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HOUSE BILL 2510

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State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Priest, Morrell, B. Sullivan and Rodne

Read first time 01/10/2006. Referred to Committee on Judiciary.

1            AN ACT Relating to early settlement offers in actions for injuries  
2 resulting from health care; amending RCW 7.70.070; and adding new  
3 sections to chapter 7.70 RCW.

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

5            NEW SECTION.    **Sec. 1.** A new section is added to chapter 7.70 RCW  
6 to read as follows:

7            The definitions in this section apply throughout sections 2 through  
8 6 of this act unless the context clearly requires otherwise.

9            (1) "Allegedly responsible party" means a health care provider  
10 alleged by the claimant to be responsible for at least some portion of  
11 an injury to the claimant resulting from alleged professional  
12 negligence in the provision of health care.

13            (2) "Amount recovered" means the total compensation, including the  
14 reasonable value of nonmonetary compensation, that an attorney has  
15 obtained on behalf of a claimant through settlement, arbitration, or  
16 judgment, minus the reasonable costs and expenses incurred by the  
17 attorney in prosecuting or settling the claim.

18            (3) "Claimant" means any natural person who, in his or her own  
19 right, or vicariously, is seeking compensation in connection with a

1 claim under this chapter for personal injury or wrongful death as a  
2 result of alleged professional negligence in the provision of health  
3 care.

4 (4) "Collateral source" means compensation or benefits paid or  
5 payable to the claimant or on the claimant's behalf, to compensate the  
6 claimant for the injury complained of, regardless of the right of  
7 recoupment of any other entity, through subrogation, trust agreement,  
8 lien, or otherwise.

9 (5) "Contingent fee" means compensation, however calculated, that  
10 is payable only if an amount is recovered.

11 (6) "Early settlement offer" means a settlement offer made in  
12 accordance with section 2 of this act.

13 (7) "Economic damages" has the meaning provided in RCW 4.56.250.

14 (8) "Entity" includes an individual or person.

15 (9) "Noneconomic damages" has the meaning provided in RCW 4.56.250.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 7.70 RCW  
17 to read as follows:

18 (1) In any civil action for damages brought under this chapter  
19 against a health care provider based on alleged professional  
20 negligence, an allegedly responsible party may make an early settlement  
21 offer at any time prior to one hundred twenty days after the claim is  
22 filed with a court. To qualify as an early settlement offer, the offer  
23 must include a good faith offer to compensate the claimant for the  
24 claimant's current and future economic damages suffered as a result of  
25 the allegedly responsible party's act or omission, less collateral  
26 source benefits available to the claimant, and for reasonable hourly  
27 attorneys' fees for the claimant. The early settlement offer must be  
28 in writing and communicated to the claimant by certified mail. The  
29 offer must remain open for acceptance for a minimum of thirty days from  
30 the date the offer is received by the claimant.

31 (2) An allegedly responsible party may amend or issue an additional  
32 early settlement offer prior to one hundred twenty days after the  
33 action is commenced. The claimant may extend the time for receiving  
34 the offer beyond this period.

35 (3) An attorney who receives an early settlement offer shall  
36 provide a true and complete copy of the offer to his or her client.

1 (4) A claimant who agrees in writing to an early settlement offer  
2 may not bring or continue a civil action, based on the same alleged  
3 professional negligence, against the allegedly responsible party who  
4 made the early settlement offer or any other allegedly responsible  
5 parties who joined in the early settlement offer under subsection (5)  
6 of this section.

7 (5) An offer under subsection (1) of this section may include other  
8 allegedly responsible parties who were involved in the events that gave  
9 rise to the civil action, regardless of the theory of liability on  
10 which the claim is based, with their consent. If, after an early  
11 settlement offer is made and accepted, the participants in the offer  
12 dispute their relative contributions to the payments to be made to the  
13 claimant, such disputes shall be resolved through binding arbitration  
14 in accordance with chapter 7.04 RCW.

15 (6) The claimant may reject an offer of compensation made under  
16 subsection (1) of this section and elect to bring or maintain a civil  
17 action for damages. Upon rejection of an offer of compensation that  
18 complies with the requirements of subsection (1) of this section, the  
19 claimant may recover damages in the civil action only if the claimant  
20 proves by clear and convincing evidence that the allegedly responsible  
21 party caused the injury by reckless, willful, or wanton conduct.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 7.70 RCW  
23 to read as follows:

24 (1) An attorney who represents a person alleging personal injury or  
25 death resulting from professional negligence in the provision of health  
26 care, and who represents the person on a contingent-fee basis, shall  
27 send a demand for compensation by certified mail to each allegedly  
28 responsible party prior to commencing a court action. In the event  
29 that multiple allegedly responsible parties are known to the attorney,  
30 a demand must be sent on the same date to each party. The demand must  
31 specify the amount of compensation sought and must set forth the  
32 material facts, documentary evidence, and other information relevant to  
33 the demand, including:

34 (a) The name and address of the claimant or of the person on whose  
35 behalf the claim is being made;

36 (b) A brief description of how the injury or loss occurred;

1 (c) The names and, if known, the addresses and telephone numbers of  
2 all known witnesses to the injury or loss;

3 (d) Copies of photographs in the claimant's possession which relate  
4 to the injury or loss;

5 (e) The basis for claiming that the party to whom the demand is  
6 addressed is responsible or partially responsible for the injury or  
7 loss;

8 (f) A description of the nature of the injury or loss, including  
9 the dates and nature of the care or services provided, and the names  
10 and addresses of all physicians and other health care providers that  
11 provided medical care or services to the claimant or injured party;

12 (g) Medical records relating to the injury, including those  
13 involving a prior injury or preexisting medical condition which would  
14 be discoverable by the allegedly responsible party during the course of  
15 litigation or, in lieu thereof, executed releases authorizing the  
16 allegedly responsible party to obtain the records directly from those  
17 health care providers who provided treatment to the claimant; and

18 (h) Documentation of any medical expenses, lost wages, personal  
19 losses, and other economic and noneconomic damages suffered as a  
20 consequence of the injury or loss.

21 (2) The attorney shall mail copies of each demand to the claimant  
22 and to each allegedly responsible party.

23 (3) A claimant's attorney who learns of an additional allegedly  
24 responsible party after making a demand for compensation under  
25 subsection (1) of this section shall send a demand for compensation to  
26 the newly discovered allegedly responsible party and simultaneously  
27 mail a copy of the demand to each of the other allegedly responsible  
28 parties and to the claimant.

29 (4) In the event that a claimant's attorney learns of an additional  
30 allegedly responsible party more than ninety days after making a demand  
31 for compensation under subsection (1) of this section, the attorney  
32 shall not be required to send a demand to that party nor do the fee  
33 limitations imposed under section 5 (1) and (2) of this act apply with  
34 regard to an amount recovered from that party, except as provided by  
35 this subsection. An attorney who fails as a result of a breach of the  
36 standard of care to learn of an additional allegedly responsible party  
37 within ninety days of sending a demand for compensation to another

1 allegedly responsible party shall not collect a fee in excess of that  
2 allowed under section 5 (1) and (2) of this act with respect to an  
3 amount recovered from the additional allegedly responsible party.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 7.70 RCW  
5 to read as follows:

6 An allegedly responsible party is under no obligation to issue a  
7 response to a demand for compensation made under section 3 of this act.  
8 The fact that a demand for compensation was or was not made, the fact  
9 that an early settlement offer was or was not made, and the amount of  
10 any demand or settlement offer made are inadmissible at a trial arising  
11 from the injury or loss.

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

14 (1) An attorney who represents a claimant who has accepted an early  
15 settlement offer under section 2 of this act shall not collect an  
16 amount as compensation for the attorney's services that is more than  
17 the attorney's reasonable hourly fees for the services performed.

18 (2) An attorney who represents a claimant who has rejected or  
19 failed to accept an early settlement offer shall not collect a  
20 contingent fee that is greater than twenty percent of the amount of the  
21 early settlement offer plus the percentage of the amount recovered in  
22 excess of the early settlement offer as was agreed to by the claimant  
23 and the attorney.

24 (3) A claimant's attorney who has failed to make a demand for  
25 compensation under section 3 of this act, or who has omitted from the  
26 demand any information required under section 3 of this act of a  
27 material nature which the attorney had in his or her possession, or  
28 which was readily available to him or her, or of which the attorney had  
29 knowledge, shall not collect a contingent fee greater than twenty  
30 percent of the amount recovered.

31 (4) A claimant's attorney who has failed to provide his or her  
32 client a true and complete copy of an early settlement offer received  
33 by the attorney, as required under section 2 of this act, shall not  
34 collect a contingent fee greater than twenty percent of the amount  
35 recovered.

1 (5) An attorney shall disclose, plainly and in writing, to  
2 claimants whom the attorney proposes to represent on a contingent-fee  
3 basis: (a) The fee limitations imposed by this section; and (b) the  
4 fact that such limitations are maximum limits and that the attorney and  
5 claimant may negotiate a lower fee.

6 The attorney shall also provide to each claimant a copy of this  
7 act.

8 (6) The fee limitations imposed by this section may not be waived.

9 (7) This section applies to all attorneys practicing in this state,  
10 including attorneys prosecuting claims filed in federal court, to the  
11 maximum extent permitted by federal law.

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

14 A fiduciary relationship applies with respect to a fee agreement  
15 between an attorney and a claimant.

16 **Sec. 7.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each  
17 amended to read as follows:

18 (1) The court shall, in any action under this chapter, determine  
19 the reasonableness of each party's attorneys fees. The court shall  
20 take into consideration the following:

21 ~~((1))~~ (a) The time and labor required, the novelty and difficulty  
22 of the questions involved, and the skill requisite to perform the legal  
23 service properly;

24 ~~((2))~~ (b) The likelihood, if apparent to the client, that the  
25 acceptance of the particular employment will preclude other employment  
26 by the lawyer;

27 ~~((3))~~ (c) The fee customarily charged in the locality for similar  
28 legal services;

29 ~~((4))~~ (d) The amount involved and the results obtained;

30 ~~((5))~~ (e) The time limitations imposed by the client or by the  
31 circumstances;

32 ~~((6))~~ (f) The nature and length of the professional relationship  
33 with the client;

34 ~~((7))~~ (g) The experience, reputation, and ability of the lawyer  
35 or lawyers performing the services;

36 ~~((8))~~ (h) Whether the fee is fixed or contingent.

1        (2) An attorney's contingency fee is limited to the maximum  
2 permissible fee allowed under section 5 of this act.

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