
SUBSTITUTE HOUSE BILL 1260

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Dyer, Backlund, Hymes, Casada, Kremen, Thompson and Schoesler)

Read first time 02/28/95.

1 AN ACT Relating to health care liability reform; amending RCW
2 5.60.060 and 70.02.050; adding a new section to chapter 4.24 RCW;
3 adding a new section to chapter 48.43 RCW; adding a new section to
4 chapter 74.08 RCW; creating new sections; and repealing RCW 18.130.330.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW
7 to read as follows:

8 LIABILITY REFORM. (1) The claimant's attorney shall file the
9 certificate specified in subsection (2) of this section within ninety
10 days of filing or service, whichever occurs later, any action for
11 damages arising out of the professional negligence of a person
12 licensed, registered, or certified under Title 18 RCW and subject to
13 chapter 18.130 RCW.

14 (2) The certificate issued by the claimant's attorney shall
15 declare:

16 (a) That the attorney has reviewed the facts of the case;

17 (b) That the attorney has consulted with at least one qualified
18 expert who holds a license, certificate, or registration issued by this
19 state or another state in the same profession as that of the defendant,

1 who practices in the same specialty or subspecialty as the defendant,
2 and who the attorney reasonably believes is knowledgeable in the
3 relevant issues involved in the particular action;

4 (c) The identity of the expert and the expert's license,
5 certification, or registration;

6 (d) That the expert is willing and available to testify to
7 admissible facts or opinions; and

8 (e) That the attorney has concluded on the basis of such review and
9 consultation that there is reasonable and meritorious cause for the
10 filing of such action.

11 (3) Where a certificate is required under this section, and where
12 there are multiple defendants, the certificate or certificates must
13 state the attorney's conclusion that on the basis of review and expert
14 consultation, there is reasonable and meritorious cause for the filing
15 of such action as to each defendant.

16 (4) The provisions of this section shall not be applicable to a
17 plaintiff who is not represented by an attorney.

18 (5) Violation of this section shall be grounds for either dismissal
19 of the case or sanctions against the attorney, or both, as the court
20 deems appropriate.

21 NEW SECTION. **Sec. 2.** Section 1 of this act applies to all actions
22 for damages arising out of professional negligence filed on or after
23 the effective date of this section.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.43 RCW
25 to read as follows:

26 No public or private health care payer subject to the jurisdiction
27 of the state of Washington shall propose, issue, sign, or renew a
28 provider agreement or enrollee service agreement that contains a clause
29 whose effect, in any way, is to disclaim liability for the care
30 delivered or not delivered to an enrollee because of a decision of the
31 payer as to whether the care was a covered service, medically
32 necessary, economically provided, medically appropriate, or similar
33 consideration. Similarly, no clause shall attempt to shift liability
34 for harm caused by such payer decisions to either providers, or
35 enrollees, or both, by claiming that the decision as to whether care
36 should be delivered, as opposed to paid for, is between the provider
37 and patient alone as if the fact of whether or not care is paid for

1 played little or no role in a patient's decision to obtain care.
2 Nothing in this section shall be inferred to result in liability to
3 anyone for the payer's payment decisions that are consistent with the
4 language of the applicable service agreement or consistent with the
5 cost-effective delivery of health care. The intent of this section is
6 only to prevent payers from shifting their liability for payment
7 decisions to either providers, or enrollees, or both.

8 NEW SECTION. **Sec. 4.** The legislature finds that the decision in
9 *Louden v. Mhyre*, 110 Wn.2d 675 (1988), has resulted in unnecessary
10 litigation expenses and has created an unfair advantage for attorneys
11 representing claimants. Despite the waiver of the physician-patient
12 privilege, defendants in personal injury cases cannot interview health
13 care witnesses without the presence or permission of the claimant's
14 attorney. This is in contrast to the claimant's attorney's ability to
15 obtain an authorization from his or her client and engage in private
16 meetings with all pertinent health care witnesses. As a result, the
17 defense must pay for expensive depositions, many of which are
18 unnecessary because the witness' information could have been obtained
19 inexpensively through a brief interview after the privilege was waived.
20 Legislation is needed to level the playing field and reduce unnecessary
21 litigation expense.

22 **Sec. 5.** RCW 5.60.060 and 1989 c 271 s 301 are each amended to read
23 as follows:

24 (1) A husband shall not be examined for or against his wife,
25 without the consent of the wife, nor a wife for or against her husband
26 without the consent of the husband; nor can either during marriage or
27 afterward, be without the consent of the other, examined as to any
28 communication made by one to the other during marriage. But this
29 exception shall not apply to a civil action or proceeding by one
30 against the other, nor to a criminal action or proceeding for a crime
31 committed by one against the other, nor to a criminal action or
32 proceeding against a spouse if the marriage occurred subsequent to the
33 filing of formal charges against the defendant, nor to a criminal
34 action or proceeding for a crime committed by said husband or wife
35 against any child of whom said husband or wife is the parent or
36 guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW:
37 PROVIDED, That the spouse of a person sought to be detained under

1 chapter 70.96A or 71.05 RCW may not be compelled to testify and shall
2 be so informed by the court prior to being called as a witness.

3 (2) An attorney or counselor shall not, without the consent of his
4 or her client, be examined as to any communication made by the client
5 to him or her, or his or her advice given thereon in the course of
6 professional employment.

7 (3) A member of the clergy or a priest shall not, without the
8 consent of a person making the confession, be examined as to any
9 confession made to him or her in his or her professional character, in
10 the course of discipline enjoined by the church to which he or she
11 belongs.

12 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.250,
13 a physician or surgeon or osteopathic physician or surgeon shall not,
14 without the consent of his or her patient, be examined in a civil
15 action as to any information acquired in attending such patient, which
16 was necessary to enable him or her to prescribe or act for the patient,
17 except as follows:

18 (a) In any judicial proceedings regarding a child's injury,
19 neglect, or sexual abuse or the cause thereof; and

20 (b) Ninety days after (~~filing an action~~) making a claim in
21 writing for personal injuries or wrongful death, the claimant shall be
22 deemed to waive the physician-patient privilege. Waiver of the
23 physician-patient privilege for any one physician or condition
24 constitutes a waiver of the privilege as to all physicians or
25 conditions, subject to such limitations as a court may impose pursuant
26 to court rules. Where the privilege has been waived under this
27 section, ex parte interviews with such physicians may be conducted in
28 the same manner as with any other witness.

29 (5) A public officer shall not be examined as a witness as to
30 communications made to him or her in official confidence, when the
31 public interest would suffer by the disclosure.

32 **Sec. 6.** RCW 70.02.050 and 1993 c 448 s 4 are each amended to read
33 as follows:

34 (1) A health care provider may disclose health care information
35 about a patient without the patient's authorization to the extent a
36 recipient needs to know the information, if the disclosure is:

37 (a) To a person who the provider reasonably believes is providing
38 health care to the patient;

1 (b) To any other person who requires health care information for
2 health care education, or to provide planning, quality assurance, peer
3 review, or administrative, legal, financial, or actuarial services to
4 the health care provider; or for assisting the health care provider in
5 the delivery of health care and the health care provider reasonably
6 believes that the person:

7 (i) Will not use or disclose the health care information for any
8 other purpose; and

9 (ii) Will take appropriate steps to protect the health care
10 information;

11 (c) To any other health care provider reasonably believed to have
12 previously provided health care to the patient, to the extent necessary
13 to provide health care to the patient, unless the patient has
14 instructed the health care provider in writing not to make the
15 disclosure;

16 (d) To any person if the health care provider reasonably believes
17 that disclosure will avoid or minimize an imminent danger to the health
18 or safety of the patient or any other individual, however there is no
19 obligation under this chapter on the part of the provider to so
20 disclose;

21 (e) Oral, and made to immediate family members of the patient, or
22 any other individual with whom the patient is known to have a close
23 personal relationship, if made in accordance with good medical or other
24 professional practice, unless the patient has instructed the health
25 care provider in writing not to make the disclosure;

26 (f) To a health care provider who is the successor in interest to
27 the health care provider maintaining the health care information;

28 (g) For use in a research project that an institutional review
29 board has determined:

30 (i) Is of sufficient importance to outweigh the intrusion into the
31 privacy of the patient that would result from the disclosure;

32 (ii) Is impracticable without the use or disclosure of the health
33 care information in individually identifiable form;

34 (iii) Contains reasonable safeguards to protect the information
35 from redisclosure;

36 (iv) Contains reasonable safeguards to protect against identifying,
37 directly or indirectly, any patient in any report of the research
38 project; and

1 (v) Contains procedures to remove or destroy at the earliest
2 opportunity, consistent with the purposes of the project, information
3 that would enable the patient to be identified, unless an institutional
4 review board authorizes retention of identifying information for
5 purposes of another research project;

6 (h) To a person who obtains information for purposes of an audit,
7 if that person agrees in writing to:

8 (i) Remove or destroy, at the earliest opportunity consistent with
9 the purpose of the audit, information that would enable the patient to
10 be identified; and

11 (ii) Not to disclose the information further, except to accomplish
12 the audit or report unlawful or improper conduct involving fraud in
13 payment for health care by a health care provider or patient, or other
14 unlawful conduct by the health care provider;

15 (i) To an official of a penal or other custodial institution in
16 which the patient is detained;

17 (j) To provide directory information, unless the patient has
18 instructed the health care provider not to make the disclosure;

19 (k) In the case of a hospital or health care provider to provide,
20 in cases reported by fire, police, sheriff, or other public authority,
21 name, residence, sex, age, occupation, condition, diagnosis, or extent
22 and location of injuries as determined by a physician, and whether the
23 patient was conscious when admitted; or

24 (l) Made after a deemed waiver of the physician-patient privilege
25 under RCW 5.60.060(4)(b).

26 (2) A health care provider shall disclose health care information
27 about a patient without the patient's authorization if the disclosure
28 is:

29 (a) To federal, state, or local public health authorities, to the
30 extent the health care provider is required by law to report health
31 care information; when needed to determine compliance with state or
32 federal licensure, certification or registration rules or laws; or when
33 needed to protect the public health;

34 (b) To federal, state, or local law enforcement authorities to the
35 extent the health care provider is required by law;

36 (c) Pursuant to compulsory process in accordance with RCW
37 70.02.060.

38 (3) All state or local agencies obtaining patient health care
39 information pursuant to this section shall adopt rules establishing

1 their record acquisition, retention, and security policies that are
2 consistent with this chapter.

3 NEW SECTION. **Sec. 7.** Sections 4 through 6 of this act do not
4 apply to claims, hearings, appeals, or any other proceedings under
5 Title 51 RCW.

6 NEW SECTION. **Sec. 8.** A new section is added to chapter 74.08 RCW
7 to read as follows:

8 (1) The legislature finds inappropriate the practice of
9 establishing a trust for a minor from an award or settlement of a
10 personal injury claim that has the effect of making the minor eligible
11 for public assistance when the minor otherwise would not be eligible
12 for such assistance. In these cases, limited public resources are
13 provided to persons with substantial assets, not the truly needy, and
14 the ultimate benefit of these trusts generally goes to the families of
15 these minors. The legislature intends to limit the ability to
16 establish this type of trust solely to obtain public assistance.

17 (2) The department shall review its policies and rules and, as
18 necessary and to the extent allowed by federal law, revise existing
19 rules or adopt new rules to limit the ability of minors who receive
20 substantial personal injury awards or settlements to use trusts to
21 become eligible for public assistance.

22 NEW SECTION. **Sec. 9.** RCW 18.130.330 and 1994 c 102 s 1 & 1993 c
23 492 s 412 are each repealed.

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