

**WORKING DRAFT**

SENATE FILE NO. \_\_\_\_\_

Medicaid-medical malpractice insurance assistance.

Sponsored by: Senator(s) Mockler

A BILL

for

1 AN ACT relating to medical malpractice insurance; 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 legislature finds that there is a medical  
 13 malpractice insurance crisis in Wyoming that is causing  
 14 physicians' professional insurance premiums to increase to  
 15 the point that some physicians are unable to afford

1 insurance premium increases and are closing their practices  
2 and leaving, or contemplating closing their practices and  
3 leaving, the state. The medical malpractice insurance  
4 crisis has a particularly great impact upon those  
5 physicians who provide care to Wyoming residents qualified  
6 under the Wyoming Medical Assistance and Services Act.

7

8 (b) It is the purpose of this act to attempt:

9

10 (i) To retain physicians who may otherwise close  
11 their practices in Wyoming because of the cost of medical  
12 malpractice insurance;

13

14 (ii) To maintain an adequate number of  
15 physicians in the state to meet the needs of Wyoming  
16 citizens, particularly those citizens who could not  
17 otherwise afford or obtain necessary medical care.

18

19 (c) The legislature finds the program provided within  
20 this act is necessary support of the poor, enacted to  
21 ensure that medical services funded under the Wyoming  
22 Medical Assistance and Services Act and the Child Health  
23 Insurance Program will continue to be available to citizens  
24 of Wyoming.

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**\*\*\* STAFF COMMENTS \*\*\***

The legislative findings in the W1 bill have been modified slightly to reflect the inclusion of the CHIPS program and by adding subsection (c), specifying the Legislative finding that the program being enacted is for necessary support of the poor.

9       **Section 1.** W.S. 35-1-901 and 35-1-902 are created to  
10 read:

11

ARTICLE 9

12

MEDICAL MALPRACTICE INSURANCE ASSISTANCE ACCOUNT

13

14

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

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(a) As used in this article:

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

19

20

21

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

22

23

24

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

25

26

27

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

3                                   **\*\*\* STAFF COMMENTS \*\*\***

4           **This would include medical doctors, doctors of**  
5           **osteopathy and physician assistants but would not**  
6           **include dentists, podiatrists, optometrists or**  
7           **chiropractors.**  
8

9           **35-1-903.    Medical malpractice insurance assistance**  
10          **account; creation; duties of the department; requirements**  
11          **for assistance; breach.**  
12

13           (a) There is created a medical malpractice insurance  
14 assistance account. The account and any investment income  
15 earned from it shall be invested and reinvested by the  
16 state treasurer pursuant to W.S. 9-4-711. Investment  
17 income shall be redeposited to the account. Funds within  
18 the account, including investment income, are continuously  
19 appropriated to the department and shall be used for the  
20 purposes of this article.

21  
22           (b) The department shall:

23  
24           (i) Develop and make available application forms  
25 for assistance under this section;  
26

1           (ii)     Develop and enter into contracts with  
2 physicians as provided in this section;

3

4           (iii)  Administer the account; and

5

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

8

9           (c)   Any physician who is licensed and practicing  
10 in the state may apply to the department for assistance in  
11 paying a portion of the physician's medical malpractice  
12 insurance premiums as provided in this section.  Upon  
13 approval of the application for assistance, the physician  
14 shall enter into a contract with the state, wherein the  
15 physician shall agree:

16

17           (i)   To practice in the area of medical specialty  
18 or subspecialty for the entire period of the contract for  
19 which malpractice insurance premium assistance is to be  
20 provided under this section;

21

22           (ii)  To provide medical care for the entire  
23 period of the contract to Wyoming residents qualified under  
24 the Wyoming Medical Assistance and Services Act or the

1 Child Health Insurance Program established under W.S. 35-  
2 25-101 who are seeking medical care which the physician is  
3 qualified to provide;

4 **\*\*\* STAFF COMMENTS \*\*\***

5 The CHIPS program was added based upon  
6 discussions at the last meeting. The language is  
7 now similar to that used for the physician and  
8 dentist loan repayment program under W.S. 9-2-  
9 118. Two significant differences are that those  
10 participating in the loan repayment program are  
11 serving in "underserved" areas and they are also  
12 prohibited from discriminating against Medicare  
13 clients. There is also a local government  
14 matching requirement (25%) under the repayment  
15 program.  
16

17 (iii) To submit documentation to establish that  
18 the physician has complied with the terms of the contract  
19 and to determine the amount of assistance that should be  
20 provided; and  
21

22 (iv) To repay all funds distributed to the  
23 physician pursuant to this article, together with attorney  
24 fees and costs incurred in collection, for any contract  
25 period in which the physician is in breach of the contract.

26 **\*\*\* STAFF COMMENTS \*\*\***

27 Paragraph (iv) was added to the W1 version in  
28 order to help the state enforce collection of  
29 funds paid in case of a breach of the contract.  
30

31

1 (d) At the times specified in the contract but in no  
2 event less than once per year, the physician shall submit  
3 documentation to the department showing compliance with the  
4 terms of the contract. The department shall examine the  
5 documentation provided by the physician and calculate the  
6 amount of assistance if any to be provided. The amount of  
7 assistance to be provided shall be calculated by:

8

9 (i) Determining the amount of medical  
10 malpractice insurance premiums paid by the physician;

11

12 (ii) Determining the percentage of the  
13 physician's practice dedicated to providing the care to the  
14 persons specified in paragraph (c)(ii) of this section.  
15 This determination shall be based upon the dollar amount of  
16 billings made;

17

**\*\*\* STAFF COMMENTS \*\*\***

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**The last sentence was added to the W1 version in  
19 order to clarify the intent. Other options would  
20 include time spent or receivables.**

21

22 (iii) Multiplying the percentage determined  
23 under paragraph (ii) of this subsection by the amount  
24 determined under paragraph (i) of this subsection; and

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**\*\*\* STAFF COMMENTS \*\*\***

26

**Paragraph (iii) was rewritten, previously it  
27 spoke to determining the dollar amount of**

1           **malpractice premium directly attributable to**  
2           **providing Medicaid, etc, care.**  
3

4           (iv)           Multiplying the product obtained in  
5 paragraph (iii) of this subsection by one-half (1/2).  
6

7           (e) If funding available from the account is  
8 insufficient to pay assistance for all physicians who apply  
9 for assistance under this section, the department may at  
10 its discretion reduce the payments to pay each eligible  
11 physician a pro rata amount, in a manner to maximize the  
12 number of physicians who may receive assistance under this  
13 section.  
14

15           (f) In addition to any other civil or criminal  
16 penalties that may be imposed by law, any physician who  
17 fails or refuses to fulfill the terms of the contract  
18 required under subsection (c) of this section shall be in  
19 breach of the contract. The department may obtain the  
20 assistance of the attorney general to recoup the amount of  
21 assistance provided under the contract together with  
22 attorney fees and other costs of collection.

23                           **\*\*\* STAFF COMMENTS \*\*\***  
24           **The last sentence was rewritten to reflect the**  
25           **addition of attorney fees and to delete a**  
26           **reference to other "civil action against the**  
27           **physician."**



1 (g) The payment amounts and the name of a physician  
2 receiving payments under this section shall be a public  
3 record. Any other information used by the department in  
4 determining the amount of payment to physicians, including  
5 all information submitted to the department by a physician  
6 under this article, which is not already matters of public  
7 record are confidential and are not public records under  
8 W.S. 16-4-201 through 16-4-205.

9 **\*\*\* STAFF COMMENTS \*\*\***

10 **This subsection (g) is new and was incorporated**  
11 **after discussion with Senator Mockler.**  
12

13 **Section 3.** There is appropriated from the budget  
14 reserve account to the medical malpractice insurance  
15 assistance account created by this act, ten million dollars  
16 (\$10,000,000.00) to implement the purposes of this act,  
17 including payment of assistance for physicians' qualified  
18 medical malpractice insurance premiums and administrative  
19 costs incurred by the department of health in the  
20 implementation of the act.

21 **\*\*\* STAFF COMMENTS \*\*\***

22 **There is no breakdown in premium costs and**  
23 **administrative cost, nor positions added.**  
24

25 **Section 4.** This act is effective immediately upon  
26 completion of all acts necessary for a bill to become law

1 as provided by Article 4, Section 8 of the Wyoming  
2 Constitution.

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4

(END)

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