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HOUSE BILL 1260

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State of Washington

54th Legislature

1995 Regular Session

By Representatives Dyer, Backlund, Hymes, Casada, Kremen, Thompson and Schoesler

Read first time 01/19/95. Referred to Committee on HEALTH CARE.

1 AN ACT Relating to health care liability reform; adding a new  
2 section to chapter 4.24 RCW; adding new sections to chapter 7.70 RCW;  
3 adding a new section to chapter 18.130 RCW; and creating a new section.

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

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

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

12 (2) The certificate issued by the claimant's attorney shall  
13 declare:

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

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

1 and who the attorney reasonably believes is knowledgeable in the  
2 relevant issues involved in the particular action;

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

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

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

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

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

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

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

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

25 A health care provider, as defined in chapter 48.43 RCW, shall not  
26 be liable for the decision of a third party payer or others not to pay  
27 for or provide reimbursement for health care services recommended by  
28 the health care provider, provided:

29 (1) The health care provider complies with any formal or informal  
30 avenues of appeal made available by the third party payer or others  
31 under a health plan, as defined in chapter 48.43 RCW, or under any  
32 other contract or policy providing or paying for health care benefits  
33 or services; and

34 (2) The health care provider advises the patient to obtain the  
35 recommended care, even if not covered by the third party payer, and  
36 informs the patient of the potential risks in not obtaining the  
37 recommended health care services.

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

3        (1) Even when the physician-patient privilege is waived, defendant,  
4 including defendant's counsel, shall not engage in ex parte contact  
5 with health care providers that have provided health care services to  
6 the plaintiff. Once the action is commenced under chapter 4.28 RCW,  
7 the plaintiff, including plaintiff's attorney, also shall not engage in  
8 ex parte contact with health care providers regarding the health care  
9 provided to plaintiff that is related to the cause of action.

10        (2) This section does not apply to actions under Title 51 RCW.

11        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 18.130 RCW  
12 to read as follows:

13        (1) Except to the extent that liability insurance is not available,  
14 every licensed, certified, or registered health care practitioner whose  
15 services are included in the standard benefits package, as determined  
16 in chapter 48.43 RCW, and whose scope of practice includes independent  
17 practice, shall, as a condition of licensure and relicensure, be  
18 required to provide evidence of a minimum level of malpractice  
19 insurance coverage of a type satisfactory to the department before  
20 January 1, 1996.

21        The department shall designate by rule:

22        (a) Those health professions whose scope of practice includes  
23 independent practice;

24        (b) For each health profession whose scope of practice includes  
25 independent practice, whether malpractice insurance is available;

26        (c) If such insurance is available, the appropriate minimum level  
27 of mandated coverage; and

28        (d) The types of malpractice insurance coverage that will satisfy  
29 the requirements of this section.

30        (2) By December 1, 1994, the department of health shall submit  
31 recommendations to appropriate committees of the legislature regarding  
32 implementation of this section. The report shall address at least the  
33 following issues:

34        (a) Whether exemption of a health care practitioner from the  
35 requirements of this section, including but not limited to health care  
36 practitioners employed by the federal government and retired health  
37 care practitioners, is appropriate; and

1 (b) Whether malpractice coverage provided by an employer should be  
2 recognized as satisfying the requirements of this section.

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