

HOUSE BILL NO. HB0305

Medical malpractice panel.

Sponsored by: Representative(s) Simpson, Boswell,
Childers, Osborn, Parady, Ross and Tipton

A BILL

for

1 AN ACT relating to administration of government; modifying
2 the Wyoming medical review act; providing an alternative
3 means to resolve medical malpractice claims; and providing
4 for an effective date.

5

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

7

8 **Section 1.** W.S. 9-2-1501, 9-2-1502, 9-2-1503(a)(iii),
9 (v) and (vii), 9-2-1505(a), (c) and by creating a new
10 subsection (d), 9-2-1506(a) and by creating new subsections
11 (d) through (j), 9-2-1507(a), (c) and (d),
12 9-2-1510(a)(intro), (d) and by creating a new subsection
13 (e) and 9-2-1511(c) are amended to read:

14

15

ARTICLE 15

16

MEDICAL MALPRACTICE PANEL

1

2 **9-2-1501. Short title.**

3

4 This act may be cited as the "Wyoming Medical ~~Review~~
5 Malpractice Panel Act".

6

7 **9-2-1502. Purpose of provisions.**

8

9 The purpose of this act is to provide an alternative means
10 to resolve medical malpractice claims to prevent where
11 possible the filing in court of actions against health care
12 providers ~~and their employees for professional liability in~~
13 ~~situations where the facts do not permit at least a~~
14 ~~reasonable inference of malpractice~~ and to make possible
15 the fair and equitable disposition of ~~such~~ medical
16 malpractice claims ~~against health care providers as that~~
17 ~~are, or reasonably may be, well founded~~ that have been
18 filed in court and are appropriate for alternative dispute
19 resolution.

20

21 **9-2-1503. Definitions.**

22

23 (a) As used in this act:

24

1 (iii) "Health care provider" means a ~~physician,~~
2 ~~dentist, health care facility or any person employed by a~~
3 ~~health care facility~~ who, in accordance with law or a
4 license granted by a state agency, provides health care;
5 including but not limited to:

6
7 (A) A physician, dentist, nurse,
8 podiatrist, pharmacist, chiropractor, optometrist or health
9 care facility; and

10

11 (B) An officer, employee or agent of a
12 health care provider acting in the course and scope of
13 employment.

14

15 (v) "Panel" means the medical ~~review~~ malpractice
16 panel provided for under this act;

17

18 (vii) "This act" means W.S. 9-2-1501 through
19 ~~9-2-1512~~ 9-2-1511.

20

21 **9-2-1505. Panel created; compensation; director of**
22 **panel; appointment and duties; rulemaking.**

23

1 (a) There is created the Wyoming medical ~~review~~
2 malpractice panel.

3

4 (c) Members of the panel shall receive compensation
5 while engaged in the business of the board of ~~forty dollars~~
6 ~~(\$40.00)~~ sixty dollars (\$60.00) per hour for any hour
7 during which a hearing or part of a hearing is held.
8 Compensation for travel and other services shall be as
9 provided in W.S. 9-3-102 and 9-3-103. Compensation to any
10 panel member under this subsection shall not exceed ~~three~~
11 ~~hundred twenty dollars (\$320.00)~~ four hundred eighty
12 dollars (\$480.00) per day. Unless otherwise agreed by the
13 parties or otherwise ordered by a court, each party shall
14 pay fifty percent (50%) of the fees of the panel, including
15 travel expenses and other expenses of the review. Any
16 amount paid under this subsection by a prevailing party
17 shall be considered as costs for purposes of Rule 54 of the
18 Wyoming Rules of Civil Procedure.

19

20 (d) For administrative purposes the panel shall be
21 located in the office of the attorney general which shall
22 furnish any necessary administrative support.

23

1 **9-2-1506. Claims to be reviewed by panel; tolling of**
2 **statute of limitation; immunity of panel and witnesses;**
3 **administration.**

4
5 (a) The panel shall review ~~all~~ malpractice claims
6 against health care providers filed with the panel ~~except~~
7 ~~those claims subject to a valid arbitration agreement~~
8 ~~allowed by law or upon which suit has been filed prior to~~
9 ~~July 1, 1986. No complaint alleging malpractice shall be~~
10 ~~filed in any court against a health care provider before a~~
11 ~~claim is made to the panel and its decision is rendered.~~
12 ~~The running of the applicable limitation period in a~~
13 ~~malpractice action is tolled upon receipt by the director~~
14 ~~of the application for review and does not begin again~~
15 ~~until thirty (30) days after the panel's final decision is~~
16 ~~served upon the claimant. as follows:~~

17
18 (i) With the voluntary agreement of both the
19 complainant and the health care provider; or

20
21 (ii) At the request of either the complainant or
22 the health care provider, provided the court determines
23 pursuant to Rule 40, Wyoming Rules of Civil Procedure, that

1 alternative dispute resolution by the medical malpractice
2 panel is appropriate.

3
4 (d) With the voluntary agreement of both the
5 complainant and the health care provider the panel may act
6 as arbitrators pursuant to article 19, section 8 of the
7 Wyoming constitution. Implementation of arbitration
8 pursuant to this subsection shall be subject to the
9 following:

10
11 (i) The arbitration under this section shall
12 proceed only if both parties agree before proceeding to
13 abide the judgment of the panel;

14
15 (ii) The decision of the panel acting as
16 arbitrator is final and obligatory on the parties as to
17 both the presence or absence of medical malpractice and the
18 compensation therefore and any other question at issue;

19
20 (iii) The panel shall promulgate by rule and
21 regulation appropriate statements that the parties or their
22 attorneys shall sign to authorize arbitration under this
23 section. The statements shall be approved in their final
24 form by the attorney general and shall set forth any

1 limitations on the recovery of damages involved in agreeing
2 to arbitration under this section. The statements may
3 include an offer to pay a different proportion of the costs
4 than the proportion specified in W.S. 9-2-1505(c);

5
6 (iv) Before proceeding under this subsection,
7 both parties shall agree to one (1) of the following
8 options for arbitration of all differences:

9
10 (A) No restrictions on the arbitrators as
11 to the amount of compensation that may be provided the
12 complainant;

13
14 (B) Restriction of the compensation that
15 may be provided the complainant to the actual and necessary
16 medical expenses incurred due to medical negligence of the
17 health care provider in treating the complainant plus
18 remission or refund of the charges owed or paid by the
19 complainant to the health care provider for the treatment
20 that included the negligence; or

21
22 (C) Restriction of the compensation that
23 may be provided the complainant to remission or refund of
24 the charges owed or paid by the complainant to the health

1 care provider for the treatment that included the
2 negligence or the medical error.

3
4 (e) The panel may seek expert advice from other
5 persons.

6
7 (f) In an arbitration procedure under this section, a
8 party may proceed pro se or may be represented by an
9 attorney. In a proceeding under subparagraph (d)(iv)(B) or
10 (C) of this section a party may be represented by a health
11 care provider.

12
13 (g) In a proceeding under subparagraph (d)(iv)(C) of
14 this section, the panel may order the remission or refund
15 of the charges owed or paid by the complainant upon a
16 finding of negligence by the health care provider or upon a
17 finding of error that does not reach the level of
18 negligence by the provider.

19
20 (h) As a result of any proceeding under this section
21 the panel may make recommendations to any health care
22 provider for steps to be taken to prevent future medical
23 errors.

24

1 (j) Unless an action has been filed, the running of
2 the applicable limitation period in a malpractice action is
3 tolled upon receipt by the director of the application for
4 review and does not begin again until thirty (30) days
5 after the panel's final decision is served upon the
6 claimant.

7
8 **9-2-1507. Claim review procedure; contents of claim;**
9 **service of claim on provider; answer.**

10
11 (a) ~~Claimants shall~~ With agreement of the health care
12 provider against whom a claim is asserted, a claimant may
13 submit a case for the consideration of the panel prior to
14 filing a complaint in any court in this state by addressing
15 a claim, in writing, signed by the claimant or his
16 attorney, to the director of the panel. The claim shall
17 contain:

18
19 (i) A statement in reasonable detail of the
20 elements of the health care provider's conduct which are
21 believed to constitute a malpractice claim, the dates the
22 conduct occurred, and the names and addresses of all
23 ~~physicians, dentists and hospitals~~ health care providers

1 having contact with the claimant relevant to the claim and
2 all witnesses;

3

4 (ii) A statement, signed by the claimant,
5 authorizing the panel to obtain access to all ~~medical,~~
6 ~~dental and hospital~~ health care provider records and
7 information pertaining to the claim and, for the purposes
8 of its consideration of this matter only, waiving any
9 privilege as to the contents of those records. Nothing in
10 the statement may in any way be construed as waiving that
11 privilege for any other purpose or in any other context, in
12 or out of court;:-

13

14 (iii) Written authorization of the health care
15 provider for submission of the claim for review under this
16 act.

17

18 (c) Upon receipt of a claim, the director shall cause
19 a true copy of the claim to be served on the health care
20 ~~providers~~ provider against whom the claim has been filed.

21

22 (d) The health care provider shall answer the claim
23 within thirty (30) days after service and shall submit a
24 statement authorizing the panel to inspect all ~~medical,~~

1 ~~dental and hospital~~ health care provider records and
2 information pertaining to the claim except those records
3 which are privileged pursuant to W.S. 35-17-105. The
4 answer shall be filed with the director who shall serve a
5 copy on the claimant.

6
7 **9-2-1510. Panel deliberations and decision; decision**
8 **not binding.**

9
10 (a) Upon consideration of all the relevant material,
11 the panel, except as required pursuant to W.S. 9-2-1506(d),
12 shall determine whether there is:

13
14 (d) Except as provided by W.S. 9-2-1506(d), the
15 panel's decision is not binding upon any party. The panel
16 may by stipulation of the parties recommend an award.

17
18 (e) With the consent of the parties, details of the
19 panel's deliberations may be disseminated to appropriate
20 health care providers and employees of health care
21 providers and, with individual identifications removed, to
22 the public. The purpose of the dissemination shall be the
23 prevention of future health care errors.

24

1 **9-2-1511. Confidentiality of panel proceedings;**
2 **privilege; decision not admissible.**

3

4 (c) The decision of the panel is ~~not~~ admissible as
5 evidence in any action.

6

7 **Section 2.** W.S. 9-2-1503(a)(i) and 9-2-1512 are
8 repealed.

9

10 **Section 3.** This act is effective July 1, 2003.

11

12

(END)