

HOUSE BILL NO. HB1011

Medical malpractice insurance account.

Sponsored by: Joint Appropriations Interim Committee

A BILL

for

1 AN ACT relating to medical malpractice premiums; creating
2 the medical malpractice insurance assistance account;
3 authorizing assistance for payment of physicians' medical
4 malpractice insurance premiums as specified; providing
5 requirements; specifying duties; providing an
6 appropriation; and providing for an effective date.

7

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

9

10 **Section 1.**

11

12 (a) The Wyoming legislature finds that:

13

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

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

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

14

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

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

1

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

5

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

9

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

20

21 **Section 2.** W.S. 35-1-901 and 35-1-902 are created to
22 read:

23

24

ARTICLE 9

1 MEDICAL MALPRACTICE INSURANCE ASSISTANCE ACCOUNT

2

3 **35-1-901. Definitions.**

4

5 (a) As used in this article:

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

9

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

14

15 (iii) "Department" means the department of
16 health;

17

18 (iv) "Director" means the director of the
19 department of health;

20

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

23

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

4
5 (a) There is created a medical malpractice insurance
6 assistance account. Funds within the account shall be used
7 by the department for purposes of this article.

8
9 (b) The department shall:

10
11 (i) Develop and make available application forms
12 for assistance under this section;

13
14 (ii) Develop and enter into contracts with
15 physicians as provided in this section;

16
17 (iii) Administer the account; and

18
19 (iv) Exercise all powers necessary to implement
20 this article, including adopting rules.

21
22 (c) Any physician who is licensed and practicing in
23 the state may apply to the department for a loan to pay a

1 physician's medical malpractice insurance premiums as
2 provided in this section. The physician shall establish:

3

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

9

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

15

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

21

22 (B) He has procured or, upon a
23 determination of eligibility under this subsection, will

1 procure a subsequent medical malpractice policy covering
2 prior events.

3

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

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

11

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

18

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

23

1 (iv) To repay any loans made, within five (5)
2 years from the date of disbursement of loan proceeds,
3 together with interest at the annual rate of two percent
4 (2%); and

5
6 (v) To immediately repay all funds loaned to the
7 physician pursuant to this article, together with accrued
8 interest, attorney fees and costs incurred in collection,
9 if the physician breaches the contract during the three (3)
10 year period.

11
12 (e) At the times specified in the contract but in no
13 event less than once per year, the physician shall submit
14 documentation to the department showing compliance with the
15 terms of the contract. The amount of loan to be made shall
16 be the amount applied for but not to exceed the premium for
17 coverage purchased under subparagraph (c)(ii)(A) or (B) of
18 this section. The department may approve the making of the
19 loan upon its determination of compliance with this
20 section. Loan proceeds shall not be disbursed until the
21 physician has purchased or will immediately purchase the
22 required coverage.

23

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

9
10 (g) The loan amounts and the name of a physician
11 receiving loans under this section shall be a public
12 record. Any other information used by the department in
13 determining loans to physicians, including all information
14 submitted to the department by a physician, under this
15 article which is not already a matter of public record is
16 confidential and is not a public record under W.S. 16-4-201
17 through 16-4-205.

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

22
23 **Section 3.** There is appropriated from the budget
24 reserve account to the medical malpractice insurance

1 assistance account created by this act, eight million two
2 hundred thousand dollars (\$8,200,000.00) to implement this
3 act, including loans for physicians' qualified medical
4 malpractice insurance premiums and administrative costs
5 incurred by the department of health in the implementation
6 of the act.

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

12

13 (END)