel-2.

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; providing an  
6 appropriation; and providing for 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 9-2-1523 are created  
11 to read:

12

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

14

15 This act may be cited as the "Wyoming Medical Review Panel  
16 Act".

17

1           **9-2-1514. Purpose of provisions.**

2

3           (a) The purposes of this act are:

4

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

10

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

16

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

20

21           **9-2-1515. Definitions.**

22

23           (a) As used in this act:

24

1           (i) "Health care provider" means a person or  
2 facility licensed, certified or otherwise authorized by the  
3 law of this state to provide health care in the ordinary  
4 course of business or practice of a profession, but does  
5 not include a person who provides health care solely  
6 through the sale or dispensing of drugs or medical devices;

7

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

13

14           (iii) "Panel" means the medical review panel  
15 provided for under this act;

16

17           (iv) "Reasonable probability" means a factual  
18 basis which might lead a reasonable mind to the conclusion.  
19 Where there is evidence in the record and room for two (2)  
20 opinions, the conclusion shall be reached honestly and upon  
21 due consideration;

22

23           (v) "Substantial evidence" means relevant and  
24 competent evidence that a reasonable mind might accept as

1 adequate to make a finding of fact. It may be less than  
2 the weight of the evidence, but it shall not be clearly  
3 contrary to the overwhelming weight of the evidence. More  
4 is required to meet the burden than a mere scintilla of  
5 evidence or suspicion of the existence of a fact to be  
6 established;

7

8 (vi) "This act" means W.S. 9-2-1513 through  
9 9-2-1523.

10

11 **9-2-1516. Service of pleadings; computation of time.**

12

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

17

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

21

22 **9-2-1517. Panel created; compensation; director of**  
23 **panel; appointment and duties; rulemaking.**

24

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

3

4 (b) The panel shall have a director who shall be the  
5 attorney general or his designee and shall conduct the  
6 administrative business of the panel and otherwise  
7 implement this act. The director may employ personnel or  
8 contract for services necessary to implement this act. The  
9 director shall promulgate rules and regulations in  
10 accordance with the Wyoming Administrative Procedure Act to  
11 implement this act.

12

13 (c) Members of the panel shall receive compensation  
14 while engaged in the business of the board of five hundred  
15 dollars (\$500.00) for each one-half (1/2) day or portion  
16 thereof the panel is convened, plus two hundred dollars  
17 (\$200.00) for preparation days, not to exceed one (1)  
18 preparation day for each day or portion thereof the panel  
19 is convened. Compensation for travel and other services  
20 shall be as provided in W.S. 9-3-102 and 9-3-103.

21

22 **9-2-1518. Claims to be reviewed by panel; prohibition**  
23 **on filing claims in court; tolling of statute of**

1 **limitation; immunity of panel and witnesses;**  
2 **administration.**

3

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

17

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

22

23 (c) The panel may provide for the administration of  
24 oaths, the receipt of applications for claim review, the

1 promulgation of forms required under this act, the issuance  
2 of subpoenas in connection with the administration of this  
3 act, and the performance of all other acts required to  
4 fairly and effectively administer this act. A party  
5 requesting a subpoena shall bear all costs of mileage and  
6 witness fees.

7

8 **9-2-1519. Claim review procedure; contents of**  
9 **application for claim review; service of application for**  
10 **claim review on provider; answer.**

11

12 (a) Unless the claimant and respondent agree by  
13 written statements to waive submission to the panel,  
14 claimants shall submit a case for the consideration of the  
15 panel prior to filing a complaint in any court in this  
16 state by addressing an application for claim review, in  
17 writing, signed by the claimant or his attorney, to the  
18 director of the panel. The application for claim review  
19 shall contain:

20

21 (i) A statement in reasonable detail of the  
22 elements of the health care provider's conduct which are  
23 believed to constitute a malpractice claim, the dates the  
24 conduct occurred, and the names and addresses of all health

1 care providers having contact with the claimant relevant to  
2 the claim and all witnesses;

3

4 (ii) A medical record release form, signed by  
5 the claimant, authorizing the panel to obtain access to all  
6 health care provider records and information pertaining to  
7 the claim and, for the purposes of its consideration of  
8 this matter only, waiving any privilege as to the contents  
9 of those records. Nothing in the statement may in any way  
10 be construed as waiving that privilege for any other  
11 purpose or in any other context, in or out of court.

12

13 (b) The claimant shall submit, within forty-five (45)  
14 days following the submission of the application for claim  
15 review, a statement prepared and signed by an expert in the  
16 specialty or subspecialty of medical practice at issue,  
17 setting forth the basis for the expert's belief that the  
18 conduct is believed to constitute a malpractice claim and  
19 the evidence currently available to support the expert's  
20 opinion.

21

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



1

2 (d) Upon receipt of an application for claim review,  
3 the director shall cause a true copy of the application to  
4 be served on the health care providers against whom the  
5 application for claim review has been filed.

6

7 (e) The health care provider shall answer the  
8 application for claim review within thirty (30) days after  
9 service of the statement required under subsection (b) of  
10 this section and shall submit a statement authorizing the  
11 panel to inspect all health care provider records and  
12 information pertaining to the claim except those records  
13 which are privileged pursuant to W.S. 35-2-910 or 35-17-105  
14 or 42 U.S.C. 11137(b). The answer shall be filed with the  
15 director who shall serve a copy on the claimant. If the  
16 health care provider fails to file an answer to the  
17 application for claim review, the claimant may immediately  
18 pursue the claim in a court of competent jurisdiction.

19

20 **9-2-1520. Panel composition; selection;**  
21 **disqualification of panelist; multiple defendants.**

22

23 (a) The panel for each claim reviewed under this act  
24 shall consist of two (2) health care providers licensed in

1 this state, two (2) members of the state bar and one (1)  
2 lay person who is not an attorney, health care provider or  
3 an employee of an attorney or health care provider. All  
4 panel members shall be residents of this state. If  
5 feasible one (1) member of the panel shall be from the  
6 health care provider's profession or specialty. In those  
7 cases where the theory of respondeat superior or some other  
8 derivative theory of recovery is employed, if feasible one  
9 (1) member shall be from the individual health care  
10 provider's profession or specialty and one (1) member shall  
11 be from the profession or specialty of the health care  
12 provider named as employer, master or principal.

13

14 (b) Within five (5) days of receipt, the director  
15 shall notify the state licensing agency of the health care  
16 provider involved and the state bar of the filing of the  
17 application for claim review. Within fourteen (14) days of  
18 notification, the state licensing agency and the state bar  
19 shall each provide the director a list of twelve (12) of  
20 its members as proposed panelists. To the extent possible,  
21 the state licensing agency shall include on the list  
22 persons specializing in the same field or discipline as the  
23 health care provider against whom the application for claim  
24 review is made. The director shall select two (2) from

1 each list to serve as panelists and shall notify the  
2 parties and the panel members selected of their selection.  
3 The four (4) professional panelists shall unanimously  
4 select and appoint one (1) person as a lay panelist. The  
5 director shall notify the parties of the name of the lay  
6 panelist.

7

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

11

12 (d) If, within fifteen (15) days of receipt of the  
13 notice of selection of the professional panelists, the  
14 claimant or the health care provider against whom the  
15 application for claim review is made files an affidavit  
16 stating his belief that a professional panelist selected by  
17 the director cannot be impartial in reviewing the  
18 application for claim review, the panel member is  
19 disqualified, and the director shall select another from  
20 the list. Each party may disqualify not more than three (3)  
21 professional panel members under this subsection.

22

1           (e) The director may excuse a panelist from serving  
2 if the panelist feels his presence on the panel would be  
3 inappropriate under the circumstances of the case.

4

5           (f) When an application for claim review is filed  
6 against two (2) or more health care providers, the  
7 application for claim review against each health care  
8 provider shall be consolidated for hearing unless by  
9 stipulation of all parties or at the discretion of the  
10 panel, the applications for claim review are heard  
11 separately.

12

13           **9-2-1521. Hearing procedure; review of decision**  
14 **prohibited.**

15

16           (a) The director shall set a time and place for the  
17 hearing and provide notice to all parties at least thirty  
18 (30) days prior to the hearing. The proper place for  
19 hearing shall be the county in which an action is required  
20 to be brought according to W.S. 1-5-101 through 1-5-109.  
21 The hearing date shall not be more than one hundred twenty  
22 (120) days after the director receives the application for  
23 claim review unless the director or panel finds good cause  
24 to delay the hearing. At least fifteen (15) days before

1 the hearing the director shall provide each panel member  
2 copies of all applications for claim review, briefs,  
3 records and other documents the director considers  
4 necessary.

5

6 (b) The hearing shall be conducted in accordance with  
7 rules and regulations promulgated by the director. The  
8 hearing shall be informal, and the Wyoming Rules of  
9 Evidence and, except as specified in this act, the Wyoming  
10 Administrative Procedure Act do not apply. No decision of  
11 the director or the panel is subject to review in a court.  
12 A record of the hearing may be made if so stipulated by all  
13 the parties and the panel. The panel may issue subpoenas  
14 to compel the attendance of witnesses as provided under the  
15 Administrative Procedure Act. Fees for any witness  
16 appearing at a hearing under this section shall be paid by  
17 the party calling the witness.

18

19 (c) The panel may take the case under advisement or  
20 may request that additional facts, records, witnesses or  
21 other information be obtained and presented to it at a  
22 supplemental hearing, which shall be set for a date not  
23 later than thirty (30) days from the date of the original

1 hearing unless the claimant or his attorney consents in  
2 writing to a longer period.

3

4 **9-2-1522. Panel deliberations and decision; decision**  
5 **not binding.**

6

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

9

10 (i) Substantial evidence that the acts  
11 complained of occurred and that they constitute  
12 malpractice; and

13

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

16

17 (b) The deliberations of the panel are confidential.  
18 All votes of the panel on the questions for discussion  
19 shall be by secret ballot. The decision shall be by a  
20 majority vote of the panel and shall be signed by the  
21 chairman within forty-five (45) days following the hearing.  
22 Failure to issue a timely decision shall vacate any  
23 determination made and shall not bar the claimant from  
24 proceeding with the claim in a court of law.

1

2 (c) The decision shall be in writing and forwarded to  
3 the director who shall serve copies on the parties. The  
4 panel's decision is not binding upon any party. The  
5 decision of the panel and any materials submitted by the  
6 parties thereto may be admissible in whole or in part in  
7 any subsequent trial of the matter, subject to the  
8 discretion of the trial court, in accordance with the  
9 Wyoming Rules of Evidence.

10

11 **9-2-1523. Confidentiality of panel proceedings;**  
12 **privilege; decision admissible.**

13

14 (a) The director shall maintain records of all  
15 proceedings before the panel, which shall include the  
16 nature of the act or omissions alleged in the application  
17 for claim review, a brief summary of the evidence  
18 presented, the decision of the panel and any majority or  
19 minority opinions filed. Except as otherwise required by  
20 law, or allowed pursuant to W.S. 9-2-1522(c) any records  
21 which may identify any party to the proceedings shall not  
22 be made public and are to be used solely for the purpose of  
23 compiling statistical data and facilitating ongoing studies  
24 of medical malpractice in this state.

1

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

5

6 **Section 2.** W.S. 9-2-1501 through 9-2-1512 are  
7 repealed.

8

9 **Section 3.** There is appropriated from the general  
10 fund to the medical review panel five hundred thousand  
11 dollars (\$500,000.00) or as much thereof as necessary to  
12 carry out the purposes of this act.

13

14 **Section 4.** This act is effective July 1, 2005.

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(END)