

WORKING DRAFT

HOUSE BILL NO. _____

Governmental immunity-contract physicians.

Sponsored by: Representative(s) Lubnau

A BILL

for

1 AN ACT relating to the Governmental Claims Act; providing
2 immunity for physicians under contract with county memorial
3 hospitals and hospital districts as specified; requiring
4 hospital boards to make findings prior to extending a
5 contract to a physician under the Act; requiring covered
6 physicians to agree to accept specified clients; specifying
7 limits on damages; indexing the limit on damages as
8 specified; providing a definition; specifying that coverage
9 under the Act for a physician is discretionary and no cause
10 of action exists against a hospital board for not providing
11 coverage under the Act; and providing for an effective
12 date.

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

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1 **Section 1.** W.S. 1-39-103(a)(iv)(B) and by creating a
2 new subparagraph (F) and 1-39-110 are amended to read:

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4 **1-39-103. Definitions.**

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6 (a) As used in this act:

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8 (iv) "Public employee":

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10 (B) Does not include an independent
11 contractor, except as provided in ~~subparagraph~~
12 subparagraphs (C) and (F) of this paragraph, or a judicial
13 officer exercising the authority vested in him;

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15 (F) Includes any physician providing
16 services under a contract to state institutions, county
17 memorial hospitals or hospital districts;

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19 **1-39-110. Liability; health care providers.**

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21 (a) A governmental entity is liable for damages
22 resulting from bodily injury, wrongful death or property
23 damage caused by the negligence of health care providers
24 who are employees of the governmental entity, including

1 contract physicians who are providing a service for state
2 institutions, county memorial hospitals or hospital
3 districts, while acting within the scope of their duties.

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5 (b) Notwithstanding W.S. 1-39-118(a), for claims
6 under this section against a physician employed by the
7 state of Wyoming based upon an act, error or omission
8 occurring on or after May 1, 1988, or against a physician
9 providing services under a contract with a county memorial
10 hospital or hospital district based upon an act, error, or
11 omission occurring on or after July 1, 2006, the liability
12 of the state, county memorial hospital or hospital district
13 shall not exceed the sum of one million dollars
14 (\$1,000,000.00) to any claimant for any number of claims
15 arising out of a single transaction or occurrence nor
16 exceed the sum of one million dollars (\$1,000,000.00) for
17 all claims of all claimants arising out of a single
18 transaction or occurrence. The liability of a physician
19 providing services under a contract with a county memorial
20 hospital or hospital district under this section shall be
21 established separate from any liability established for the
22 governmental entity. Each fiscal year, the limit of
23 liability under this subsection for physicians providing
24 services under a contract with a county memorial hospital

1 or hospital district shall be increased by the medical
2 category inflation rate as of the immediately preceding
3 March 31 as shown by the Wyoming cost-of-living index as
4 determined by the division of economic analysis of the
5 department of administration and information.

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7 (c) A physician providing a service under a contract
8 with a county memorial hospital or hospital district shall
9 be subject to the provisions of this act only if the board
10 of trustees of the hospital has made a written record of
11 findings that extending:

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13 (i) The hospital's contract for insurance will
14 result in an increase in access to health care services, a
15 decrease in the cost of those services or an increase in
16 the quality of health care offered in the area of
17 responsibility of the hospital;

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19 (ii) The insurance coverage to cover the
20 contract physician is reasonable and in the best interests
21 of the patients in the community, is in the furtherance of
22 the objectives of the hospital, is an effective and
23 necessary use of taxpayers' monies and that the physician

1 receiving the coverage under the contract for insurance is
2 not receiving a windfall; and

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4 (iii) The insurance to provide coverage for the
5 physician will provide coverage that would not otherwise be
6 available to the physician by another private or public
7 insurer.

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9 (d) In addition to subsection (c) of this section, a
10 physician providing a service under a contract with a
11 county memorial hospital or hospital district shall be
12 subject to the provisions of this act only if he:

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14 (i) Agrees to accept and serve underserved
15 patient populations, including patients eligible for
16 services under the Wyoming Medical Assistance and Services
17 Act, the federal Medicare program and the state child
18 health insurance program, in a nondiscriminatory manner;

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20 (ii) Participates in the hospital's risk
21 management program;

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1 (iii) Complies at all times with federal and
2 state law governing the delivery and billing for health
3 care services;

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5 (iv) Executes a written agreement with the
6 hospital for a defined term and a defined benefit;

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8 (v) Gives fair market value in health care
9 services or money for any value received under the contract
10 he executes with the hospital;

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12 (vi) Is not restricted from obtaining hospital
13 privileges at other institutions;

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15 (vii) Is not subject to any requirements for
16 producing a specified quantity of health care for, or
17 referrals to, the hospital;

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19 (viii) Agrees to accept insurance coverage from
20 the hospital that is approved by the Wyoming insurance
21 commissioner; and

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23 (ix) Does not receive a financial windfall for
24 entering into the agreement with the hospital.

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(e) Insurance coverage for a physician providing services under a contract at a county memorial hospital or hospital district under this act shall be at the discretion of the governing board of trustees of the county memorial hospital or hospital district. No county memorial hospital or hospital district shall be required to provide insurance coverage to a contract physician under this section unless it voluntarily complies with subsection (c) of this section and enters into a written agreement with the contract physician.

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Section 2. This act is effective July 1, 2006.

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