

**E2SHB 1291** - S AMD 579

By Senators Thibaudeau, Keiser

ADOPTED 04/14/2005

1 On page 2, after line 8, insert the following:

2 "Sec. 2. RCW 5.64.010 and 1975-'76 2nd ex.s. c 56 s 3 are each  
3 amended to read as follows:

4 (1) In any civil action against a health care provider for personal  
5 injuries which is based upon alleged professional negligence (~~and~~  
6 ~~which is against:~~

7 ~~(1) A person licensed by this state to provide health care or~~  
8 ~~related services, including, but not limited to, a physician,~~  
9 ~~osteopathic physician, dentist, nurse, optometrist, podiatrist,~~  
10 ~~chiropractor, physical therapist, psychologist, pharmacist, optician,~~  
11 ~~physician's assistant, osteopathic physician's assistant, nurse~~  
12 ~~practitioner, or physician's trained mobile intensive care paramedic,~~  
13 ~~including, in the event such person is deceased, his estate or personal~~  
14 ~~representative;~~

15 ~~(2) An employee or agent of a person described in subsection (1) of~~  
16 ~~this section, acting in the course and scope of his employment,~~  
17 ~~including, in the event such employee or agent is deceased, his estate~~  
18 ~~or personal representative; or~~

19 ~~(3) An entity, whether or not incorporated, facility, or~~  
20 ~~institution employing one or more persons described in subsection (1)~~  
21 ~~of this section, including, but not limited to, a hospital, clinic,~~  
22 ~~health maintenance organization, or nursing home; or an officer,~~  
23 ~~director, employee, or agent thereof acting in the course and scope of~~  
24 ~~his employment, including, in the event such officer, director,~~  
25 ~~employee, or agent is deceased, his estate or personal~~  
26 ~~representative;)), or in any arbitration or mediation proceeding~~  
27 related to such civil action, evidence of furnishing or offering or  
28 promising to pay medical, hospital, or similar expenses occasioned by  
29 an injury is not admissible (~~to prove liability for the injury~~)).

1       (2)(a) In a civil action against a health care provider for  
2 personal injuries that is based upon alleged professional negligence,  
3 or in any arbitration or mediation proceeding related to such civil  
4 action, a statement, affirmation, gesture, or conduct identified in (b)  
5 of this subsection is inadmissible as evidence if:

6       (i) More than twenty days before commencement of trial it was  
7 conveyed by a health care provider to the injured person, or to a  
8 person specified in RCW 7.70.065(1); and

9       (ii) It relates to the discomfort, pain, suffering, injury, or  
10 death of the injured person as the result of the alleged professional  
11 negligence.

12       (b) (a) of this subsection applies to:

13       (i) Any statement, affirmation, gesture, or conduct expressing  
14 apology, fault, sympathy, commiseration, condolence, compassion, or a  
15 general sense of benevolence; or

16       (ii) Any statement or affirmation regarding remedial actions that  
17 may be taken to address the act or omission that is the basis for the  
18 allegation of negligence.

19       **Sec. 3.** RCW 4.24.260 and 1994 sp.s. c 9 s 701 are each amended to  
20 read as follows:

21       ~~((Physicians licensed under chapter 18.71 RCW, dentists licensed~~  
22 ~~under chapter 18.32 RCW, and pharmacists licensed under chapter 18.64~~  
23 ~~RCW)) Any member of a health profession listed under RCW 18.130.040~~  
24 ~~who, in good faith, makes a report, files charges, or presents evidence~~  
25 ~~against another member of ((their)) a health profession based on the~~  
26 ~~claimed ((incompetency or gross misconduct)) unprofessional conduct as~~  
27 ~~provided in RCW 18.130.180 or inability to practice with reasonable~~  
28 ~~skill and safety to consumers by reason of any physical or mental~~  
29 ~~condition as provided in RCW 18.130.170 of such person before the~~  
30 ~~((medical quality assurance commission established under chapter 18.71~~  
31 ~~RCW, in a proceeding under chapter 18.32 RCW, or to the board of~~  
32 ~~pharmacy under RCW 18.64.160)) agency, board, or commission responsible~~  
33 ~~for disciplinary activities for the person's profession under chapter~~  
34 ~~18.130 RCW, shall be immune from civil action for damages arising out~~  
35 ~~of such activities. A person prevailing upon the good faith defense~~  
36 ~~provided for in this section is entitled to recover expenses and~~  
37 ~~reasonable attorneys' fees incurred in establishing the defense.~~

1       **Sec. 4.** RCW 18.130.160 and 2001 c 195 s 1 are each amended to read  
2 as follows:

3       Upon a finding, after hearing, that a license holder or applicant  
4 has committed unprofessional conduct or is unable to practice with  
5 reasonable skill and safety due to a physical or mental condition, the  
6 disciplining authority may consider the imposition of sanctions, taking  
7 into account any prior findings of fact under RCW 18.130.110, any  
8 stipulations to informal disposition under RCW 18.130.172, and any  
9 action taken by other in-state or out-of-state disciplining  
10 authorities, and issue an order providing for one or any combination of  
11 the following:

- 12       (1) Revocation of the license;
- 13       (2) Suspension of the license for a fixed or indefinite term;
- 14       (3) Restriction or limitation of the practice;
- 15       (4) Requiring the satisfactory completion of a specific program of  
16 remedial education or treatment;
- 17       (5) The monitoring of the practice by a supervisor approved by the  
18 disciplining authority;
- 19       (6) Censure or reprimand;
- 20       (7) Compliance with conditions of probation for a designated period  
21 of time;
- 22       (8) Payment of a fine for each violation of this chapter, not to  
23 exceed five thousand dollars per violation. Funds received shall be  
24 placed in the health professions account;
- 25       (9) Denial of the license request;
- 26       (10) Corrective action;
- 27       (11) Refund of fees billed to and collected from the consumer;
- 28       (12) A surrender of the practitioner's license in lieu of other  
29 sanctions, which must be reported to the federal data bank.

30       Any of the actions under this section may be totally or partly  
31 stayed by the disciplining authority. In determining what action is  
32 appropriate, the disciplining authority must first consider what  
33 sanctions are necessary to protect or compensate the public. Only  
34 after such provisions have been made may the disciplining authority  
35 consider and include in the order requirements designed to rehabilitate  
36 the license holder or applicant. All costs associated with compliance  
37 with orders issued under this section are the obligation of the license  
38 holder or applicant.

1       The licensee or applicant may enter into a stipulated disposition  
2 of charges that includes one or more of the sanctions of this section,  
3 but only after a statement of charges has been issued and the licensee  
4 has been afforded the opportunity for a hearing and has elected on the  
5 record to forego such a hearing. The stipulation shall either contain  
6 one or more specific findings of unprofessional conduct or inability to  
7 practice, or a statement by the licensee acknowledging that evidence is  
8 sufficient to justify one or more specified findings of unprofessional  
9 conduct or inability to practice. The stipulation entered into  
10 pursuant to this subsection shall be considered formal disciplinary  
11 action for all purposes.

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

14       (1) "Adverse event" means any of the following events or  
15 occurrences:

16       (a) An unanticipated death or major permanent loss of function, not  
17 related to the natural course of a patient's illness or underlying  
18 condition;

19       (b) A patient suicide while the patient was under care in the  
20 hospital;

21       (c) An infant abduction or discharge to the wrong family;

22       (d) Sexual assault or rape of a patient or staff member while in  
23 the hospital;

24       (e) A hemolytic transfusion reaction involving administration of  
25 blood or blood products having major blood group incompatibilities;

26       (f) Surgery performed on the wrong patient or wrong body part;

27       (g) A failure or major malfunction of a facility system such as the  
28 heating, ventilation, fire alarm, fire sprinkler, electrical,  
29 electronic information management, or water supply which affects any  
30 patient diagnosis, treatment, or care service within the facility; or

31       (h) A fire which affects any patient diagnosis, treatment, or care  
32 area of the facility.

33       The term does not include an incident.

34       (2) "Ambulatory surgical facility" means any distinct entity that  
35 operates exclusively for the purpose of providing surgical services to  
36 patients not requiring hospitalization, whether or not the facility is  
37 certified under Title XVIII of the federal social security act.

1 (3) "Childbirth center" means a facility licensed under chapter  
2 18.46 RCW.

3 (4) "Correctional medical facility" means a part or unit of a  
4 correctional facility operated by the department of corrections under  
5 chapter 72.10 RCW that provides medical services for lengths of stay in  
6 excess of twenty-four hours to offenders.

7 (5) "Department" means the department of health.

8 (6) "Health care worker" means an employee, independent contractor,  
9 licensee, or other individual who is directly involved in the delivery  
10 of health services in a medical facility.

11 (7) "Hospital" means a facility licensed under chapter 70.41 RCW.

12 (8) "Incident" means an event, occurrence, or situation involving  
13 the clinical care of a patient in a medical facility which:

14 (a) Results in unanticipated injury to a patient that is less  
15 severe than death or major permanent loss of function and is not  
16 related to the natural course of the patient's illness or underlying  
17 condition; or

18 (b) Could have injured the patient but did not either cause an  
19 unanticipated injury or require the delivery of additional health care  
20 services to the patient.

21 The term does not include an adverse event.

22 (9) "Medical facility" means an ambulatory surgical facility,  
23 childbirth center, hospital, psychiatric hospital, or correctional  
24 medical facility.

25 (10) "Psychiatric hospital" means a hospital facility licensed as  
26 a psychiatric hospital under chapter 71.12 RCW.

27 NEW SECTION. **Sec. 6.** (1) Each medical facility shall report to  
28 the department the occurrence of any adverse event. The report must be  
29 submitted to the department within forty-five days after occurrence of  
30 the event has been confirmed.

31 (2) The report shall be filed in a format specified by the  
32 department after consultation with medical facilities. It shall  
33 identify the facility but shall not include any identifying information  
34 for any of the health care professionals, facility employees, or  
35 patients involved. This provision does not modify the duty of a  
36 hospital to make a report to the department of health or a disciplinary

1 authority if a licensed practitioner has committed unprofessional  
2 conduct as defined in RCW 18.130.180.

3 (3) Any medical facility or health care worker may report an  
4 incident to the department. The report shall be filed in a format  
5 specified by the department after consultation with medical facilities  
6 and shall identify the facility but shall not include any identifying  
7 information for any of the health care professionals, facility  
8 employees, or patients involved. This provision does not modify the  
9 duty of a hospital to make a report to the department of health or a  
10 disciplinary authority if a licensed practitioner has committed  
11 unprofessional conduct as defined in RCW 18.130.180.

12 (4) If, in the course of investigating a complaint received from an  
13 employee of a licensed medical facility, the department determines that  
14 the facility has not undertaken efforts to investigate the occurrence  
15 of an adverse event, the department shall direct the facility to  
16 undertake an investigation of the event. If a complaint related to a  
17 potential adverse event involves care provided in an ambulatory  
18 surgical facility, the department shall notify the facility and request  
19 that they undertake an investigation of the event. The protections of  
20 RCW 43.70.075 apply to complaints related to adverse events or  
21 incidents that are submitted in good faith by employees of medical  
22 facilities.

23 NEW SECTION. **Sec. 7.** The department shall:

24 (1) Receive reports of adverse events and incidents under section  
25 6 of this act;

26 (2) Investigate adverse events;

27 (3) Establish a system for medical facilities and the health care  
28 workers of a medical facility to report adverse events and incidents,  
29 which shall be accessible twenty-four hours a day, seven days a week;

30 (4) Adopt rules as necessary to implement this act;

31 (5) Directly or by contract:

32 (a) Collect, analyze, and evaluate data regarding reports of  
33 adverse events and incidents, including the identification of  
34 performance indicators and patterns in frequency or severity at certain  
35 medical facilities or in certain regions of the state;

36 (b) Develop recommendations for changes in health care practices

1 and procedures, which may be instituted for the purpose of reducing the  
2 number and severity of adverse events and incidents;

3 (c) Directly advise reporting medical facilities of immediate  
4 changes that can be instituted to reduce adverse events and incidents;

5 (d) Issue recommendations to medical facilities on a facility-  
6 specific or on a statewide basis regarding changes, trends, and  
7 improvements in health care practices and procedures for the purpose of  
8 reducing the number and severity of adverse events and incidents.  
9 Prior to issuing recommendations, consideration shall be given to the  
10 following factors: Expectation of improved quality care,  
11 implementation feasibility, other relevant implementation practices,  
12 and the cost impact to patients, payers, and medical facilities.  
13 Statewide recommendations shall be issued to medical facilities on a  
14 continuing basis and shall be published and posted on the department's  
15 publicly accessible web site. The recommendations made to medical  
16 facilities under this section shall not be considered mandatory for  
17 licensure purposes unless they are adopted by the department as rules  
18 pursuant to chapter 34.05 RCW; and

19 (e) Monitor implementation of reporting systems addressing adverse  
20 events or their equivalent in other states and make recommendations to  
21 the governor and the legislature as necessary for modifications to this  
22 chapter to keep the system as nearly consistent as possible with  
23 similar systems in other states;

24 (6) Report no later than January 1, 2007, and annually thereafter  
25 to the governor and the legislature on the department's activities  
26 under this act in the preceding year. The report shall include:

27 (a) The number of adverse events and incidents reported by medical  
28 facilities on a geographical basis and their outcomes;

29 (b) The information derived from the data collected including any  
30 recognized trends concerning patient safety; and

31 (c) Recommendations for statutory or regulatory changes that may  
32 help improve patient safety in the state.

33 The annual report shall be made available for public inspection and  
34 shall be posted on the department's web site;

35 (7) Conduct all activities under this section in a manner that  
36 preserves the confidentiality of documents, materials, or information  
37 made confidential by section 9 of this act.

1        NEW SECTION.    **Sec. 8.** (1) Medical facilities licensed by the  
2 department shall have in place policies to assure that, when  
3 appropriate, information about unanticipated outcomes is provided to  
4 patients or their families or any surrogate decision makers identified  
5 pursuant to RCW 7.70.065. Notifications of unanticipated outcomes  
6 under this section do not constitute an acknowledgment or admission of  
7 liability, nor can the fact of notification or the content disclosed be  
8 introduced as evidence in a civil action.

9        (2) Beginning January 1, 2006, the department shall, during the  
10 survey of a licensed medical facility, ensure that the policy required  
11 in subsection (1) of this section is in place.

12        NEW SECTION.    **Sec. 9.** When a report of an adverse event or  
13 incident under section 6 of this act is made by or through a  
14 coordinated quality improvement program under RCW 43.70.510 or  
15 70.41.200, or by a peer review committee under RCW 4.24.250,  
16 information and documents, including complaints and incident reports,  
17 created specifically for and collected and maintained by a quality  
18 improvement committee for the purpose of preparing a report of an  
19 adverse event or incident shall be subject to the confidentiality  
20 protections of those laws and RCW 42.17.310(1)(hh)."

21        Renumber the remaining sections consecutively and correct any  
22 internal references accordingly.

23        On page 6, after line 14, insert the following:

24        "NEW SECTION.    **Sec. 11.** Sections 5 through 9 of this act  
25 constitute a new chapter in Title 70 RCW."

26        Renumber the remaining section consecutively and correct any  
27 internal references accordingly.



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By Senators Thibaudeau, Keiser

**ADOPTED 04/14/2005**

1        On page 1, line 2 of the title, after "amending RCW" strike  
2        "43.70.110" and insert "5.64.010, 4.24.260, 18.130.160, 43.70.110," and  
3        on line 4, after "RCW;" insert "adding a new chapter to Title 70 RCW;"

**--- END ---**