

HOUSE BILL NO. HB0204

Excess medical noneconomic damages.

Sponsored by: Representative(s) Simpson, Buchanan,
Esquibel, Harshman, Hinckley, Nicholas,
Parady, Reese and Ross and Senator(s) Coe,
Decaria and Vasey

A BILL

for

1 AN ACT relating to noneconomic compensatory medical damages
2 payments; creating the noneconomic medical damages payments
3 account; providing legislative findings and purposes;
4 authorizing payments of excess noneconomic compensatory
5 medical damages awards against physicians as specified;
6 requiring agreements; providing requirements; specifying
7 duties of attorney general; requiring notice of actions and
8 approval of the attorney general as specified; requiring
9 information from insurers; limiting payments as specified;
10 providing appropriations; providing for reinsurance;
11 providing for an actuarial study; and providing for an
12 effective date.

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

15

1 **Section 1.** W.S. 9-2-125 and 9-2-126 are created to
2 read:

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4 **9-2-125. Noneconomic medical damages payments**
5 **account; findings; purpose.**

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7 (a) The legislature finds that there have been
8 unprecedented increases in medical malpractice insurance
9 premiums for doctors practicing in some specialties in
10 Wyoming. These large, unprecedented increases may result in
11 decreased availability of necessary medical care for
12 Wyoming citizens throughout the state. The legislature
13 further finds that Wyoming, as a demographically frontier
14 state, has difficulty recruiting sufficient numbers of
15 physicians to practice in many areas of the state.

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17 (b) It is the purpose of this section and W.S.
18 9-2-126:

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20 (i) To encourage students who attend medical
21 school under the provisions of W.S. 9-2-118 or 21-17-109 to
22 return to Wyoming to practice medicine in the state;

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1 (ii) To retain physicians who may otherwise
2 close their practices in Wyoming because of excessively
3 high medical malpractice insurance premiums and the threat
4 of excess noneconomic compensatory medical damage payments;

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6 (iii) To attract and maintain an adequate number
7 of physicians, particularly physicians with critical
8 medical practice specialties, in the state to meet the
9 needs of Wyoming citizens, particularly those citizens who
10 are unable to otherwise afford or obtain necessary medical
11 care.

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13 **9-2-126. Noneconomic medical damages payments**
14 **account; creation; duties of state treasurer and attorney**
15 **general; contract required; terms of assistance;**
16 **reinsurance; recoupment.**

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18 (a) There is created a noneconomic medical damages
19 payments account within the trust and agency fund. The
20 account and any investment income earned from the account
21 shall be held in trust and invested and reinvested by the
22 state treasurer pursuant to W.S. 9-4-711.

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1 (b) Any medical student who completes an accredited
2 residency program under the provisions of W.S. 9-2-118 or
3 21-17-109 and obtains a license to practice medicine in
4 Wyoming, or a practicing physician who is licensed in
5 Wyoming, and who enters into an agreement under this
6 section shall be eligible to have any settlements or final
7 judgments specifying noneconomic compensatory damages in
8 excess of three hundred fifty thousand dollars
9 (\$350,000.00) up to a maximum payment of six hundred fifty
10 thousand dollars (\$650,000.00) paid by the attorney general
11 from the noneconomic medical damages payments account
12 created by this section. As a condition of receiving
13 payments under this section, the physician shall enter into
14 an agreement with the state, wherein the physician shall
15 agree:

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17 (i) To practice in Wyoming for a period of not
18 less than four (4) years;

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20 (ii) To provide medical care for the entire
21 period of the contract, as provided in paragraph (vi) of
22 this subsection;

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1 (iii) To notify the attorney general if any
2 claim is made or any action is filed against the physician
3 alleging medical injury caused by the physician which may
4 result in a settlement or final judgment award with
5 noneconomic compensatory damages in excess of three hundred
6 fifty thousand dollars (\$350,000.00);

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8 (iv) To allow the attorney general to
9 participate in any action, including any settlement
10 negotiations, that may occur as a result of any claim made
11 as specified in paragraph (iii) of this subsection;

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13 (v) To maintain primary insurance coverage in
14 each specialty area the physician will practice under his
15 agreement with the state; and

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17 (vi) To provide medical care for the period of
18 the contract in underserved areas of the state and to
19 accept patients qualified under the Medical Assistance and
20 Services Act and the child health insurance program who
21 seek medical care which the physician is qualified to
22 provide.

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1 (c) The department of health, in consultation with
2 the state board of medicine, shall determine which areas of
3 the state are underserved and which medical specialties are
4 most needed in each underserved area. The department shall
5 rank the cities, towns and counties of the state based on
6 numbers of physicians, specialty practice areas available
7 within the area and the number of persons enrolled in the
8 Medical Assistance and Services Act and the children health
9 insurance program, with highest priority given to areas
10 with the most need based on that criteria. The department
11 shall provide the information to the attorney general who
12 shall consider that information and available funds in the
13 noneconomic medical damages payments account in determining
14 whether to enter into a contract with a physician under
15 this section.

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17 (d) The attorney general may:

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19 (i) Enter into contracts with:

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21 (A) Medical students or primary care
22 physicians graduating from accredited residency programs
23 who agree to the terms required under subsection (b) of
24 this section;

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(B) Any physician licensed and practicing in the state at least seventy percent (70%) of any contract year, or any physician practicing medicine only in Wyoming on a less than full-time basis, who agrees to the terms required under subsection (b) of this section.

(ii) Participate in actions, including settlement negotiations in any action, of which he has received notice under paragraph (b)(iii) of this section.

(e) The attorney general shall administer the account created by this section. Subject to other provisions of this section, upon application from any physician who has entered into an agreement under this section and proof of a final judgment or settlement for noneconomic compensatory damages in excess of three hundred fifty thousand dollars (\$350,000.00) as a result of a medical negligence claim against the physician, the attorney general shall pay the noneconomic compensatory damages in excess of three hundred fifty thousand dollars (\$350,000.00) from the funds within the noneconomic medical damages payments account. In any contract entered into under this section, the attorney general shall not pay more than six hundred fifty thousand

1 dollars (\$650,000.00) in noneconomic compensatory medical
2 damages for any one (1) claim. If a claim under this
3 section includes an award for noneconomic compensatory
4 medical damages in excess of the maximum amount the
5 attorney general is authorized to pay for that claim under
6 this section, the physician shall remain liable for the
7 amount of the award over that maximum.

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9 (f) The attorney general may use funds from the
10 account to purchase reinsurance as deemed prudent to
11 minimize expenditures under this section.

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13 (g) Any physician who enters into an agreement under
14 this section and who fails or refuses to fulfill the terms
15 of the contract required under subsection (b) of this
16 section, shall be deemed to be in default of the agreement.
17 Any noneconomic compensatory damages that may be
18 attributable to medical treatment provided by a physician
19 deemed to be in default of an agreement with the state at
20 the time of the treatment shall not be eligible for payment
21 from the account created by this section, regardless of the
22 amount of the final judgment or settlement. The attorney
23 general may institute an action to recover any payments
24 from the account created by this section that were

1 incorrectly made on behalf of the defaulting physician
2 under the agreement.

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4 **Section 2.** W.S. 21-17-109(d)(intro) and (ii) is
5 amended to read:

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7 **21-17-109. Course in field of professional health**
8 **services; authority to offer; contracts with students;**
9 **repayment of funds expended; deposit of repayments.**

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11 (d) In addition to the requirements of subsection (c)
12 of this section, and before expending any funds the board
13 of trustees shall obtain an agreement with the state of
14 Wyoming from each student whereby the student agrees to:

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16 (ii) Actively engage in professional practice or
17 other professional pursuits in Wyoming for not to exceed
18 ~~three (3)~~ four (4) years as the board requires and enter
19 into an agreement with the attorney general under W.S.
20 9-2-126. The taking of a family practice residency program
21 in the state shall not be substituted in lieu of the
22 practice requirements; or

23

24 **Section 3.**

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2 (a) There is appropriated from the budget reserve
3 account to the noneconomic medical damages payments
4 account within the trust and agency fund, five million
5 dollars (\$5,000,000.00) to implement the purposes of this
6 act, including payment of qualified payments under W.S.
7 9-2-126(e) and administrative costs incurred by the
8 attorney general in the implementation of the act.

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10 (b) There is appropriated from the general fund fifty
11 thousand dollars (\$50,000.00) for the insurance department
12 to conduct an actuarial study to consider the benefits of
13 reinsurance and to estimate the anticipated annual cost and
14 terms of reinsurance under this act.

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16 **Section 4.** Any agreements entered into under W.S.
17 9-2-118 or 21-17-109 prior to July 1, 2004, shall not be
18 affected by the provisions of this act.

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20 **Section 5.** This act is effective July 1, 2004.

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(END)