

SENATE BILL REPORT

Initiative 336

As of February 16, 2005

Title: An act relating to health care quality protection.

Sponsors: People of the State of Washington.

Brief History:

Committee Activity: Health & Long-Term Care: 1/17/05, 1/26/05 [w/oRec-JUD].
Judiciary: 2/15/05.

SENATE COMMITTEE ON JUDICIARY

Staff: Aldo Melchiori (786-7439)

Background: Health care providers purchase medical malpractice insurance coverage from insurers in the private market. Insurers, in turn, purchase reinsurance, which covers losses over and above a certain level. Many physician specialties have reported difficulties finding medical malpractice insurance coverage. Others have reported a significant rise in premiums.

The Insurance Commissioner is responsible for the licensing and regulation of insurance companies doing business in this state. This oversight includes approval of rates and rating plans. The Commissioner does not generally review an insurer's underwriting standards and does not receive information related to specific classes or types of insurance coverages provided. In addition, the Commissioner does not receive information about medical malpractice claims, judgments, or settlement.

The Department of Health's Medical Quality Assurance Commission (MQAC) is responsible for protecting the public by assuring that quality health care is provided by physicians and physician assistants. MQAC establishes, monitors, and enforces qualifications for licensure, consistent standards of practice, and continuing competency. It is composed of nineteen Governor-appointed members and six pro-tem members appointed by the Department of Health Secretary. Under the Uniform Disciplinary Act, upon determining that a license holder has committed unprofessional conduct or is unable to practice with reasonable skill and safety, MQAC may issue an order of discipline ranging from revocation of the license to mandating a refund to the patient.

In a medical malpractice action, there is no limit to the number of expert witnesses allowed per issue.

Summary of Bill: Medical Liability Insurance. The Insurance Commissioner (Commissioner) must notify the public when any insurer files for a medical malpractice insurance rate change of less than 15 percent. The rate change will be approved after a waiting period unless a hearing is requested or the Commissioner disapproves the filing. If the rate change is 15 percent or greater, the commissioner must order a public hearing.

A supplemental malpractice insurance program is created to provide an additional layer of liability coverage for malpractice claims. The program pays claims and related defense costs on behalf of a covered health care provider or facility once the underlying layer of insurance has paid the claims to the maximum retained limit. A board of governors is appointed by the Commissioner to oversee the operations of the program. The program is funded by annual premiums and has the ability to issue a capital call if necessary. The legislature may also appropriate any funds it deems necessary to support the program.

To qualify to be in the program, a provider or facility must have certain ties to Washington state and must finance claim payments that fall within a retained limit by either purchasing underlying insurance or self-insuring. For an individual health care provider, the minimum retained limits for the underlying coverage are \$250,000 per claim and an annual aggregate limit of \$750,000. The minimum retained limits increase as the size of the health care facility increases. Under the supplemental insurance program, a provider may obtain excess liability coverage above the level of the retained limits up to \$1 million per claim with an annual aggregate limit of \$3 million. The basic limits of excess liability covering a health care facility are \$2 million per claim and an annual aggregate limit of \$6 million. A provider or facility may not reject any settlement agreed upon between a claimant and either the program or the underlying insurer, although they may appeal any resulting premium increase.

Malpractice insurers providing the underlying coverage are required to report to the Commissioner any malpractice claim that resulted in a final judgment or settlement. Failure to do so is punishable by fine. The Commissioner must prepare annual aggregate statistical summaries of closed claims and annual reports analyzing trends in claims, types of medical malpractice, and an analysis of the state medical malpractice insurance market. The Department of Health must thoroughly investigate a health care professional if he or she has had three claims paid within the most recent five-year period and if the total indemnity payment for each claim was \$50,000 or more.

Patient Safety and Patient Right to Know. The number of members of the public on the MQAC is raised from four to six. At least two of the public members must not be from the health care industry and must be representatives of patient advocacy groups or organizations.

Upon patient request, a health care provider must disclose his or her experience with the treatment including its outcomes. A health care facility is obligated to make the records made or received in the course of business, including those filed to the disciplining authority, relating to any adverse medical event available for examination if requested by a patient or immediate family member.

Unless MQAC finds mitigating circumstances, no person who has had three or more judgments holding that they committed medical malpractice entered against them within a ten-year period must be licensed or continue to be licensed to practice medicine. The clerk of the court must report to the Department of Health any verdict or settlement in a medical malpractice action in excess of \$100,000.

Medical Liability Cost Savings. In any medical malpractice action, each side is limited to two expert witnesses per issue except upon a showing of necessity. Attorneys filing a medical malpractice claim must certify that the claim is not frivolous. If an action is signed and filed in violation of this rule, the court may impose an appropriate sanction on the attorney, including an order to pay expenses and fees to the other party.

Appropriation: None.

Fiscal Note: Requested on January 11, 2005.

Committee/Commission/Task Force Created: No.

Effective Date: If submitted to the people at the next general election and passed, 30 days after the election.

Testimony For: If the goal is to lower insurance costs, the best way to achieve it is to control the amount of medical malpractice that is occurring. There are a small number of bad physicians who are causing the majority of malpractice cases. These are complex issues that require the multi-pronged response that this initiative provides.

Testimony Against: This initiative is pure retaliation against physicians by the trial lawyers. The insurance commissioner already reviews rates thoroughly. The new insurance program just provides another deep pocket for plaintiffs while doing nothing to fix the health care system. The

three strikes provisions is designed to encourage early and easy settlement of cases for the benefit of plaintiffs and their attorneys. Physician discipline will not be enhanced by including more civilian members to the MQAC. Acts of negligence are defined too broadly.

Who Testified: PRO: Bill Daley, Washington Citizen Action; Dylan Malone, Citizens for Better, Safer Healthcare; Judy Massong, WSTLA; Jenn Mielenz, Better, Safer Healthcare Coalition.

CON: Ken Isaacs, Washington State Medical Association; Cliff Webster, Washington State Medical Association; Bob Appel, Washington State Hospital Association.