

ENROLLED ACT NO. 134, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

AN ACT relating to the medical review panel; repealing existing statutes relating to the medical review panel; recreating the medical review panel; providing for selection of panel members; designating the attorney general or his designee as panel director to perform administrative tasks; authorizing the use of administrative hearing officers; establishing procedures for review of claims; providing definitions; granting rulemaking authority; providing appropriations; authorizing positions; and providing for effective dates.

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

Section 1. W.S. 9-2-1513 through 9-2-1523 are created to read:

9-2-1513. Short title.

This act may be cited as the "Wyoming Medical Review Panel Act of 2005".

9-2-1514. Purpose of provisions.

(a) The purposes of this act are:

(i) To prevent where possible the filing in court of actions against health care providers and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice; and

(ii) To make possible the fair and equitable disposition of such claims against health care providers as are, or reasonably may be, well founded.

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9-2-1515. Definitions.

(a) As used in this act:

(i) "Health care provider" means a person or facility licensed, certified or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession, but does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices;

(ii) "Malpractice claim" or "claim" means any claim against a health care provider for alleged medical treatment, alleged lack of medical treatment, or other alleged departure from accepted standards of health care which results in damage to the patient;

(iii) "Panel" means the medical review panel provided for under this act;

(iv) "Reasonable probability" means a factual basis which might lead a reasonable mind to the conclusion. Where there is evidence in the record and room for two (2) opinions, the conclusion shall be reached honestly and upon due consideration;

(v) "Substantial evidence" means relevant and competent evidence that a reasonable mind might accept as adequate to make a finding of fact. It may be less than the weight of the evidence, but it shall not be clearly contrary to the overwhelming weight of the evidence. More is required to meet the burden than a mere scintilla of evidence or suspicion of the existence of a fact to be established;

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(vi) "This act" means W.S. 9-2-1513 through 9-2-1523.

9-2-1516. Service of pleadings; computation of time.

(a) The claim, answer, decision and all other pleadings required to be served under this act shall be served in accordance with the Wyoming Rules of Civil Procedure.

(b) Computation of time periods prescribed or allowed under this act shall be in accordance with rule 6 of the Wyoming Rules of Civil Procedure.

9-2-1517. Panel created; compensation; director of panel; appointment and duties; rulemaking.

(a) There is created the Wyoming medical review panel.

(b) The panel shall have a director who shall be the attorney general or his designee and shall conduct the administrative business of the panel and otherwise implement this act. The director may use the office of administrative hearings as necessary and may employ personnel or contract for services necessary to implement this act. The director shall promulgate rules and regulations in accordance with the Wyoming Administrative Procedure Act to implement this act.

(c) Members of the panel shall receive compensation while engaged in the business of the board of five hundred dollars (\$500.00) per day each day the panel is convened, plus two hundred dollars (\$200.00) per preparation day, not to exceed two thousand dollars (\$2,000.00) per claim

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reviewed. Compensation for travel and other services shall be as provided in W.S. 9-3-102 and 9-3-103.

9-2-1518. Claims to be reviewed by panel; prohibition on filing claims in court; tolling of statute of limitation; immunity of panel and witnesses; administration.

(a) The panel shall review all malpractice claims against health care providers filed with the panel except those claims subject to a valid arbitration agreement allowed by law or upon which suit has been filed prior to July 1, 2005. Unless submission to the panel is waived in accordance with W.S. 9-2-1519(a), no complaint alleging malpractice shall be filed in any court against a health care provider before a claim is made to the panel and its decision is rendered. The running of the applicable limitation period in a malpractice action is tolled upon receipt by the director of the claim and does not begin again until thirty (30) days after the panel's final decision, or seventy-five (75) days after the panel's last hearing, whichever occurs earlier.

(b) Panel members are absolutely immune from civil liability for all acts in the course and scope of the duties under this act, including but not limited to communications, findings, opinions and conclusions.

(c) The panel may provide for the administration of oaths, the receipt of claims, the promulgation of forms required under this act, the issuance of subpoenas in connection with the administration of this act, and the performance of all other acts required to fairly and effectively administer this act. A party requesting a subpoena shall bear all costs of mileage and witness fees.

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9-2-1519. Claim review procedure; contents of claim; service of claim on provider; answer.

(a) Unless the claimant and respondent agree by written statements to waive submission to the panel, claimants shall submit a claim for the consideration of the panel prior to filing a complaint in any court in this state by addressing a claim, in writing, signed by the claimant or his attorney, to the director of the panel. The claim shall contain:

(i) A statement in reasonable detail of the elements of the health care provider's conduct which are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all health care providers having contact with the claimant relevant to the claim and all witnesses;

(ii) A medical record release form, signed by the claimant, authorizing the panel to obtain access to all health care provider records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. Nothing in the statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court.

(b) The claimant shall submit, within sixty (60) days following the submission of the claim, a statement prepared and signed by an expert in the specialty or subspecialty of medical practice at issue, setting forth the basis for the expert's belief that the conduct is believed to constitute a malpractice claim and the evidence currently available to support the expert's opinion.

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(c) The claim may be amended by filing an amendment not less than fourteen (14) days prior to the hearing date.

(d) Upon receipt of a claim, the director shall cause a true copy of the claim to be served on the health care providers against whom the claim has been filed.

(e) The health care provider shall answer the claim within sixty (60) days after service of the medical records release required under subsection (b) of this section and shall submit a medical records release authorizing the panel to inspect all health care provider records and information pertaining to the claim except those records which are confidential pursuant to W.S. 35-2-910 or 35-17-105 or 42 U.S.C. 11137(b). The answer shall be filed with the director who shall serve a copy on the claimant. If the health care provider fails to timely file an answer to the claim, the claimant may immediately pursue the claim in a court of competent jurisdiction.

9-2-1520. Panel composition; selection; disqualification of panelist; multiple defendants.

(a) The panel for each claim reviewed under this act shall consist of two (2) health care providers licensed in this state, two (2) attorneys licensed in this state and one (1) lay person unanimously chosen by the first four (4) members, who is not an attorney, health care provider or an employee of an attorney or health care provider. All panel members shall be residents of this state. If feasible the health care provider members of the panel shall be from the health care provider's profession or specialty. In those cases where the theory of respondeat superior or some other derivative theory of recovery is employed, if feasible one (1) member shall be from the individual health care provider's profession or specialty and one (1) member shall

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be from the profession or specialty of the health care provider named as employer, master or principal.

(b) Within five (5) days of receipt, the director shall notify the state licensing agency of the health care provider involved and the state bar of the filing of the claim. Within fourteen (14) days of notification, the state licensing agency and the state bar shall each provide the director a list of twelve (12) of its members as proposed panelists. To the extent possible, the state licensing agency shall include on the list persons specializing in the same field or discipline as the health care provider against whom the claim is made. The director shall select two (2) from each list to serve as panelists and shall notify the parties and the panel members selected of their selection. The four (4) professional panelists shall unanimously select and appoint one (1) person as a lay panelist. The director shall notify the parties of the name of the lay panelist.

(c) At or prior to the hearing, the panel may, by majority vote, select a chairman from among its members to preside over the panel proceedings, or shall request a hearing officer from the office of administrative hearings to preside over the panel proceedings.

(d) If, within fifteen (15) days of receipt of the notice of selection of the professional panelists, the claimant or the health care provider against whom the claim is made files an affidavit stating his belief that a professional panelist selected by the director cannot be impartial in reviewing the claim, the panel member is disqualified, and the director shall select another from the list. Each party may disqualify not more than three (3) professional panel members under this subsection.

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(e) The director may excuse a panelist from serving if the panelist feels his presence on the panel would be inappropriate under the circumstances of the case.

(f) When a claim is filed against two (2) or more health care providers, the claim against each health care provider shall be consolidated for hearing unless by stipulation of all parties or at the discretion of the panel, the claims are heard separately.

9-2-1521. Hearing procedure; review of decision prohibited.

(a) The director shall set a time and place for the hearing and provide notice to all parties at least thirty (30) days prior to the hearing. The proper place for hearing shall be the county in which an action is required to be brought according to W.S. 1-5-101 through 1-5-109. The hearing date shall not be more than one hundred twenty (120) days after the director receives the submission of the statement required under W.S. 9-2-1519(b) unless the director or panel finds good cause to delay the hearing. At least fifteen (15) days before the hearing the director shall provide each panel member copies of all claims, answers, briefs, records and other documents the director considers necessary.

(b) The hearing shall be conducted in accordance with rules and regulations promulgated by the director. The hearing shall be informal, and the Wyoming Rules of Evidence and, except as specified in this act, the Wyoming Administrative Procedure Act do not apply. No decision of the director or the panel is subject to review in a court. A record of the hearing shall be made. The panel may issue subpoenas to compel the attendance of witnesses as provided under the Administrative Procedure Act. Fees for any

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witness appearing at a hearing under this section shall be paid by the party calling the witness.

(c) The panel may take the case under advisement or may request that additional facts, records, witnesses or other information be obtained and presented to it at a supplemental hearing, which shall be set for a date not later than thirty (30) days from the beginning date of the original hearing unless the parties consent in writing to a longer period.

9-2-1522. Panel deliberations and decision; decision not binding.

(a) Upon consideration of all the relevant material, the panel shall determine whether there is:

(i) Substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(ii) A reasonable probability that the patient was injured as a result of the acts complained of.

(b) The deliberations of the panel are confidential. All votes of the panel on the questions for discussion shall be by secret ballot. The final decision shall be by a majority vote of the panel and shall be signed by the chairman within forty-five (45) days following the hearing. Failure to issue a timely final decision shall vacate any determination made and shall not bar the claimant from proceeding with the claim in a court of law.

(c) The final decision shall be in writing and forwarded to the director who shall serve copies on the parties. The panel's decision is not binding upon any

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party. The decision of the panel and any materials submitted by the parties thereto may be admissible in whole or in part in any subsequent trial of the matter, subject to the discretion of the trial court, in accordance with the Wyoming Rules of Evidence.

9-2-1523. Confidentiality of panel proceedings; privilege; decision admissible.

(a) The director shall maintain records of all proceedings before the panel, which shall include the nature of the act or omissions alleged in the claim, a brief summary of the evidence presented, the final decision of the panel and any majority or minority opinions filed. Except as otherwise required by law, or allowed pursuant to W.S. 9-2-1522(c) any records which may identify any party to the proceedings shall not be made public and are to be used solely for the purpose of compiling statistical data and facilitating ongoing studies of medical malpractice in this state.

(b) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions and internal proceedings of the panel.

Section 2. W.S. 9-2-1501 through 9-2-1512 are repealed.

Section 3.

(a) There is appropriated from the general fund to the medical review panel five hundred thousand dollars (\$500,000.00) or as much thereof as necessary to carry out the purposes of this act.

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(b) There is appropriated from the general fund to the office of the attorney general two hundred fifty thousand dollars (\$250,000.00), or as much thereof as necessary, and the attorney general is authorized up to two (2) additional full-time equivalent positions to carry out the purposes of this act.

Section 4.

(a) Except as provided in subsection (b) of this section, this act is effective July 1, 2005.

(b) W.S. 9-2-1517(b), as created in section 1 of this act, and section 3(b) of this act are effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____
DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk

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