

SENATE FILE NO. SF0175

Wyoming medical excess liability program.

Sponsored by: Senator(s) Jennings

A BILL

for

1 AN ACT relating to medical malpractice insurance; creating  
 2 the Wyoming medical excess liability program; providing  
 3 qualifications and requirements under the program;  
 4 excepting punitive damages from eligibility; providing a  
 5 claims process; providing an appropriation; and providing  
 6 for an effective date.

7

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

9

10 **Section 1.** W.S. 35-1-1001 through 35-1-1007 are  
 11 created to read:

12

ARTICLE 10

13

WYOMING MEDICAL EXCESS LIABILITY PROGRAM

14

15

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

16

17

1           (a) This act shall be known and may be cited as the  
2 "Wyoming medical excess liability program."

3

4           (b) As used in this article:

5

6                 (i) "Physician" means a person licensed under  
7 W.S. 33-26-303;

8

9                 (ii) "Program" means the Wyoming medical excess  
10 liability program;

11

12                 (iii) "This article" refers to the Wyoming  
13 medical excess liability program.

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15           **35-1-1002. Contract required; payment limits.**

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17 Any physician who is licensed and practicing in Wyoming,  
18 who meets the financial requirements and enters into an  
19 agreement as specified by this article, shall be eligible  
20 to have any settlements or final judgments for noneconomic  
21 damages in excess of three hundred fifty thousand dollars  
22 (\$350,000.00) up to a maximum payment of one million  
23 dollars (\$1,000,000.00), paid by the Wyoming medical excess  
24 liability program.

1

2           **35-1-1003. Program qualifications and requirements;**  
3 **eligibility.**

4

5           (a) To be qualified under the provisions of the  
6 Wyoming medical excess liability program, a physician  
7 shall:

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9                   (i) Establish financial responsibility by filing  
10 proof with the insurance commissioner that he is insured by  
11 a policy of malpractice liability insurance issued by an  
12 authorized insurer; and

13

14                   (ii) The physician shall enter into an agreement  
15 with the state, pursuant to which the physician shall:

16

17                           (A) Actively provide medical care in the  
18 state of Wyoming through July 1, 2008;

19

20                           (B) Notify the insurance commissioner in  
21 writing if any claim is made or any action is filed against  
22 the physician alleging medical injury caused by the  
23 physician which may result in a settlement or final  
24 judgment award;

1

2 (C) Allow the insurance commissioner, his  
3 counsel and the office of the attorney general to  
4 participate in all aspects of any claim, demand or suit,  
5 including any settlement negotiations, that may occur as a  
6 result of any claim made pursuant to this article;

7

8 (D) Maintain the primary insurance coverage  
9 in each specialty area the physician will practice under;

10

11 (E) Accept and provide medical care to  
12 patients qualified under the Medical Assistance and  
13 Services Act, the Child Health Insurance Program or any  
14 other state or federally funded plan who seek medical care  
15 the physician is qualified to provide; and

16

17 (F) Notify the insurance commissioner in  
18 writing within thirty (30) days of any change in the  
19 physician's status under the agreement.

20

21 (b) The state may enter into contracts with any  
22 physician practicing under a valid license who is  
23 practicing in the state at least seventy percent (70%) of  
24 any contract year or any physician practicing medicine only

1 in Wyoming on a less than full-time basis, who agrees to  
2 the terms required under subsection (a) of this section.

3

4 **35-1-1004. Duties and responsibilities of the**  
5 **insurance commissioner; payment from reinsurance purchased**  
6 **by the program; audits required.**

7

8 (a) The Wyoming insurance commissioner shall  
9 administer the program created by this article. The  
10 insurance commissioner shall purchase reinsurance as deemed  
11 prudent to minimize expenditures under this article.

12

13 (b) Subject to other provisions of this article, upon  
14 application from any physician who has entered into an  
15 agreement under this article and proof of a final judgment  
16 or settlement for noneconomic compensatory damages in  
17 excess of three hundred fifty thousand dollars  
18 (\$350,000.00) as a result of a medical negligence claim  
19 against the physician for acts or omissions occurring in  
20 Wyoming, the reinsurance policy under the program shall pay  
21 the noneconomic damages in excess of three hundred fifty  
22 thousand dollars (\$350,000.00) from the Wyoming medical  
23 excess liability program.

24

1           (c) In any contract entered into under this article,  
2 the reinsurance policy under the program shall not pay more  
3 than one million dollars (\$1,000,000.00) in noneconomic  
4 damages for any one (1) claim.

5

6           (d) Payment of noneconomic damages in excess of the  
7 one million dollars (\$1,000,000.00) shall remain the  
8 liability of the physician.

9

10          (e) The insurance commissioner shall have the  
11 authority to conduct audits, actuarial analysis or studies  
12 deemed necessary to ensure the ongoing financial stability  
13 of the program and shall be paid for out of the program.

14

15           **35-1-1005. Noncompliance.**

16

17          (a) Any physician who enters into an agreement under  
18 this article and who fails or refuses to fulfill the terms  
19 of the agreement, shall not be in compliance with the  
20 agreement and shall not be eligible for participation in  
21 the Wyoming medical excess liability program.

22

23          (b) Any noneconomic damages that may be attributable  
24 to medical treatment provided by a physician deemed by the

1 insurance commissioner not to be in compliance with his  
2 agreement with the state at the time of the treatment shall  
3 not be eligible for payment from the program created by  
4 this article, regardless of the amount of the final  
5 judgment or settlement.

6

7 **35-1-1006. Punitive damages.**

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9 Punitive damages shall not be paid from the Wyoming medical  
10 excess liability program.

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12 **35-1-1007. Claims data.**

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14 (a) Within thirty (30) days after each claim is  
15 closed, any insurer writing medical malpractice liability  
16 coverage in this state shall file with the insurance  
17 commissioner a report of each claim against a health care  
18 provider and a report of each award or settlement given in  
19 each case against a health care provider. The insurer  
20 shall remove any information from the report which could be  
21 used to identify the particular health care provider and  
22 his claim history or the patient and the patient's medical  
23 history.

24

1           (b) The report shall contain the following  
2 information:

3

4           (i) For each claim:

5

6                   (A) Specialty coverage of the insured;

7

8                   (B) Nature and substance of the claim;

9

10                   (C) Age of the injured party;

11

12                   (D) The date and manner of disposition,  
13 whether by judgment, settlement, arbitration or otherwise  
14 and an itemization of the amounts paid, if any, if reported  
15 separately or can reasonably be characterized, segregated  
16 or identified for:

17

18                           (I) Medical and prescription costs;

19

20                           (II) Economic damages;

21

22                           (III) Noneconomic damages;

23



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

3

4 (V) Any additional information required  
5 by the commissioner.

6

7 (c) The report required by subsections (a) and (b) of  
8 this section and its contents are not admissible or  
9 discoverable.

10

11 (d) The insurance commissioner shall report by  
12 December 1 of each year a summary of the report required by  
13 subsections (a) and (b) of this section to the legislative  
14 management council and the governor.

15

16 **Section 2.**

17

18 (a) The Wyoming legislature finds:

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

24

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

7

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

13

14           (iv) Sufficient numbers of physicians actively  
15 practicing throughout the state is critical to the  
16 availability of adequate medical care for Wyoming citizens,  
17 particularly individuals under the Wyoming Medical  
18 Assistance and Services Act, the Wyoming Uninsured Child  
19 Health Insurance Program and to other needy individuals;

20

21           (v) The availability of adequate medical care to  
22 Wyoming citizens is threatened without implementation of  
23 this act.

24

1           (b) The legislature determines that the assistance  
2 contemplated by this act is necessary to support the  
3 compelling state interests of ensuring the availability of  
4 adequate medical care, the availability of physicians to  
5 offer medical care in Wyoming's communities and the  
6 availability of physicians to provide medical care to the  
7 needy and the poor. The legislature therefore determines  
8 that assistance contemplated by this act is both for a  
9 public purpose and for necessary support of the poor as  
10 authorized in Article 16, Section 6 of the Wyoming  
11 Constitution.

12

13           **Section 3.**

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15           (a) There is appropriated from the budget reserve  
16 account to the Wyoming medical excess liability program two  
17 million dollars (\$2,000,000.00) to implement the purposes  
18 of this act and the administrative costs incurred by the  
19 insurance commissioner in the implementation of this act.

20

21           (b) There is authorized one (1) additional position  
22 to the insurance department for the purposes of  
23 implementing this act.

24

1           **Section 4.**

2

3           (a) This act shall apply to all medical malpractice  
4 settlements or claims based upon errors or omissions  
5 alleged to have occurred on or after the effective date of  
6 this act.

7

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

11

12

(END)