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ENGROSSED HOUSE BILL 3197

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State of Washington

58th Legislature

2004 Regular Session

By Representatives Schual-Berke, Kagi, Cody, Lantz, Morrell,  
Clibborn and Rockefeller

Read first time 02/14/2004. Referred to .

1 AN ACT Relating to reporting and analysis of medical malpractice  
2 related information; adding a new section to chapter 7.70 RCW; adding  
3 a new chapter to Title 48 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Claim" means a demand for payment of a loss caused by medical  
8 malpractice.

9 (a) Two or more claims arising out of a single injury or incident  
10 of medical malpractice is one claim.

11 (b) A series of related incidents of medical malpractice is one  
12 claim.

13 (2) "Claimant" means a person filing a claim against a health care  
14 provider or health care facility.

15 (3) "Commissioner" means the insurance commissioner.

16 (4) "Health care facility" or "facility" means a clinic, diagnostic  
17 center, hospital, laboratory, mental health center, nursing home,  
18 office, surgical facility, treatment facility, or similar place where  
19 a health care provider provides health care to patients.

1 (5) "Health care provider" or "provider" means a health care  
2 provider as defined in RCW 48.43.005.

3 (6) "Insuring entity" means:

4 (a) An insurer;

5 (b) A joint underwriting association;

6 (c) A risk retention group; or

7 (d) An unauthorized insurer that provides surplus lines coverage.

8 (7) "Medical malpractice" means a negligent act, error, or omission  
9 in providing or failing to provide professional health care services,  
10 failure to obtain informed consent, or breach of promise of a  
11 particular result.

12 NEW SECTION. **Sec. 2.** (1) Beginning on April 1, 2005, every  
13 insuring entity or self-insurer that provides medical malpractice  
14 insurance to any facility or provider in Washington state must report  
15 to the commissioner by the first of each quarter any claim related to  
16 medical malpractice, if the claim resulted in a final:

17 (a) Judgment in any amount;

18 (b) Settlement in any amount; or

19 (c) Disposition of a medical malpractice claim resulting in no  
20 indemnity payment on behalf of an insured.

21 (2) If a claim is not reported by an insuring entity or self-  
22 insurer under subsection (1) of this section due to limitations in the  
23 medical malpractice coverage of a facility or provider, the facility or  
24 provider must report the claim to the commissioner.

25 (3) Reports under this section must be filed with the commissioner  
26 within sixty days after the claim is resolved.

27 (4)(a) The commissioner may impose a fine of up to two hundred  
28 fifty dollars per day per case against any insuring entity or surplus  
29 lines producer that violates the requirements of this section. The  
30 total fine per case may not exceed ten thousand dollars.

31 (b) The department of health may impose a fine of up to two hundred  
32 fifty dollars per day per case against any facility or provider that  
33 violates the requirements of this section. The total fine per case may  
34 not exceed ten thousand dollars.

35 NEW SECTION. **Sec. 3.** The reports required under section 2 of this

1 act must contain the following data in a form prescribed by the  
2 commissioner for each claim:

3 (1) The health care provider's name, address, provider professional  
4 license number, and type of medical specialty for which the provider is  
5 insured; the name of the facility, if any, and the location within the  
6 facility where the injury occurred; and the names and professional  
7 license numbers if applicable, of all defendants involved in the claim.  
8 This information is confidential and exempt from public disclosure, but  
9 may be disclosed:

10 (a) Publicly, if the provider or facility provides written consent;  
11 or

12 (b) To the commissioner at any time for the purpose of identifying  
13 multiple or duplicate claims arising out of the same occurrence;

- 14 (2) The provider or facility policy number or numbers;  
15 (3) The date of the loss;  
16 (4) The date the claim was reported to the insuring entity, self-  
17 insurer, facility, or provider;  
18 (5) The name and address of the claimant. This information is  
19 confidential and exempt from public disclosure, but may be disclosed:

20 (a) Publicly, if the claimant provides written consent; or  
21 (b) To the commissioner at any time for the purpose of identifying  
22 multiple or duplicate claims arising out of the same occurrence;

- 23 (6) The date of suit, if filed;  
24 (7) The claimant's age and sex;  
25 (8) Specific information about the judgment or settlement  
26 including:

27 (a) The date and amount of any judgment or settlement;  
28 (b) Whether the settlement:  
29 (i) Was the result of an arbitration, judgment, or mediation; and  
30 (ii) Occurred before or after trial;

31 (c) An itemization of:  
32 (i) Economic damages, such as incurred and anticipated medical  
33 expense and lost wages;  
34 (ii) Noneconomic damages;  
35 (iii) Allocated loss adjustment expense, including but not limited  
36 to court costs, attorneys' fees, and costs of expert witnesses; and

37 (d) If there is no judgment or settlement:  
38 (i) The date and reason for final disposition; and

1 (ii) The date the claim was closed;

2 (9) A summary of the occurrence that created the claim, which must  
3 include:

4 (a) The final diagnosis for which the patient sought or received  
5 treatment;

6 (b) A description of any misdiagnosis made by the provider of the  
7 actual condition of the patient;

8 (c) The operation, diagnostic, or treatment procedure that caused  
9 the injury;

10 (d) A description of the principal injury that led to the claim;  
11 and

12 (e) The safety management actions the facility or provider has  
13 taken to make similar occurrences or injuries less likely in the  
14 future. This reporting requirement does not create a legal duty on the  
15 part of a facility or provider to implement safety management actions;  
16 and

17 (10) Any other information required by the commissioner, by rule,  
18 that helps the commissioner analyze and evaluate the nature, causes,  
19 location, cost, and damages involved in medical malpractice cases.

20 NEW SECTION. **Sec. 4.** The commissioner must prepare aggregate  
21 statistical summaries of closed claims based on calendar year data  
22 submitted under section 2 of this act.

23 (1) At a minimum, data must be sorted by calendar year and calendar  
24 accident year. The commissioner may also decide to display data in  
25 other ways.

26 (2) The summaries must be available by March 31st of each year.

27 NEW SECTION. **Sec. 5.** Beginning in 2006, the commissioner must  
28 prepare an annual report by June 30th that summarizes and analyzes the  
29 closed claim reports for medical malpractice filed under section 2 of  
30 this act and the annual financial reports filed by insurers writing  
31 medical malpractice insurance in this state. The report must include:

32 (1) An analysis of closed claim reports of prior years for which  
33 data are collected and show:

34 (a) Trends in the frequency and severity of claims payments;

35 (b) An itemization of economic and noneconomic damages;

1 (c) The types of medical malpractice for which claims have been  
2 paid; and

3 (d) Any other information the commissioner determines illustrates  
4 trends in closed claims;

5 (2) An analysis of the medical malpractice insurance market in  
6 Washington state, including:

7 (a) An analysis of the financial reports of the insurers with a  
8 combined market share of at least ninety percent of net written medical  
9 malpractice premium in Washington state for the prior calendar year;

10 (b) A loss ratio analysis of medical malpractice insurance written  
11 in Washington state; and

12 (c) A profitability analysis of each insurer writing medical  
13 malpractice insurance;

14 (3) A comparison of loss ratios and the profitability of medical  
15 malpractice insurance in Washington state to other states based on  
16 financial reports filed with the national association of insurance  
17 commissioners and any other source of information the commissioner  
18 deems relevant;

19 (4) A summary of the rate filings for medical malpractice that have  
20 been approved by the commissioner for the prior calendar year,  
21 including an analysis of the trend of direct and incurred losses as  
22 compared to prior years;

23 (5) The commissioner must post reports required by this section on  
24 the internet no later than thirty days after they are due; and

25 (6) The commissioner may adopt rules that require insuring entities  
26 and self-insurers required to report under section 2(1) of this act to  
27 report data related to:

28 (a) The frequency and severity of open claims for the reporting  
29 period;

30 (b) The aggregate amounts reserved for incurred claims;

31 (c) Changes in reserves from the previous reporting period; and

32 (d) Any other information that helps the commissioner monitor  
33 losses and claims development in the Washington state medical  
34 malpractice insurance market.

35 NEW SECTION. **Sec. 6.** The commissioner shall adopt all rules  
36 needed to implement this chapter. To ensure that claimants and health  
37 care providers cannot be individually identified when data is disclosed

1 to the public, the commissioner shall adopt rules that require the  
2 protection of information that, in combination, could result in the  
3 ability to identify the claimant or health care provider in a  
4 particular claim.

5 NEW SECTION. **Sec. 7.** A new section is added to chapter 7.70 RCW  
6 to read as follows:

7 (1) In any action filed under this chapter that results in a final:

8 (a) Judgment in any amount;

9 (b) Settlement in any amount; or

10 (c) Disposition resulting in no indemnity payment,

11 the claimant or his or her attorney shall report to the office of the  
12 insurance commissioner on forms provided by the commissioner any court  
13 costs, attorneys' fees, or costs of expert witnesses incurred in  
14 pursuing the action.

15 (2) The commissioner may adopt rules requiring the submission of  
16 any other information that would help the commissioner analyze and  
17 evaluate the costs involved in medical malpractice cases.

18 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act constitute  
19 a new chapter in Title 48 RCW.

20 NEW SECTION. **Sec. 9.** If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

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