

HOUSE BILL NO. HB1010

Medical malpractice review.

Sponsored by: Joint Appropriations Interim Committee

A BILL

for

1 AN ACT relating to medical care; authorizing various
2 studies relating to medical errors, medical malpractice
3 insurance and tort reform generally; specifying duties of
4 the Wyoming health care commission; modifying sunset date
5 for the health care commission accordingly; providing for
6 legislative participation in health care commission
7 activities as specified; requiring reports and
8 recommendations; providing appropriations; and providing
9 for an effective date.

10

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

12

13 **Section 1.**

14

15 (a) The Wyoming health care commission with
16 assistance from the insurance commissioner shall study the
17 feasibility, costs and benefits of a new system of dealing

1 with health care errors and health care malpractice which
2 has the following characteristics:

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4 (i) Definition and identification of health care
5 errors;

6

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

9

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

12

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

15

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

19

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

22

23 (B) Other expenses and lost opportunities,
24 including loss of actual and potential earnings, increased

1 living expenses, decreased quality of life and other
2 compensation as appropriate and as provided through a
3 schedule or formula.

4

5 (b) The study shall provide information about:

6

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

9

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

17

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

22

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

4
5 (v) The schedules or formulas necessary to
6 determine the compensation of people injured by health care
7 errors;

8
9 (vi) The appropriate means for a person
10 aggrieved by an action of the commission to appeal to the
11 courts;

12
13 (vii) An analysis of this system's costs and
14 benefits for health care professionals and the public
15 compared to the present system of tort;

16
17 (viii) Any other factors the health care
18 commission deems relevant to the general topic.

19
20 (c) The health care commission shall report its
21 findings under this section and recommendations for
22 legislation to the joint appropriations, joint
23 corporations, elections and political subdivisions, joint
24 judiciary and joint labor, health and social services

1 interim committees. The report under this section is due
2 on or before October 15, 2005.

3
4 **Section 2.**

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

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

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15 (ii) The Nebraska excess liability fund;

16
17 (iii) The practicality of a Nebraska style
18 excess liability fund for Wyoming health care providers;

19
20 (iv) Similarities and differences between the
21 Nebraska and Wyoming tort systems, as they would affect the
22 practicality or advisability of a Nebraska style excess
23 liability fund in Wyoming;

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

4
5 (vi) Any other issues the commission deems
6 appropriate and necessary for this study.

7
8 (b) The health care commission shall report its
9 findings under this section and recommendations for
10 legislation to the joint appropriations, joint
11 corporations, elections and political subdivisions, joint
12 judiciary and joint labor, health and social services
13 interim committees. The report under this section is due
14 on or before November 1, 2004.

15

16 **Section 3.**

17

18 (a) The Wyoming health care commission with
19 assistance of the insurance commissioner shall conduct a
20 study on the feasibility of requiring physicians to create
21 one (1) or more risk retention groups or other similar
22 insurance mechanisms for the purposes of providing medical
23 malpractice liability insurance to physicians providing

1 medical care to persons in this state. The study shall
2 include:

3

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

6

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

12

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

17

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

20

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

1

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

6

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

12

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

17

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

24

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

8
9 (c) The health care commission shall report its
10 findings under this section and recommendations for
11 legislation for consideration by the joint appropriations
12 interim committee. The joint corporations, elections and
13 political subdivisions, joint judiciary and joint labor,
14 health and social services interim committees shall also
15 receive reports. The report under this section is due on
16 or before November 15, 2004.

17
18 **Section 4.** The Wyoming health care commission with
19 assistance from the insurance commissioner shall design and
20 complete an actuarial study to determine the expected
21 effects on health care provider's medical malpractice
22 claims experience and insurance premiums of establishing
23 limitations on damages recoverable for noneconomic losses
24 suffered as a result of medical malpractice or alleged

1 medical malpractice. The study shall determine those
2 effects as the limitation amount is set at various levels.
3 The commission and commissioner shall design the study in
4 the manner determined best to inform the legislature and
5 the public of the effects of establishing such limitations
6 on damages. The commission shall report results of the
7 study to the joint appropriations, joint corporations,
8 elections and political subdivisions, joint judiciary and
9 joint labor, health and social services interim committees.
10 The report under this section is due on or before October
11 15, 2004.

12

13 **Section 5.**

14

15 (a) The office of rural health care shall study the
16 number of physicians providing patient care within this
17 state and determine for each physician providing care:

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19 (i) The physician's specialty;

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21 (ii) The location at which the physician
22 provides care;

23

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

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4 (iv) Whether the physician is practicing full or
5 part time;

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7 (v) Whether the physician is practicing
8 independently or in association with a hospital or other
9 health care facility;

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11 (vi) Whether the physician has any military
12 obligation.

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

20

21 **Section 6.**

22

23 (a) In addition to other powers granted to the
24 Wyoming health care commission under W.S. 9-2-2801 through

1 9-2-2804, the commission is specifically authorized to
2 retain the services of actuaries and other consultants as
3 needed to complete its duties under this act.

4

5 (b) The president of the senate and the speaker of
6 the house of representatives shall each appoint one (1)
7 member from their respective house to participate in the
8 studies and reporting requirements under this act. The
9 legislative members so appointed shall participate as
10 voting members of the health care commission only for
11 purposes of this act.

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13 **Section 7.** W.S. 9-2-2804 is amended to read:

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15 **9-2-2804. Termination of article.**

16

17 W.S. 9-2-2801 through 9-2-2803 are repealed effective June
18 30, ~~2005~~2006.

19

20 **Section 8.**

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22 (a) There is appropriated to the Wyoming health care
23 commission five hundred sixty thousand dollars

1 (\$560,000.00) or as much thereof as is necessary from the
2 budget reserve account for purposes of this act.

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4 (b) There is appropriated from the budget reserve
5 account to the insurance department fifty thousand dollars
6 (\$50,000.00) or as much thereof as is necessary for
7 purposes of this act.

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9 (c) There is appropriated from the general fund to
10 the department of health forty thousand dollars
11 (\$40,000.00) or as much thereof as is necessary for
12 purposes of this act.

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14 (d) There is appropriated from the general fund to
15 the legislative service office two thousand dollars
16 (\$2,000.00) for legislative salary, per diem and mileage
17 for legislative members participating with the health care
18 commission in the studies conducted under this act.

19

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

5

6

(END)