NEWS RELEASE

For immediate release

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CASPER, Wyo. – Wyoming Healthcare Commission (WHCC) Chairman T. Chris Muirhead has sent a package of emergency, short-term recommendations to the Wyoming Legislature for the July special session.

The commission's three-part proposal provides an integrated response to Wyoming's heightened medical malpractice insurance crisis. The WHCC's "Crisis Response Package" includes two top-priority recommendations first issued in the fall of 2004 and one additional emergency proposal drafted in the wake of OHIC's announcement that it will cease doing business in the state.

"From the beginning, the Healthcare Commission realized that virtually all the long-term solutions that have proven effective in other states are not open to Wyoming because of constitutional barriers," Muirhead said. "For that reason, it is important to initiate the lengthy process of eliminating those barriers while also providing some immediate, temporary strategic state subsidies designed to help physicians who agree to remain in Wyoming until lasting solutions can take hold."

Muirhead strongly cautioned legislators against quickly enacting complex long-term solutions while operating in a crisis mode.

Specifically, the WHCC's Crisis Response Package consists of:

1. A constitutional amendment that allows for – but does not mandate – both limits (caps) on noneconomic, or "pain and suffering" damages, in claims against healthcare providers and a mandatory pretrial screening or mediation process to reduce frivolous claims.

2. An immediate, focused study of the feasibility and affordability of a proposal that would use a worker's compensation-style model to quickly and consistently compensate patients injured through avoidable medical errors and to identify and avoid common or reoccurring systems errors.

3. Immediate state subsidies for:

    a. A temporary premium assistance plan to close the gap between the higher medical malpractice base rates now being paid by Wyoming physicians and their counterparts in surrounding states.
    b. Assistance for physicians previously covered by OHIC who will be required to pay prior claims or "tail" coverage when changing to new carriers.
    c. A temporary, state-supported insurance mechanism to serve as a "safety net" to provide coverage, if needed, for some physicians unable to obtain coverage in the commercial market.

The Wyoming Healthcare Commission is a nine-member appointed board created by the Wyoming Legislature in 2003 to find solutions for a number of complex and overlapping healthcare problems, including but not limited to the affordability and availability of medical malpractice insurance.

Muirhead said the Wyoming Legislature recognized the need for in-depth, sustained research into the state's numerous, complex healthcare problems, so the WHCC was designed to serve as a primary resource for Wyoming legislators when it comes to healthcare issues.

"For the past year, our entire focus has been on maintaining and improving the access to healthcare in Wyoming communities," the chairman said. "But we've come to realize that patient-friendly Wyoming communities will exist only if we first promote a more physician-friendly environment."

Initially, the commission was to have sent its final recommendations to the Wyoming Legislature by December 2004; however, the rapid escalation of the medical liability insurance crisis has shortened that timeline considerably and long-term solutions will be proposed this fall, well in advance of the 2005 session.

Wyoming Healthcare Commission

T. Chris Muirhead, Chairman

COMMISSIONERS:
George Bryce
Ford Bussart
Jack Glode, M.D.
Carol V. Jenkins
Paul A. Lang
Steve Mossbrook
Dixie M. Roberts
John H. Vandel

Diane Harrop, Director
Emily Genoff, Assistant

7 June 2004

Dear Wyoming Legislator,

As you know, the Wyoming Healthcare Commission (WHCC) was created by the 2003 Legislature and has been charged with the task of conducting deep research into a number of critical healthcare issues facing Wyoming.

During this past year, we have amassed reams of reference materials and generated a wealth of Wyoming-specific data. Our data-driven approach will continue to provide the foundations for WHCC recommendations so that you can rely on us as an unbiased resource for accurate and reliable information about a wide range of healthcare topics.

As chairman, I am submitting three specific WHCC recommendations to you for the upcoming special session. These are listed and more fully described on the following pages.

The first two were endorsed by the entire WHCC last fall as our top two priorities. The 2004 Legislature, of course, did adopt half of the two-part Constitutional Amendment that we recommended, however, we remain convinced that the ultimate goal of any changes in the current medical liability climate must be to create *Physician-friendly*—and therefore *Patient-friendly*—Wyoming communities. For this to happen, the legislature must have the ability to place limits on noneconomic damages and design a mandatory pretrial medical review panel. The final recommendation includes three elements designed to minimize the immediate and negative effects of the elevated level of crisis that caused you to take the historic step of calling yourselves into special session.

I will make myself available to help prepare for the special session and will be available to answer questions or discuss our recommendations. Please also feel free to contact WHCC Director Diane Harrop for information. Our central mission, after all, is to serve as your knowledgeable and dependable first-line resource for healthcare-related topics.

Thank you,

T. Chris Muirhead
Chairman

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WYOMING HEALTHCARE COMMISSION

3-Part Crisis-Response Package – Recommendations for the July 2004, Special Session of the Wyoming Legislature

1.

The Wyoming Healthcare Commission recommends adoption of the following Constitutional Amendment:

NEW Article 10, Section 4A:

Any section of this Constitution to the contrary notwithstanding, the Legislature shall, in any civil action where the act or omission of a health care provider has been alleged to have resulted in death or injury to any person, have the right to:

(a) Limit the amount to be recovered for non-economic loss arising from the death or injury;

(b) Mandate an alternate dispute resolution process or other review of the matter by a medical review panel prior to the filing of a civil action against a health care provider.

This allows the people of Wyoming to decide whether the Wyoming Constitution should be amended to remove constitutional barriers to reforms.

The Wyoming Legislature needs to be given the "tools" that will allow the state to begin to address the malpractice issue. This would first include the power to set limits on non-economic damages (caps), if appropriate, in medical liability cases. The Constitutional amendment would give the Wyoming Legislature the flexibility to set and change non-economic cap levels according to current market conditions, but this amendment alone would not require that caps be adopted.

The second tool the Wyoming Legislature needs is the legislative power to create a mandatory medical review panel or other mechanism for determining the validity of a complaint prior to the filing of a civil action against a healthcare provider.

It is important to ask Wyoming voters for permission to give the Wyoming Legislature a full range of Constitutionally-allowable long-term remedies, so the 2004 HJR 11 (now known as Constitutional Amendment C) should be repealed if this combined amendment is adopted in the special session.

2.

The Wyoming Healthcare Commission continues to support our original recommendation for adequate funding of a study that would determine the feasibility and affordability of a proposal to use a Worker's Compensation-style model to improve the quality of healthcare in Wyoming. Further, the Wyoming Healthcare Commission is willing and able to facilitate this study if directed and funded by the Wyoming Legislature.

This proposal (as described in 2004 SF 028) aims to identify healthcare errors, and the general causes of healthcare errors, pinpoint and address systemic causes of errors, prevent future errors through system improvements, improve the delivery of healthcare services through enhanced patient safety, and consistently compensate individuals injured as a result of avoidable medical errors.

The Wyoming Healthcare Commission recognizes that this is an innovative idea, and therefore untested anywhere else; however, we see enough potential in the concept as a long-term solution to Wyoming's medical liability crisis to recommend that immediate and focused analysis be undertaken prior to the 2005 legislative session.

3.

The Wyoming Healthcare Commission recommends consideration of the following emergency crisis-level package as a response to Wyoming's heightened medical malpractice liability insurance crisis. It contains three separate elements designed to protect patients' access to healthcare in the short term while also providing immediate, but not permanent, relief to Wyoming physicians. These measures should continue for two to three years to give physicians the security of knowing that relief will not disappear before long-term solutions can be adopted and fully implemented.

It is further recommended that attempts not be made to adopt legislative long-term solutions until after the Wyoming Healthcare Commission transmits its full recommendations to the Legislature prior to the 2005 session. We should all recognize that our current situation developed over a 15-year period and that quick responses will not be in the best interest of the State.

CRISIS-RESPONSE PACKAGE:

A. **<u>Medical malpractice premium subsidies based on regional averages</u> should be provided for Wyoming physicians to address the growing gap between medical liability rates being paid by Wyoming physicians and those being**

paid by physicians in surrounding states. This type of plan is often called a "Premium Assistance Plan".
A subsidy plan similar to 2004 HB 173 could provide the most immediate and effective relief by providing state subsidies to cover the differences between medical malpractice rates being paid by Wyoming physicians and those paid by counterparts in surrounding states. It has been well documented that medical liability insurance premium base rates for Wyoming physicians are significantly higher than base rates in neighboring states. It is also known that Wyoming competes directly with these same states when recruiting physicians — creating a double disadvantage. Although an actuarial study has not been undertaken to estimate an exact price tag for this plan, we believe this kind of premium assistance plan could cost the state between $9 million and $11 million per year for each of the next three years.

B. State subsidies should be made available in some way to assist Wyoming physicians with the cost of prior acts or "tail" coverage. A subsidy of this type should only apply to those physicians being forced to seek medical liability coverage from a new company as a result of the decision by OHIC to cease doing business in Wyoming.
The situation the State of Wyoming may find itself in is that some Wyoming physicians formerly covered by OHIC will be forced to pay additional tail coverage (estimated to be 120% - 150% of their mature premium amount) either to OHIC or to a new insurer as part of their new policy. The cost of this tail coverage on top of the yearly premium with an alternate carrier may very well force many older physicians who cannot afford this into early retirement. Others may very well leave Wyoming, restrict higher-risk areas of their practices such as covering emergency rooms or delivering babies, or choose to "go bare" and continue to practice without insurance coverage for past acts—leaving some injured patients without access to appropriate compensation. Although an actuarial study to determine an estimated cost of this program has not been undertaken, it is conceivable that the State could incur a one-time cost of no more than $13 million (based on an estimate of 150% of total OHIC premiums paid by Wyoming physicians for the previous policy year and assuming the state elected to pay 100%). The intent would be to keep physicians from exiting our healthcare system early by either retiring or leaving the state in search of lower premiums.

C. A temporary state-sponsored or state-supported mechanism may need to be created to provide medical liability insurance coverage for Wyoming physicians who cannot obtain coverage in the commercial market because they practice in high-risk but essential specialties.
The Wyoming Healthcare Commission is very hesitant to put the State of Wyoming into the medical liability insurance business; however, a "safety net" may be needed to help a number of deserving physicians who are unable to obtain malpractice coverage from either the primary or secondary commercial malpractice markets. This mechanism must be in place in case large numbers of

physicians or some physicians practicing in higher-risk medical specialties are unable to obtain coverage.

As we concluded in our Joint Underwriting Association study (complete JUA Study is listed under "Reports" at www.wyominghealthcarecommission.org or by calling (307) 235-3227 for a print copy) last fall, an emergency JUA is a possible option. The best scenario would be for the State of Wyoming to negotiate an agreement to work in concert with a medical malpractice insurer currently doing business in Wyoming to provide the administrative and actuarial structures necessary to operate such a mechanism on a temporary basis.

Since an additional conclusion of the JUA Study was that premiums offered by a Joint Underwriting Association would be a minimum of 30% higher than rates offered by the voluntary market, the subsidy estimates described in #1 above may have to be revised upward for physicians covered by a JUA.

T. Chris Muirhead, Chairman
Wyoming Healthcare Commission

PRESS CONFERENCE
8 June 2004
10:00 a.m.
Casper, Wyoming

Thank you all for your attendance today. I am Chris Muirhead and I serve as chairman of the Wyoming Healthcare Commission.

I have a prepared statement to make and then I will be happy to answer as many questions as time allows.

The Wyoming Healthcare Commission was created by the 2003 Legislature and was tasked with finding long-term solutions to several critical healthcare problems in Wyoming. The medical liability insurance crisis is just one of those issues. Some of the others are:

- Increased access to healthcare services for Wyoming people
- Affordable health insurance
- Healthcare professional workforce shortages
- Chronic disease management
- Healthcare information technology
- Personal responsibility issues
- Cost shifting due to low Medicare/Medicaid reimbursements and uncompensated care

While we currently have four major studies underway that deal with issues other than the medical malpractice insurance crisis, it should come as no surprise to anyone that the members of the Wyoming Healthcare Commission consider the medical liability insurance crisis to be the most critical lynch-pin issue: if Wyoming cannot find viable solutions to this problem, WHCC work in other important healthcare areas will be less likely to succeed.

During the past year, the WHCC has amassed a pretty impressive amount of information, researched approaches developed by other states; and generated a great deal of Wyoming-specific data. We will continue to study and analyze information, but several things have become clear to me during this past year:

Wyoming has the opportunity, in the coming year, to make some difficult changes that will redefine our state as a *Physician-friendly* environment. I am convinced that the only way to ensure that Wyoming communities are

also *Patient-friendly* is to be able to attract and retain a sufficient number of high-quality medical professionals.

Our healthcare system in Wyoming is physician-centered—and without physicians, the entire system disintegrates rapidly. If Wyoming continues to lose doctors because they have to pay significantly higher insurance rates to practice in Wyoming than in neighboring states, the negative effects will multiply and impact virtually every community in this state. A community that cannot offer access to healthcare services will not thrive—no matter how much economic development money is poured into it.

Physicians are becoming a rare commodity in our country, so they have many choices about where and how they practice medicine. Wyoming is now the sole "crisis" state in the region, putting us clearly at a disadvantage when it comes to recruiting new physicians. Clearly, we must take steps to change that.

Last fall, the WHCC completed a study (the Joint Underwriting Association or JUA Study) that made it clear to us that Wyoming was already facing a medical malpractice insurance *affordability* crisis. At the end of that report, we indicated that, if one of the two major medical malpractice insurers left the state, this could easily expand the current crisis into a full-blown *affordability and availability crisis.* In that case, the Commission would be prepared to present recommendations for emergency short-term responses.

As we all know, OHIC, the company that insures approximately 43% of (or 381) Wyoming physicians has announced that they will cease renewing policies as of October 1; so my task today is to present to the public a 3-part crisis-response package of recommendations which has also been sent to all members of the Wyoming Legislature for their consideration at the special session.

You have all been given complete copies of the recommendations that went out to each of our states legislature — and those of you joining us by phone can obtain a copy by e-mailing your request to: whcc@state.wy.us.

To summarize, the Wyoming Healthcare Commission recommends the following:

1. We recommend the legislature pass for consideration by the voters in this coming general election a Constitutional Amendment that allows for—but does not mandate—both limitations on noneconomic (or "pain and suffering") damages (caps) in claims against healthcare providers and a mandatory pre-trial screening or mediation process to weed out frivolous claims.

2. We recommend the legislature appropriate adequate funds to conduct an immediate study of the feasibility of a proposal to use a Worker's Compensation-style model to quickly and consistently compensate patients injured through avoidable medical errors and to significantly reduce common or reoccurring systems errors.

3. We recommend that the state legislation provide for immediate temporary state subsidies as follows:

    a. creation of a Premium Assistance Plan that makes Wyoming medical liability insurance rates competitive on a regional basis to Wyoming physicians

    b. providing physicians previously insured by OHIC with assistance in purchasing prior acts or "tail" coverage

    c. the creation of an emergency Joint Underwriting Association (JUA) or other mechanism to provide a "safety net" for some physicians unable to obtain coverage in the commercial primary or secondary mal-practice market

At the same time, I most respectfully request that members of the Wyoming legislature use this special session as a time to deal primarily with the immediate crisis situation and I urge legislators to wait until the Wyoming Healthcare Commission has had a chance to conclude its deliberative processes and bring forward its recommendations for carefully-formulated, long-term solutions.

Initially, statute required the Commission to send its final recommendations to the Wyoming Legislature by December of 2004; however, the rapid escalation of the mal-practice liability insurance crisis has shortened that timeline considerably and our long-term solutions will be proposed in late fall of this year, in advance of the 2005 session.

In summary: The over-riding conclusion of the Wyoming Healthcare Commission is that no lasting, substantive reforms will be possible without the removal of at least two Constitutional barriers. We will not know if Wyoming voters are willing to give the legislature the expanded powers that we have suggested until after November 2nd general election. But I can guarantee that the Wyoming Healthcare Commission will continue to work hard to have a systematic, integrated package of long-range solutions ready to present to the Legislature in time for consideration in 2005.

Now, will be glad to answer a few questions in the time that we have left.