

ENROLLED ACT NO. 3, SENATE

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

AN ACT relating to medical malpractice premiums; creating the medical malpractice insurance assistance account; authorizing assistance for payment of physicians' medical malpractice insurance premiums as specified; providing for state loans to physicians for participation in risk retention groups as specified; providing for repayment; providing requirements; specifying duties; providing an appropriation; and providing for an effective date.

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

Section 1.

(a) The Wyoming legislature finds that:

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

(ii) That limited availability has been exacerbated by the withdrawal from the state of one (1) of the two (2) major medical malpractice insurers. That action will require some physicians to change insurers and some to acquire coverage for prior acts;

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

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(iv) Wyoming has difficulty recruiting and retaining sufficient numbers of physicians to practice in various parts of the state;

(v) A sufficient number of physicians throughout the state is critical to the availability of adequate medical care for Wyoming citizens, particularly individuals under the Wyoming Medical Assistance and Services Act and the Wyoming Uninsured Child Health Insurance Program, as well as to other needy individuals;

(vi) Ensuring the availability of adequate medical care to Wyoming citizens is a compelling interest of the state; and

(vii) The availability of adequate medical care to Wyoming citizens, is threatened without implementation of this act.

(b) The legislature determines that the assistance contemplated by this act is necessary to support the compelling state interests of ensuring the availability of adequate medical care, encouraging physicians to offer medical care in Wyoming's communities, and encouraging physicians to provide medical care to needy and poor persons. The legislature further determines that assistance contemplated by this act is both for a public purpose and for necessary support of the poor as authorized in Article 16, Section 6 of the Wyoming Constitution.

Section 2. W.S. 35-1-901 through 35-1-903 are created to read:

ARTICLE 9
MEDICAL MALPRACTICE INSURANCE ASSISTANCE ACCOUNT

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35-1-901. Definitions.

(a) As used in this article:

(i) "Account" means the medical malpractice insurance assistance account;

(ii) "Claims made" when describing an insurance policy or coverage means insuring against liability on those claims brought against the insured only during the term of the policy or coverage;

(iii) "Contracting entity" means an entity which contracts with a Wyoming licensed health care facility to provide physician services to the facility and which in fulfillment of such a contract procures medical malpractice insurance for physicians providing the contracted services;

(iv) "Department" means the department of health;

(v) "Director" means the director of the department of health;

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

35-1-902. Medical malpractice insurance assistance account; creation; duties of the department; requirements for assistance; breach.

(a) There is created a medical malpractice insurance assistance account. Funds within the account shall be used by the department for purposes of this article.

(b) The department shall:

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(i) Develop and make available application forms for assistance under this article;

(ii) Develop and enter into contracts with physicians as provided in this article;

(iii) Administer the account; and

(iv) Exercise all powers necessary to implement this article, including adopting rules.

(c) Any physician who is licensed and practicing in the state may apply to the department for a loan to pay a physician's medical malpractice insurance premiums as provided in this section. The physician shall establish:

(i) That he previously was insured for medical malpractice for prior events and those events are not eligible for coverage under the prior claims made policy because the period for making a claim under the policy has expired; and

(ii) Current coverage by the insurer providing the coverage referenced in paragraph (i) of this subsection is no longer available due to either the insolvency of the insurer or the withdrawal of the insurer from the medical malpractice insurance market in the state; and either

(A) The physician has procured or, upon a determination of eligibility under this subsection, will procure coverage from his previous insurer for prior events not covered due to the expiration of the period for making claims; or

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(B) He has procured or, upon a determination of eligibility under this subsection, will procure a subsequent medical malpractice policy covering prior events.

(d) Upon approval of the application for assistance, the physician shall enter into a contract with the state, wherein the physician shall agree:

(i) To practice in this state in his area of medical specialty or subspecialty for a minimum of three (3) years;

(ii) To provide medical care during that three (3) year period to Wyoming residents qualified under the Wyoming Medical Assistance and Services Act or the Child Health Insurance Program established under W.S. 35-25-101 who are seeking medical care which the physician is qualified to provide;

(iii) To submit documentation to establish that the physician has complied with the terms of the contract and to determine the amount of the loan that should be made;

(iv) To repay any loans made, within five (5) years from the date of disbursement of loan proceeds, together with interest at the annual rate as determined by the state treasurer at an annual rate equal to the average prime interest rate during the preceding fiscal year plus one percent (1%). To determine the average prime interest rate, the state treasurer shall average the prime interest rate for at least seventy-five percent (75%) of the thirty (30) largest banks in the United States. The interest rate shall be adjusted on January 1 of each year; and

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(v) To immediately repay all funds loaned to the physician pursuant to this section, together with accrued interest, attorney fees and costs incurred in collection, if the physician breaches the contract during the three (3) year period.

(e) Any contracting entity shall be eligible to receive a loan under this section to the same extent as an individual physician. The contracting entity shall be required to establish that for the physicians whose services the entity provides, the entity has procured insurance which meets the requirements specified in subsection (c) of this section. The contracting entity shall be further required to contract with the state agreeing to meet the requirements of paragraphs (d)(iii) through (v) of this section, with the entity agreeing to meet the requirements imposed upon individual physicians. The contracting entity shall also agree that each physician providing services within Wyoming who is within its contracting group shall meet the provision of service requirements of paragraphs (d)(i) and (ii) of this section, with the duration being modified to a period of the lesser of the time the physician is a member of the contracting entity's group or three (3) years.

(f) At the times specified in the contract but in no event less than once per year, the physician or the contracting entity receiving a loan under this section shall submit documentation to the department showing compliance with the terms of the contract. The amount of loan to be made shall be the amount applied for but not to exceed the premium for coverage purchased by the individual physician or the contracting entity under subparagraph (c)(ii)(A) or (B) of this section and shall be prorated for the percentage of the physician's or the contracting entity's actual practice in Wyoming. The department may

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approve the making of the loan upon its determination of compliance with this section. Loan proceeds shall not be disbursed until the physician or contracting entity has purchased or will immediately purchase the required coverage.

(g) In addition to any other civil or criminal penalties that may be imposed by law, any physician or contracting entity who fails or refuses to fulfill the terms of the contract required under subsection (c) of this section shall be in breach of the contract. The department may obtain the assistance of the attorney general to recoup the amount of loan and interest due under the contract, together with attorney fees and other costs of collection.

(h) The loan amounts and the name of a physician or contracting entity receiving loans under this section shall be a public record. Any other information used by the department in determining loans to physicians or contracting entities, including all information submitted to the department by a physician or contracting entity, under this article which is not already a matter of public record is confidential and is not a public record under W.S. 16-4-201 through 16-4-205.

(j) No loan shall be made under this section unless the physician or contracting entity has completed and submitted an application to the department on or before January 15, 2005.

35-1-903. Assistance for risk retention group participation; duties of the department; requirements for assistance; breach.

(a) Any physician who is licensed and practicing in the state may apply to the department for a loan to be used

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to pay the cost of the physician's participation in a risk retention group, of which the majority of ownership interest is held by Wyoming physicians, providing medical malpractice insurance coverage. Upon approval of the application for a loan, the physician shall enter into a contract with the state, wherein the physician shall agree:

(i) To practice in the area of medical specialty or subspecialty for the entire period of time for which the loan under this section remains unpaid;

(ii) To provide medical care, for the entire period of time the loan under this section remains unpaid, to Wyoming residents qualified under the Wyoming Medical Assistance and Services Act or the Child Health Insurance Program established under W.S. 35-25-101 who are seeking medical care which the physician is qualified to provide;

(iii) To submit documentation to establish that the physician has complied with the terms of the contract and to determine the amount of the loan that should be provided under this section;

(iv) To provide the state with a security interest in the physician's membership or shareholder interest in the risk retention group;

(v) To repay any loans made under this section within ten (10) years from the date of disbursement of loan proceeds, together with interest as determined by the state treasurer at an annual rate equal to the average prime interest rate during the preceding fiscal year plus one percent (1%). To determine the average prime interest rate, the state treasurer shall average the prime interest rate for at least seventy-five percent (75%) of the thirty

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(30) largest banks in the United States. The interest rate shall be adjusted on January 1 of each year; and

(vi) To immediately repay all funds distributed to the physician pursuant to this section, together with attorney fees and costs incurred in collection, for any contract period in which the physician is in breach of the contract.

(b) At the times specified in the contract but in no event less than once per year, the physician shall submit documentation to the department showing compliance with the terms of the contract. The amount of loan to be made shall be the amount applied for but not to exceed one hundred fifty percent (150%) of the physician's most recent annual malpractice insurance premium. The amount shall also be prorated for the percentage of the physician's actual practice in Wyoming. The department may approve the making of the loan upon its determination of compliance with this section. Loan proceeds shall not be disbursed until the physician has paid or immediately will pay for his participation in the risk retention group.

(c) If funding available from the account is insufficient to pay assistance for all physicians who apply for assistance under this article, the department may at its discretion reduce the payments to pay each eligible physician a pro rata amount.

(d) Any physician who fails or refuses to fulfill the terms of the contract required under subsection (a) of this section shall be in breach of the contract. Loans under this section shall be subject to the provisions of W.S. 35-1-902(g) and (h).

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(e) No loan shall be made under this section unless the physician has completed and submitted an application to the department on or before January 15, 2005.

Section 3. There is appropriated from the budget reserve account to the medical malpractice insurance assistance account created by this act, thirteen million two hundred thousand dollars (\$13,200,000.00) to implement this act, including loans for physicians' qualified medical malpractice insurance premiums, loans for risk retention group participation and administrative costs incurred by the department of health in the implementation of the act.

Section 4. 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 Senate.

Chief Clerk

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