

HOUSE BILL NO. HB0213

Medical liability-noneconomic damages.

Sponsored by: Representative(s) Gay, Brechtel, Krone,
Semlek and Stubson and Senator(s) Jennings
and Nutting

A BILL

for

1 AN ACT relating to medical malpractice liability; creating
2 the Wyoming excess liability account; specifying
3 legislative findings and purposes; providing definitions;
4 specifying requirements; specifying duties of the attorney
5 general; providing for reports; providing for investment of
6 monies from the account; authorizing corresponding
7 modifications in medical malpractice liability insurance
8 policies; providing for applicability; providing
9 appropriations; and providing for an effective date.

10

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

12

13 **Section 1.** W.S. 35-1-1201 through 35-1-1209 are
14 created to read:

15

16

ARTICLE 12

1 WYOMING EXCESS LIABILITY ACCOUNT

2

3 **35-1-1201. Definitions.**

4

5 (a) As used in this article:

6

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

9

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

17

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

20

21 **35-1-1202. Wyoming excess liability account;**
22 **creation; duties of state treasurer; contract required;**
23 **payment limits.**

24

1 (a) There is created the Wyoming excess liability
2 account. The account and any investment income earned from
3 the account shall be held in trust and invested and
4 reinvested by the state treasurer pursuant to W.S. 9-4-715.

5

6 (b) Any physician who is licensed and practicing in
7 Wyoming who meets the financial requirements and enters
8 into an agreement as specified by this article shall be
9 eligible to have any settlements or final judgments for
10 noneconomic damages, resulting from a professional
11 malpractice claim against the physician, paid by the state
12 from the Wyoming excess liability account as provided in
13 this article.

14

15 (c) A payment from the Wyoming excess liability
16 account shall be limited to the amount by which a
17 settlement or final judgment against the physician for
18 noneconomic damages resulting from one (1) occurrence
19 exceeds five hundred thousand dollars (\$500,000.00).
20 However, the state's payment from the account shall be
21 limited to five hundred thousand dollars (\$500,000.00) per
22 occurrence and one million dollars (\$1,000,000.00) per
23 physician over the term of the agreement entered into
24 pursuant to W.S. 35-1-1203(a)(ii).

1

2 (d) Nothing in this article shall be interpreted to
3 affect the provisions of the medical liability compensation
4 account created by W.S. 26-33-105.

5

6 **35-1-1203. Wyoming excess liability account;**
7 **qualifications and requirements; eligibility.**

8

9 (a) To be qualified to participate in the Wyoming
10 excess liability account under W.S. 35-1-1202(b), a
11 physician shall:

12

13 (i) File proof with the attorney general that
14 the physician is insured by a policy of professional
15 malpractice liability insurance issued by an authorized
16 insurer and having payment limits of at least one million
17 dollars (\$1,000,000.00) per occurrence. The policy
18 documents shall provide that, if the insurance is cancelled
19 for any reason, the carrier shall notify the Wyoming
20 attorney general; and

21

22 (ii) Enter into a written agreement with the
23 state in which the physician agrees:

24

1 (A) To actively provide medical care in the
2 state of Wyoming for a continuous period of not less than
3 three (3) years after entry into the agreement;

4
5 (B) To notify the attorney general in
6 writing if any claim is made or any action is filed against
7 the physician alleging medical injury caused by the
8 physician;

9
10 (C) To allow the office of the attorney
11 general to participate on behalf of the state in all
12 aspects of any claim, demand or suit, including settlement
13 negotiations, resulting from alleged medical injury caused
14 by the physician;

15
16 (D) To continuously maintain the primary
17 insurance coverage described in paragraph (i) of this
18 subsection in each specialty area the physician will
19 practice during his agreement with the state;

20
21 (E) To provide medical care which the
22 physician is qualified to provide to patients who are
23 qualified participants under the Medical Assistance and

1 Services Act, the child health insurance program or any
2 other state or federally funded program; and

3

4 (F) To notify the attorney general in
5 writing within fifteen (15) days if the physician is no
6 longer practicing under the terms of the agreement entered
7 into pursuant to W.S. 35-1-1203(a)(ii), if the physician no
8 longer carries the insurance coverage required under
9 paragraph (i) of this subsection or if the physician
10 otherwise ceases to be eligible for the program under this
11 article.

12

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

19

20 (c) The attorney general shall provide a certificate
21 of participation to each physician who has entered into an
22 agreement under this article and is eligible for payments
23 from the account.

24

1 **35-1-1204. Duties and responsibilities of the**
2 **attorney general; payment from account; audits required.**

3
4 (a) The Wyoming attorney general shall administer the
5 account created by this article and shall promulgate rules
6 and regulations to carry out the purposes of this article.
7 No agreements shall be entered into under this article
8 until final adoption of rules and regulations pursuant to
9 this subsection. Subject to the limitations of W.S.
10 35-1-1202(c) and other provisions of this article, upon
11 application from any physician who has entered into an
12 agreement under this article and proof of a final judgment
13 or settlement for noneconomic damages as a result of a
14 medical negligence claim against the physician for acts or
15 omissions occurring in Wyoming, the attorney general shall
16 pay the state's share of noneconomic damages from the
17 account only if the attorney general has fully participated
18 in the case or has fully participated in and approved the
19 settlement terms.

20
21 (b) Payment of noneconomic damages in excess of the
22 amounts provided by this article for any one (1) occurrence
23 shall remain the liability of the physician.

24

1 (c) The attorney general may use funds from the
2 account to purchase reinsurance as deemed prudent to
3 minimize expenditures under this section.

4

5 (d) The attorney general shall have the authority to
6 conduct audits, actuarial analysis or studies, paid for out
7 of the account, deemed necessary to ensure the ongoing
8 financial stability of the account.

9

10 (e) On or before March 1 of each year, the attorney
11 general shall submit a completed annual audit of the
12 account and a closed claims report to the legislative
13 management council and the governor. The audit and report
14 shall include recommendations as to any policy, contract or
15 statutory changes necessary to ensure that funds in the
16 account are adequate and the fund is financially stable.

17

18 (f) The attorney general may hire counsel to
19 represent the interests of the state with respect to the
20 account. Costs for hired counsel and other appropriate
21 expenses associated with any claim or demand or suit,
22 including but not limited to witness fees, travel expenses
23 and expert witness fees, shall be paid from the account.

24

1 (g) Any medical malpractice liability insurance
2 policy issued or renewed in this state on or after the
3 effective date of this article may provide that the
4 insurer's liability under the policy for noneconomic
5 damages may be reduced by the amount paid pursuant to this
6 article.

7

8 **35-1-1205. Default; authority of attorney general.**

9

10 (a) Any physician who enters into an agreement, and
11 who fails or refuses to fulfill the terms of the agreement
12 required under W.S. 35-1-1204(b), shall not be eligible for
13 payment of noneconomic damages from the account. Any
14 physician who violates the provisions of the agreement
15 after any payment is made from the account on the
16 physician's behalf shall be liable for repayment of the
17 amount paid pursuant to this article.

18

19 (b) Any noneconomic damages that may be attributable
20 to medical treatment provided while the physician was out
21 of compliance with an agreement pursuant to this article
22 shall not be eligible for payment from the account, and the
23 state shall have no obligation to defend or participate in
24 the settlement of the claim.

1

2 (c) The attorney general may institute an action to
3 recover any payments from the account that were incorrectly
4 made on behalf of a physician who was in default of the
5 agreement entered into pursuant to W.S. 35-1-1203(a)(ii) at
6 the time of the occurrence or payment, or that were made on
7 behalf of a physician who subsequently violated any
8 provision of the agreement.

9

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

13

14 **35-1-1206. Punitive damages.**

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16 Punitive damages shall not be paid from the Wyoming excess
17 liability fund account.

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19 **35-1-1207. Notice of claim against account required;
20 role of the state in settlements and civil actions.**

21

22 (a) Any claimant seeking recovery from a physician
23 for noneconomic damages covered by the account shall name

1 the fund as a party to any claim, demand or suit, and shall
2 serve the claim upon the attorney general.

3

4 (b) The state shall fully participate in all aspects
5 of each claim, demand or suit, including settlement
6 negotiations and allocation of damages between economic and
7 noneconomic damages, in which the account has been named a
8 party and in which it has received notice through the
9 attorney general. No payment shall be made from the
10 account unless the attorney general fully participates in
11 all aspects of each claim, demand or suit, including
12 settlement negotiations and allocation of damages between
13 economic and noneconomic damages.

14

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

18

19 **35-1-1208. Claims data reported.**

20

21 (a) Within thirty (30) days after each claim is
22 closed, any insurer writing medical malpractice liability
23 coverage in this state shall file with the insurance
24 commissioner a report of each claim against a health care

1 provider. The insurer shall remove any information from
2 the report which could be used to identify the patient and
3 their medical history.

4

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

7

8 (i) For each closed claim:

9

10 (A) Specialty and primary coverage of the
11 insured;

12

13 (B) Nature and substance of the claim;

14

15 (C) Age of the injured party;

16

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

22

23 (I) Medical and prescription costs;

24

1 (II) Economic damages;

2

3 (III) Noneconomic damages;

4

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

7

8 (V) Any additional information
9 required by the commissioner.

10

11 **35-1-1209. Annual report.**

12

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

18

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

21

22 (ii) A description of the level of participation
23 of the attorney general in each case or settlement covered
24 under the account;

1

2 (iii) An analysis of how the account is
3 affecting the number of physicians practicing in the state;
4 and

5

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

8

9

Section 2.

10

11 (a) The Wyoming legislature finds that:

12

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

17

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

24

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

6

7 (iv) Maintenance of a sufficient number of
8 physicians actively practicing throughout the state is
9 critical to the availability of adequate medical care for
10 Wyoming citizens, particularly individuals under the
11 Wyoming Medical Assistance and Services Act, the child
12 health insurance program and other needy individuals;

13

14 (v) The availability of adequate medical care to
15 Wyoming citizens is threatened without implementation of
16 this act.

17

18 (b) The legislature determines that the assistance
19 contemplated by this act is necessary to support the
20 compelling state interests of ensuring the availability of
21 adequate medical care, encouraging physicians to offer
22 medical care in Wyoming's communities and encouraging
23 physicians to provide medical care to the needy and the
24 poor. The legislature therefore determines that assistance

1 contemplated by this act is both for a public purpose and
2 for necessary support of the poor as authorized in article
3 16, section 6 of the Wyoming constitution.

4

5 **Section 3.**

6

7 (a) There is appropriated from the budget reserve
8 account to the Wyoming excess liability account five
9 million dollars (\$5,000,000.00) to implement the purposes
10 of this act, including payment of qualified payments under
11 W.S. 35-1-1202, costs of defense, witness fees and
12 administrative costs incurred by the attorney general in
13 the implementation of the Wyoming excess liability account.

14

15 (b) There is appropriated from the general fund fifty
16 thousand dollars (\$50,000.00) to the insurance department
17 to conduct an actuarial study to consider the benefits of
18 reinsurance and to estimate the anticipated annual cost and
19 terms of reinsurance for the Wyoming excess liability
20 account.

21

22 **Section 4.** This act shall apply to all medical
23 malpractice settlements or claims based upon errors or

1 omissions alleged to have occurred after the effective date
2 of this act.

3

4 **Section 5.** This act is effective immediately upon
5 completion of all acts necessary for a bill to become law
6 as provided by Article 4, Section 8 of the Wyoming
7 Constitution.

8

9

(END)