

SENATE BILL REPORT

SB 5318

As Reported By Senate Committee On:
Health & Long-Term Care, February 23, 2005

Title: An act relating to improving health care professional and health care facility patient safety practices.

Brief Description: Improving patient safety practices.

Sponsors: Senators Thibaudeau, Keiser, Kline, Franklin, Poulsen, McAuliffe and Kohl-Welles.

Brief History:

Committee Activity: Health & Long-Term Care: 2/10/05, 2/23/05 [DPS].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5318 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Thibaudeau, Vice Chair; Franklin, Kastama, Kline and Poulsen.

Staff: Edith Rice (786-7444)

Background: Patient Safety Measures. In 1999, the Institute of Medicine reported that between 44,000 and 98,000 people die in the United States every year due to medical errors. At the federal level, the Agency for Healthcare Research and Quality (AHRQ) funds research to reduce medical errors and increase patient safety. In 2001, AHRQ provided almost \$50 million in funding for ninety-four grants related to health care work conditions, the use of information technology, medical errors data reporting, and other patient safety projects.

In Washington, hospitals maintain quality improvement committees to improve the quality of health care services and prevent medical malpractice. Quality improvement proceedings review medical staff privileges and employee competency, collect information related to negative health care outcomes, and conduct safety improvement activities. Provider groups and medical facilities other than hospitals are encouraged to conduct similar activities.

Offers of Settlement. Evidence of furnishing or offering to pay medical expenses needed as the result of an injury is not admissible in a civil action to prove liability for the injury. In addition, a court rule provides that evidence of offers of compromise are not admissible to prove liability for a claim. Evidence of conduct or statements made in compromise negotiations are likewise not admissible.

In 2002, the Legislature passed legislation that makes expressions of sympathy relating to the pain, suffering, or death of an injured person inadmissible in a civil trial. A statement of fault, however, is not made inadmissible under this provision.

Summary of Substitute Bill: Patient Safety Account. The "Patient Safety Account" is created. The account is to be funded in two ways. First, the Secretary of Health must collect a two dollar surcharge on licenses for fifteen health professions, and two dollars per licensed bed are charged to acute care hospitals and psychiatric hospitals. Second, one percent of the contingency fee for an attorney representing the prevailing plaintiff in an action for injuries resulting from health care must be provided to the Department of Health (Department) for transfer into the account.

The account is an appropriated account that is to be used for grants, loans, and other arrangements that support efforts to reduce medical errors and enhance patient safety. The Department must establish criteria for the types of programs to receive funds. The criteria must emphasize evidence-based practices recommended by governmental and private organizations including the Agency for Healthcare Research and Quality, the Institute of Medicine, the Joint Commission on Accreditation of Health Care Organizations, and the National Quality Forum. At least two of the projects must implement recommendations of the Institute of Medicine's report Keeping Patients Safe: Transforming the Work Environment of Nurses. Funding priority is given to projects that are proven to enhance patient safety and reduce medical errors as opposed to those that only have a substantial likelihood of doing so.

By December 1, 2008, the Department must report to the legislature about the funds raised, criteria developed, and projects funded.

Statements of Apology. (1) Statements or conduct expressing apology, fault, or sympathy; or (2) statements regarding remedial actions that may be taken to address the act are inadmissible as evidence of an admission of liability or as evidence of an admission against interest. Offers to pay medical expenses resulting from the injury are inadmissible.

Substitute Bill Compared to Original Bill: The substitute bill removes the fee provision as applied to nursing home administrators. It also makes an offer to pay medical expenses completely inadmissible, instead of only being inadmissible to prove liability for the injury.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed, except for section 103, which takes effect July 1, 2005.

Testimony For: Studying what sorts of practices actually help to improve patient safety is a good idea, so that health care providers know what to focus on for quality improvement. Attorneys support this concept and are willing to fund the Account, but because this is the vast majority of the funds (as compared to the \$2 surcharge revenue), it should be re-examined periodically. Allowing apologies is working anecdotally in certain test areas, but this section should be tailored more narrowly to prevent perjury.

Testimony Against: Nursing home administrators should not be included in the list of professions that have to pay the surcharge, as they do not engage in the practice of medicine. If nursing home administrators are included, the fee should go towards DSHS because they are the overseeing authority.

Who Testified: PRO: Lisa Thatcher, Washington State Hospitals Association; Larry Shannon, Washington State Trial Lawyers Association.

CON: Deb Murphy, Washington Association of Housing and Services for the Aging; Jonathan Eames, Washington Health Care Association.