

HOUSE BILL NO. HB0319

Excess liability account.

Sponsored by: Representative(s) Wasserburger, Gay and  
Jorgensen

A BILL

for

1 AN ACT relating to a medical malpractice liability;  
2 creating the Wyoming excess liability account; specifying  
3 legislative findings and purposes; providing definitions;  
4 specifying requirements; specifying duties; providing for a  
5 report; providing for investment of monies from the  
6 account; authorizing corresponding modifications in medical  
7 malpractice liability insurance policies; and providing for  
8 effective dates.

9

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

11

12 **Section 1.** W.S. 35-1-1001 through 35-1-1008 are  
13 created to read:

14

15

ARTICLE 10

16

WYOMING EXCESS LIABILITY ACCOUNT

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**35-1-1001. Definitions.**

(a) As used in this article:

(i) "Account" means the Wyoming excess liability account;

(ii) "Noneconomic damages" means any loss, harm, damage or impairment suffered by a person as a result of malpractice which is nonpecuniary and subjective in nature and extent, including but not limited to pain, suffering, inconvenience, mental anguish, emotional distress, loss of society and companionship, loss of consortium and any other intangible loss, harm, damage or impairment;

(iii) "Physician" means a person licensed under W.S. 33-26-303.

**35-1-1002. Wyoming excess liability account; creation; duties of state treasurer; contract required; payment limits.**

1           (a) There is created the Wyoming excess liability  
2 account within the trust and agency fund. The account and  
3 any investment income earned from the account shall be held  
4 in trust and invested and reinvested by the state treasurer  
5 pursuant to W.S. 9-4-711.

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7           (b) Any physician who is licensed and practicing in  
8 Wyoming, who meets the financial requirements and enters  
9 into an agreement as specified by this article, shall be  
10 eligible to have any settlements or final judgments for  
11 noneconomic damages in excess of five hundred thousand  
12 dollars (\$500,000.00), up to a maximum payment by the state  
13 from the account of five hundred thousand dollars  
14 (\$500,000.00) per settlement or judgment. In no event  
15 shall the state pay from the account any amounts in excess  
16 of one million dollars (\$1,000,000.00) for coverage of any  
17 one (1) physician over the term of any agreement entered  
18 pursuant to W.S. 35-1-1003(a)(ii).

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20           (c) Nothing in this article shall be interpreted to  
21 affect the provisions of the medical liability compensation  
22 account created by W.S. 26-33-105.

23

1           **35-1-1003. Wyoming excess liability account;**  
2 **qualifications and requirements; eligibility.**

3

4           (a) To be qualified to participate in the Wyoming  
5 excess liability account under W.S. 35-1-1002(b), a  
6 physician shall:

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8                   (i) Establish financial responsibility by filing  
9 proof with the attorney general that he is insured by a  
10 policy of malpractice liability insurance of at least one  
11 million dollars (\$1,000,000.00) coverage per occurrence  
12 issued by an authorized insurer and proof that if the  
13 insurance is cancelled for any reason that the carrier has  
14 agreed to notify the Wyoming attorney general; and

15

16                   (ii) The physician shall enter into a written  
17 agreement with the state, wherein the physician shall  
18 agree:

19

20                   (A) To actively provide medical care in the  
21 state of Wyoming for a continuous period of no less than  
22 three (3) years after entry into the agreement;

23

1 (B) To notify the attorney general in  
2 writing if any claim is made or any action is filed against  
3 the physician alleging medical injury caused by the  
4 physician;

5

6 (C) To allow the office of the attorney  
7 general to participate on behalf of the account in all  
8 aspects of any claim, demand or suit, including any  
9 settlement negotiations, that may occur as a result of any  
10 claim made pursuant to this article;

11

12 (D) To continuously maintain the primary  
13 insurance coverage as set forth in paragraph (a)(i) of this  
14 section in each specialty area the physician will practice  
15 under his agreement with the state;

16

17 (E) To accept and provide medical care to  
18 patients qualified under the medical assistance and  
19 services act, the child health insurance program or any  
20 other state or federally funded program who seek medical  
21 care the physician is qualified to provide; and

22

23 (F) To notify the attorney general in  
24 writing within fifteen (15) days if the physician is no

1 longer practicing under the terms of this article or if the  
2 physician no longer carries the primary insurance coverage  
3 required under paragraph (a)(i) of this section.

4

5 (b) The state may enter into contracts with any  
6 physician practicing under a valid license who is  
7 practicing in the state at least seventy percent (70%) of  
8 any contract year or any physician practicing medicine only  
9 in Wyoming on a less than full-time basis who agrees to the  
10 terms required under subsection (a) of this section.

11

12 (c) The attorney general shall provide a certificate  
13 of participation to each physician who has entered into an  
14 agreement under this article and is eligible for coverage  
15 under the account.

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17 **35-1-1004. Duties and responsibilities of the**  
18 **attorney general; payment from account; audits required.**

19

20 (a) The Wyoming attorney general shall administer the  
21 account created by this article. The attorney general  
22 shall promulgate rules and regulations as he considers  
23 necessary to carry out the purposes of this act and shall  
24 take other appropriate action to carry out the provisions

1 of this act. No agreements shall be entered into under  
2 this section until final adoption of rules and regulations  
3 pursuant to this subsection. Subject to other provisions  
4 of this article, upon application from any physician who  
5 has entered into an agreement under this article and proof  
6 of a final judgment or settlement for noneconomic damages  
7 in excess of five hundred thousand dollars (\$500,000.00) as  
8 a result of a medical negligence claim against the  
9 physician for acts or omissions occurring in Wyoming, the  
10 attorney general shall pay the noneconomic damages in  
11 excess of five hundred thousand dollars (\$500,000.00) from  
12 the account to the extent payment is within the limitations  
13 of this article and only if the attorney general has fully  
14 participated in the case or has fully participated in and  
15 approved the settlement terms.

16

17 (b) In any agreement entered into under this article,  
18 the attorney general shall not pay more than five hundred  
19 thousand dollars (\$500,000.00) in noneconomic damages for  
20 any one claim and shall not pay more than one million  
21 dollars (\$1,000,000.00) in claims or judgments against any  
22 one (1) physician over the term of any agreement entered  
23 pursuant to W.S. 35-1-1003(a)(ii).

24

1           (c) Payment of noneconomic damages in excess of the  
2 five hundred thousand dollars (\$500,000.00) for any one (1)  
3 claim or judgment shall remain the liability of the  
4 physician.

5

6           (d) The attorney general may use funds from the  
7 account to purchase reinsurance as deemed prudent to  
8 minimize expenditures under this section.

9

10           (e) The attorney general shall have the authority to  
11 conduct audits, actuarial analysis or studies deemed  
12 necessary to ensure the ongoing financial stability of the  
13 account.

14

15           (f) Audits, actuarial analysis or studies conducted  
16 pursuant to this article shall be paid for out of the funds  
17 in the account.

18

19           (g) On or before March 1 of each calendar year, the  
20 attorney general shall submit a completed annual audit of  
21 the account and a closed claims report to the legislative  
22 management council and the governor. The audit and report  
23 shall include recommendations as to any policy or legal



1 changes necessary to ensure the account is meeting its  
2 purposes and maintaining financial stability.

3

4 (h) The attorney general may hire counsel to  
5 represent the interests of the state with respect to the  
6 account on his behalf. The attorney general shall employ  
7 the counsel with funds of the account, and shall pay  
8 expenses associated with any claim, demand or suit from the  
9 account, including but not limited to witness fees, travel  
10 expenses and expert witness fees related to the state's  
11 interest in the case.

12

13 (j) Any medical malpractice liability insurance  
14 policy issued or renewed in this state on or after the  
15 effective date of this article which provides required  
16 coverage under W.S. 35-1-1003(a)(i), may provide that the  
17 insurer's liability under the policy for a claim may be  
18 reduced by the amount paid from the account pursuant to  
19 W.S. 35-1-1004(a) for that claim.

20

21 **35-1-1005. Default; authority of attorney general.**

22

23 (a) Any physician who enters into an agreement and  
24 who fails or refuses to fulfill the terms of the agreement

1 required under W.S. 35-1-1004(b), shall not be eligible for  
2 participation in the account. Any physician who violates  
3 the provisions of the agreement after any payment is made  
4 from the account on the physician's behalf shall be liable  
5 for repayment of the amount paid pursuant to this article.

6  
7 (b) Any noneconomic damages that may be attributable  
8 to medical treatment provided by a physician deemed not to  
9 be in compliance with an agreement with the state at the  
10 time of the treatment shall not be eligible for payment  
11 from the account created by this section, regardless of the  
12 amount of the final judgment or settlement. The  
13 noncompliant physician and his malpractice liability  
14 insurance shall assume all responsibility for defending the  
15 claim and payment of any award under the claim.

16  
17 (c) The attorney general may institute an action to  
18 recover any payments from the account created by this  
19 section that were incorrectly made on behalf of the  
20 defaulting physician under the agreement or were made on  
21 behalf of a physician who subsequently violates any  
22 provision of the agreement.

23

1           (d) The attorney general may make any payment under  
2 this article under any reservation of rights he deems  
3 appropriate to protect the state's interests.

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5           **35-1-1006. Punitive damages.**

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7 Punitive damages shall not be paid from the Wyoming excess  
8 liability fund account.

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10           **35-1-1007. Notice of claim against account required;**  
11 **role of the state in settlements and civil actions.**

12

13           (a) Any claimant seeking recovery from a physician  
14 for noneconomic damages covered by the account shall name  
15 the fund as a party to any claim, demand or suit, and shall  
16 serve the claim upon the attorney general.

17

18           (b) The state shall fully participate in all aspects  
19 of each claim, demand or suit, including settlement  
20 negotiations and allocation of damages between economic and  
21 noneconomic damages, in which the account has been named a  
22 party and in which it has received notice through the  
23 attorney general. No payment shall be made from the  
24 account unless the attorney general fully participates in

1 all aspects of each claim, demand or suit, including  
2 settlement negotiations and allocation of damages between  
3 economic and noneconomic damages.

4

5 (c) Failure to allow full and complete participation  
6 in all aspects of each claim shall result in no payment  
7 from the account.

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9 **35-1-1008. Claims data reported.**

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11 (a) Within thirty (30) days after each claim is  
12 closed, any insurer writing medical malpractice liability  
13 coverage in this state shall file with the insurance  
14 commissioner a report of each claim against a health care  
15 provider. The insurer shall remove any information from  
16 the report which could be used to identify the patient and  
17 their medical history.

18

19 (b) The closed claim report shall contain the  
20 following information for the preceding calendar year:

21

22 (i) For each closed claim:

23

1 (A) Specialty and primary coverage of the  
2 insured;

3

4 (B) Nature and substance of the claim;

5

6 (C) Age of the injured party;

7

8 (D) After final disposition of the claim,  
9 the date and manner of disposition, whether by judgment,  
10 settlement, arbitration or otherwise, and an itemization of  
11 the amounts paid, if any, reported separately or reasonably  
12 segregated and identified for:

13

14 (I) Medical and prescription costs;

15

16 (II) Economic damages;

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18 (III) Noneconomic damages;

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20 (IV) Costs of defense, including  
21 attorney's fees, costs and expenses; and

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23 (V) Any additional information

24 required by the commissioner.

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**Section 2.**

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(a) The Wyoming legislature finds that:

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(i) Physicians' medical malpractice insurance is available from a very limited number of authorized insurers in Wyoming and has been recognized to be a noncompetitive market by the Wyoming insurance commissioner;

(ii) Medical malpractice insurance premiums generally are increasing. These premiums are even more costly if a physician is required to change insurers. The increased premiums are causing and will continue to cause physicians to limit or close their practices, or in some cases, to leave the state;

(iii) Wyoming has difficulty recruiting and retaining sufficient numbers of physicians to practice in various parts of the state. Elements of this difficulty include the limited availability of insurance and its high cost;

1           (iv) Sufficient numbers of physicians actively  
2 practicing throughout the state is critical to the  
3 availability of adequate medical care for Wyoming citizens,  
4 particularly individuals under the Wyoming Medical  
5 Assistance and Services Act, the Wyoming Uninsured Child  
6 Health Insurance Program, and to other needy individuals;

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8           (v) The availability of adequate medical care to  
9 Wyoming citizens is threatened without implementation of  
10 this act.

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12           (b) The legislature determines that the assistance  
13 contemplated by this act is necessary to support the  
14 compelling state interests of ensuring the availability of  
15 adequate medical care, encouraging physicians to offer  
16 medical care in Wyoming's communities, and encouraging  
17 physicians to provide medical care to the needy and the  
18 poor. The legislature therefore determines that assistance  
19 contemplated by this act is both for a public purpose and  
20 for necessary support of the poor as authorized in article  
21 16, section 6 of the Wyoming constitution.

22

23           **Section 3.**

24

1           (a) There is appropriated from the budget reserve  
2 account to the Wyoming excess liability account within the  
3 trust and agency fund, five million dollars (\$5,000,000.00)  
4 to implement the purposes of this act, including payment of  
5 qualified payments under W.S. 35-1-1002, costs of defense,  
6 witness fees and administrative costs incurred by the  
7 attorney general in the implementation of the act.

8

9           (b) There is appropriated from the general fund fifty  
10 thousand dollars (\$50,000.00) for the insurance department  
11 to conduct an actuarial study to consider the benefits of  
12 reinsurance and to estimate the anticipated annual cost and  
13 terms of reinsurance under this act.

14

15           **Section 4.**

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17           (a) On or before September 1 of each year, the  
18 attorney general shall annually examine the excess  
19 liability account program and submit his report to the  
20 governor and the legislature. The examination and report  
21 shall include an analysis of the following:

22

23           (i) The number of claims paid from the account,  
24 including the dollar amount paid for each claim;



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2 (ii) A description of the level of participation  
3 of the attorney general in each case or settlement covered  
4 under the account;

5

6 (iii) An analysis of how the account is  
7 affecting the number of physicians practicing in the state;  
8 and

9

10 (iv) An analysis of how the account is affecting  
11 medical malpractice insurance premiums in the state.

12

13 **Section 5.**

14

15 (a) This act is effective immediately upon completion  
16 of all acts necessary for a bill to become law as provided  
17 by Article 4, Section 8 of the Wyoming Constitution.

18

19 (b) This act shall apply to all medical malpractice  
20 settlements or claims based upon errors or omissions  
21 alleged to have occurred between the effective date of this  
22 act and July 1, 2008.

23

24

(END)