

ENROLLED ACT NO. 2, HOUSE OF REPRESENTATIVES

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING  
2004 SPECIAL SESSION

AN ACT relating to medical care; authorizing various studies relating to medical errors, medical malpractice insurance and tort reform generally; specifying duties of the Wyoming health care commission; modifying sunset date for the health care commission accordingly; modifying membership of the health care commission; requiring the department of health to evaluate the need for a medical safety event reporting system as specified; requiring reports and recommendations; providing appropriations; and providing for an effective date.

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

**Section 1.**

(a) The Wyoming health care commission with assistance from the insurance commissioner shall study the feasibility, costs and benefits of a new system to address and resolve health care errors and health care malpractice which has the following characteristics:

(i) Definition and identification of health care errors;

(ii) Identification of general and systemic causes of health care errors;

(iii) Reporting of health care errors to a health care errors commission;

(iv) Prevention of health care errors through systemic improvements that enhance patient safety;

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(v) A system to compensate individuals, as their exclusive remedy, for damages resulting from health care errors, including payment for:

(A) All health care expenses arising from the error; and

(B) Other expenses and lost opportunities, including loss of actual and potential earnings, increased living expenses, decreased quality of life and other compensation as appropriate and as provided through a schedule or formula.

(vi) Prevention and elimination of unfounded allegations and unnecessary actions against health care providers in cases which do not amount to medical malpractice.

(b) The study shall provide information about:

(i) The characteristics identified in subsection (a) of this section;

(ii) The probable costs of the system including but not limited to the costs of administration, the costs of improvements to the health care system needed to prevent future errors, the cost of compensating those persons injured by errors and the costs to health care professionals in providing the financial resources necessary to support the system;

(iii) The size of the health care errors commission and the appropriate mix of health care professionals, attorneys and public representatives on the commission;

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(iv) The administration and management of the commission including staffing and procedures for handling claims;

(v) The schedules or formulas necessary to determine the compensation of people injured by health care errors;

(vi) The appropriate means for a person aggrieved by an action of the commission to seek judicial review;

(vii) An analysis of this system's costs and benefits for health care professionals, victims of health care errors and the public compared to the present system of tort;

(viii) Any other factors the health care commission deems relevant to the general topic.

(c) The health care commission shall report its findings under this section and recommendations for legislation to the joint appropriations, joint corporations, elections and political subdivisions, joint judiciary and joint labor, health and social services interim committees. A preliminary draft of the report under this section is due on or before September 1, 2005 and the final report is due on or before October 15, 2005.

## **Section 2.**

(a) The Wyoming health care commission with assistance from the insurance commissioner shall study issues relating to insurance reform issues specified in this subsection. The commission shall study:

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(i) Self-insurance pools or state-funded insurance programs to provide excess liability insurance for health care providers;

(ii) The Nebraska excess liability fund;

(iii) The practicality of a Nebraska style excess liability fund for Wyoming health care providers;

(iv) Similarities and differences between the Nebraska and Wyoming tort systems, as they would affect the practicality or advisability of a Nebraska style excess liability fund in Wyoming;

(v) Estimated capitalization and other start-up expenses for an excess liability self-insurance pool or state-funded insurance program;

(vi) Current efforts related to comprehensive medical malpractice and general individual health insurance regulation reform in other states, chosen at the discretion of the commission including but not limited to efforts to restrict premium rate increases or policy cancellation resulting from claims made by an insured but not paid by the insurer and the effects of renewal dates on availability of insurance; and

(vii) Any other issues the commission deems appropriate and necessary for this study.

(b) The health care commission shall report its findings under this section and recommendations for legislation to the joint appropriations, joint corporations, elections and political subdivisions, joint judiciary and joint labor, health and social services

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interim committees. The report under this section is due on or before November 1, 2004.

**Section 3.**

(a) The Wyoming health care commission with assistance of the insurance commissioner shall conduct a study on the feasibility of requiring physicians to create one (1) or more risk retention groups or other similar insurance mechanisms for the purposes of providing medical malpractice liability insurance to physicians providing medical care to persons in this state. The study shall include:

(i) A determination of the number of physicians who practice in this state;

(ii) A review of the historical and expected loss experiences of medical malpractice liability insurers, including risk retention groups, that have insured physicians against loss associated with medical malpractice in this state;

(iii) A review of expected coverages, deductibles, limits, rates and rating classification systems based upon current industry practices in this state and in other states;

(iv) A review of reserve fund requirements necessary for group solvency;

(v) An examination of and recommendations regarding risk retention groups or other similar insurance mechanisms management, underwriting procedures, managerial oversight methods and investment policies;

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(vi) An examination of the probable impact of requiring creation of and membership in one (1) or more risk retention groups or other similar insurance mechanisms upon the current market for medical liability insurance;

(vii) An evaluation of the feasibility of using other programs in addition to or in correlation with one (1) or more risk retention groups or other similar insurance mechanisms, including the medical liability compensation account;

(viii) Recommendations regarding the manner in which one (1) or more risk retention groups or other similar insurance mechanisms may be created and participation therein by physicians required;

(ix) An evaluation of the need for and the potential levels of any state subsidy or loan necessary to create a viable insurance mechanism for providing medical malpractice insurance to the state's physicians with a goal of providing one-time loans or subsidies to cause long-term stabilized rates and sound reserves.

(b) The commission may include in its study under this section, to the extent it determines the inclusion appropriate or helpful to the legislature in addressing health care malpractice issues, a review of hospitals either in isolation or in combination with its review of physician risk retention groups or similar insurance mechanisms.

(c) The health care commission shall report its findings under this section and recommendations for legislation for consideration by the joint appropriations interim committee. The joint corporations, elections and political subdivisions, joint judiciary and joint labor,

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health and social services interim committees shall also receive reports. The report under this section is due on or before November 15, 2004.

**Section 4.** The Wyoming health care commission with assistance from the insurance commissioner shall design and complete an actuarial study to determine the expected effects on health care provider's medical malpractice claims experience and insurance premiums of establishing limitations on damages recoverable for noneconomic losses suffered as a result of medical malpractice or alleged medical malpractice. The study shall determine those effects as the limitation amount is set at various levels. The commission and commissioner shall design the study in the manner determined best to inform the legislature and the public of the effects of establishing such limitations on damages. The commission shall report results of the study to the joint appropriations, joint corporations, elections and political subdivisions, joint judiciary and joint labor, health and social services interim committees. The report under this section is due on or before October 15, 2004.

**Section 5.**

(a) The office of rural health care shall study the number of physicians, nurses, nurse practitioners and physician assistants who are providing patient care within this state and determine for each of those health providers:

- (i) The provider's specialty;
- (ii) The location at which the provider provides care;

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(iii) The length of time the provider has been providing care in this state;

(iv) Whether the provider is practicing full or part time;

(v) Whether the provider is practicing independently or in association with a hospital or other health care facility;

(vi) Whether the provider has any military obligation;

(vii) Whether the provider has hospital privileges at any Wyoming hospital;

(viii) Whether the provider's medical education was funded by the state of Wyoming through WWAMI, WICHE, contract or similar medical education program;

(ix) Whether the number of physicians reported and their areas of specialties indicate a physician shortage in those or other areas of specialty.

(b) The office of rural health care shall report its findings under this section to the joint appropriations, joint corporations, elections and political subdivisions, joint judiciary and joint labor, health and social services interim committees. The report under this section is due on or before November 1, 2004.

#### **Section 6.**

(a) The department of health shall evaluate the need for a medical safety event reporting system plan and in so doing shall consider:



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(i) The needed uses for the information reported;

(ii) The definition of information to be reported;

(iii) The mechanics of the reporting system and the costs of the system to both the health care facilities and the state;

(iv) The extent the information reported should be confidential and protected from discovery in legal actions;

(v) The sanctions for failure to comply with the reporting requirement;

(vi) The extent to which existing reporting systems meet the needs for reporting;

(vii) The extent to which there should be a staff to analyze individual reports and assist the health care facilities in re-engineering their systems and making changes to prevent future errors;

(viii) The degree and form of public reporting of the data and the degree to which risk adjustment of the data is appropriate;

(ix) The experiences of other states with similar reporting systems.

(b) A report shall be made to the joint labor, health and social services interim committee by October 15, 2004.

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**Section 7.** In addition to other powers granted to the Wyoming health care commission under W.S. 9-2-2801 through 9-2-2804, the commission is specifically authorized to retain the services of actuaries and other consultants as needed to complete its duties under this act. Any actuary shall be directed to produce a nonbiased report, including a summary sheet of all assumptions used, any assumptions rejected and the rationale for making or rejecting assumptions.

**Section 8.** W.S. 9-2-2801(b) and (e) and 9-2-2804 are amended to read:

**9-2-2801. Health care commission created; membership; salary; meetings; advisory committees.**

(b) The commission shall consist of ~~nine (9)~~ eleven (11) members appointed by the governor.

(e) The commission shall meet at the call of the chairman. ~~Five (5)~~ Six (6) members shall constitute a quorum.

**9-2-2804. Termination of article.**

W.S. 9-2-2801 through 9-2-2803 are repealed effective June 30, ~~2005~~ 2006.

**Section 9.**

(a) There is appropriated from the budget reserve account to the Wyoming health care commission five hundred sixty thousand dollars (\$560,000.00) or as much thereof as is necessary for purposes of this act.

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(b) There is appropriated from the budget reserve account to the insurance department fifty thousand dollars (\$50,000.00) or as much thereof as is necessary for purposes of this act.

(c) There is appropriated from the general fund to the department of health seventy thousand dollars (\$70,000.00) or as much thereof as is necessary for purposes of this act.

(d) There is appropriated from the general fund to the department of health for the purposes of evaluating the need for a medical safety event reporting system fifty thousand dollars (\$50,000.00) or as much thereof as is necessary for the purposes of this act.

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

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk