

2SHB 2292 - S COMM AMD

By Committee on Health & Long-Term Care

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that access to safe,  
4 affordable health care is one of the most important issues facing the  
5 citizens of Washington state. The legislature further finds that the  
6 rising cost of medical malpractice insurance has caused some  
7 physicians, particularly those in high-risk specialties such as  
8 obstetrics and emergency room practice, to be unavailable when and  
9 where the citizens need them the most. The answers to these problems  
10 are varied and complex, requiring comprehensive solutions that  
11 encourage patient safety practices, increase oversight of medical  
12 malpractice insurance, and making the civil justice system more  
13 understandable, fair, and efficient for all the participants.

14 It is the intent of the legislature to prioritize patient safety  
15 and the prevention of medical errors above all other considerations as  
16 legal changes are made to address the problem of high malpractice  
17 insurance premiums. Thousands of patients are injured each year as a  
18 result of medical errors, many of which can be avoided by supporting  
19 health care providers, facilities, and carriers in their efforts to  
20 reduce the incidence of those mistakes. It is also the legislature's  
21 intent to provide incentives to settle cases before resorting to court,  
22 and to provide the option of a more fair, efficient, and streamlined  
23 alternative to trials for those for whom settlement negotiations do not  
24 work. Finally, it is the intent of the legislature to provide the  
25 insurance commissioner with the tools and information necessary to  
26 regulate medical malpractice insurance rates and policies so that they  
27 are fair to both the insurers and the insured.

28 **PART I - PATIENT SAFETY**

1           **Encouraging Patient Safety Through Communications With Patients**

2           **Sec. 101.** 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)).~~

30           (2)(a) In a civil action against a health care provider for  
31 personal injuries that is based upon alleged professional negligence,  
32 or in any arbitration or mediation proceeding related to such civil  
33 action, a statement, affirmation, gesture, or conduct identified in (b)  
34 of this subsection is not admissible as evidence if:

35           (i) It was conveyed by a health care provider to the injured  
36 person, or to a person specified in RCW 7.70.065 (1)(a) or (2)(a)  
37 within thirty days of the act or omission that is the basis for the

1 allegation of professional negligence or within thirty days of the time  
2 the health care provider discovered the act or omission that is the  
3 basis for the allegation of professional negligence, whichever period  
4 expires later; and

5 (ii) It relates to the discomfort, pain, suffering, injury, or  
6 death of the injured person as the result of the alleged professional  
7 negligence.

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

9 (i) Any statement, affirmation, gesture, or conduct expressing  
10 apology, fault, sympathy, commiseration, condolence, compassion, or a  
11 general sense of benevolence; or

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

15 **Encouraging Reports of Unprofessional Conduct or Lack of**  
16 **Capacity to Practice Safely**

17 **Sec. 102.** RCW 4.24.260 and 1994 sp.s. c 9 s 701 are each amended  
18 to read as follows:

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

1           **Medical Quality Assurance Commission Consumer Membership**

2           **Sec. 103.** RCW 18.71.015 and 1999 c 366 s 4 are each amended to  
3 read as follows:

4           The Washington state medical quality assurance commission is  
5 established, consisting of thirteen individuals licensed to practice  
6 medicine in the state of Washington under this chapter, two individuals  
7 who are licensed as physician assistants under chapter 18.71A RCW, and  
8 (~~four~~) six individuals who are members of the public. At least two  
9 of the public members shall not be from the health care industry. Each  
10 congressional district now existing or hereafter created in the state  
11 must be represented by at least one physician member of the commission.  
12 The terms of office of members of the commission are not affected by  
13 changes in congressional district boundaries. Public members of the  
14 commission may not be a member of any other health care licensing board  
15 or commission, or have a fiduciary obligation to a facility rendering  
16 health services regulated by the commission, or have a material or  
17 financial interest in the rendering of health services regulated by the  
18 commission.

19           The members of the commission shall be appointed by the governor.  
20 Members of the initial commission may be appointed to staggered terms  
21 of one to four years, and thereafter all terms of appointment shall be  
22 for four years. The governor shall consider such physician and  
23 physician assistant members who are recommended for appointment by the  
24 appropriate professional associations in the state. In appointing the  
25 initial members of the commission, it is the intent of the legislature  
26 that, to the extent possible, the existing members of the board of  
27 medical examiners and medical disciplinary board repealed under section  
28 336, chapter 9, Laws of 1994 sp. sess. be appointed to the commission.  
29 No member may serve more than two consecutive full terms. Each member  
30 shall hold office until a successor is appointed.

31           Each member of the commission must be a citizen of the United  
32 States, must be an actual resident of this state, and, if a physician,  
33 must have been licensed to practice medicine in this state for at least  
34 five years.

35           The commission shall meet as soon as practicable after appointment  
36 and elect officers each year. Meetings shall be held at least four  
37 times a year and at such place as the commission determines and at such

1 other times and places as the commission deems necessary. A majority  
2 of the commission members appointed and serving constitutes a quorum  
3 for the transaction of commission business.

4 The affirmative vote of a majority of a quorum of the commission is  
5 required to carry any motion or resolution, to adopt any rule, or to  
6 pass any measure. The commission may appoint panels consisting of at  
7 least three members. A quorum for the transaction of any business by  
8 a panel is a minimum of three members. A majority vote of a quorum of  
9 the panel is required to transact business delegated to it by the  
10 commission.

11 Each member of the commission shall be compensated in accordance  
12 with RCW 43.03.265 and in addition thereto shall be reimbursed for  
13 travel expenses incurred in carrying out the duties of the commission  
14 in accordance with RCW 43.03.050 and 43.03.060. Any such expenses  
15 shall be paid from funds appropriated to the department of health.

16 Whenever the governor is satisfied that a member of a commission  
17 has been guilty of neglect of duty, misconduct, or malfeasance or  
18 misfeasance in office, the governor shall file with the secretary of  
19 state a statement of the causes for and the order of removal from  
20 office, and the secretary shall forthwith send a certified copy of the  
21 statement of causes and order of removal to the last known post office  
22 address of the member.

23 Vacancies in the membership of the commission shall be filled for  
24 the unexpired term by appointment by the governor.

25 The members of the commission are immune from suit in an action,  
26 civil or criminal, based on its disciplinary proceedings or other  
27 official acts performed in good faith as members of the commission.

28 Whenever the workload of the commission requires, the commission  
29 may request that the secretary appoint pro tempore members of the  
30 commission. When serving, pro tempore members of the commission have  
31 all of the powers, duties, and immunities, and are entitled to all of  
32 the emoluments, including travel expenses, of regularly appointed  
33 members of the commission.

#### 34 **Health Care Provider Discipline**

35 **Sec. 104.** RCW 18.130.160 and 2001 c 195 s 1 are each amended to  
36 read as follows:

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

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

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

37       The licensee or applicant may enter into a stipulated disposition  
38 of charges that includes one or more of the sanctions of this section,

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

10 **Increasing Patient Safety Through**  
11 **Disclosure and Analysis of Adverse Events**

12 NEW SECTION. **Sec. 105.** The definitions in this section apply  
13 throughout this chapter unless the context clearly requires otherwise.

14 (1) "Adverse health event" or "adverse event" means the list of  
15 serious reportable events adopted by the national quality forum in  
16 2002, in its consensus report on serious reportable events in health  
17 care. The department shall update the list, through adoption of rules,  
18 as subsequent changes are made by the national quality forum. The term  
19 does not include an incident.

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

24 (3) "Childbirth center" means a facility licensed under chapter  
25 18.46 RCW.

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

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

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

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

35 (8) "Incident" means an event, occurrence, or situation involving  
36 the clinical care of a patient in a medical facility that:

1 (a) Results in unanticipated injury to a patient that is not  
2 related to the natural course of the patient's illness or underlying  
3 condition and does not constitute an adverse event; or

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

7 "Incident" does not include an adverse event.

8 (9) "Independent entity" means that entity that the department of  
9 health contracts with under section 108 of this act to receive  
10 notifications and reports of adverse events and incidents, and carry  
11 out the activities specified in section 108 of this act.

12 (10) "Medical facility" means a childbirth center, hospital,  
13 psychiatric hospital, or correctional medical facility. An ambulatory  
14 surgical facility shall be considered a medical facility for purposes  
15 of this chapter upon the effective date of any requirement for state  
16 registration or licensure of ambulatory surgical facilities.

17 (11) "Psychiatric hospital" means a hospital facility licensed as  
18 a psychiatric hospital under chapter 71.12 RCW.

19 NEW SECTION. **Sec. 106.** (1) The legislature intends to establish  
20 an adverse health events and incident reporting system that is designed  
21 to facilitate quality improvement in the health care system, improve  
22 patient safety and decrease medical errors in a nonpunitive manner.  
23 The reporting system shall not be designed to punish errors by health  
24 care practitioners or health care facility employees.

25 (2) Each medical facility shall notify the department of health  
26 regarding the occurrence of any adverse event and file a subsequent  
27 report as provided in this section. Notification must be submitted to  
28 the department within forty-eight hours of confirmation by the medical  
29 facility that an adverse event has occurred. A subsequent report must  
30 be submitted to the department within forty-five days after  
31 confirmation by the medical facility that an adverse event has  
32 occurred. The notification and report shall be submitted to the  
33 department using the internet-based system established under section  
34 108(2) of this act.

35 (3) The notification and report shall be filed in a format  
36 specified by the department after consultation with medical facilities  
37 and the independent entity. The format shall identify the facility,



1 but shall not include any identifying information for any of the health  
2 care professionals, facility employees, or patients involved. This  
3 provision does not modify the duty of a hospital to make a report to  
4 the department of health or a disciplinary authority if a licensed  
5 practitioner has committed unprofessional conduct as defined in RCW  
6 18.130.180.

7 (4) As part of the report filed under this section, the medical  
8 facility must conduct a root cause analysis of the event, describe the  
9 corrective action plan that will be implemented consistent with the  
10 findings of the analysis, or provide an explanation of any reasons for  
11 not taking corrective action. The department shall adopt rules, in  
12 consultation with medical facilities and the independent entity,  
13 related to the form and content of the root cause analysis and  
14 corrective action plan. In developing the rules, consideration shall  
15 be given to existing standards for root cause analysis or corrective  
16 action plans adopted by the joint commission on accreditation of health  
17 facilities and other national or governmental entities.

18 (5) If, in the course of investigating a complaint received from an  
19 employee of a medical facility, the department determines that the  
20 facility has not reported an adverse event or undertaken efforts to  
21 investigate the occurrence of an adverse event, the department shall  
22 direct the facility to report or to undertake an investigation of the  
23 event.

24 (6) The protections of RCW 43.70.075 apply to reports of adverse  
25 events that are submitted in good faith by employees of medical  
26 facilities.

27 NEW SECTION. **Sec. 107.** (1) The department shall:

28 (a) Receive and investigate, where necessary, notifications and  
29 reports of adverse events, including root cause analyses and corrective  
30 action plans submitted as part of reports, and communicate to  
31 individual facilities the department's conclusions, if any, regarding  
32 an adverse event reported by a facility; and

33 (b) Adopt rules as necessary to implement this chapter.

34 (2) The department may enforce the reporting requirements of  
35 section 106 of this act using their existing enforcement authority  
36 provided in chapter 18.46 RCW for childbirth centers, chapter 70.41 RCW  
37 for hospitals, and chapter 71.12 RCW for psychiatric hospitals.

1        NEW SECTION.    **Sec. 108.**    (1) The department shall contract with a  
2 qualified, independent entity to receive notifications and reports of  
3 adverse events and incidents, and carry out the activities specified in  
4 this section.    In establishing qualifications for, and choosing the  
5 independent entity, the department shall strongly consider the patient  
6 safety organization criteria included in the federal patient safety and  
7 quality improvement act of 2005, P.L. 109-41, and any regulations  
8 adopted to implement this chapter.

9        (2) The independent entity shall:

10        (a) In collaboration with the department of health, establish an  
11 internet-based system for medical facilities and the health care  
12 workers of a medical facility to submit notifications and reports of  
13 adverse events and incidents, which shall be accessible twenty-four  
14 hours a day, seven days a week.    The system shall be a portal to report  
15 both adverse events and incidents, and notifications and reports of  
16 adverse events shall be immediately transmitted to the department.    The  
17 system shall be a secure system that protects the confidentiality of  
18 personal health information and provider and facility specific  
19 information submitted in notifications and reports, including  
20 appropriate encryption and an accurate means of authenticating the  
21 identify of users of the system;

22        (b) Collect, analyze, and evaluate data regarding notifications and  
23 reports of adverse events and incidents, including the identification  
24 of performance indicators and patterns in frequency or severity at  
25 certain medical facilities or in certain regions of the state;

26        (c) Develop recommendations for changes in health care practices  
27 and procedures, which may be instituted for the purpose of reducing the  
28 number or severity of adverse events and incidents;

29        (d) Directly advise reporting medical facilities of immediate  
30 changes that can be instituted to reduce adverse events or incidents;

31        (e) Issue recommendations to medical facilities on a  
32 facility-specific or on a statewide basis regarding changes, trends,  
33 and improvements in health care practices and procedures for the  
34 purpose of reducing the number and severity of adverse events or  
35 incidents.    Prior to issuing recommendations, consideration shall be  
36 given to the following factors:    Expectation of improved quality of  
37 care, implementation feasibility, other relevant implementation  
38 practices, and the cost impact to patients, payers, and medical

1 facilities. Statewide recommendations shall be issued to medical  
2 facilities on a continuing basis and shall be published and posted on  
3 a publicly accessible web site. The recommendations made to medical  
4 facilities under this section shall not be considered mandatory for  
5 licensure purposes unless they are adopted by the department as rules  
6 pursuant to chapter 34.05 RCW; and

7 (f) Monitor implementation of reporting systems addressing adverse  
8 events or their equivalent in other states and make recommendations to  
9 the governor and the legislature as necessary for modifications to this  
10 chapter to keep the system as nearly consistent as possible with  
11 similar systems in other states.

12 (3) The independent entity shall report no later than January 1,  
13 2008, and annually thereafter to the governor and the legislature on  
14 the activities under this chapter in the preceding year. The report  
15 shall include:

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

18 (b) The information derived from the data collected, including any  
19 recognized trends concerning patient safety; and

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

22 The annual report shall be made available for public inspection and  
23 shall be posted on the department's and the independent entity's web  
24 site.

25 (4) The independent entity shall conduct all activities under this  
26 section in a manner that preserves the confidentiality of facilities,  
27 documents, materials, or information made confidential by section 110  
28 of this act.

29 (5) Medical facilities and health care workers may report incidents  
30 to the independent entity. The report shall be filed in a format  
31 specified by the independent entity, after consultation with the  
32 department and medical facilities, and shall identify the facility but  
33 shall not include any identifying information for any of the health  
34 care professionals, facility employees, or patients involved. This  
35 provision does not modify the duty of a hospital to make a report to  
36 the department or a disciplinary authority if a licensed practitioner  
37 has committed unprofessional conduct as defined in RCW 18.130.180. The

1 protections of RCW 43.70.075 apply to reports of incidents that are  
2 submitted in good faith by employees of medical facilities.

3 **Sec. 109.** RCW 43.70.075 and 1995 c 265 s 19 are each amended to  
4 read as follows:

5 (1) The identity of a whistleblower who complains, in good faith,  
6 to the department of health about the improper quality of care by a  
7 health care provider, or in a health care facility, as defined in RCW  
8 43.72.010, or who submits a notification or report of an adverse event  
9 or an incident, in good faith, to the department of health under  
10 section 106 of this act or to the independent entity under section 108  
11 of this act, shall remain confidential. The provisions of RCW 4.24.500  
12 through 4.24.520, providing certain protections to persons who  
13 communicate to government agencies, shall apply to complaints and  
14 notifications or reports of adverse events or incidents filed under  
15 this section. The identity of the whistleblower shall remain  
16 confidential unless the department determines that the complaint or  
17 notification or report of the adverse event or incident was not made in  
18 good faith. An employee who is a whistleblower, as defined in this  
19 section, and who as a result of being a whistleblower has been  
20 subjected to workplace reprisal or retaliatory action has the remedies  
21 provided under chapter 49.60 RCW.

22 (2)(a) "Improper quality of care" means any practice, procedure,  
23 action, or failure to act that violates any state law or rule of the  
24 applicable state health licensing authority under Title 18 or chapters  
25 70.41, 70.96A, 70.127, 70.175, 71.05, 71.12, and 71.24 RCW, and  
26 enforced by the department of health. Each health disciplinary  
27 authority as defined in RCW 18.130.040 may, with consultation and  
28 interdisciplinary coordination provided by the state department of  
29 health, adopt rules defining accepted standards of practice for their  
30 profession that shall further define improper quality of care.  
31 Improper quality of care shall not include good faith personnel actions  
32 related to employee performance or actions taken according to  
33 established terms and conditions of employment.

34 (b) "Reprisal or retaliatory action" means but is not limited to:  
35 Denial of adequate staff to perform duties; frequent staff changes;  
36 frequent and undesirable office changes; refusal to assign meaningful  
37 work; unwarranted and unsubstantiated report of misconduct pursuant to

1 Title 18 RCW; letters of reprimand or unsatisfactory performance  
2 evaluations; demotion; reduction in pay; denial of promotion;  
3 suspension; dismissal; denial of employment; and a supervisor or  
4 superior encouraging coworkers to behave in a hostile manner toward the  
5 whistleblower.

6 (c) "Whistleblower" means a consumer, employee, or health care  
7 professional who in good faith reports alleged quality of care concerns  
8 to the department of health.

9 (3) Nothing in this section prohibits a health care facility from  
10 making any decision exercising its authority to terminate, suspend, or  
11 discipline an employee who engages in workplace reprisal or retaliatory  
12 action against a whistleblower.

13 (4) The department shall adopt rules to implement procedures for  
14 filing, investigation, and resolution of whistleblower complaints that  
15 are integrated with complaint procedures under Title 18 RCW for health  
16 professionals or health care facilities.

17 NEW SECTION. **Sec. 110.** (1) When a notification or report of an  
18 adverse event or incident under section 106 or 108 of this act is made  
19 by or through a coordinated quality improvement program under RCW  
20 43.70.510 or 70.41.200, or by a peer review committee under RCW  
21 4.24.250, information and documents, including complaints and incident  
22 reports, created specifically for and collected and maintained by a  
23 quality improvement committee for the purpose of preparing a  
24 notification or report of an adverse event or incident, and the  
25 notification or report itself, shall be subject to the confidentiality  
26 protections of those laws and RCW 42.17.310(1)(hh) and 42.56.360(1)(c).

27 (2) When a notification or report of an adverse event or incident  
28 made by a health care worker under section 106 or 108 of this act uses  
29 information and documents, including complaints and incident reports,  
30 created specifically for and collected and maintained by a quality  
31 improvement committee under RCW 43.70.510 or 70.41.200 or a peer review  
32 committee under RCW 4.24.250, the notification or report itself and the  
33 information or documents used for the purpose of preparing the  
34 notification or report, shall be subject to the confidentiality  
35 protections of those laws and RCW 42.17.310(1)(hh) and 42.56.360(1)(c).

1       **Sec. 111.** RCW 42.17.310 and 2005 c 424 s 16, 2005 c 349 s 1, 2005  
2 c 312 s 6, 2005 c 284 s 1, 2005 c 172 s 13, and 2005 c 33 s 4 are each  
3 reenacted and amended to read as follows:

4       (1) The following are exempt from public inspection and copying:

5       (a) Personal information in any files maintained for students in  
6 public schools, patients or clients of public institutions or public  
7 health agencies, or welfare recipients.

8       (b) Personal information in files maintained for employees,  
9 appointees, or elected officials of any public agency to the extent  
10 that disclosure would violate their right to privacy.

11       (c) Information required of any taxpayer in connection with the  
12 assessment or collection of any tax if the disclosure of the  
13 information to other persons would (i) be prohibited to such persons by  
14 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the  
15 taxpayer's right to privacy or result in unfair competitive  
16 disadvantage to the taxpayer.

17       (d) Specific intelligence information and specific investigative  
18 records compiled by investigative, law enforcement, and penology  
19 agencies, and state agencies vested with the responsibility to  
20 discipline members of any profession, the nondisclosure of which is  
21 essential to effective law enforcement or for the protection of any  
22 person's right to privacy.

23       (e) Information revealing the identity of persons who are witnesses  
24 to or victims of crime or who file complaints with investigative, law  
25 enforcement, or penology agencies, other than the public disclosure  
26 commission, if disclosure would endanger any person's life, physical  
27 safety, or property. If at the time a complaint is filed the  
28 complainant, victim or witness indicates a desire for disclosure or  
29 nondisclosure, such desire shall govern. However, all complaints filed  
30 with the public disclosure commission about any elected official or  
31 candidate for public office must be made in writing and signed by the  
32 complainant under oath.

33       (f) Test questions, scoring keys, and other examination data used  
34 to administer a license, employment, or academic examination.

35       (g) Except as provided by chapter 8.26 RCW, the contents of real  
36 estate appraisals, made for or by any agency relative to the  
37 acquisition or sale of property, until the project or prospective sale  
38 is abandoned or until such time as all of the property has been

1 acquired or the property to which the sale appraisal relates is sold,  
2 but in no event shall disclosure be denied for more than three years  
3 after the appraisal.

4 (h) Valuable formulae, designs, drawings, computer source code or  
5 object code, and research data obtained by any agency within five years  
6 of the request for disclosure when disclosure would produce private  
7 gain and public loss.

8 (i) Preliminary drafts, notes, recommendations, and intra-agency  
9 memorandums in which opinions are expressed or policies formulated or  
10 recommended except that a specific record shall not be exempt when  
11 publicly cited by an agency in connection with any agency action.

12 (j) Records which are relevant to a controversy to which an agency  
13 is a party but which records would not be available to another party  
14 under the rules of pretrial discovery for causes pending in the  
15 superior courts.

16 (k) Records, maps, or other information identifying the location of  
17 archaeological sites in order to avoid the looting or depredation of  
18 such sites.

19 (l) Any library record, the primary purpose of which is to maintain  
20 control of library materials, or to gain access to information, which  
21 discloses or could be used to disclose the identity of a library user.

22 (m) Financial information supplied by or on behalf of a person,  
23 firm, or corporation for the purpose of qualifying to submit a bid or  
24 proposal for (i) a ferry system construction or repair contract as  
25 required by RCW 47.60.680 through 47.60.750 or (ii) highway  
26 construction or improvement as required by RCW 47.28.070.

27 (n) Railroad company contracts filed prior to July 28, 1991, with  
28 the utilities and transportation commission under RCW 81.34.070, except  
29 that the summaries of the contracts are open to public inspection and  
30 copying as otherwise provided by this chapter.

31 (o) Financial and commercial information and records supplied by  
32 private persons pertaining to export services provided pursuant to  
33 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to  
34 export projects pursuant to RCW 43.23.035.

35 (p) Financial disclosures filed by private vocational schools under  
36 chapters 28B.85 and 28C.10 RCW.

37 (q) Records filed with the utilities and transportation commission

1 or attorney general under RCW 80.04.095 that a court has determined are  
2 confidential under RCW 80.04.095.

3 (r) Financial and commercial information and records supplied by  
4 businesses or individuals during application for loans or program  
5 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
6 or during application for economic development loans or program  
7 services provided by any local agency.

8 (s) Membership lists or lists of members or owners of interests of  
9 units in timeshare projects, subdivisions, camping resorts,  
10 condominiums, land developments, or common-interest communities  
11 affiliated with such projects, regulated by the department of  
12 licensing, in the files or possession of the department.

13 (t) All applications for public employment, including the names of  
14 applicants, resumes, and other related materials submitted with respect  
15 to an applicant.

16 (u) The residential addresses, residential telephone numbers,  
17 personal wireless telephone numbers, personal electronic mail  
18 addresses, Social Security numbers, and emergency contact information  
19 of employees or volunteers of a public agency, and the names, dates of  
20 birth, residential addresses, residential telephone numbers, personal  
21 wireless telephone numbers, personal electronic mail addresses, Social  
22 Security numbers, and emergency contact information of dependents of  
23 employees or volunteers of a public agency, which are held by any  
24 public agency in personnel records, public employment related records,  
25 or volunteer rosters, or are included in any mailing list of employees  
26 or volunteers of any public agency. For purposes of this subsection,  
27 "employees" includes independent provider home care workers as defined  
28 in RCW 74.39A.240.

29 (v) The residential addresses and residential telephone numbers of  
30 the customers of a public utility contained in the records or lists  
31 held by the public utility of which they are customers, except that  
32 this information may be released to the division of child support or  
33 the agency or firm providing child support enforcement for another  
34 state under Title IV-D of the federal social security act, for the  
35 establishment, enforcement, or modification of a support order.

36 (w)(i) The federal social security number of individuals governed  
37 under chapter 18.130 RCW maintained in the files of the department of  
38 health, except this exemption does not apply to requests made directly



1 to the department from federal, state, and local agencies of  
2 government, and national and state licensing, credentialing,  
3 investigatory, disciplinary, and examination organizations; (ii) the  
4 current residential address and current residential telephone number of  
5 a health care provider governed under chapter 18.130 RCW maintained in  
6 the files of the department, if the provider requests that this  
7 information be withheld from public inspection and copying, and  
8 provides to the department an accurate alternate or business address  
9 and business telephone number. On or after January 1, 1995, the  
10 current residential address and residential telephone number of a  
11 health care provider governed under RCW 18.130.040 maintained in the  
12 files of the department shall automatically be withheld from public  
13 inspection and copying unless the provider specifically requests the  
14 information be released, and except as provided for under RCW  
15 42.17.260(9).

16 (x) Information obtained by the board of pharmacy as provided in  
17 RCW 69.45.090.

18 (y) Information obtained by the board of pharmacy or the department  
19 of health and its representatives as provided in RCW 69.41.044,  
20 69.41.280, and 18.64.420.

21 (z) Financial information, business plans, examination reports, and  
22 any information produced or obtained in evaluating or examining a  
23 business and industrial development corporation organized or seeking  
24 certification under chapter 31.24 RCW.

25 (aa) Financial and commercial information supplied to the state  
26 investment board by any person when the information relates to the  
27 investment of public trust or retirement funds and when disclosure  
28 would result in loss to such funds or in private loss to the providers  
29 of this information.

30 (bb) Financial and valuable trade information under RCW 51.36.120.

31 (cc) Client records maintained by an agency that is a domestic  
32 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape  
33 crisis center as defined in RCW 70.125.030.

34 (dd) Information that identifies a person who, while an agency  
35 employee: (i) Seeks advice, under an informal process established by  
36 the employing agency, in order to ascertain his or her rights in  
37 connection with a possible unfair practice under chapter 49.60 RCW

1 against the person; and (ii) requests his or her identity or any  
2 identifying information not be disclosed.

3 (ee) Investigative records compiled by an employing agency  
4 conducting a current investigation of a possible unfair practice under  
5 chapter 49.60 RCW or of a possible violation of other federal, state,  
6 or local laws prohibiting discrimination in employment.

7 (ff) Business related information protected from public inspection  
8 and copying under RCW 15.86.110.

9 (gg) Financial, commercial, operations, and technical and research  
10 information and data submitted to or obtained by the clean Washington  
11 center in applications for, or delivery of, program services under  
12 chapter 70.95H RCW.

13 (hh) Information and documents created specifically for, and  
14 collected and maintained by, a quality improvement committee pursuant  
15 to RCW 43.70.510 or 70.41.200, by a peer review committee under RCW  
16 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640  
17 or 18.20.390, and notifications or reports of adverse events or  
18 incidents made under section 106 or 108 of this act, regardless of  
19 which agency is in possession of the information and documents.

20 (ii) Personal information in files maintained in a data base  
21 created under RCW 43.07.360.

22 (jj) Financial and commercial information requested by the public  
23 stadium authority from any person or organization that leases or uses  
24 the stadium and exhibition center as defined in RCW 36.102.010.

25 (kk) Names of individuals residing in emergency or transitional  
26 housing that are furnished to the department of revenue or a county  
27 assessor in order to substantiate a claim for property tax exemption  
28 under RCW 84.36.043.

29 (ll) The names, residential addresses, residential telephone  
30 numbers, and other individually identifiable records held by an agency  
31 in relation to a vanpool, carpool, or other ride-sharing program or  
32 service. However, these records may be disclosed to other persons who  
33 apply for ride-matching services and who need that information in order  
34 to identify potential riders or drivers with whom to share rides.

35 (mm) The personally identifying information of current or former  
36 participants or applicants in a paratransit or other transit service  
37 operated for the benefit of persons with disabilities or elderly  
38 persons.

1 (nn) The personally identifying information of persons who acquire  
2 and use transit passes and other fare payment media including, but not  
3 limited to, stored value smart cards and magnetic strip cards, except  
4 that an agency may disclose this information to a person, employer,  
5 educational institution, or other entity that is responsible, in whole  
6 or in part, for payment of the cost of acquiring or using a transit  
7 pass or other fare payment media, or to the news media when reporting  
8 on public transportation or public safety. This information may also  
9 be disclosed at the agency's discretion to governmental agencies or  
10 groups concerned with public transportation or public safety.

11 (oo) Proprietary financial and commercial information that the  
12 submitting entity, with review by the department of health,  
13 specifically identifies at the time it is submitted and that is  
14 provided to or obtained by the department of health in connection with  
15 an application for, or the supervision of, an antitrust exemption  
16 sought by the submitting entity under RCW 43.72.310. If a request for  
17 such information is received, the submitting entity must be notified of  
18 the request. Within ten business days of receipt of the notice, the  
19 submitting entity shall provide a written statement of the continuing  
20 need for confidentiality, which shall be provided to the requester.  
21 Upon receipt of such notice, the department of health shall continue to  
22 treat information designated under this section as exempt from  
23 disclosure. If the requester initiates an action to compel disclosure  
24 under this chapter, the submitting entity must be joined as a party to  
25 demonstrate the continuing need for confidentiality.

26 (pp) Records maintained by the board of industrial insurance  
27 appeals that are related to appeals of crime victims' compensation  
28 claims filed with the board under RCW 7.68.110.

29 (qq) Financial and commercial information supplied by or on behalf  
30 of a person, firm, corporation, or entity under chapter 28B.95 RCW  
31 relating to the purchase or sale of tuition units and contracts for the  
32 purchase of multiple tuition units.

33 (rr) Any records of investigative reports prepared by any state,  
34 county, municipal, or other law enforcement agency pertaining to sex  
35 offenses contained in chapter 9A.44 RCW or sexually violent offenses as  
36 defined in RCW 71.09.020, which have been transferred to the Washington  
37 association of sheriffs and police chiefs for permanent electronic  
38 retention and retrieval pursuant to RCW 40.14.070(2)(b).

1 (ss) Credit card numbers, debit card numbers, electronic check  
2 numbers, card expiration dates, or bank or other financial account  
3 numbers, except when disclosure is expressly required by or governed by  
4 other law.

5 (tt) Financial information, including but not limited to account  
6 numbers and values, and other identification numbers supplied by or on  
7 behalf of a person, firm, corporation, limited liability company,  
8 partnership, or other entity related to an application for a horse  
9 racing license submitted pursuant to RCW 67.16.260(1)(b), liquor  
10 license, gambling license, or lottery retail license.

11 (uu) Records maintained by the employment security department and  
12 subject to chapter 50.13 RCW if provided to another individual or  
13 organization for operational, research, or evaluation purposes.

14 (vv) Individually identifiable information received by the work  
15 force training and education coordinating board for research or  
16 evaluation purposes.

17 (ww) Those portions of records assembled, prepared, or maintained  
18 to prevent, mitigate, or respond to criminal terrorist acts, which are  
19 acts that significantly disrupt the conduct of government or of the  
20 general civilian population of the state or the United States and that  
21 manifest an extreme indifference to human life, the public disclosure  
22 of which would have a substantial likelihood of threatening public  
23 safety, consisting of:

24 (i) Specific and unique vulnerability assessments or specific and  
25 unique response or deployment plans, including compiled underlying data  
26 collected in preparation of or essential to the assessments, or to the  
27 response or deployment plans; and

28 (ii) Records not subject to public disclosure under federal law  
29 that are shared by federal or international agencies, and information  
30 prepared from national security briefings provided to state or local  
31 government officials related to domestic preparedness for acts of  
32 terrorism.

33 (xx) Commercial fishing catch data from logbooks required to be  
34 provided to the department of fish and wildlife under RCW 77.12.047,  
35 when the data identifies specific catch location, timing, or  
36 methodology and the release of which would result in unfair competitive  
37 disadvantage to the commercial fisher providing the catch data.

1 However, this information may be released to government agencies  
2 concerned with the management of fish and wildlife resources.

3 (yy) Sensitive wildlife data obtained by the department of fish and  
4 wildlife. However, sensitive wildlife data may be released to  
5 government agencies concerned with the management of fish and wildlife  
6 resources. Sensitive wildlife data includes:

7 (i) The nesting sites or specific locations of endangered species  
8 designated under RCW 77.12.020, or threatened or sensitive species  
9 classified by rule of the department of fish and wildlife;

10 (ii) Radio frequencies used in, or locational data generated by,  
11 telemetry studies; or

12 (iii) Other location data that could compromise the viability of a  
13 specific fish or wildlife population, and where at least one of the  
14 following criteria are met:

15 (A) The species has a known commercial or black market value;

16 (B) There is a history of malicious take of that species; or

17 (C) There is a known demand to visit, take, or disturb, and the  
18 species behavior or ecology renders it especially vulnerable or the  
19 species has an extremely limited distribution and concentration.

20 (zz) The personally identifying information of persons who acquire  
21 recreational licenses under RCW 77.32.010 or commercial licenses under  
22 chapter 77.65 or 77.70 RCW, except name, address of contact used by the  
23 department, and type of license, endorsement, or tag. However, the  
24 department of fish and wildlife may disclose personally identifying  
25 information to:

26 (i) Government agencies concerned with the management of fish and  
27 wildlife resources;

28 (ii) The department of social and health services, child support  
29 division, and to the department of licensing in order to implement RCW  
30 77.32.014 and 46.20.291; and

31 (iii) Law enforcement agencies for the purpose of firearm  
32 possession enforcement under RCW 9.41.040.

33 (aaa)(i) Discharge papers of a veteran of the armed forces of the  
34 United States filed at the office of the county auditor before July 1,  
35 2002, that have not been commingled with other recorded documents.  
36 These records will be available only to the veteran, the veteran's next  
37 of kin, a deceased veteran's properly appointed personal representative

1 or executor, a person holding that veteran's general power of attorney,  
2 or to anyone else designated in writing by that veteran to receive the  
3 records.

4 (ii) Discharge papers of a veteran of the armed forces of the  
5 United States filed at the office of the county auditor before July 1,  
6 2002, that have been commingled with other records, if the veteran has  
7 recorded a "request for exemption from public disclosure of discharge  
8 papers" with the county auditor. If such a request has been recorded,  
9 these records may be released only to the veteran filing the papers,  
10 the veteran's next of kin, a deceased veteran's properly appointed  
11 personal representative or executor, a person holding the veteran's  
12 general power of attorney, or anyone else designated in writing by the  
13 veteran to receive the records.

14 (iii) Discharge papers of a veteran filed at the office of the  
15 county auditor after June 30, 2002, are not public records, but will be  
16 available only to the veteran, the veteran's next of kin, a deceased  
17 veteran's properly appointed personal representative or executor, a  
18 person holding the veteran's general power of attorney, or anyone else  
19 designated in writing by the veteran to receive the records.

20 (iv) For the purposes of this subsection (1)(aaa), next of kin of  
21 deceased veterans have the same rights to full access to the record.  
22 Next of kin are the veteran's widow or widower who has not remarried,  
23 son, daughter, father, mother, brother, and sister.

24 (bbb) Those portions of records containing specific and unique  
25 vulnerability assessments or specific and unique emergency and escape  
26 response plans at a city, county, or state adult or juvenile  
27 correctional facility, the public disclosure of which would have a  
28 substantial likelihood of threatening the security of a city, county,  
29 or state adult or juvenile correctional facility or any individual's  
30 safety.

31 (ccc) Information compiled by school districts or schools in the  
32 development of their comprehensive safe school plans pursuant to RCW  
33 28A.320.125, to the extent that they identify specific vulnerabilities  
34 of school districts and each individual school.

35 (ddd) Information regarding the infrastructure and security of  
36 computer and telecommunications networks, consisting of security  
37 passwords, security access codes and programs, access codes for secure

1 software applications, security and service recovery plans, security  
2 risk assessments, and security test results to the extent that they  
3 identify specific system vulnerabilities.

4 (eee) Information obtained and exempted or withheld from public  
5 inspection by the health care authority under RCW 41.05.026, whether  
6 retained by the authority, transferred to another state purchased  
7 health care program by the authority, or transferred by the authority  
8 to a technical review committee created to facilitate the development,  
9 acquisition, or implementation of state purchased health care under  
10 chapter 41.05 RCW.

11 (fff) Proprietary data, trade secrets, or other information that  
12 relates to: (i) A vendor's unique methods of conducting business; (ii)  
13 data unique to the product or services of the vendor; or (iii)  
14 determining prices or rates to be charged for services, submitted by  
15 any vendor to the department of social and health services for purposes  
16 of the development, acquisition, or implementation of state purchased  
17 health care as defined in RCW 41.05.011.

18 (ggg) The personally identifying information of persons who acquire  
19 and use transponders or other technology to facilitate payment of  
20 tolls. This information may be disclosed in aggregate form as long as  
21 the data does not contain any personally identifying information. For  
22 these purposes aggregate data may include the census tract of the  
23 account holder as long as any individual personally identifying  
24 information is not released. Personally identifying information may be  
25 released to law enforcement agencies only for toll enforcement  
26 purposes. Personally identifying information may be released to law  
27 enforcement agencies for other purposes only if the request is  
28 accompanied by a court order.

29 (hhh) Financial, commercial, operations, and technical and research  
30 information and data submitted to or obtained by the life sciences  
31 discovery fund authority in applications for, or delivery of, grants  
32 under chapter 43.350 RCW, to the extent that such information, if  
33 revealed, would reasonably be expected to result in private loss to the  
34 providers of this information.

35 (iii) Records of mediation communications that are privileged under  
36 chapter 7.07 RCW.

37 (2) Except for information described in subsection (1)(c)(i) of  
38 this section and confidential income data exempted from public

1 inspection pursuant to RCW 84.40.020, the exemptions of this section  
2 are inapplicable to the extent that information, the disclosure of  
3 which would violate personal privacy or vital governmental interests,  
4 can be deleted from the specific records sought. No exemption may be  
5 construed to permit the nondisclosure of statistical information not  
6 descriptive of any readily identifiable person or persons.

7 (3) Inspection or copying of any specific records exempt under the  
8 provisions of this section may be permitted if the superior court in  
9 the county in which the record is maintained finds, after a hearing  
10 with notice thereof to every person in interest and the agency, that  
11 the exemption of such records is clearly unnecessary to protect any  
12 individual's right of privacy or any vital governmental function.

13 (4) Agency responses refusing, in whole or in part, inspection of  
14 any public record shall include a statement of the specific exemption  
15 authorizing the withholding of the record (or part) and a brief  
16 explanation of how the exemption applies to the record withheld.

17 **Sec. 112.** RCW 42.56.360 and 2005 c 274 s 416 are each amended to  
18 read as follows:

19 (1) The following health care information is exempt from disclosure  
20 under this chapter:

21 (a) Information obtained by the board of pharmacy as provided in  
22 RCW 69.45.090;

23 (b) Information obtained by the board of pharmacy or the department  
24 of health and its representatives as provided in RCW 69.41.044,  
25 69.41.280, and 18.64.420;

26 (c) Information and documents created specifically for, and  
27 collected and maintained by a quality improvement committee under RCW  
28 43.70.510 or 70.41.200, or by a peer review committee under RCW  
29 4.24.250, and notifications or reports of adverse events or incidents  
30 made under section 106 or 108 of this act, regardless of which agency  
31 is in possession of the information and documents;

32 (d)(i) Proprietary financial and commercial information that the  
33 submitting entity, with review by the department of health,  
34 specifically identifies at the time it is submitted and that is  
35 provided to or obtained by the department of health in connection with  
36 an application for, or the supervision of, an antitrust exemption  
37 sought by the submitting entity under RCW 43.72.310;



1 (ii) If a request for such information is received, the submitting  
2 entity must be notified of the request. Within ten business days of  
3 receipt of the notice, the submitting entity shall provide a written  
4 statement of the continuing need for confidentiality, which shall be  
5 provided to the requester. Upon receipt of such notice, the department  
6 of health shall continue to treat information designated under this  
7 subsection (1)(d) as exempt from disclosure;

8 (iii) If the requester initiates an action to compel disclosure  
9 under this chapter, the submitting entity must be joined as a party to  
10 demonstrate the continuing need for confidentiality;

11 (e) Records of the entity obtained in an action under RCW 18.71.300  
12 through 18.71.340;

13 (f) Except for published statistical compilations and reports  
14 relating to the infant mortality review studies that do not identify  
15 individual cases and sources of information, any records or documents  
16 obtained, prepared, or maintained by the local health department for  
17 the purposes of an infant mortality review conducted by the department  
18 of health under RCW 70.05.170; and

19 (g) Complaints filed under chapter 18.130 RCW after July 27, 1997,  
20 to the extent provided in RCW 18.130.095(1).

21 (2) Chapter 70.02 RCW applies to public inspection and copying of  
22 health care information of patients.

### 23 **Coordinated Quality Improvement Programs**

24 **Sec. 113.** RCW 43.70.510 and 2004 c 145 s 2 are each amended to  
25 read as follows:

26 (1)(a) Health care institutions and medical facilities, other than  
27 hospitals, that are licensed by the department, professional societies  
28 or organizations, health care service contractors, health maintenance  
29 organizations, health carriers approved pursuant to chapter 48.43 RCW,  
30 and any other person or entity providing health care coverage under  
31 chapter 48.42 RCW that is subject to the jurisdiction and regulation of  
32 any state agency or any subdivision thereof may maintain a coordinated  
33 quality improvement program for the improvement of the quality of  
34 health care services rendered to patients and the identification and  
35 prevention of medical malpractice as set forth in RCW 70.41.200.

1 (b) All such programs shall comply with the requirements of RCW  
2 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to  
3 reflect the structural organization of the institution, facility,  
4 professional societies or organizations, health care service  
5 contractors, health maintenance organizations, health carriers, or any  
6 other person or entity providing health care coverage under chapter  
7 48.42 RCW that is subject to the jurisdiction and regulation of any  
8 state agency or any subdivision thereof, unless an alternative quality  
9 improvement program substantially equivalent to RCW 70.41.200(1)(a) is  
10 developed. All such programs, whether complying with the requirement  
11 set forth in RCW 70.41.200(1)(a) or in the form of an alternative  
12 program, must be approved by the department before the discovery  
13 limitations provided in subsections (3) and (4) of this section and the  
14 exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section  
15 shall apply. In reviewing plans submitted by licensed entities that  
16 are associated with physicians' offices, the department shall ensure  
17 that the exemption under RCW 42.17.310(1)(hh) and the discovery  
18 limitations of this section are applied only to information and  
19 documents related specifically to quality improvement activities  
20 undertaken by the licensed entity.

21 (2) Health care provider groups of five or more providers may  
22 maintain a coordinated quality improvement program for the improvement  
23 of the quality of health care services rendered to patients and the  
24 identification and prevention of medical malpractice as set forth in  
25 RCW 70.41.200. For purposes of this section, a health care provider  
26 group may be a consortium of providers consisting of five or more  
27 providers in total. All such programs shall comply with the  
28 requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h)  
29 as modified to reflect the structural organization of the health care  
30 provider group. All such programs must be approved by the department  
31 before the discovery limitations provided in subsections (3) and (4) of  
32 this section and the exemption under RCW 42.17.310(1)(hh) and  
33 subsection (5) of this section shall apply.

34 (3) Any person who, in substantial good faith, provides information  
35 to further the purposes of the quality improvement and medical  
36 malpractice prevention program or who, in substantial good faith,  
37 participates on the quality improvement committee shall not be subject  
38 to an action for civil damages or other relief as a result of such

1 activity. Any person or entity participating in a coordinated quality  
2 improvement program that, in substantial good faith, shares information  
3 or documents with one or more other programs, committees, or boards  
4 under subsection (6) of this section is not subject to an action for  
5 civil damages or other relief as a result of the activity or its  
6 consequences. For the purposes of this section, sharing information is  
7 presumed to be in substantial good faith. However, the presumption may  
8 be rebutted upon a showing of clear, cogent, and convincing evidence  
9 that the information shared was knowingly false or deliberately  
10 misleading.

11 (4) Information and documents, including complaints and incident  
12 reports, created specifically for, and collected, and maintained by a  
13 quality improvement committee are not subject to discovery or  
14 introduction into evidence in any civil action, and no person who was  
15 in attendance at a meeting of such committee or who participated in the  
16 creation, collection, or maintenance of information or documents  
17 specifically for the committee shall be permitted or required to  
18 testify in any civil action as to the content of such proceedings or  
19 the documents and information prepared specifically for the committee.  
20 This subsection does not preclude: (a) In any civil action, the  
21 discovery of the identity of persons involved in the medical care that  
22 is the basis of the civil action whose involvement was independent of  
23 any quality improvement activity; (b) in any civil action, the  
24 testimony of any person concerning the facts that form the basis for  
25 the institution of such proceedings of which the person had personal  
26 knowledge acquired independently of such proceedings; (c) in any civil  
27 action by a health care provider regarding the restriction or  
28 revocation of that individual's clinical or staff privileges,  
29 introduction into evidence information collected and maintained by  
30 quality improvement committees regarding such health care provider; (d)  
31 in any civil action challenging the termination of a contract by a  
32 state agency with any entity maintaining a coordinated quality  
33 improvement program under this section if the termination was on the  
34 basis of quality of care concerns, introduction into evidence of  
35 information created, collected, or maintained by the quality  
36 improvement committees of the subject entity, which may be under terms  
37 of a protective order as specified by the court; (e) in any civil  
38 action, disclosure of the fact that staff privileges were terminated or

1 restricted, including the specific restrictions imposed, if any and the  
2 reasons for the restrictions; or (f) in any civil action, discovery and  
3 introduction into evidence of the patient's medical records required by  
4 rule of the department of health to be made regarding the care and  
5 treatment received.

6 (5) Information and documents created specifically for, and  
7 collected and maintained by a quality improvement committee are exempt  
8 from disclosure under chapter 42.17 RCW.

9 (6) A coordinated quality improvement program may share information  
10 and documents, including complaints and incident reports, created  
11 specifically for, and collected and maintained by a quality improvement  
12 committee or a peer review committee under RCW 4.24.250 with one or  
13 more other coordinated quality improvement programs maintained in  
14 accordance with this section or with RCW 70.41.200 or a peer review  
15 committee under RCW 4.24.250, for the improvement of the quality of  
16 health care services rendered to patients and the identification and  
17 prevention of medical malpractice. The privacy protections of chapter  
18 70.02 RCW and the federal health insurance portability and  
19 accountability act of 1996 and its implementing regulations apply to  
20 the sharing of individually identifiable patient information held by a  
21 coordinated quality improvement program. Any rules necessary to  
22 implement this section shall meet the requirements of applicable  
23 federal and state privacy laws. Information and documents disclosed by  
24 one coordinated quality improvement program to another coordinated  
25 quality improvement program or a peer review committee under RCW  
26 4.24.250 and any information and documents created or maintained as a  
27 result of the sharing of information and documents shall not be subject  
28 to the discovery process and confidentiality shall be respected as  
29 required by subsection (4) of this section and RCW 4.24.250.

30 (7) The department of health shall adopt rules as are necessary to  
31 implement this section.

32 **Prescription Legibility**

33 NEW SECTION. **Sec. 114.** The legislature finds that prescription  
34 drug errors occur because the pharmacist or nurse cannot read the  
35 prescription from the physician or other provider with prescriptive

1 authority. The legislature further finds that legible prescriptions  
2 can prevent these errors.

3 **Sec. 115.** RCW 69.41.010 and 2003 c 257 s 2 and 2003 c 140 s 11 are  
4 each reenacted and amended to read as follows:

5 As used in this chapter, the following terms have the meanings  
6 indicated unless the context clearly requires otherwise:

7 (1) "Administer" means the direct application of a legend drug  
8 whether by injection, inhalation, ingestion, or any other means, to the  
9 body of a patient or research subject by:

10 (a) A practitioner; or

11 (b) The patient or research subject at the direction of the  
12 practitioner.

13 (2) "Community-based care settings" include: Community residential  
14 programs for the developmentally disabled, certified by the department  
15 of social and health services under chapter 71A.12 RCW; adult family  
16 homes licensed under chapter 70.128 RCW; and boarding homes licensed  
17 under chapter 18.20 RCW. Community-based care settings do not include  
18 acute care or skilled nursing facilities.

19 (3) "Deliver" or "delivery" means the actual, constructive, or  
20 attempted transfer from one person to another of a legend drug, whether  
21 or not there is an agency relationship.

22 (4) "Department" means the department of health.

23 (5) "Dispense" means the interpretation of a prescription or order  
24 for a legend drug and, pursuant to that prescription or order, the  
25 proper selection, measuring, compounding, labeling, or packaging  
26 necessary to prepare that prescription or order for delivery.

27 (6) "Dispenser" means a practitioner who dispenses.

28 (7) "Distribute" means to deliver other than by administering or  
29 dispensing a legend drug.

30 (8) "Distributor" means a person who distributes.

31 (9) "Drug" means:

32 (a) Substances recognized as drugs in the official United States  
33 pharmacopoeia, official homeopathic pharmacopoeia of the United States,  
34 or official national formulary, or any supplement to any of them;

35 (b) Substances intended for use in the diagnosis, cure, mitigation,  
36 treatment, or prevention of disease in man or animals;

1 (c) Substances (other than food, minerals or vitamins) intended to  
2 affect the structure or any function of the body of man or animals; and

3 (d) Substances intended for use as a component of any article  
4 specified in (a), (b), or (c) of this subsection. It does not include  
5 devices or their components, parts, or accessories.

6 (10) "Electronic communication of prescription information" means  
7 the communication of prescription information by computer, or the  
8 transmission of an exact visual image of a prescription by facsimile,  
9 or other electronic means for original prescription information or  
10 prescription refill information for a legend drug between an authorized  
11 practitioner and a pharmacy or the transfer of prescription information  
12 for a legend drug from one pharmacy to another pharmacy.

13 (11) "In-home care settings" include an individual's place of  
14 temporary and permanent residence, but does not include acute care or  
15 skilled nursing facilities, and does not include community-based care  
16 settings.

17 (12) "Legend drugs" means any drugs which are required by state law  
18 or regulation of the state board of pharmacy to be dispensed on  
19 prescription only or are restricted to use by practitioners only.

20 (13) "Legible prescription" means a prescription or medication  
21 order issued by a practitioner that is capable of being read and  
22 understood by the pharmacist filling the prescription or the nurse or  
23 other practitioner implementing the medication order. A prescription  
24 must be hand printed, typewritten, or electronically generated.

25 (14) "Medication assistance" means assistance rendered by a  
26 nonpractitioner to an individual residing in a community-based care  
27 setting or in-home care setting to facilitate the individual's self-  
28 administration of a legend drug or controlled substance. It includes  
29 reminding or coaching the individual, handing the medication container  
30 to the individual, opening the individual's medication container, using  
31 an enabler, or placing the medication in the individual's hand, and  
32 such other means of medication assistance as defined by rule adopted by  
33 the department. A nonpractitioner may help in the preparation of  
34 legend drugs or controlled substances for self-administration where a  
35 practitioner has determined and communicated orally or by written  
36 direction that such medication preparation assistance is necessary and  
37 appropriate. Medication assistance shall not include assistance with

1 intravenous medications or injectable medications, except prefilled  
2 insulin syringes.

3 (15) "Person" means individual, corporation, government or  
4 governmental subdivision or agency, business trust, estate, trust,  
5 partnership or association, or any other legal entity.

6 (16) "Practitioner" means:

7 (a) A physician under chapter 18.71 RCW, an osteopathic physician  
8 or an osteopathic physician and surgeon under chapter 18.57 RCW, a  
9 dentist under chapter 18.32 RCW, a podiatric physician and surgeon  
10 under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a  
11 registered nurse, advanced registered nurse practitioner, or licensed  
12 practical nurse under chapter 18.79 RCW, an optometrist under chapter  
13 18.53 RCW who is certified by the optometry board under RCW 18.53.010,  
14 an osteopathic physician assistant under chapter 18.57A RCW, a  
15 physician assistant under chapter 18.71A RCW, a naturopath licensed  
16 under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or,  
17 when acting under the required supervision of a dentist licensed under  
18 chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

19 (b) A pharmacy, hospital, or other institution licensed,  
20 registered, or otherwise permitted to distribute, dispense, conduct  
21 research with respect to, or to administer a legend drug in the course  
22 of professional practice or research in this state; and

23 (c) A physician licensed to practice medicine and surgery or a  
24 physician licensed to practice osteopathic medicine and surgery in any  
25 state, or province of Canada, which shares a common border with the  
26 state of Washington.

27 (17) "Secretary" means the secretary of health or the secretary's  
28 designee.

29 **PART II - INSURANCE INDUSTRY REFORM**

30 **Medical Malpractice Closed Claim Reporting**

31 NEW SECTION. **Sec. 201.** The definitions in this section apply  
32 throughout this chapter unless the context clearly requires otherwise.

33 (1) "Claim" means a demand for monetary damages for injury or death  
34 caused by medical malpractice, and a voluntary indemnity payment for

1 injury or death caused by medical malpractice made in the absence of a  
2 demand for monetary damages.

3 (2) "Claimant" means a person, including a decedent's estate, who  
4 is seeking or has sought monetary damages for injury or death caused by  
5 medical malpractice.

6 (3) "Closed claim" means a claim that has been settled or otherwise  
7 disposed of by the insuring entity, self-insurer, facility, or  
8 provider. A claim may be closed with or without an indemnity payment  
9 to a claimant.

10 (4) "Commissioner" means the insurance commissioner.

11 (5) "Economic damages" has the same meaning as in RCW  
12 4.56.250(1)(a).

13 (6) "Health care facility" or "facility" means a clinic, diagnostic  
14 center, hospital, laboratory, mental health center, nursing home,  
15 office, surgical facility, treatment facility, or similar place where  
16 a health care provider provides health care to patients, and includes  
17 entities described in RCW 7.70.020(3).

18 (7) "Health care provider" or "provider" has the same meaning as in  
19 RCW 7.70.020 (1) and (2).

20 (8) "Insuring entity" means:

- 21 (a) An insurer;
- 22 (b) A joint underwriting association;
- 23 (c) A risk retention group; or
- 24 (d) An unauthorized insurer that provides surplus lines coverage.

25 (9) "Medical malpractice" means an actual or alleged negligent act,  
26 error, or omission in providing or failing to provide health care  
27 services that is actionable under chapter 7.70 RCW.

28 (10) "Noneconomic damages" has the same meaning as in RCW  
29 4.56.250(1)(b).

30 (11) "Self-insurer" means any health care provider, facility, or  
31 other individual or entity that assumes operational or financial risk  
32 for claims of medical malpractice.

33 NEW SECTION. **Sec. 202.** (1) For claims closed on or after January  
34 1, 2008:

35 (a) Every insuring entity or self-insurer that provides medical  
36 malpractice insurance to any facility or provider in Washington state  
37 must report each medical malpractice closed claim to the commissioner.



1 (b) If a claim is not covered by an insuring entity or self-  
2 insurer, the facility or provider named in the claim must report it to  
3 the commissioner after a final claim disposition has occurred due to a  
4 court proceeding or a settlement by the parties. Instances in which a  
5 claim may not be covered by an insuring entity or self-insurer include,  
6 but are not limited to, situations in which the:

7 (i) Facility or provider did not buy insurance or maintained a  
8 self-insured retention that was larger than the final judgment or  
9 settlement;

10 (ii) Claim was denied by an insuring entity or self-insurer because  
11 it did not fall within the scope of the insurance coverage agreement;  
12 or

13 (iii) Annual aggregate coverage limits had been exhausted by other  
14 claim payments.

15 (2) Beginning in 2009, reports required under subsection (1) of  
16 this section must be filed by March 1st, and include data for all  
17 claims closed in the preceding calendar year and any adjustments to  
18 data reported in prior years. The commissioner may adopt rules that  
19 require insuring entities, self-insurers, facilities, or providers to  
20 file closed claim data electronically.

21 (3) The commissioner may impose a fine of up to two hundred fifty  
22 dollars per day against any insuring entity that violates the  
23 requirements of this section.

24 (4) The department of health, department of licensing or department  
25 of social and health services may require a provider or facility to  
26 take corrective action to assure compliance with the requirements of  
27 this section.

28 NEW SECTION. **Sec. 203.** Reports required under section 202 of this  
29 act must contain the following information in a form and coding  
30 protocol prescribed by the commissioner that, to the extent possible  
31 and still fulfill the purposes of this chapter, are consistent with the  
32 format for data reported to the national practitioner data bank:

33 (1) Claim and incident identifiers, including:

34 (a) A claim identifier assigned to the claim by the insuring  
35 entity, self-insurer, facility, or provider; and

36 (b) An incident identifier if companion claims have been made by a

1 claimant. For the purposes of this section, "companion claims" are  
2 separate claims involving the same incident of medical malpractice made  
3 against other providers or facilities;

4 (2) The medical specialty of the provider who was primarily  
5 responsible for the incident of medical malpractice that led to the  
6 claim;

7 (3) The type of health care facility where the medical malpractice  
8 incident occurred;

9 (4) The primary location within a facility where the medical  
10 malpractice incident occurred;

11 (5) The geographic location, by city and county, where the medical  
12 malpractice incident occurred;

13 (6) The injured person's sex and age on the incident date;

14 (7) The severity of malpractice injury using the national  
15 practitioner data bank severity scale;

16 (8) The dates of:

17 (a) The incident that was the proximate cause of the claim;

18 (b) Notice to the insuring entity, self-insurer, facility, or  
19 provider;

20 (c) Suit, if filed;

21 (d) Final indemnity payment, if any; and

22 (e) Final action by the insuring entity, self-insurer, facility, or  
23 provider to close the claim;

24 (9) Settlement information that identifies the timing and final  
25 method of claim disposition, including:

26 (a) Claims settled by the parties;

27 (b) Claims disposed of by a court, including the date disposed; or

28 (c) Claims disposed of by alternative dispute resolution, such as  
29 arbitration, mediation, private trial, and other common dispute  
30 resolution methods; and

31 (d) Whether the settlement occurred before or after trial, if a  
32 trial occurred;

33 (10) Specific information about the indemnity payments and defense  
34 expenses, as follows:

35 (a) For claims disposed of by a court that result in a verdict or  
36 judgment that itemizes damages:

37 (i) The total verdict or judgment;

1 (ii) If there is more than one defendant, the total indemnity paid  
2 by or on behalf of this facility or provider;  
3 (iii) Economic damages;  
4 (iv) Noneconomic damages; and  
5 (v) Allocated loss adjustment expense, including but not limited to  
6 court costs, attorneys' fees, and costs of expert witnesses; and  
7 (b) For claims that do not result in a verdict or judgment that  
8 itemizes damages:  
9 (i) The total amount of the settlement;  
10 (ii) If there is more than one defendant, the total indemnity paid  
11 by or on behalf of this facility or provider;  
12 (iii) Paid and estimated economic damages; and  
13 (iv) Allocated loss adjustment expense, including but not limited  
14 to court costs, attorneys' fees, and costs of expert witnesses;  
15 (11) The reason for the medical malpractice claim. The reporting  
16 entity must use the same allegation group and act or omission codes  
17 used for mandatory reporting to the national practitioner data bank;  
18 and  
19 (12) Any other claim-related data the commissioner determines to be  
20 necessary to monitor the medical malpractice marketplace, if such data  
21 are reported:  
22 (a) To the national practitioner data bank; or  
23 (b) Voluntarily by members of the physician insurers association of  
24 America as part of the association's data-sharing project.

25 NEW SECTION. **Sec. 204.** The commissioner must prepare aggregate  
26 statistical summaries of closed claims based on data submitted under  
27 section 202 of this act.

28 (1) At a minimum, the commissioner must summarize data by calendar  
29 year and calendar/incident year. The commissioner may also decide to  
30 display data in other ways if the commissioner:

31 (a) Protects information as required under section 206(2) of this  
32 act; and

33 (b) Exempts from disclosure data described in RCW 42.56.400(11).

34 (2) The summaries must be available by April 30th of each year,  
35 unless the commissioner notifies legislative committees by March 15th  
36 that data are not available and informs the committees when the  
37 summaries will be completed.

1 (3) Information included in an individual closed claim report  
2 submitted by an insuring entity, self-insurer, provider, or facility  
3 under this chapter is confidential and exempt from public disclosure,  
4 and the commissioner must not make these data available to the public.

5 NEW SECTION. **Sec. 205.** Beginning in 2010, the commissioner must  
6 prepare an annual report that summarizes and analyzes the closed claim  
7 reports for medical malpractice filed under sections 202 and 209 of  
8 this act and the annual financial reports filed by authorized insurers  
9 writing medical malpractice insurance in this state. The commissioner  
10 must complete the report by June 30th, unless the commissioner notifies  
11 legislative committees by June 1st that data are not available and  
12 informs the committees when the summaries will be completed.

13 (1) The report must include:

14 (a) An analysis of reported closed claims from prior years for  
15 which data are collected. The analysis must show:

16 (i) Trends in the frequency and severity of claim payments;

17 (ii) A comparison of economic and noneconomic damages;

18 (iii) A distribution of allocated loss adjustment expenses and  
19 other legal expenses;

20 (iv) The types of medical malpractice for which claims have been  
21 paid; and

22 (v) Any other information the commissioner finds relevant to trends  
23 in medical malpractice closed claims if the commissioner:

24 (A) Protects information as required under section 206(2) of this  
25 act; and

26 (B) Exempts from disclosure data described in RCW 42.56.400(11);

27 (b) An analysis of the medical malpractice insurance market in  
28 Washington state, including:

29 (i) An analysis of the financial reports of the authorized insurers  
30 with a combined market share of at least ninety percent of direct  
31 written medical malpractice premium in Washington state for the prior  
32 calendar year;

33 (ii) A loss ratio analysis of medical malpractice insurance written  
34 in Washington state; and

35 (iii) A profitability analysis of the authorized insurers with a  
36 combined market share of at least ninety percent of direct written

1 medical malpractice premium in Washington state for the prior calendar  
2 year;

3 (c) A comparison of loss ratios and the profitability of medical  
4 malpractice insurance in Washington state to other states based on  
5 financial reports filed with the national association of insurance  
6 commissioners and any other source of information the commissioner  
7 deems relevant; and

8 (d) A summary of the rate filings for medical malpractice that have  
9 been approved by the commissioner for the prior calendar year,  
10 including an analysis of the trend of direct incurred losses as  
11 compared to prior years.

12 (2) The commissioner must post reports required by this section on  
13 the internet no later than thirty days after they are due.

14 (3) The commissioner may adopt rules that require insuring entities  
15 and self-insurers required to report under section 202 of this act and  
16 subsection (1)(a) of this section to report data related to:

17 (a) The frequency and severity of closed claims for the reporting  
18 period; and

19 (b) Any other closed claim information that helps the commissioner  
20 monitor losses and claim development patterns in the Washington state  
21 medical malpractice insurance market.

22 NEW SECTION. **Sec. 206.** The commissioner must adopt all rules  
23 needed to implement this chapter. The rules must:

24 (1) Identify which insuring entity or self-insurer has the primary  
25 obligation to report a closed claim when more than one insuring entity  
26 or self-insurer is providing medical malpractice liability coverage to  
27 a single health care provider or a single health care facility that has  
28 been named in a claim;

29 (2) Protect information that, alone or in combination with other  
30 data, could result in the ability to identify a claimant, health care  
31 provider, health care facility, or self-insurer involved in a  
32 particular claim or collection of claims; and

33 (3) Specify standards and methods for the reporting by claimants,  
34 insuring entities, self-insurers, facilities, and providers.

35 NEW SECTION. **Sec. 207.** (1) If the national association of  
36 insurance commissioners adopts revised model statistical reporting

1 standards for medical malpractice insurance, the commissioner must  
2 analyze the new reporting standards and report this information to the  
3 legislature, as follows:

4 (a) An analysis of any differences between the model reporting  
5 standards and:

- 6 (i) Sections 201 through 206 of this act; and
- 7 (ii) Any statistical plans that the commissioner has adopted under  
8 RCW 48.19.370; and

9 (b) Recommendations, if any, about legislative changes necessary to  
10 implement the model reporting standards.

11 (2) The commissioner must submit the report required under  
12 subsection (1) of this section to the following legislative committees  
13 by the first day of December in the year after the national association  
14 of insurance commissioners adopts new model medical malpractice  
15 reporting standards:

16 (a) The house of representatives committees on health care;  
17 financial institutions and insurance; and judiciary; and

18 (b) The senate committees on health and long-term care; financial  
19 institutions, housing and consumer protection; and judiciary.

20 NEW SECTION. **Sec. 208.** This chapter does not amend or modify the  
21 statistical reporting requirements that apply to insurers under RCW  
22 48.19.370.

23 NEW SECTION. **Sec. 209.** A new section is added to chapter 7.70 RCW  
24 to read as follows:

25 (1) As used in this section:

26 (a) "Claim" has the same meaning as in section 201(1) of this act.

27 (b) "Claimant" has the same meaning as in section 201(2) of this  
28 act.

29 (c) "Commissioner" has the same meaning as in section 201(4) of  
30 this act.

31 (d) "Medical malpractice" has the same meaning as in section 201(9)  
32 of this act.

33 (2)(a) For claims settled or otherwise disposed of on or after  
34 January 1, 2008, the claimant or his or her attorney must report data  
35 to the commissioner if any action filed under this chapter results in  
36 a final:

- 1 (i) Judgment in any amount;  
2 (ii) Settlement or payment in any amount; or  
3 (iii) Disposition resulting in no indemnity payment.  
4 (b) As used in this subsection, "data" means:  
5 (i) The date of the incident of medical malpractice that was the  
6 principal cause of the action;  
7 (ii) The principal county in which the incident of medical  
8 malpractice occurred;  
9 (iii) The date of suit, if filed;  
10 (iv) The injured person's sex and age on the incident date; and  
11 (v) Specific information about the disposition, judgment, or  
12 settlement, including:  
13 (A) The date and amount of any judgment or settlement;  
14 (B) Court costs;  
15 (C) Attorneys' fees; and  
16 (D) Costs of expert witnesses.

17 **Sec. 210.** RCW 42.56.400 and 2005 c 274 s 420 are each amended to  
18 read as follows:

19 The following information relating to insurance and financial  
20 institutions is exempt from disclosure under this chapter:

21 (1) Records maintained by the board of industrial insurance appeals  
22 that are related to appeals of crime victims' compensation claims filed  
23 with the board under RCW 7.68.110;

24 (2) Information obtained and exempted or withheld from public  
25 inspection by the health care authority under RCW 41.05.026, whether  
26 retained by the authority, transferred to another state purchased  
27 health care program by the authority, or transferred by the authority  
28 to a technical review committee created to facilitate the development,  
29 acquisition, or implementation of state purchased health care under  
30 chapter 41.05 RCW;

31 (3) The names and individual identification data of all viators  
32 regulated by the insurance commissioner under chapter 48.102 RCW;

33 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

34 (5) Information provided under RCW 48.05.510 through 48.05.535,  
35 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600  
36 through 48.46.625;

1 (6) Information gathered under chapter 19.85 RCW or RCW 34.05.328  
2 that can be identified to a particular business;

3 (7) Examination reports and information obtained by the department  
4 of financial institutions from banks under RCW 30.04.075, from savings  
5 banks under RCW 32.04.220, from savings and loan associations under RCW  
6 33.04.110, from credit unions under RCW 31.12.565, from check cashers  
7 and sellers under RCW 31.45.030(3), and from securities brokers and  
8 investment advisers under RCW 21.20.100, all of which is confidential  
9 and privileged information;

10 (8) Information provided to the insurance commissioner under RCW  
11 48.110.040(3);

12 (9) Documents, materials, or information obtained by the insurance  
13 commissioner under RCW 48.02.065, all of which are confidential and  
14 privileged; (~~and~~)

15 (10) Confidential proprietary and trade secret information provided  
16 to the commissioner under RCW 48.31C.020 through 48.31C.050 and  
17 48.31C.070; and

18 (11) Data filed under sections 202, 203, 205, and 209 of this act  
19 that, alone or in combination with any other data, may reveal the  
20 identity of a claimant, health care provider, health care facility,  
21 insuring entity, or self-insurer involved in a particular claim or a  
22 collection of claims. For the purposes of this subsection:

23 (a) "Claimant" has the same meaning as in section 201(2) of this  
24 act.

25 (b) "Health care facility" has the same meaning as in section  
26 201(6) of this act.

27 (c) "Health care provider" has the same meaning as in section  
28 201(7) of this act.

29 (d) "Insuring entity" has the same meaning as in section 201(8) of  
30 this act.

31 (e) "Self-insurer" has the same meaning as in section 201(11) of  
32 this act.

### 33 Underwriting Standards

34 NEW SECTION. Sec. 211. A new section is added to chapter 48.18  
35 RCW to read as follows:

36 (1) For the purposes of this section:



1 (a) "Affiliate" has the same meaning as in RCW 48.31B.005(1).  
2 (b) "Claim" means a demand for monetary damages by a claimant.  
3 (c) "Claimant" means a person, including a decedent's estate, who  
4 is seeking or has sought monetary damages for injury or death caused by  
5 medical malpractice.  
6 (d) "Tier" has the same meaning as in RCW 48.18.545(1)(h).  
7 (e) "Underwrite" or "underwriting" means the process of selecting,  
8 rejecting, or pricing a risk, and includes each of these activities:  
9 (i) Evaluation, selection, and classification of risk, including  
10 placing a risk with an affiliate insurer that has higher rates and/or  
11 rating plan components that will result in higher premiums;  
12 (ii) Application of classification plans, rates, rating rules, and  
13 rating tiers to an insured risk; and  
14 (iii) Determining eligibility for:  
15 (A) Insurance coverage provisions;  
16 (B) Higher policy limits; or  
17 (C) Premium payment plans.  
18 (2) During each underwriting process, an insurer may consider the  
19 following factors only in combination with other substantive  
20 underwriting factors:  
21 (a) An insured has inquired about the nature or scope of coverage  
22 under a medical malpractice insurance policy;  
23 (b) An insured has notified their insurer about an incident that  
24 may be covered under the terms of their medical malpractice insurance  
25 policy, and that incident does not result in a claim; or  
26 (c) A claim made against an insured was closed by the insurer  
27 without payment. An insurer may consider the effect of multiple claims  
28 if they have a significant effect on the insured's risk profile.  
29 (3) If any underwriting activity related to the insured's risk  
30 profile results in higher premiums as described under subsection (1)(e)  
31 (i) and (ii) of this section or reduced coverage as described under  
32 subsection (1)(e)(iii) of this section, the insurer must provide  
33 written notice to the insured, in clear and simple language, that  
34 describes the significant risk factors which led to the underwriting  
35 action. The commissioner must adopt rules that define the components  
36 of a risk profile that require notice under this subsection.

1       **Sec. 212.** RCW 48.18.290 and 1997 c 85 s 1 are each amended to read  
2 as follows:

3       (1) Cancellation by the insurer of any policy which by its terms is  
4 cancellable at the option of the insurer, or of any binder based on  
5 such policy which does not contain a clearly stated expiration date,  
6 may be effected as to any interest only upon compliance with the  
7 following:

8       ~~(a) ((Written notice of such cancellation, accompanied by the~~  
9 ~~actual reason therefor, must be actually delivered or mailed to the~~  
10 ~~named insured not less than forty five days prior to the effective date~~  
11 ~~of the cancellation except for cancellation of insurance policies for~~  
12 ~~nonpayment of premiums, which notice shall be not less than ten days~~  
13 ~~prior to such date and except for cancellation of fire insurance~~  
14 ~~policies under chapter 48.53 RCW, which notice shall not be less than~~  
15 ~~five days prior to such date;))~~ For all insurance policies other than  
16 medical malpractice insurance policies or fire insurance policies  
17 cancelled under RCW 48.53.040:

18       (i) The insurer must deliver or mail written notice of cancellation  
19 to the named insured at least forty-five days before the effective date  
20 of the cancellation; and

21       (ii) The cancellation notice must include the insurer's actual  
22 reason for canceling the policy.

23       (b) For medical malpractice insurance policies:

24       (i) The insurer must deliver or mail written notice of the  
25 cancellation to the named insured at least ninety days before the  
26 effective date of the cancellation; and

27       (ii) The cancellation notice must include the insurer's actual  
28 reason for canceling the policy and describe the significant risk  
29 factors that led to the insurer's underwriting action, as defined under  
30 section 211(1)(e) of this act.

31       (c) If an insurer cancels a policy described under (a) or (b) of  
32 this subsection for nonpayment of premium, the insurer must deliver or  
33 mail the cancellation notice to the named insured at least ten days  
34 before the effective date of the cancellation.

35       (d) If an insurer cancels a fire insurance policy under RCW  
36 48.53.040, the insurer must deliver or mail the cancellation notice to  
37 the named insured at least five days before the effective date of the  
38 cancellation.

1        (e) Like notice must also be so delivered or mailed to each  
2 mortgagee, pledgee, or other person shown by the policy to have an  
3 interest in any loss which may occur thereunder. For purposes of this  
4 subsection (1)(~~(b)~~) (e), "delivered" includes electronic transmittal,  
5 facsimile, or personal delivery.

6        (2) The mailing of any such notice shall be effected by depositing  
7 it in a sealed envelope, directed to the addressee at his or her last  
8 address as known to the insurer or as shown by the insurer's records,  
9 with proper prepaid postage affixed, in a letter depository of the  
10 United States post office. The insurer shall retain in its records any  
11 such item so mailed, together with its envelope, which was returned by  
12 the post office upon failure to find, or deliver the mailing to, the  
13 addressee.

14        (3) The affidavit of the individual making or supervising such a  
15 mailing, shall constitute prima facie evidence of such facts of the  
16 mailing as are therein affirmed.

17        (4) The portion of any premium paid to the insurer on account of  
18 the policy, unearned because of the cancellation and in amount as  
19 computed on the pro rata basis, must be actually paid to the insured or  
20 other person entitled thereto as shown by the policy or by any  
21 endorsement thereon, or be mailed to the insured or such person as soon  
22 as possible, and no later than forty-five days after the date of notice  
23 of cancellation to the insured for homeowners', dwelling fire, and  
24 private passenger auto. Any such payment may be made by cash, or by  
25 check, bank draft, or money order.

26        (5) This section shall not apply to contracts of life or disability  
27 insurance without provision for cancellation prior to the date to which  
28 premiums have been paid, or to contracts of insurance procured under  
29 the provisions of chapter 48.15 RCW.

30        **Sec. 213.** RCW 48.18.2901 and 2002 c 347 s 1 are each amended to  
31 read as follows:

32        (1) Each insurer (~~(shall be required to)~~) must renew any (~~contract~~  
33 ~~of~~) insurance policy subject to RCW 48.18.290 unless one of the  
34 following situations exists:

35        (a) (~~The insurer gives the named insured at least forty five days'~~  
36 ~~notice in writing as provided for in RCW 48.18.290, that it proposes to~~

~~1 refuse to renew the insurance contract upon its expiration date; and~~  
~~2 sets forth in that writing the actual reason for refusing to renew))~~

3 (i) For all insurance policies subject to RCW 48.18.290(1)(a):

4 (A) The insurer must deliver or mail written notice of nonrenewal  
5 to the named insured at least forty-five days before the expiration  
6 date of the policy; and

7 (B) The notice must include the insurer's actual reason for  
8 refusing to renew the policy.

9 (ii) For medical malpractice insurance policies subject to RCW  
10 48.18.290(1)(b):

11 (A) The insurer must deliver or mail written notice of the  
12 nonrenewal to the named insured at least ninety days before the  
13 expiration date of the policy; and

14 (B) The notice must include the insurer's actual reason for  
15 refusing to renew the policy and describe the significant risk factors  
16 that led to the insurer's underwriting action, as defined under section  
17 211(1)(e) of this act;

18 (b) At least twenty days prior to its expiration date, the insurer  
19 has communicated, either directly or through its agent, its willingness  
20 to renew in writing to the named insured and has included in that  
21 writing a statement of the amount of the premium or portion thereof  
22 required to be paid by the insured to renew the policy, and the insured  
23 fails to discharge when due his or her obligation in connection with  
24 the payment of such premium or portion thereof;

25 (c) The insured has procured equivalent coverage prior to the  
26 expiration of the policy period;

27 (d) The contract is evidenced by a written binder containing a  
28 clearly stated expiration date which has expired according to its  
29 terms; or

30 (e) The contract clearly states that it is not renewable, and is  
31 for a specific line, subclassification, or type of coverage that is not  
32 offered on a renewable basis. This subsection (1)(e) does not restrict  
33 the authority of the insurance commissioner under this code.

34 (2) Any insurer failing to include in the notice required by  
35 subsection (1)(b) of this section the amount of any increased premium  
36 resulting from a change of rates and an explanation of any change in  
37 the contract provisions shall renew the policy if so required by that  
38 subsection according to the rates and contract provisions applicable to

1 the expiring policy. However, renewal based on the rates and contract  
2 provisions applicable to the expiring policy shall not prevent the  
3 insurer from making changes in the rates and/or contract provisions of  
4 the policy once during the term of its renewal after at least twenty  
5 days' advance notice of such change has been given to the named  
6 insured.

7 (3) Renewal of a policy shall not constitute a waiver or estoppel  
8 with respect to grounds for cancellation which existed before the  
9 effective date of such renewal, or with respect to cancellation of fire  
10 policies under chapter 48.53 RCW.

11 (4) "Renewal" or "to renew" means the issuance and delivery by an  
12 insurer of a contract of insurance replacing at the end of the contract  
13 period a contract of insurance previously issued and delivered by the  
14 same insurer, or the issuance and delivery of a certificate or notice  
15 extending the term of a contract beyond its policy period or term.  
16 However, (a) any contract of insurance with a policy period or term of  
17 six months or less whether or not made continuous for successive terms  
18 upon the payment of additional premiums shall for the purpose of RCW  
19 48.18.290 and 48.18.293 through 48.18.295 be considered as if written  
20 for a policy period or term of six months; and (b) any policy written  
21 for a term longer than one year or any policy with no fixed expiration  
22 date, shall, for the purpose of RCW 48.18.290 and 48.18.293 through  
23 48.18.295, be considered as if written for successive policy periods or  
24 terms of one year.

25 (5) A midterm blanket reduction in rate, approved by the  
26 commissioner, for medical malpractice insurance shall not be considered  
27 a renewal for purposes of this section.

28 **Prior Approval of Medical Malpractice Insurance Rates**

29 **Sec. 214.** RCW 48.18.100 and 2005 c 223 s 8 are each amended to  
30 read as follows:

31 (1) No insurance policy form or application form where written  
32 application is required and is to be attached to the policy, or printed  
33 life or disability rider or endorsement form may be issued, delivered,  
34 or used unless it has been filed with and approved by the commissioner.  
35 This section does not apply to:

36 (a) Surety bond forms;

1 (b) Forms filed under RCW 48.18.103;

2 (c) Forms exempted from filing requirements by the commissioner  
3 under RCW 48.18.103;

4 (d) Manuscript policies, riders, or endorsements of unique  
5 character designed for and used with relation to insurance upon a  
6 particular subject; or

7 (e) Contracts of insurance procured under the provisions of chapter  
8 48.15 RCW.

9 (2) Every such filing containing a certification, in a form  
10 approved by the commissioner, by either the chief executive officer of  
11 the insurer or by an actuary who is a member of the American academy of  
12 actuaries, attesting that the filing complies with Title 48 RCW and  
13 Title 284 of the Washington Administrative Code, may be used by the  
14 insurer immediately after filing with the commissioner. The  
15 commissioner may order an insurer to cease using a certified form upon  
16 the grounds set forth in RCW 48.18.110. This subsection does not apply  
17 to certain types of policy forms designated by the commissioner by  
18 rule.

19 (3) Except as provided in RCW 48.18.103, every filing that does not  
20 contain a certification pursuant to subsection (2) of this section must  
21 be made not less than thirty days in advance of issuance, delivery, or  
22 use. At the expiration of the thirty days, the filed form shall be  
23 deemed approved unless prior thereto it has been affirmatively approved  
24 or disapproved by order of the commissioner. The commissioner may  
25 extend by not more than an additional fifteen days the period within  
26 which he or she may affirmatively approve or disapprove any form, by  
27 giving notice of the extension before expiration of the initial thirty-  
28 day period. At the expiration of the period that has been extended,  
29 and in the absence of prior affirmative approval or disapproval, the  
30 form shall be deemed approved. The commissioner may withdraw any  
31 approval at any time for cause. By approval of any form for immediate  
32 use, the commissioner may waive any unexpired portion of the initial  
33 thirty-day waiting period.

34 (4) The commissioner's order disapproving any form or withdrawing  
35 a previous approval must state the grounds for disapproval.

36 (5) No form may knowingly be issued or delivered as to which the  
37 commissioner's approval does not then exist.

1 (6) The commissioner may, by rule, exempt from the requirements of  
2 this section any class or type of insurance policy forms if filing and  
3 approval is not desirable or necessary for the protection of the  
4 public.

5 (7) Every member or subscriber to a rating organization must adhere  
6 to the form filings made on its behalf by the organization. Deviations  
7 from the organization are permitted only when filed with the  
8 commissioner in accordance with this chapter.

9 (8) Medical malpractice insurance form filings are subject to the  
10 provisions of this section.

11 **Sec. 215.** RCW 48.18.103 and 2005 c 223 s 9 are each amended to  
12 read as follows:

13 (1) It is the intent of the legislature to assist the purchasers of  
14 commercial property casualty insurance by allowing policies to be  
15 issued more expeditiously and provide a more competitive market for  
16 forms.

17 (2) Commercial property casualty policies may be issued prior to  
18 filing the forms.

19 (3) All commercial property casualty forms must be filed with the  
20 commissioner within thirty days after an insurer issues any policy  
21 using them. This subsection does not apply to:

22 (a) Types or classes of forms that the commissioner exempts from  
23 filing by rule; and

24 (b) Manuscript policies, riders, or endorsements of unique  
25 character designed for and used with relation to insurance upon a  
26 particular subject.

27 (4) If, within thirty days after a commercial property casualty  
28 form has been filed, the commissioner finds that the form does not meet  
29 the requirements of this chapter, the commissioner shall disapprove the  
30 form and give notice to the insurer or rating organization that made  
31 the filing, specifying how the form fails to meet the requirements and  
32 stating when, within a reasonable period thereafter, the form shall be  
33 deemed no longer effective. The commissioner may extend the time for  
34 review an additional fifteen days by giving notice to the insurer prior  
35 to the expiration of the original thirty-day period.

36 (5) Upon a final determination of a disapproval of a policy form

1 under subsection (4) of this section, the insurer must amend any  
2 previously issued disapproved form by endorsement to comply with the  
3 commissioner's disapproval.

4 (6) For purposes of this section, "commercial property casualty"  
5 means insurance pertaining to a business, profession, occupation,  
6 nonprofit organization, or public entity for the lines of property and  
7 casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or  
8 48.11.070, but does not mean medical malpractice insurance.

9 (7) Except as provided in subsection (5) of this section, the  
10 disapproval shall not affect any contract made or issued prior to the  
11 expiration of the period set forth in the notice of disapproval.

12 (8) Every member or subscriber to a rating organization must adhere  
13 to the form filings made on its behalf by the organization. An insurer  
14 may deviate from forms filed on its behalf by an organization only if  
15 the insurer files the forms with the commissioner in accordance with  
16 this chapter.

17 (9) In the event a hearing is held on the actions of the  
18 commissioner under subsection (4) of this section, the burden of proof  
19 shall be on the commissioner.

20 **Sec. 216.** RCW 48.19.043 and 2003 c 248 s 7 are each amended to  
21 read as follows:

22 (1) It is the intent of the legislature to assist the purchasers of  
23 commercial property casualty insurance by allowing policies to be  
24 issued more expeditiously and provide a more competitive market for  
25 rates.

26 (2) Notwithstanding the provisions of RCW 48.19.040(1), commercial  
27 property casualty policies may be issued prior to filing the rates.  
28 All commercial property casualty rates shall be filed with the  
29 commissioner within thirty days after an insurer issues any policy  
30 using them.

31 (3) If, within thirty days after a commercial property casualty  
32 rate has been filed, the commissioner finds that the rate does not meet  
33 the requirements of this chapter, the commissioner shall disapprove the  
34 filing and give notice to the insurer or rating organization that made  
35 the filing, specifying how the filing fails to meet the requirements  
36 and stating when, within a reasonable period thereafter, the filing



1 shall be deemed no longer effective. The commissioner may extend the  
2 time for review another fifteen days by giving notice to the insurer  
3 prior to the expiration of the original thirty-day period.

4 (4) Upon a final determination of a disapproval of a rate filing  
5 under subsection (3) of this section, the insurer shall issue an  
6 endorsement changing the rate to comply with the commissioner's  
7 disapproval from the date the rate is no longer effective.

8 (5) For purposes of this section, "commercial property casualty"  
9 means insurance pertaining to a business, profession, occupation,  
10 nonprofit organization, or public entity for the lines of property and  
11 casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or  
12 48.11.070, but does not mean medical malpractice insurance.

13 (6) Except as provided in subsection (4) of this section, the  
14 disapproval shall not affect any contract made or issued prior to the  
15 expiration of the period set forth in the notice of disapproval.

16 (7) In the event a hearing is held on the actions of the  
17 commissioner under subsection (3) of this section, the burden of proof  
18 is on the commissioner.

19 **Sec. 217.** RCW 48.19.060 and 1997 c 428 s 4 are each amended to  
20 read as follows:

21 (1) The commissioner shall review a filing as soon as reasonably  
22 possible after made, to determine whether it meets the requirements of  
23 this chapter.

24 (2) Except as provided in RCW 48.19.070 and 48.19.043:

25 (a) No such filing shall become effective within thirty days after  
26 the date of filing with the commissioner, which period may be extended  
27 by the commissioner for an additional period not to exceed fifteen days  
28 if he or she gives notice within such waiting period to the insurer or  
29 rating organization which made the filing that he or she needs such  
30 additional time for the consideration of the filing. The commissioner  
31 may, upon application and for cause shown, waive such waiting period or  
32 part thereof as to a filing that he or she has not disapproved.

33 (b) A filing shall be deemed to meet the requirements of this  
34 chapter unless disapproved by the commissioner within the waiting  
35 period or any extension thereof.

36 (3) Medical malpractice insurance rate filings are subject to the  
37 provisions of this section.

1 PART III - HEALTH CARE LIABILITY REFORM

2 Statutes of Limitations and Repose

3 NEW SECTION. **Sec. 301.** The purpose of this section and section  
4 302 of this act is to respond to the court's decision in *DeYoung v.*  
5 *Providence Medical Center*, 136 Wn.2d 136 (1998), by expressly stating  
6 the legislature's rationale for the eight-year statute of repose in RCW  
7 4.16.350.

8 The legislature recognizes that the eight-year statute of repose  
9 alone may not solve the crisis in the medical insurance industry.  
10 However, to the extent that the eight-year statute of repose has an  
11 effect on medical malpractice insurance, that effect will tend to  
12 reduce rather than increase the cost of malpractice insurance.

13 Whether or not the statute of repose has the actual effect of  
14 reducing insurance costs, the legislature finds it will provide  
15 protection against claims, however few, that are stale, based on  
16 untrustworthy evidence, or that place undue burdens on defendants.

17 In accordance with the court's opinion in *DeYoung*, the legislature  
18 further finds that compelling even one defendant to answer a stale  
19 claim is a substantial wrong, and setting an outer limit to the  
20 operation of the discovery rule is an appropriate aim.

21 The legislature further finds that an eight-year statute of repose  
22 is a reasonable time period in light of the need to balance the  
23 interests of injured plaintiffs and the health care industry.

24 The legislature intends to reenact RCW 4.16.350 with respect to the  
25 eight-year statute of repose and specifically set forth for the court  
26 the legislature's legitimate rationale for adopting the eight-year  
27 statute of repose. The legislature further intends that the eight-year  
28 statute of repose reenacted by section 302 of this act be applied to  
29 actions commenced on or after the effective date of this section.

30 **Sec. 302.** RCW 4.16.350 and 1998 c 147 s 1 are each reenacted to  
31 read as follows:

32 Any civil action for damages for injury occurring as a result of  
33 health care which is provided after June 25, 1976 against:

34 (1) A person licensed by this state to provide health care or  
35 related services, including, but not limited to, a physician,

1 osteopathic physician, dentist, nurse, optometrist, podiatric physician  
2 and surgeon, chiropractor, physical therapist, psychologist,  
3 pharmacist, optician, physician's assistant, osteopathic physician's  
4 assistant, nurse practitioner, or physician's trained mobile intensive  
5 care paramedic, including, in the event such person is deceased, his  
6 estate or personal representative;

7 (2) An employee or agent of a person described in subsection (1) of  
8 this section, acting in the course and scope of his employment,  
9 including, in the event such employee or agent is deceased, his estate  
10 or personal representative; or

11 (3) An entity, whether or not incorporated, facility, or  
12 institution employing one or more persons described in subsection (1)  
13 of this section, including, but not limited to, a hospital, clinic,  
14 health maintenance organization, or nursing home; or an officer,  
15 director, employee, or agent thereof acting in the course and scope of  
16 his employment, including, in the event such officer, director,  
17 employee, or agent is deceased, his estate or personal representative;  
18 based upon alleged professional negligence shall be commenced within  
19 three years of the act or omission alleged to have caused the injury or  
20 condition, or one year of the time the patient or his representative  
21 discovered or reasonably should have discovered that the injury or  
22 condition was caused by said act or omission, whichever period expires  
23 later, except that in no event shall an action be commenced more than  
24 eight years after said act or omission: PROVIDED, That the time for  
25 commencement of an action is tolled upon proof of fraud, intentional  
26 concealment, or the presence of a foreign body not intended to have a  
27 therapeutic or diagnostic purpose or effect, until the date the patient  
28 or the patient's representative has actual knowledge of the act of  
29 fraud or concealment, or of the presence of the foreign body; the  
30 patient or the patient's representative has one year from the date of  
31 the actual knowledge in which to commence a civil action for damages.

32 For purposes of this section, notwithstanding RCW 4.16.190, the  
33 knowledge of a custodial parent or guardian shall be imputed to a  
34 person under the age of eighteen years, and such imputed knowledge  
35 shall operate to bar the claim of such minor to the same extent that  
36 the claim of an adult would be barred under this section. Any action  
37 not commenced in accordance with this section shall be barred.

1 For purposes of this section, with respect to care provided after  
2 June 25, 1976, and before August 1, 1986, the knowledge of a custodial  
3 parent or guardian shall be imputed as of April 29, 1987, to persons  
4 under the age of eighteen years.

5 This section does not apply to a civil action based on intentional  
6 conduct brought against those individuals or entities specified in this  
7 section by a person for recovery of damages for injury occurring as a  
8 result of childhood sexual abuse as defined in RCW 4.16.340(5).

9 **Sec. 303.** RCW 4.16.190 and 1993 c 232 s 1 are each amended to read  
10 as follows:

11 (1) Unless otherwise provided in this section, if a person entitled  
12 to bring an action mentioned in this chapter, except for a penalty or  
13 forfeiture, or against a sheriff or other officer, for an escape, be at  
14 the time the cause of action accrued either under the age of eighteen  
15 years, or incompetent or disabled to such a degree that he or she  
16 cannot understand the nature of the proceedings, such incompetency or  
17 disability as determined according to chapter 11.88 RCW, or imprisoned  
18 on a criminal charge prior to sentencing, the time of such disability  
19 shall not be a part of the time limited for the commencement of action.

20 (2) Subsection (1) of this section with respect to a person under  
21 the age of eighteen years does not apply to the time limited for the  
22 commencement of an action under RCW 4.16.350.

### 23 **Certificate of Merit**

24 NEW SECTION. **Sec. 304.** A new section is added to chapter 7.70 RCW  
25 to read as follows:

26 (1) In an action against an individual health care provider under  
27 this chapter for personal injury or wrongful death in which the injury  
28 is alleged to have been caused by an act or omission that violates the  
29 accepted standard of care, the plaintiff must file a certificate of  
30 merit at the time of commencing the action. If the action is commenced  
31 within forty-five days prior to the expiration of the applicable  
32 statute of limitations, the plaintiff must file the certificate of  
33 merit no later than forty-five days after commencing the action.

34 (2) If there is more than one defendant in the action, the person

1 commencing the action must file a certificate of merit for each  
2 defendant.

3 (3) The certificate of merit must contain a statement that the  
4 person executing the certificate of merit believes, based on the  
5 information known at the time of executing the certificate of merit,  
6 that there is a reasonable probability that the defendant's conduct did  
7 not follow the accepted standard of care required to be exercised by  
8 the defendant.

9 (4) Upon motion of the plaintiff, the court may grant an additional  
10 period of time to file the certificate of merit, not to exceed ninety  
11 days, if the court finds there is good cause for the extension.

12 (5)(a) Failure to file a certificate of merit that complies with  
13 the requirements of this section is grounds for dismissal of the case.

14 (b) If a case is dismissed for failure to file a certificate of  
15 merit that complies with the requirements of this section, the filing  
16 of the claim against the health care provider shall not be used against  
17 the health care provider in professional liability insurance rate  
18 setting, personal credit history, or professional licensing and  
19 credentialing.

20 **Voluntary Arbitration**

21 NEW SECTION. **Sec. 305.** This chapter applies to any cause of  
22 action for damages for personal injury or wrongful death based on  
23 alleged professional negligence in the provision of health care where  
24 all parties to the action have agreed to submit the dispute to  
25 arbitration under this chapter in accordance with the requirements of  
26 section 306 of this act.

27 NEW SECTION. **Sec. 306.** (1) Parties in an action covered under  
28 section 305 of this act may elect to submit the dispute to arbitration  
29 under this chapter in accordance with the requirements in this section.

30 (a) A claimant may elect to submit the dispute to arbitration under  
31 this chapter by including such election in the complaint filed at the  
32 commencement of the action. A defendant may elect to submit the  
33 dispute to arbitration under this chapter by including such election in  
34 the defendant's answer to the complaint. The dispute will be submitted

1 to arbitration under this chapter only if all parties to the action  
2 elect to submit the dispute to arbitration.

3 (b) If the parties do not initially elect to submit the dispute to  
4 arbitration in accordance with (a) of this subsection, the parties may  
5 make such an election at any time during the pendency of the action by  
6 filing a stipulation with the court in which all parties to the action  
7 agree to submit the dispute to arbitration under this chapter.

8 (2) A party that does not initially elect to submit a dispute to  
9 arbitration under this chapter must file a declaration with the court  
10 that meets the following requirements:

11 (a) In the case of a claimant, the declaration must be filed at the  
12 time of commencing the action and must state that the attorney  
13 representing the claimant presented the claimant with a copy of the  
14 provisions of this chapter before commencing the action and that the  
15 claimant elected not to submit the dispute to arbitration under this  
16 chapter; and

17 (b) In the case of a defendant, the declaration must be filed at  
18 the time of filing the answer and must state that the attorney  
19 representing the defendant presented the defendant with a copy of the  
20 provisions of this chapter before filing the defendant's answer and  
21 that the defendant elected not to submit the dispute to arbitration  
22 under this chapter.

23 NEW SECTION. Sec. 307. (1) An arbitrator shall be selected by  
24 agreement of the parties no later than forty-five days after: (a) The  
25 date all defendants elected arbitration in the answer where the parties  
26 elected arbitration in the initial complaint and answer; or (b) the  
27 date of the stipulation where the parties agreed to enter into  
28 arbitration after the commencement of the action through a stipulation  
29 filed with the court. The parties may agree to select more than one  
30 arbitrator to conduct the arbitration.

31 (2) If the parties are unable to agree to an arbitrator by the time  
32 specified in subsection (1) of this section, each side may submit the  
33 names of three arbitrators to the court, and the court shall select an  
34 arbitrator from among the submitted names within fifteen days of being  
35 notified that the parties are unable to agree to an arbitrator. If  
36 none of the parties submit any names of potential arbitrators, the  
37 court shall select an arbitrator.

1        NEW SECTION.    **Sec. 308.**    The arbitrator may conduct the arbitration  
2 in such manner as the arbitrator considers appropriate so as to aid in  
3 the fair and expeditious disposition of the proceeding subject to the  
4 requirements of this section and section 309 of this act.

5        (1)(a) Except as provided in (b) of this subsection, each party is  
6 entitled to two experts on the issue of liability, two experts on the  
7 issue of damages, and one rebuttal expert.

8        (b) Where there are multiple parties on one side, the arbitrator  
9 shall determine the number of experts that are allowed based on the  
10 minimum number of experts necessary to ensure a fair and economic  
11 resolution of the action.

12        (2)(a) Unless the arbitrator determines that exceptional  
13 circumstances require additional discovery, each party is entitled to  
14 the following discovery from any other party:

15        (i) Twenty-five interrogatories, including subparts;

16        (ii) Ten requests for admission; and

17        (iii) In accordance with applicable court rules:

18        (A) Requests for production of documents and things, and for entry  
19 upon land for inspection and other purposes; and

20        (B) Requests for physical and mental examinations of persons.

21        (b) The parties shall be entitled to the following depositions:

22        (i) Depositions of parties and any expert that a party expects to  
23 call as a witness. Except by order of the arbitrator for good cause  
24 shown, the length of the deposition of a party or an expert witness  
25 shall be limited to four hours.

26        (ii) Depositions of other witnesses. Unless the arbitrator  
27 determines that exceptional circumstances require additional  
28 depositions, the total number of depositions of persons who are not  
29 parties or expert witnesses is limited to five depositions per side,  
30 each of which may last no longer than two hours in length. In the  
31 deposition of a fact witness, each side is entitled to examine for one  
32 hour of the deposition.

33        (3) An arbitrator may issue a subpoena for the attendance of a  
34 witness and for the production of records and other evidence at any  
35 hearing and may administer oaths. A subpoena must be served in the  
36 manner for service of subpoenas in a civil action and, upon motion to  
37 the court by a party to the arbitration proceeding or the arbitrator,  
38 enforced in the manner for enforcement of subpoenas in a civil action.

1        NEW SECTION.    **Sec. 309.**    (1) An arbitration under this chapter  
2 shall be conducted according to the time frames specified in this  
3 section. The time frames provided in this section run from the date  
4 all defendants have agreed to arbitration in their answers where the  
5 parties elected arbitration in the initial complaint and answer, and  
6 from the date of the execution of the stipulation where the parties  
7 agreed to enter into arbitration after the commencement of the action  
8 through a stipulation filed with the court. The arbitrator shall issue  
9 a case scheduling order in every case specifying the dates by which the  
10 requirements of (b) through (f) of this subsection must be completed.

11        (a) Within forty-five days, the claimant shall provide stipulations  
12 for all relevant medical records to the defendants.

13        (b) Within one hundred twenty days, the claimant shall disclose to  
14 the defendants the names and curriculum vitae or other documentation of  
15 qualifications of any expert the claimant expects to call as a witness.

16        (c) Within one hundred forty days, each defendant shall disclose to  
17 the claimants the names and curriculum vitae or other documentation of  
18 qualifications of any expert the defendant expects to call as a  
19 witness.

20        (d) Within one hundred sixty days, each party shall disclose to the  
21 other parties the name and curriculum vitae or other documentation of  
22 qualifications of any rebuttal expert the party expects to call as a  
23 witness.

24        (e) Within two hundred forty days, all discovery shall be  
25 completed.

26        (f) Within two hundred seventy days, the arbitration hearing shall  
27 commence subject to the limited authority of the arbitrator to extend  
28 this deadline under subsection (2) of this section.

29        (2) It is the express public policy of the legislature that  
30 arbitration hearings under this chapter be commenced no later than  
31 twelve months after the parties elect to submit the dispute to  
32 arbitration. The arbitrator may grant a continuance of the  
33 commencement of the arbitration hearing to a date more than twelve  
34 months after the parties elect to submit the dispute to arbitration  
35 only where a party shows that exceptional circumstances create an undue  
36 and unavoidable hardship on the party.





1 the notice is served within ninety days of the expiration of the  
2 applicable statute of limitations, the time for the commencement of the  
3 action must be extended ninety days from the service of the notice.

4 (2) The provisions of subsection (1) of this section are not  
5 applicable with respect to any defendant whose name is unknown to the  
6 plaintiff at the time of filing the complaint and who is identified  
7 therein by a fictitious name.

8 (3) After the filing of the ninety-day presuit notice, and before  
9 a superior court trial, all causes of action, whether based in tort,  
10 contract, or otherwise, for damages arising from injury occurring as a  
11 result of health care provided after July 1, 1993, shall be subject to  
12 mandatory mediation prior to trial except as provided in subsection (6)  
13 of this section.

14 ~~((+2))~~ (4) The supreme court shall by rule adopt procedures to  
15 implement mandatory mediation of actions under this chapter. The  
16 ~~((rules shall))~~ implementation contemplates the adoption of rules by  
17 the supreme court which will require mandatory mediation without  
18 exception unless subsection (6) of this section applies. The rules on  
19 mandatory mediation shall address, at a minimum:

20 (a) Procedures for the appointment of, and qualifications of,  
21 mediators. A mediator shall have experience or expertise related to  
22 actions arising from injury occurring as a result of health care, and  
23 be a member of the state bar association who has been admitted to the  
24 bar for a minimum of five years or who is a retired judge. The parties  
25 may stipulate to a nonlawyer mediator. The court may prescribe  
26 additional qualifications of mediators;

27 (b) Appropriate limits on the amount or manner of compensation of  
28 mediators;

29 (c) The number of days following the filing of a claim under this  
30 chapter within which a mediator must be selected;

31 (d) The method by which a mediator is selected. The rule shall  
32 provide for designation of a mediator by the superior court if the  
33 parties are unable to agree upon a mediator;

34 (e) The number of days following the selection of a mediator within  
35 which a mediation conference must be held;

36 (f) A means by which mediation of an action under this chapter may  
37 be waived by a mediator who has determined that the claim is not  
38 appropriate for mediation; and

1 (g) Any other matters deemed necessary by the court.

2 ~~((3))~~ (5) Mediators shall not impose discovery schedules upon the  
3 parties.

4 (6) The mandatory mediation requirement of subsection (4) of this  
5 section does not apply to an action subject to mandatory arbitration  
6 under chapter 7.06 RCW or to an action in which the parties have  
7 agreed, subsequent to the arisal of the claim, to submit the claim to  
8 arbitration under chapter 7.04A or 7.-- (sections 305 through 313 of  
9 this act) RCW.

10 (7) The implementation also contemplates the adoption of a rule by  
11 the supreme court for procedures for the parties to certify to the  
12 court the manner of mediation used by the parties to comply with this  
13 section.

#### 14 Collateral Sources

15 **Sec. 315.** RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each  
16 amended to read as follows:

17 Any party may present evidence to the trier of fact that the  
18 ~~((patient))~~ plaintiff has already been compensated for the injury  
19 complained of from any source except the assets of the ~~((patient, his))~~  
20 plaintiff, the plaintiff's representative, or ~~((his))~~ the plaintiff's  
21 immediate family~~((, or insurance purchased with such assets))~~. In the  
22 event such evidence is admitted, the plaintiff may present evidence of  
23 an obligation to repay such compensation and evidence of any amount  
24 paid by the plaintiff, or his or her representative or immediate  
25 family, to secure the right to the compensation. ~~((Insurance bargained~~  
26 ~~for or provided on behalf of an employee shall be considered insurance~~  
27 ~~purchased with the assets of the employee.))~~ Compensation as used in  
28 this section shall mean payment of money or other property to or on  
29 behalf of the ~~((patient))~~ plaintiff, rendering of services to the  
30 ~~((patient))~~ plaintiff free of charge to the ~~((patient))~~ plaintiff, or  
31 indemnification of expenses incurred by or on behalf of the ~~((patient))~~  
32 plaintiff. Notwithstanding this section, evidence of compensation by  
33 a defendant health care provider may be offered only by that provider.

#### 34 Preventing Frivolous Lawsuits



1        NEW SECTION.    **Sec. 405.**    Sections 112 and 210 of this act take  
2 effect July 1, 2006.

3        NEW SECTION.    **Sec. 406.**    If specific funding for the purposes of  
4 sections 105 through 112 of this act, referencing sections 105 through  
5 112 of this act by bill or chapter number and section numbers, is not  
6 provided by June 30, 2006, in the omnibus appropriations act, sections  
7 105 through 112 of this act are null and void.

8        NEW SECTION.    **Sec. 407.**    If any provision of this act or its  
9 application to any person or circumstance is held invalid, the  
10 remainder of the act or the application of the provision to other  
11 persons or circumstances is not affected."

**2SHB 2292** - S COMM AMD  
By Committee on Health & Long-Term Care

12        On page 1, line 4 of the title, after "fees;" strike the remainder  
13 of the title and insert "amending RCW 5.64.010, 4.24.260, 18.71.015,  
14 18.130.160, 43.70.075, 43.70.510, 42.56.400, 48.18.290, 48.18.2901,  
15 48.18.100, 48.18.103, 48.19.043, 48.19.060, 4.16.190, 7.70.100, and  
16 7.70.080; reenacting and amending RCW 42.17.310 and 69.41.010;  
17 reenacting RCW 4.16.350; adding new sections to chapter 7.70 RCW;  
18 adding a new section to chapter 48.18 RCW; adding a new chapter to  
19 Title 70 RCW; adding a new chapter to Title 48 RCW; adding a new  
20 chapter to Title 7 RCW; creating new sections; prescribing penalties;  
21 providing an effective date; and providing an expiration date."

--- END ---