

HOUSE BILL NO. HB0083

Medical review panel-2.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to the medical review panel; repealing
2 existing statutes relating to the medical review panel;
3 recreating the medical review panel; specifying the
4 creation of the panel is pursuant to article 10, section 4
5 of the Wyoming Constitution, as amended; and providing for
6 an effective date.

7

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

9

10 **Section 1.** W.S. 9-2-1513 through 9-2-1524 are created
11 to read:

12

13 **9-2-1513. Short title.**

14

15 This act may be cited as the "Wyoming Medical Review Panel
16 Act".

17

1 **9-2-1514. Purpose of provisions.**

2

3 (a) The purposes of this act are:

4

5 (i) To create a medical review panel, as
6 authorized by article 10, section 4, of the Wyoming
7 Constitution, as amended pursuant to 2004 House Joint
8 Resolution No. 0011, which was ratified by a majority of
9 the electors voting at the 2004 general election;

10

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

16

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

20

21 **9-2-1515. Definitions.**

22

23 (a) As used in this act:

24

1 (i) "Dentist" means a person licensed under W.S.
2 33-15-108;

3

4 (ii) "Health care provider" means a physician,
5 dentist, health care facility or any person employed by a
6 health care facility who, in accordance with law or a
7 license granted by a state agency, provides health care;

8

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

14

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

17

18 (v) "Physician" means a person licensed under
19 W.S. 33-26-303;

20

21 (vi) "This act" means W.S. 9-2-1513 through
22 9-2-1524.

23

24 **9-2-1516. Service of pleadings; computation of time.**

1

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

6

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

10

11 **9-2-1517. Panel created; compensation; director of**
12 **panel; appointment and duties; rulemaking.**

13

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

16

17 (b) The panel shall have a director who shall be the
18 attorney general or his designee and shall conduct the
19 administrative business of the panel and otherwise
20 implement this act. The director may employ personnel or
21 contract for services necessary to implement this act. The
22 director shall promulgate rules and regulations in
23 accordance with the Wyoming Administrative Procedure Act to
24 implement this act.

1

2 (c) Members of the panel shall receive compensation
3 while engaged in the business of the board of forty dollars
4 (\$40.00) per hour for any hour during which a hearing or
5 part of a hearing is held. Compensation for travel and
6 other services shall be as provided in W.S. 9-3-102 and
7 9-3-103. Compensation to any panel member under this
8 subsection shall not exceed three hundred twenty dollars
9 (\$320.00) per day.

10

11 **9-2-1518. Claims to be reviewed by panel; prohibition**
12 **on filing claims in court; tolling of statute of**
13 **limitation; immunity of panel and witnesses;**
14 **administration.**

15

16 (a) The panel shall review all malpractice claims
17 against health care providers filed with the panel except
18 those claims subject to a valid arbitration agreement
19 allowed by law or upon which suit has been filed prior to
20 July 1, 2005. No complaint alleging malpractice shall be
21 filed in any court against a health care provider before a
22 claim is made to the panel and its decision is rendered.
23 The running of the applicable limitation period in a
24 malpractice action is tolled upon receipt by the director

1 of the application for review and does not begin again
2 until thirty (30) days after the panel's final decision is
3 served upon the claimant.

4

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

9

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

17

18 **9-2-1519. Claim review procedure; contents of claim;**
19 **service of claim on provider; answer.**

20

21 (a) Claimants shall submit a case for the
22 consideration of the panel prior to filing a complaint in
23 any court in this state by addressing a claim, in writing,
24 signed by the claimant or his attorney, to the director of

1 the panel. The claim shall contain:

2

3 (i) A statement in reasonable detail of the
4 elements of the health care provider's conduct which are
5 believed to constitute a malpractice claim, the dates the
6 conduct occurred, and the names and addresses of all
7 physicians, dentists and hospitals having contact with the
8 claimant relevant to the claim and all witnesses;

9

10 (ii) A statement, signed by the claimant,
11 authorizing the panel to obtain access to all medical,
12 dental and hospital records and information pertaining to
13 the claim and, for the purposes of its consideration of
14 this matter only, waiving any privilege as to the contents
15 of those records. Nothing in the statement may in any way
16 be construed as waiving that privilege for any other
17 purpose or in any other context, in or out of court.

18

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

21

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

1

2 (d) The health care provider shall answer the claim
3 within thirty (30) days after service and shall submit a
4 statement authorizing the panel to inspect all medical,
5 dental and hospital records and information pertaining to
6 the claim except those records which are privileged
7 pursuant to W.S. 35-17-105. The answer shall be filed with
8 the director who shall serve a copy on the claimant.

9

10 **9-2-1520. Panel composition; selection;**
11 **disqualification of panelist; multiple defendants.**

12

13 (a) The panel for each claim reviewed under this act
14 shall consist of two (2) health care providers licensed in
15 this state, two (2) members of the state bar and one (1)
16 lay person who is not a lawyer, health care provider or an
17 employee of a health care provider. All panel members
18 shall be residents of this state. If feasible one (1)
19 member of the panel shall be from the health care
20 provider's profession or specialty. In those cases where
21 the theory of respondeat superior or some other derivative
22 theory of recovery is employed, if feasible one (1) member
23 shall be from the individual health care provider's
24 profession or specialty and one (1) member shall be from

1 the profession or specialty of the health care provider
2 named as employer, master or principal.

3

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

20

21 (c) At or prior to the hearing, the panel shall
22 select a chairman from among its members. The chairman
23 shall preside over the panel proceedings.

24

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

10
11 (e) The director may excuse a panelist from serving
12 if the panelist feels his presence on the panel would be
13 inappropriate under the circumstances of the case.

14
15 (f) When a claim is filed against two (2) or more
16 health care providers, the claim against each health care
17 provider shall be consolidated for hearing unless by
18 stipulation of all parties or at the discretion of the
19 panel, the claims are heard separately.

20
21 **9-2-1521. Hearing procedure; review of decision**
22 **prohibited.**

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

13

14 (b) The hearing shall be conducted in accordance with
15 rules and regulations promulgated by the director. The
16 hearing shall be informal, and the Wyoming Rules of
17 Evidence and, except as specified in this act, the Wyoming
18 Administrative Procedure Act do not apply. No decision of
19 the director or the panel is subject to review in a court.
20 A record of the hearing may be made if so stipulated by all
21 the parties and the panel. The panel may issue subpoenas
22 to compel the attendance of witnesses as provided under the
23 Administrative Procedure Act.

24

1 (c) The panel may take the case under advisement or
2 may request that additional facts, records, witnesses or
3 other information be obtained and presented to it at a
4 supplemental hearing, which shall be set for a date not
5 later than thirty (30) days from the date of the original
6 hearing unless the claimant or his attorney consents in
7 writing to a longer period.

8

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

11

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

14

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

18

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

21

22 (b) The deliberations of the panel are confidential.
23 All votes of the panel on the questions for discussion
24 shall be by secret ballot. The decision shall be by a

1 majority vote of the panel and shall be signed by the
2 chairman.

3

4 (c) The decision shall be in writing and forwarded to
5 the director who shall serve copies on the parties. A copy
6 of the decision shall be sent to the health care provider's
7 state licensing board.

8

9 (d) The panel's decision is not binding upon any
10 party. The panel may by stipulation of the parties
11 recommend an award.

12

13 **9-2-1523. Confidentiality of panel proceedings;**
14 **privilege; decision not admissible.**

15

16 (a) The director shall maintain records of all
17 proceedings before the panel, which shall include the
18 nature of the act or omissions alleged in the claim, a
19 brief summary of the evidence presented, the decision of
20 the panel and any majority or minority opinions filed.
21 Except as otherwise required by law, any records which may
22 identify any party to the proceedings shall not be made
23 public and are not subject to subpoena but are to be used
24 solely for the purpose of compiling statistical data and

1 facilitating ongoing studies of medical malpractice in this
2 state.

3

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

7

8 (c) The decision of the panel is not admissible as
9 evidence in any action.

10

11 **9-2-1524. Panel funding; assessments; collection;**
12 **rulemaking; medical review account; expenditures.**

13

14 (a) The panel shall be funded from assessments levied
15 against and paid by each health care provider covered by
16 this act. The director shall promulgate rules in
17 accordance with the Wyoming Administrative Procedure Act to
18 annually establish appropriate assessments based on the
19 following guidelines:

20

21 (i) The total amount of the panel's proposed
22 annual budget shall be prorated among the classes of health
23 care providers covered by this act based on the number of
24 cases reviewed by the panel during the immediately

1 preceding calendar year involving each such class of health
2 care providers;

3

4 (ii) The prorated amount determined for each
5 class of health care providers shall be divided by the
6 number of practicing providers within each class of health
7 care providers to determine the individual assessment;

8

9 (iii) The first four (4) annual assessments for
10 each resident practicing provider shall be equal to one and
11 one-fourth (1 1/4) the assessment determined pursuant to
12 paragraphs (i) and (ii) of this subsection. Thereafter
13 annual assessments shall be in the amount determined
14 pursuant to those paragraphs.

15

16 (b) The director shall certify the amount of each
17 assessment to the appropriate licensing board, agency or
18 authority, and the board, agency or authority shall levy
19 and collect the assessments annually at the same time as
20 annual license fees are collected. Assessments collected
21 under this subsection shall be remitted to the director not
22 later than thirty (30) days from the date of collection and
23 paid immediately by the director to the state treasurer for

1 deposit in an account, to be known as the medical review
2 account, within the earmarked revenue fund.

3

4 (c) Monies in the medical review account shall be
5 expended by the panel to carry out the purposes of this
6 section.

7

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

10

11 **Section 3.** This act is effective July 1, 2005.

12

13 (END)