

HOUSE BILL NO. HB0306

Medical review panel-3.

Sponsored by: Representative(s) Osborn and Senator(s)
Jennings, Larson and Scott

A BILL

for

1 AN ACT relating to pretrial screening panels; prohibiting
2 the filing of a medical malpractice claim in a court until
3 the claim has been reviewed by a medical review panel;
4 providing that the decision of the panel is not binding;
5 requiring that the decision of the panel be submitted with
6 any medical malpractice complaint; creating the panel and
7 providing for selection of its members; designating the
8 attorney general or his designee as panel director to
9 perform administrative tasks; establishing procedures for
10 review of claims; providing definitions; granting
11 rulemaking authority; requiring a person filing a complaint
12 in court to file the decision of the panel; requiring a
13 person filing a complaint in court to obtain an expert
14 witness who has not appeared before the panel; providing
15 for an appropriation; 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. 9-2-2901 through 9-2-2913 are created
4 to read:

5

6

ARTICLE 29

7

MEDICAL REVIEW PANEL

8

9 **9-2-2901. Short title.**

10

11 This act may be cited as the "Wyoming Medical Review Panel
12 Act of 2005".

13

14 **9-2-2902. Purpose of provisions.**

15

16 The purpose of this act is to provide an opinion of
17 malpractice or lack of malpractice before filing in court
18 of actions against health care providers and their
19 employees for professional liability.

20

21 **9-2-2903. Definitions.**

22

23 (a) As used in this act:

24

1 (i) "Health care provider" means a physician,
2 health care facility or any person employed by a health
3 care facility who, in accordance with law or a license
4 granted by a state agency, provides health care;

5

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

11

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

14

15 (iv) "Physician" means a person licensed under
16 W.S. 33-26-303;

17

18 (v) "Expert" means a person that demonstrates a
19 minimum of ten (10) years of experience and practice in a
20 medical field related to the claims of the claimant and
21 will not financially benefit from the decision of the panel
22 or court;

23

1 (vi) "This act" means W.S. 9-2-2901 through
2 9-2-2912.

3

4 **9-2-2904. Service of pleadings; computation of time.**

5

6 (a) The claim, answer, decision and all other
7 pleadings required to be served under this act shall be
8 served in accordance with the Wyoming Rules of Civil
9 Procedure.

10

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

14

15 **9-2-2905. Panel created; compensation; director of**
16 **panel; appointment and duties; rulemaking.**

17

18 (a) There is created the Wyoming medical review
19 panel.

20

21 (b) The panel shall have a director who shall be the
22 attorney general or his designee and shall conduct the
23 administrative business of the panel and otherwise
24 implement this act. The director may employ personnel or

1 contract for services necessary to implement this act. The
2 director shall promulgate rules and regulations in
3 accordance with the Wyoming Administrative Procedure Act to
4 implement this act.

5

6 (c) Members of the panel shall receive compensation
7 while engaged in the business of the board of five hundred
8 (\$500.00) dollars per day each day the panel is convened
9 plus two hundred dollars (\$200.00) per preparation day not
10 to exceed one thousand dollars (\$1,000.00). Compensation
11 for travel and other services shall be as provided in W.S.
12 9-3-102 and 9-3-103.

13

14 **9-2-2906. Claims to be reviewed by panel; prohibition**
15 **on filing claims in court; tolling of statute of**
16 **limitation; immunity of panel; administration.**

17

18 (a) The panel shall review all malpractice claims
19 against health care providers filed with the panel except
20 those claims subject to a valid arbitration agreement
21 allowed by law or upon which suit has been filed prior to
22 July 1, 2005. No complaint alleging malpractice shall be
23 filed in any court against a health care provider before a
24 claim is made to the panel and its decision is rendered.

1 The running of the applicable limitation period in a
2 malpractice action is tolled upon receipt by the director
3 of the application for review and does not begin again
4 until thirty (30) days after the panel's final decision is
5 served upon the claimant.

6

7 (b) Panel members are absolutely immune from civil
8 liability for all acts in the course and scope of the
9 duties under this act, including but not limited to
10 communications, findings, opinions and conclusions.

11

12 (c) The panel may provide for the administration of
13 oaths, the receipt of claims filed, the promulgation of
14 forms required under this act, and the performance of all
15 other acts required to fairly and effectively administer
16 this act.

17

18 **9-2-2907. Claim review procedure; contents of claim;
19 service of claim on provider; answer.**

20

21 (a) Claimants shall submit a case for the
22 consideration of the panel prior to filing a complaint in
23 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 and hospitals having contact with the claimant
9 relevant to the claim and all witnesses;

10

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

19

20 (iii) A statement, prepared and signed by an
21 expert in the field of medical practice in which the health
22 care provider practices, setting forth the basis for the
23 expert's belief that the conduct is believed to constitute

1 a malpractice claim, and the evidence to support the
2 expert's opinion.

3

4 (b) The claim may be amended by filing an amendment
5 not less than fourteen (14) days prior to the hearing date.

6

7 (c) Upon receipt of a claim, the director shall cause
8 a true copy of the claim to be served on the health care
9 providers against whom the claim has been filed.

10

11 (d) The health care provider shall answer the claim
12 within thirty (30) days after service and shall submit a
13 statement authorizing the panel to inspect all medical and
14 hospital records and information pertaining to the claim
15 except those records which are privileged pursuant to W.S.
16 35-17-105. The answer shall be filed with the director who
17 shall serve a copy on the claimant.

18

19 **9-2-2908. Panel composition; selection;**
20 **disqualification of panelist; multiple defendants.**

21

22 (a) The panel for each claim reviewed under this act
23 shall consist of two (2) health care providers licensed in
24 this state and one (1) attorney licensed in this state.

1 All panel members shall be residents of this state. If
2 feasible the two (2) health care provider members of the
3 panel shall be from the health care provider's profession
4 or specialty.

5
6 (b) Within five (5) days of receipt, the director
7 shall notify the state licensing agency of the health care
8 provider involved of the filing of the claim and the state
9 bar association. Within fourteen (14) days of
10 notification, the state licensing agency and state bar
11 shall provide the director a list of twelve (12) of their
12 members as proposed panelists. To the extent possible, the
13 state licensing agency shall include on the list persons
14 specializing in the same field or discipline as the health
15 care provider against whom the claim is made. The director
16 shall select two (2) from the list of health care providers
17 and one (1) from the list of attorneys to serve as
18 panelists and shall notify the parties and the panel
19 members selected of their selection.

20
21 (c) At or prior to the hearing, the panel shall
22 select a chairman from among its members. The chairman
23 shall preside over the panel proceedings.

24

1 (d) If, within fifteen (15) days of receipt of the
2 notice of selection of the professional panelists, the
3 claimant or the health care provider against whom the claim
4 is made files an affidavit stating his belief that a
5 panelist selected by the director cannot be impartial in
6 reviewing the claim, the panel member is disqualified, and
7 the director shall select another from the list. Each party
8 may disqualify not more than three (3) panel members under
9 this subsection.

10

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

14

15 (f) When a claim is filed against two (2) or more
16 health care providers, the claim against each health care
17 provider shall be consolidated for hearing unless by
18 stipulation of all parties or at the discretion of the
19 panel, the claims are heard separately.

20

21 **9-2-2909. Hearing procedure; review of decision**
22 **prohibited.**

23

1 (a) The director shall set a time and place for the
2 hearing and provide notice to all parties at least thirty
3 (30) days prior to the hearing. The proper place for
4 hearing shall be the county in which an action is required
5 to be brought according to W.S. 1-5-101 through 1-5-109.
6 The hearing date shall not be more than one hundred twenty
7 (120) days after the director receives the claim unless the
8 director or panel finds good cause to delay the hearing.
9 At least fifteen (15) days before the hearing the director
10 shall provide each panel member copies of all claims,
11 briefs, records and other documents the director considers
12 necessary.

13

14 (b) The hearing shall be conducted in accordance with
15 rules and regulations promulgated by the director. The
16 hearing shall be informal, and the Wyoming Rules of
17 Evidence and, except as specified in this act, the Wyoming
18 Administrative Procedure Act do not apply. No decision of
19 the director or the panel is subject to review in a court.
20 A record of the hearing shall be made. The panel may not
21 call witnesses.

22

23 (c) The panel may take the case under advisement or
24 may request that additional facts, records or other

1 information be obtained and presented to it at a
2 supplemental hearing, which shall be set for a date not
3 later than thirty (30) days from the date of the original
4 hearing unless the claimant or his attorney consents in
5 writing to a longer period.

6

7 **9-2-2910. Panel deliberations and decision; decision**
8 **not binding.**

9

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

12

13 (i) Substantial evidence that the acts
14 complained of occurred and that they constitute
15 malpractice; and

16

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

19

20 (b) The deliberations of the panel are confidential.
21 All votes of the panel on the questions for discussion
22 shall be by secret ballot. The decision shall be by a
23 majority vote of the panel and shall be signed by the
24 chairman. The director shall not cast a vote.

1

2 (c) The decision, including a majority opinion, shall
3 be in writing and forwarded to the director who shall serve
4 copies on the parties. A copy of the decision shall be sent
5 to the health care provider's state licensing board. If a
6 claim is filed in a court of competent jurisdiction, a copy
7 of the decision shall be filed by the claimant with the
8 complaint upon filing of that claim and shall be deemed
9 admissible evidence in court.

10

11 (d) The panel's decision is not binding upon any
12 party.

13

14 **9-2-2911. Record of panel proceedings; privilege.**

15

16 (a) The director shall maintain records of all
17 proceedings before the panel, which shall include the
18 nature of the act or omissions alleged in the claim, a
19 brief summary of the evidence presented, the decision of
20 the panel and any majority or minority opinions filed.

21

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

1

2 **9-2-2912. Panel funding; assessments; collection;**
3 **rulemaking; medical review account; expenditures.**

4

5 (a) The panel shall be funded from assessments levied
6 against and paid by each health care provider licensed in
7 the state. The director shall promulgate rules in
8 accordance with the Wyoming Administrative Procedure Act to
9 annually establish appropriate assessments based on the
10 following guidelines:

11

12 (i) The total amount of the panel's proposed
13 annual budget shall be prorated among all health care
14 providers licensed in the state based on the number of
15 cases reviewed by the panel during the immediately
16 preceding calendar year;

17

18 (ii) The first four (4) annual assessments for
19 each resident practicing provider shall be equal to one and
20 one-fourth (1 1/4) the assessment determined pursuant to
21 paragraph (i) of this subsection. Thereafter annual
22 assessments shall be in the amount determined pursuant to
23 those paragraphs.

24

1 (b) The director shall certify the amount of each
2 assessment to the appropriate licensing board, agency or
3 authority, and the board, agency or authority shall levy
4 and collect the assessments annually at the same time as
5 annual license fees are collected. Assessments collected
6 under this subsection shall be remitted to the director not
7 later than thirty (30) days from the date of collection and
8 paid immediately by the director to the state treasurer for
9 deposit in an account, to be known as the medical review
10 account, within the earmarked revenue fund.

11

12 (c) Monies in the medical review account shall be
13 expended by the panel to carry out the purposes of this
14 section.

15

16 **9-2-2913. Filing of medical malpractice claims; use**
17 **of expert witness.**

18

19 (a) If a claim is filed in a court of competent
20 jurisdiction, a copy of the panel's decision shall be filed
21 by the claimant with the complaint upon filing of that
22 claim and shall be deemed admissible evidence in court.

23

1 (b) In any case proceeding in a court of competent
2 jurisdiction filed after review by a panel under this act,
3 a claimant may not submit the expert opinion of the same
4 expert used to provide the expert opinion required by W.S.
5 9-2-2907(a)(iii).

6

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

9

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

14

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

16

17

(END)