

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
5 investment of monies from the account; and providing for
6 effective dates.

7

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

9

10 **Section 1.** W.S. 35-1-1001 through 35-1-1009 are
11 created to read:

12

13 ARTICLE 10

14 WYOMING EXCESS LIABILITY ACCOUNT

15

16 **35-1-1001. Definitions.**

1

2 (a) As used in this article:

3

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

6

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

14

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

17

18 **35-1-1002. Wyoming excess liability account;**
19 **creation; duties of state treasurer; contract required;**
20 **payment limits.**

21

22 (a) There is created the Wyoming excess liability
23 account within the trust and agency fund. The account and
24 any investment income earned from the account shall be held

1 in trust and invested and reinvested by the state treasurer
2 pursuant to W.S. 9-4-711.

3

4 (b) Any physician who is licensed and practicing in
5 Wyoming, who meets the financial requirements and enters
6 into an agreement as specified by this article, shall be
7 eligible to have any settlements or final judgments for
8 noneconomic damages in excess of three hundred fifty
9 thousand dollars (\$350,000.00) up to a maximum payment of
10 one million dollars (\$1,000,000.00), paid by the state from
11 the Wyoming excess liability account.

12

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

16

17 **35-1-1003. Wyoming excess liability account;**
18 **qualifications and requirements; eligibility.**

19

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

23

1 (i) Establish financial responsibility by filing
2 proof with the insurance commissioner that he is insured by
3 a policy of malpractice liability insurance issued by an
4 authorized insurer; and

5

6 (ii) The physician shall enter into an agreement
7 with the state, wherein the physician shall agree:

8

9 (A) To actively provide medical care in the
10 state of Wyoming for a continuous period of three (3) years
11 after entry into the agreement;

12

13 (B) To notify the insurance commissioner in
14 writing if any claim is made or any action is filed against
15 the physician alleging medical injury caused by the
16 physician;

17

18 (C) To allow the insurance commissioner,
19 his counsel and the office of the attorney general to
20 participate in all aspects of any claim, demand or suit,
21 including any settlement negotiations, that may occur as a
22 result of any claim made pursuant to this article;

23

1 (D) To maintain the primary insurance
2 coverage as set forth in paragraph (a)(i) of this section
3 in each specialty area the physician will practice under
4 his agreement with the state;

5
6 (E) To accept and provide medical care to
7 patients qualified under the medical assistance and
8 services act, the child health insurance program or any
9 other state or federally funded program who seek medical
10 care the physician is qualified to provide; and

11
12 (F) To notify the commissioner in writing
13 within thirty (30) days if the physician is no longer
14 practicing under the terms of this article.

15
16 (b) The state may enter into contracts with any
17 physician practicing under a valid license who is
18 practicing in the state at least seventy percent (70%) of
19 any contract year or any physician practicing medicine only
20 in Wyoming on a less than full-time basis who agrees to the
21 terms required under subsection (a) of this section.

22
23 (c) The insurance commissioner shall provide a
24 certificate of participation to each physician who has

1 entered into an agreement under this article and is
2 eligible for coverage under the account.

3

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

7

8 (a) The Wyoming insurance commissioner shall
9 administer the account created by this article. Subject to
10 other provisions of this article, upon application from any
11 physician who has entered into an agreement under this
12 article and proof of a final judgment or settlement for
13 noneconomic compensatory damages in excess of three hundred
14 fifty thousand dollars (\$350,000.00) as a result of a
15 medical negligence claim against the physician for acts or
16 omissions occurring in Wyoming, the insurance commissioner
17 shall pay the noneconomic damages in excess of three
18 hundred fifty thousand dollars (\$350,000.00) from the
19 account.

20

21 (b) In any contract entered into under this article,
22 the insurance commissioner shall not pay more than one
23 million dollars (\$1,000,000.00) in noneconomic damages for
24 any one claim.

1

2 (c) Payment of noneconomic damages in excess of the
3 one million dollars (\$1,000,000.00) shall remain the
4 liability of the physician.

5

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

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 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 insurance commissioner shall submit a completed annual
21 audit of the account and a closed claims report to the
22 legislative management council and the governor. The audit
23 and report shall include recommendations as to any policy

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

3
4 (h) The insurance commissioner shall hire counsel to
5 represent the interests of the state with respect to the
6 account on his behalf. The insurance commissioner shall
7 employ 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.

11
12 **35-1-1005. Default; authority of attorney general.**

13
14 (a) Any physician who enters into an agreement under
15 this section and who fails or refuses to fulfill the terms
16 of the contract required under subsection (b) of this
17 section, shall not be eligible for participation in the
18 account.

19
20 (b) Any noneconomic damages that may be attributable
21 to medical treatment provided by a physician deemed not to
22 be in compliance with an agreement with the state at the
23 time of the treatment shall not be eligible for payment

1 from the account created by this section, regardless of the
2 amount of the final judgment or settlement.

3

4 (c) The attorney general may institute an action to
5 recover any payments from the account created by this
6 section that were incorrectly made on behalf of the
7 defaulting physician under the agreement.

8

9 **35-1-1006. Punitive damages.**

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11 Punitive damages shall not be paid from the Wyoming excess
12 liability fund account.

13

14 **35-1-1007. Notice of claim against account required;**
15 **role of the state in settlements and civil actions.**

16

17 (a) Any claimant seeking any recovery from a
18 physician covered by the account shall name the fund as a
19 party to any claim, demand or suit, and shall serve the
20 claim upon the insurance commissioner.

21

22 (b) The state shall fully participate in all aspects
23 of each claim, demand or suit, including settlement
24 negotiations, in which the account has been named a party

1 and in which it has received notice through the insurance
2 commissioner.

3

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

7

8 **35-1-1008. Claims data reported.**

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

24 (A) Specialty coverage of the insured;

1

2

(B) Nature and substance of the claim;

3

4

(C) Age of the injured party;

5

6

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

11

12

(I) Medical and prescription costs;

13

14

(II) Economic damages;

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16

(III) Noneconomic damages;

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18

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

20

21

(V) Any additional information
required by the commissioner.

23

1 (c) The report mandated by this section and its
2 contents are not admissible in any court of law, nor may
3 the report or its contents be subject to disclosure by
4 court order, subpoena or the Wyoming Public Records Act.

5
6 **35-1-1009. Setoff of advance payments and collateral**
7 **sources.**

8
9 Evidence of an advance payment under this article is not
10 admissible until there is a final judgment in favor of the
11 claimant, in which event the court shall reduce the
12 judgment to the claimant to the extent of the advance
13 payment. The advance payment shall inure to the exclusive
14 benefit of the health care provider or a party making the
15 payment in its behalf.

16
17 **Section 2.**

18
19 (a) The Wyoming legislature finds that:

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

1

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

8

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

14

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

21

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

1

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

12

13 **Section 3.**

14

15 (a) There is appropriated from the budget reserve
16 account to the Wyoming excess liability account within the
17 trust and agency fund, five million dollars (\$5,000,000.00)
18 to implement the purposes of this act, including payment of
19 qualified payments under W.S. 35-1-1002, costs of defense,
20 witness fees and administrative costs incurred by the
21 insurance commissioner in the implementation of the act.

22

23 (b) There is appropriated from the general fund fifty
24 thousand dollars (\$50,000.00) for the insurance department

1 to conduct an actuarial study to consider the benefits of
2 reinsurance and to estimate the anticipated annual cost and
3 terms of reinsurance under this act.

4

5 **Section 4.**

6

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

10

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

15

16 (END)