

WORKING DRAFT

HOUSE BILL NO. _____

Medical malpractice studies.

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; requiring reports and
 5 recommendations; providing appropriations; and providing
 6 for an effective date.

7

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

9

10 ***** STAFF COMMENTS *****
 11 **This draft combines three study bills requested**
 12 **by individual sponsors for the special session.**
 13 **All are related to medical care and the**
 14 **malpractice insurance issue. The first study is**
 15 **being sponsored as a separate bill by the joint**
 16 **Labor and Health and Judiciary committees. It**
 17 **has been included in this draft based upon the**
 18 **direction to combine all study bills into one**
 19 **draft. Other than to require the studies to be**
 20 **done by the health care commission and the**
 21 **insurance commissioner as specifically discussed**

1 at the last meeting, there has been no attempt to
2 make the studies uniform regarding when reports
3 are due etc., it seemed appropriate to leave the
4 differences as items for the JAC to debate. The
5 specific inclusion of the insurance commissioner
6 in the first study is not within the bill draft
7 being sponsored by the Labor and Health and
8 Judiciary Committees. The study under section 2
9 was initially drafted for the individual sponsor
10 as a Legislative/Executive Committee study, with
11 10 legislators and the governor's representative.
12 It was changed to a health care commission study
13 per the JAC discussion.
14

15 **Section 1.**

16

17 (a) The Wyoming health care commission **with**
18 **assistance from the insurance commissioner** shall study the
19 feasibility, costs and benefits of a new system of dealing
20 with health care errors and health care malpractice which
21 has the following characteristics:

22

23 (i) Definition and identification of health care
24 errors;

25

26 (ii) Identification of general and systemic
27 causes of health care errors;

28

29 (iii) Reporting of health care errors to a
30 health care errors commission;

1

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

4

5 (v) A system to compensate individuals, as their
6 exclusive remedy, for damages resulting from health care
7 errors, including payment for:

8

9 (A) All health care expenses arising from
10 the error; and

11

12 (B) Other expenses and lost opportunities,
13 including loss of actual and potential earnings, increased
14 living expenses, decreased quality of life and other
15 compensation as appropriate and as provided through a
16 schedule or formula.

17

18 (b) The study shall provide information about:

19

20 (i) The characteristics identified in subsection
21 (a) of this section;

22

23 (ii) The probable costs of the system including
24 but not limited to the costs of administration, the costs

1 of improvements to the health care system needed to prevent
2 future errors, the cost of compensating those persons
3 injured by errors and the costs to health care
4 professionals in providing the financial resources
5 necessary to support the system;

6

7 (iii) The size of the health care errors
8 commission and the appropriate mix of health care
9 professionals, attorneys and public representatives on the
10 commission;

11

12 (iv) The administration and management of the
13 commission including staffing and procedures for handling
14 claims;

15

16 (v) The schedules or formulas necessary to
17 determine the compensation of people injured by health care
18 errors;

19

20 (vi) The appropriate means for a person
21 aggrieved by an action of the commission to appeal to the
22 courts;

23

1 (vii) An analysis of this system's costs and
2 benefits for health care professionals and the public
3 compared to the present system of tort;

4

5 (viii) Any other factors the health care
6 commission deems relevant to the general topic.

7

8 (c) The completed study shall be submitted to the
9 joint labor, health and social services interim committee
10 by October 15, 2005.

11

12 **Section 2.**

13

14 (a) **The Wyoming health care commission with**
15 **assistance from the insurance commissioner** shall study
16 issues relating to insurance reform issues specified in
17 this subsection. The commission shall report **to the**
18 **management council** its findings, including any
19 recommendations for legislation. The report shall be
20 provided not later than November 1, 2005. The commission
21 shall study:

22

1 (i) Self insurance pools or state-funded
2 insurance programs to provide excess liability insurance
3 for health care providers;

4
5 (ii) The Nebraska excess liability fund;

6
7 (iii) The practicality of a Nebraska style
8 excess liability fund for Wyoming health care providers;

9
10 (iv) Similarities and differences between the
11 Nebraska and Wyoming tort systems, as they would affect the
12 practicality or advisability of a Nebraska style excess
13 liability fund in Wyoming;

14
15 (v) Estimated capitalization and other start-up
16 expenses for an excess liability self-insurance pool or
17 state-funded insurance program;

18
19 (vi) Any other issues the commission deems
20 appropriate and necessary for this study.

21
22 **Section 3.**

23

1 (a) The **Wyoming health care commission with**
2 **assistance of the** insurance commissioner shall conduct a
3 study on the feasibility of requiring physicians, hospitals
4 or combinations of physicians and hospitals to create one
5 (1) or more risk retention groups for the purposes of
6 providing medical malpractice liability insurance to
7 physicians, hospitals or combinations of physicians and
8 hospitals providing medical care to persons in this state.
9 The study shall include:

10

11 (i) A determination of the number of physicians
12 who practice in this state and the number of hospitals that
13 exist in this state;

14

15 (ii) A review of the historical and expected
16 loss experiences of medical malpractice liability insurers,
17 including risk retention groups, that have insured
18 physicians, hospitals or combinations of physicians and
19 hospitals against loss associated with medical malpractice
20 in this state;

21

22 (iii) A review of expected coverages,
23 deductibles, limits, rates and rating classification

1 systems based upon current industry practices in this state
2 and in other states;

3

4 (iv) A review of reserve fund requirements
5 necessary for group solvency;

6

7 (v) An examination of and recommendations
8 regarding risk retention group management, underwriting
9 procedures, managerial oversight methods and investment
10 policies;

11

12 (vi) An examination of the probable impact of
13 requiring creation of and membership in one (1) or more
14 risk retention groups upon the current market for medical
15 liability insurance;

16

17 (vii) An evaluation of the feasibility of using
18 other programs in addition to or in correlation with one
19 (1) or more risk retention groups, including the medical
20 liability compensation account;

21

22 (viii) Recommendations regarding the manner in
23 which one (1) or more risk retention groups may be created

1 and participation therein by physicians, hospitals or
2 combinations of physicians and hospitals required.

3

4 (b) On or before November 15, 2004, the commission
5 shall report study findings to the joint appropriations
6 interim committee, to the joint corporations, elections and
7 political subdivisions interim committee and to the joint
8 judiciary interim committee. The report shall include the
9 information specified in subsection (a) of this section and
10 any recommendations regarding necessary legislation.

11

12 **Section 4.**

13

14 (a) There is appropriated to the Wyoming health care
15 commission up to two hundred forty thousand dollars
16 (\$240,000.00) from the budget reserve account for the
17 purposes of the study authorized by section 1 of this act.

18

19 (b) There is appropriated from the budget reserve
20 account to the Wyoming health care commission fifty
21 thousand dollars (\$50,000.00) or as much thereof as is
22 necessary for purposes of the study required by section 2
23 of this act.

24

1 (c) There is appropriated from the budget reserve
2 account to the Wyoming health care commission sixty
3 thousand dollars (\$60,000.00) or as much thereof as is
4 necessary for purposes of the study required by section 3
5 of this act. Funds appropriated under this section shall
6 fund actuarial assistance and other administrative expenses
7 necessary to support study efforts.

8

9

(END)