
HOUSE BILL 2991

State of Washington 58th Legislature 2004 Regular Session

By Representatives Carrell, McMahan, Newhouse, Benson, Boldt, Alexander, Bailey, Schindler, Holmquist, McDonald, Kristiansen, Roach, Cairnes, Woods and Condotta

Read first time 01/26/2004. Referred to Committee on Judiciary.

1 AN ACT Relating to civil liability reform; amending RCW 4.56.250,
2 7.70.070, 7.70.100, 4.16.350, 7.70.080, 7.70.060, 4.24.250, 43.70.510,
3 70.41.200, 43.70.110, and 43.70.250; adding new sections to chapter
4 4.56 RCW; adding a new section to chapter 7.04 RCW; adding new sections
5 to chapter 7.70 RCW; adding new sections to chapter 43.70 RCW; and
6 creating new sections.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that it is in the best
9 interest of the people of the state of Washington to contain the
10 significantly increasing costs of malpractice insurance for licensed
11 health care professionals and institutions and noninstitutional care
12 providers in order to ensure the continued availability and
13 affordability of health care services in this state by enacting further
14 reforms to the health care tort liability system.

15 The legislature finds that, notwithstanding the tort reform
16 measures it has enacted in the past, the amounts being paid out in
17 judgments and settlements have continued to increase inordinately, and
18 that as a result there have been dramatic increases in the cost of
19 health care professional liability insurance coverage. The legislature

1 further finds that the upward pressures on already high malpractice
2 insurance premiums threaten the publics' health by discouraging
3 physicians and other health care professionals from initiating or
4 continuing their practice in this state.

5 The legislature further finds that the state of California, largely
6 as a result of its enactment of the "medical injury compensation reform
7 act" in 1975, has been able to successfully stabilize the health care
8 professional liability insurance market, maintain access to affordable
9 quality health care services, and avert the kind of crisis now facing
10 the residents of Washington.

11 The legislature finds that such reforms are rationally related to
12 the legitimate goals of reducing the costs associated with the health
13 care tort liability system while ensuring adequate and appropriate
14 compensation for persons injured as a result of health care, ensuring
15 the continued availability and affordability of health care services in
16 this state, preventing the curtailment of health care services in this
17 state, stabilizing insurance and health care costs, preventing stale
18 health care liability claims, and protecting and preserving the public
19 health, safety, and welfare as a whole.

20 **Sec. 2.** RCW 4.56.250 and 1986 c 305 s 301 are each amended to read
21 as follows:

22 (1) As used in this section, the following terms have the meanings
23 indicated unless the context clearly requires otherwise.

24 (a) "Economic damages" means objectively verifiable monetary
25 losses, including medical expenses, loss of earnings, burial costs,
26 loss of use of property, cost of replacement or repair, cost of
27 obtaining substitute domestic services, loss of employment, and loss of
28 business or employment opportunities.

29 (b) "Noneconomic damages" means subjective, nonmonetary losses,
30 including((~~τ~~)) but not limited to pain, suffering, inconvenience,
31 mental anguish, disability or disfigurement incurred by the injured
32 party, loss of ability to enjoy life, emotional distress, loss of
33 society and companionship, loss of consortium, injury to reputation and
34 humiliation, ((~~and~~)) destruction of the parent-child relationship, and
35 other nonpecuniary damages of any type.

36 (c) "Bodily injury" means physical injury, sickness, or disease,
37 including death.

1 (d) "Average annual wage" means the average annual wage in the
2 state of Washington as determined under RCW 50.04.355.

3 (2) In no action seeking damages for personal injury or death may
4 a claimant recover a judgment for noneconomic damages exceeding an
5 amount determined by multiplying 0.43 by the average annual wage and by
6 the life expectancy of the person incurring noneconomic damages, as the
7 life expectancy is determined by the life expectancy tables adopted by
8 the insurance commissioner. For purposes of determining the maximum
9 amount allowable for noneconomic damages, a claimant's life expectancy
10 shall not be less than fifteen years. The limitation contained in this
11 subsection applies to all claims for noneconomic damages made by a
12 claimant who incurred bodily injury. Claims for loss of consortium,
13 loss of society and companionship, destruction of the parent-child
14 relationship, and all other derivative claims asserted by persons who
15 did not sustain bodily injury are to be included within the limitation
16 on claims for noneconomic damages arising from the same bodily injury.

17 (3) If a case is tried to a jury, the jury shall not be informed of
18 the limitation contained in subsection (2) of this section.

19 NEW SECTION. **Sec. 3.** A new section is added to chapter 4.56 RCW
20 to read as follows:

21 (1) In an action or arbitration for damages for injury or death
22 occurring as a result of health care, or arranging for the provision of
23 health care, whether brought under chapter 7.70 RCW, or under RCW
24 4.20.010, 4.20.020, 4.20.046, 4.20.060, 4.24.010, or 48.43.545(1), or
25 any combination thereof, the total amount of noneconomic damages may
26 not exceed two hundred fifty thousand dollars.

27 (2) The limitation on noneconomic damages contained in subsection
28 (1) of this section includes all noneconomic damages claimed by or on
29 behalf of the person whose injury or death occurred as a result of
30 health care or arranging for the provision of health care, as well as
31 all claims for loss of consortium, loss of society and companionship,
32 destruction of the parent-child relationship, and other derivative
33 claims asserted by or on behalf of others arising from the same injury
34 or death. If the jury's assessment of noneconomic damages exceeds the
35 limitation contained in subsection (1) of this section, nothing in RCW
36 4.44.450 precludes the court from entering a judgment that limits the

1 total amount of noneconomic damages to those limits provided in
2 subsection (1) of this section.

3 **Sec. 4.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each
4 amended to read as follows:

5 (1) Except as set forth in subsection (2) of this section, the
6 court shall, in any action under this chapter, determine the
7 reasonableness of each party's attorneys' fees. The court shall take
8 into consideration the following:

9 ~~((1))~~ (a) The time and labor required, the novelty and difficulty
10 of the questions involved, and the skill requisite to perform the legal
11 service properly;

12 ~~((2))~~ (b) The likelihood, if apparent to the client, that the
13 acceptance of the particular employment will preclude other employment
14 by the lawyer;

15 ~~((3))~~ (c) The fee customarily charged in the locality for similar
16 legal services;

17 ~~((4))~~ (d) The amount involved and the results obtained;

18 ~~((5))~~ (e) The time limitations imposed by the client or by the
19 circumstances;

20 ~~((6))~~ (f) The nature and length of the professional relationship
21 with the client;

22 ~~((7))~~ (g) The experience, reputation, and ability of the lawyer
23 or lawyers performing the services;

24 ~~((8))~~ (h) Whether the fee is fixed or contingent.

25 (2)(a) An attorney may not contract for or collect a contingency
26 fee for representing a person in connection with an action for damages
27 against a health care provider based upon professional negligence in
28 excess of the following limits:

29 (i) Forty percent of the first fifty thousand dollars recovered;

30 (ii) Thirty-three and one-third percent of the next fifty thousand
31 dollars recovered;

32 (iii) Twenty-five percent of the next five hundred thousand dollars
33 recovered;

34 (iv) Fifteen percent of any amount in which the recovery exceeds
35 six hundred thousand dollars.

36 (b) The limitations in this section apply regardless of whether the

1 recovery is by judgment, settlement, arbitration, mediation, or other
2 form of alternative dispute resolution.

3 (c) If periodic payments are awarded to the plaintiff, the court
4 shall place a total value on these payments and include this amount in
5 computing the total award from which attorneys' fees are calculated
6 under this subsection.

7 (d) For purposes of this subsection, "recovered" means the net sum
8 recovered after deducting any disbursements or costs incurred in
9 connection with prosecution or settlement of the claim. Costs of
10 medical care incurred by the plaintiff and the attorneys' office
11 overhead costs or charges are not deductible disbursements or costs for
12 such purposes.

13 (3) This section applies to all agreements for attorneys' fees
14 entered into or modified after the effective date of this section.

15 **Sec. 5.** RCW 7.70.100 and 1993 c 492 s 419 are each amended to read
16 as follows:

17 (1) No action based upon a health care provider's professional
18 negligence may be commenced unless the defendant has been given at
19 least ninety days' notice of the intention to commence the action. If
20 the notice is served within ninety days of the expiration of the
21 applicable statute of limitations, the time for the commencement of the
22 action must be extended ninety days from the service of the notice.

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

27 (3) After the filing of the ninety-day presuit notice, and before
28 a superior court trial, all causes of action, whether based in tort,
29 contract, or otherwise, for damages arising from injury occurring as a
30 result of health care provided after July 1, 1993, shall be subject to
31 mandatory mediation prior to trial.

32 ~~((+2))~~ (4) The supreme court shall by rule adopt procedures to
33 implement mandatory mediation of actions under this chapter. The rules
34 shall require mandatory mediation without exception and address, at a
35 minimum:

36 (a) Procedures for the appointment of, and qualifications of,
37 mediators. A mediator shall have experience or expertise related to

1 actions arising from injury occurring as a result of health care, and
2 be a member of the state bar association who has been admitted to the
3 bar for a minimum of five years or who is a retired judge. The parties
4 may stipulate to a nonlawyer mediator. The court may prescribe
5 additional qualifications of mediators;

6 (b) Appropriate limits on the amount or manner of compensation of
7 mediators;

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

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

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

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

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

19 ~~((+3))~~ (5) Mediators shall not impose discovery schedules upon the
20 parties.

21 (6) The supreme court shall by rule also adopt procedures for the
22 parties to certify to the court the manner of mediation used by the
23 parties to comply with this section.

24 **Sec. 6.** RCW 4.16.350 and 1998 c 147 s 1 are each amended to read
25 as follows:

26 (1) Any civil action for damages for injury or death occurring as
27 a result of health care which is provided after June 25, 1976, against:

28 ~~((+1))~~ (a) A person licensed by this state to provide health care
29 or related services, including, but not limited to, a physician,
30 osteopathic physician, dentist, nurse, optometrist, podiatric physician
31 and surgeon, chiropractor, physical therapist, psychologist,
32 pharmacist, optician, physician's assistant, osteopathic physician's
33 assistant, nurse practitioner, or physician's trained mobile intensive
34 care paramedic, including, in the event such person is deceased, his
35 estate or personal representative;

36 ~~((+2))~~ (b) An employee or agent of a person described in (a) of

1 this subsection (~~((1) of this section~~)), acting in the course and scope
2 of his or her employment, including, in the event such employee or
3 agent is deceased, his or her estate or personal representative; or

4 ~~((3))~~ (c) An entity, whether or not incorporated, facility, or
5 institution employing one or more persons described in (a) of this
6 subsection (~~((1) of this section~~)), including, but not limited to, a
7 hospital, clinic, health maintenance organization, ~~((or))~~ nursing home,
8 or boarding home; or an officer, director, employee, or agent thereof
9 acting in the course and scope of his or her employment, including, in
10 the event such officer, director, employee, or agent is deceased, his
11 or her estate or personal representative;

12 based upon alleged professional negligence shall be commenced within
13 three years of the act or omission alleged to have caused the injury or
14 condition, or one year of the time the patient or his or her
15 representative or custodial parent or guardian discovered or reasonably
16 should have discovered that the injury or condition was caused by said
17 act or omission, whichever period (~~(expires later, except that in no~~
18 ~~event shall an action be commenced more than eight years after said act~~
19 ~~or omission: PROVIDED, That the time for commencement of an action is~~
20 ~~tolled upon proof of fraud, intentional concealment, or the presence of~~
21 ~~a foreign body not intended to have a therapeutic or diagnostic purpose~~
22 ~~or effect, until the date the patient or the patient's representative~~
23 ~~has actual knowledge of the act of fraud or concealment, or of the~~
24 ~~presence of the foreign body; the patient or the patient's~~
25 ~~representative has one year from the date of the actual knowledge in~~
26 ~~which to commence a civil action for damages.~~

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

33 ~~For purposes of this section, with respect to care provided after~~
34 ~~June 25, 1976, and before August 1, 1986, the knowledge of a custodial~~
35 ~~parent or guardian shall be imputed as of April 29, 1987, to persons~~
36 ~~under the age of eighteen years)) occurs first.~~

37 (2) In no event may an action be commenced more than three years

1 after the act or omission alleged to have caused the injury or
2 condition except:

3 (a) Upon proof of fraud, intentional concealment, or the presence
4 of a foreign body not intended to have a therapeutic or diagnostic
5 purpose or effect, in which case the patient or the patient's
6 representative has one year from the date the patient or the patient's
7 representative or custodial parent or guardian has actual knowledge of
8 the act of fraud or concealment or of the presence of the foreign body
9 in which to commence a civil action for damages.

10 (b) In the case of a minor, for any period during minority, but
11 only for such period during minority in which the minor's custodial
12 parent or guardian and the defendant or the defendant's insurer have
13 committed fraud or collusion in the failure to bring an action on
14 behalf of the minor.

15 (c) In the case of a minor under the full age of six years, in
16 which case the action on behalf of the minor must be commenced within
17 three years or prior to the minor's eighth birthday, whichever provides
18 a longer period.

19 (3) Any action not commenced in accordance with this section is
20 barred.

21 (4) For purposes of this section, the tolling provisions of RCW
22 4.16.190 do not apply.

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

28 **Sec. 7.** RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each
29 amended to read as follows:

30 (1) Any party may present evidence to the trier of fact that the
31 ((patient)) plaintiff has already been, or will be, compensated for the
32 injury complained of from ((any source except the assets of the
33 patient, his representative, or his immediate family, or insurance
34 purchased with such assets. In the event such evidence is admitted,
35 the plaintiff may present evidence of an obligation to repay such
36 compensation. Insurance bargained for or provided on behalf of an
37 employee shall be considered insurance purchased with the assets of the

1 ~~employee))~~ a collateral source. In the event the evidence is admitted,
2 the other party may present evidence of any amount that was paid or
3 contributed to secure the right to any compensation. Compensation as
4 used in this section shall mean payment of money or other property to
5 or on behalf of the patient, rendering of services to the patient free
6 of charge to the patient, or indemnification of expenses incurred by or
7 on behalf of the patient. Notwithstanding this section, evidence of
8 compensation by a defendant health care provider may be offered only by
9 that provider.

10 (2) Unless otherwise provided by statute, there is no right of
11 subrogation or reimbursement from a plaintiff's tort recovery with
12 respect to compensation covered in subsection (1) of this section.

13 NEW SECTION. Sec. 8. A new section is added to chapter 7.04 RCW
14 to read as follows:

15 (1) A contract for health care services that contains a provision
16 for arbitration of a dispute as to professional negligence of a health
17 care provider under chapter 7.70 RCW must have the provision as the
18 first article of the contract and must be expressed in the following
19 language:

20 "It is understood that any dispute as to medical malpractice that
21 is as to whether any medical services rendered under this contract were
22 unnecessary or unauthorized or were improperly, negligently, or
23 incompetently rendered, will be determined by submission to arbitration
24 as provided by Washington law, and not by a lawsuit or resort to court
25 process except as Washington law provides for judicial review of
26 arbitration proceedings. Both parties to this contract, by entering
27 into it, are giving up their constitutional right to have such a
28 dispute decided in a court of law before a jury, and instead are
29 accepting the use of arbitration."

30 (2) Immediately before the signature line provided for the
31 individual contracting for the medical services, there must appear the
32 following in at least ten-point bold red type:

33 "NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY
34 ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE
35 GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE ONE OF THIS
36 CONTRACT."

1 (3) Once signed, such a contract governs all subsequent open-book
2 account transactions for medical services for which the contract was
3 signed until or unless rescinded by written notice within thirty days
4 of signature. Written notice of such rescission may be given by a
5 guardian or other legal representative of the patient if the patient is
6 incapacitated or a minor.

7 (4) Where the contract is one for medical services to a minor, it
8 may not be disaffirmed if signed by the minor's parent or legal
9 guardian.

10 (5) Such a contract is not a contract of adhesion, nor
11 unconscionable, nor otherwise improper, where it complies with
12 subsections (1) through (3) of this section.

13 (6) Subsections (1) through (3) of this section do not apply to any
14 health benefit plan contract offered by an organization regulated under
15 Title 48 RCW that has been negotiated to contain an arbitration
16 agreement with subscribers and enrollees under such a contract.

17 NEW SECTION. **Sec. 9.** A new section is added to chapter 7.70 RCW
18 to read as follows:

19 RCW 7.70.100, 7.70.110, 7.70.120, and 7.70.130 do not apply if
20 there is a contract for binding arbitration under section 8 of this
21 act.

22 NEW SECTION. **Sec. 10.** A new section is added to chapter 7.70 RCW
23 to read as follows:

24 (1) The definitions in this subsection apply throughout this
25 section unless the context clearly requires otherwise.

26 (a) "Future damages" includes damages for future medical treatment,
27 care or custody, loss of future earnings, loss of bodily function, or
28 future pain and suffering of the judgment creditor.

29 (b) "Periodic payments" means the payment of money or delivery of
30 other property to the judgment creditor at regular intervals.

31 (2) In any action for damages for injury occurring as a result of
32 health care, the court shall, at the request of either party, enter a
33 judgment ordering that money damages or its equivalent for future
34 damages of the judgment creditor be paid in whole or in part by
35 periodic payments rather than by a lump-sum payment if the award equals
36 or exceeds fifty thousand dollars in future damages. In entering a

1 judgment ordering the payment of future damages by periodic payments,
2 the court shall make a specific finding as to the dollar amount of
3 periodic payments which will compensate the judgment creditor for such
4 future damages. As a condition to authorizing periodic payments of
5 future damages, the court shall require the judgment debtor who is not
6 adequately insured to post security adequate to ensure full payment of
7 such damages awarded by the judgment. Upon termination of periodic
8 payments of future damages, the court shall order the return of this
9 security, or so much as remains, to the judgment debtor.

10 (3)(a) The judgment ordering the payment of future damages by
11 periodic payments must specify the recipient or recipients of the
12 payments, the dollar amount of the payments, the interval between
13 payments, and the number of payments or the period of time over which
14 payments must be made. The payments are only subject to modification
15 in the event of the death of the judgment creditor.

16 (b) In the event that the court finds that the judgment debtor has
17 exhibited a continuing pattern of failing to make the payments, as
18 specified in (a) of this subsection, the court shall find the judgment
19 debtor in contempt of court and, in addition to the required periodic
20 payments, shall order the judgment debtor to pay the judgment creditor
21 all damages caused by the failure to make such periodic payments,
22 including court costs and attorneys' fees.

23 (4) However, money damages awarded for loss of future earnings may
24 not be reduced or payments terminated by reason of the death of the
25 judgment creditor, but must be paid to persons to whom the judgment
26 creditor owed a duty of support, as provided by law, immediately prior
27 to his or her death. In such cases the court that rendered the
28 original judgment, may, upon petition of any party in interest, modify
29 the judgment to award and apportion the unpaid future damages in
30 accordance with this subsection (4).

31 (5) Following the occurrence or expiration of all obligations
32 specified in the periodic payment judgment, any obligation of the
33 judgment debtor to make further payments ceases and any security given
34 under subsection (2) of this section reverts to the judgment debtor.

35 (6) For purposes of this section, the provisions of RCW 4.56.250 do
36 not apply.

37 (7) It is the intent of the legislature in enacting this section to
38 authorize, in actions for damages for injury occurring as a result of

1 health care, the entry of judgments that provide for the payment of
2 future damages through periodic payments rather than lump-sum payments.
3 By authorizing periodic payment judgments, it is the further intent of
4 the legislature that the courts will utilize such judgments to provide
5 compensation sufficient to meet the needs of an injured plaintiff and
6 those persons who are dependent on the plaintiff for whatever period is
7 necessary while eliminating the potential windfall from a lump-sum
8 recovery that was intended to provide for the care of an injured
9 plaintiff over an extended period who then dies shortly after the
10 judgment is paid, leaving the balance of the judgment award to persons
11 and purposes for which it was not intended. It is also the intent of
12 the legislature that all elements of the periodic payment program be
13 specified with certainty in the judgment ordering such payments and
14 that the judgment not be subject to modification at some future time
15 that might alter the specifications of the original judgment.

16 NEW SECTION. **Sec. 11.** A new section is added to chapter 4.56 RCW
17 to read as follows:

18 In the event that the Washington state supreme court or other court
19 of competent jurisdiction rules or affirms that section 3 of this act
20 is unconstitutional, then the prescribed cap on noneconomic damages
21 takes effect upon the ratification of a state constitutional amendment
22 that empowers the legislature to place limits on the amount of
23 noneconomic damages recoverable in any or all civil causes of action.

24 **Sec. 12.** RCW 7.70.060 and 1975-'76 2nd ex.s. c 56 s 11 are each
25 amended to read as follows:

26 If a patient while legally competent, or his or her representative
27 if he or she is not competent, signs a consent form which sets forth
28 the following, the signed consent form shall constitute prima facie
29 evidence that the patient gave his or her informed consent to the
30 treatment administered and the patient has the burden of rebutting this
31 by (~~(a preponderance of the)~~) clear, cogent, and convincing evidence:

32 (1) A description, in language the patient could reasonably be
33 expected to understand, of:

34 (a) The nature and character of the proposed treatment;

35 (b) The anticipated results of the proposed treatment;

36 (c) The recognized possible alternative forms of treatment; and

1 (d) The recognized serious possible risks, complications, and
2 anticipated benefits involved in the treatment and in the recognized
3 possible alternative forms of treatment, including nontreatment;

4 (2) Or as an alternative, a statement that the patient elects not
5 to be informed of the elements set forth in subsection (1) of this
6 section.

7 Failure to use a form shall not be admissible as evidence of
8 failure to obtain informed consent.

9 **Sec. 13.** RCW 4.24.250 and 1981 c 181 s 1 are each amended to read
10 as follows:

11 (1) Any health care provider as defined in RCW 7.70.020 (1) and (2)
12 as now existing or hereafter amended who, in good faith, files charges
13 or presents evidence against another member of their profession based
14 on the claimed incompetency or gross misconduct of such person before
15 a regularly constituted review committee or board of a professional
16 society or hospital whose duty it is to evaluate the competency and
17 qualifications of members of the profession, including limiting the
18 extent of practice of such person in a hospital or similar institution,
19 or before a regularly constituted committee or board of a hospital
20 whose duty it is to review and evaluate the quality of patient care,
21 shall be immune from civil action for damages arising out of such
22 activities. The proceedings, reports, and written records of such
23 committees or boards, or of a member, employee, staff person, or
24 investigator of such a committee or board, shall not be subject to
25 subpoena or discovery proceedings in any civil action, except actions
26 arising out of the recommendations of such committees or boards
27 involving the restriction or revocation of the clinical or staff
28 privileges of a health care provider as defined above.

29 (2) A coordinated quality improvement program maintained in
30 accordance with RCW 43.70.510 or 70.41.200 may share information and
31 documents, including complaints and incident reports, created
32 specifically for, and collected and maintained by a coordinated quality
33 improvement committee or committees or boards under subsection (1) of
34 this section, with one or more other coordinated quality improvement
35 programs for the improvement of the quality of health care services
36 rendered to patients and the identification and prevention of medical
37 malpractice. Information and documents disclosed by one coordinated

1 quality improvement program to another coordinated quality improvement
2 program and any information and documents created or maintained as a
3 result of the sharing of information and documents shall not be subject
4 to the discovery process and confidentiality shall be respected as
5 required by subsection (1) of this section and by RCW 43.70.510(4) and
6 70.41.200(3).

7 **Sec. 14.** RCW 43.70.510 and 1995 c 267 s 7 are each amended to read
8 as follows:

9 (1)(a) Health care institutions and medical facilities, other than
10 hospitals, that are licensed by the department, professional societies
11 or organizations, health care service contractors, health maintenance
12 organizations, health carriers approved pursuant to chapter 48.43 RCW,
13 and any other person or entity providing health care coverage under
14 chapter 48.42 RCW that is subject to the jurisdiction and regulation of
15 any state agency or any subdivision thereof may maintain a coordinated
16 quality improvement program for the improvement of the quality of
17 health care services rendered to patients and the identification and
18 prevention of medical malpractice as set forth in RCW 70.41.200.

19 (b) All such programs shall comply with the requirements of RCW
20 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h) as modified to
21 reflect the structural organization of the institution, facility,
22 professional societies or organizations, health care service
23 contractors, health maintenance organizations, health carriers, or any
24 other person or entity providing health care coverage under chapter
25 48.42 RCW that is subject to the jurisdiction and regulation of any
26 state agency or any subdivision thereof, unless an alternative quality
27 improvement program substantially equivalent to RCW 70.41.200(1)(a) is
28 developed. All such programs, whether complying with the requirement
29 set forth in RCW 70.41.200(1)(a) or in the form of an alternative
30 program, must be approved by the department before the discovery
31 limitations provided in subsections (3) and (4) of this section and the
32 exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section
33 shall apply. In reviewing plans submitted by licensed entities that
34 are associated with physicians' offices, the department shall ensure
35 that the exemption under RCW 42.17.310(1)(hh) and the discovery
36 limitations of this section are applied only to information and

1 documents related specifically to quality improvement activities
2 undertaken by the licensed entity.

3 (2) Health care provider groups of (~~ten~~) five or more providers
4 may maintain a coordinated quality improvement program for the
5 improvement of the quality of health care services rendered to patients
6 and the identification and prevention of medical malpractice as set
7 forth in RCW 70.41.200. All such programs shall comply with the
8 requirements of RCW 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h)
9 as modified to reflect the structural organization of the health care
10 provider group. All such programs must be approved by the department
11 before the discovery limitations provided in subsections (3) and (4) of
12 this section and the exemption under RCW 42.17.310(1)(hh) and
13 subsection (5) of this section shall apply.

14 (3) Any person who, in substantial good faith, provides information
15 to further the purposes of the quality improvement and medical
16 malpractice prevention program or who, in substantial good faith,
17 participates on the quality improvement committee shall not be subject
18 to an action for civil damages or other relief as a result of such
19 activity.

20 (4) Information and documents, including complaints and incident
21 reports, created specifically for, and collected, and maintained by a
22 quality improvement committee are not subject to discovery or
23 introduction into evidence in any civil action, and no person who was
24 in attendance at a meeting of such committee or who participated in the
25 creation, collection, or maintenance of information or documents
26 specifically for the committee shall be permitted or required to
27 testify in any civil action as to the content of such proceedings or
28 the documents and information prepared specifically for the committee.
29 This subsection does not preclude: (a) In any civil action, the
30 discovery of the identity of persons involved in the medical care that
31 is the basis of the civil action whose involvement was independent of
32 any quality improvement activity; (b) in any civil action, the
33 testimony of any person concerning the facts that form the basis for
34 the institution of such proceedings of which the person had personal
35 knowledge acquired independently of such proceedings; (c) in any civil
36 action by a health care provider regarding the restriction or
37 revocation of that individual's clinical or staff privileges,
38 introduction into evidence information collected and maintained by

1 quality improvement committees regarding such health care provider; (d)
2 in any civil action challenging the termination of a contract by a
3 state agency with any entity maintaining a coordinated quality
4 improvement program under this section if the termination was on the
5 basis of quality of care concerns, introduction into evidence of
6 information created, collected, or maintained by the quality
7 improvement committees of the subject entity, which may be under terms
8 of a protective order as specified by the court; (e) in any civil
9 action, disclosure of the fact that staff privileges were terminated or
10 restricted, including the specific restrictions imposed, if any and the
11 reasons for the restrictions; or (f) in any civil action, discovery and
12 introduction into evidence of the patient's medical records required by
13 rule of the department of health to be made regarding the care and
14 treatment received.

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

18 (6) A coordinated quality improvement program may share information
19 and documents, including complaints and incident reports, created
20 specifically for, and collected and maintained by a quality improvement
21 committee or a peer review committee under RCW 4.24.250 with one or
22 more other coordinated quality improvement programs maintained in
23 accordance with this section or with RCW 70.41.200, for the improvement
24 of the quality of health care services rendered to patients and the
25 identification and prevention of medical malpractice. Information and
26 documents disclosed by one coordinated quality improvement program to
27 another coordinated quality improvement program and any information and
28 documents created or maintained as a result of the sharing of
29 information and documents shall not be subject to the discovery process
30 and confidentiality shall be respected as required by subsection (4) of
31 this section and RCW 4.24.250.

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

34 **Sec. 15.** RCW 70.41.200 and 2000 c 6 s 3 are each amended to read
35 as follows:

36 (1) Every hospital shall maintain a coordinated quality improvement

1 program for the improvement of the quality of health care services
2 rendered to patients and the identification and prevention of medical
3 malpractice. The program shall include at least the following:

4 (a) The establishment of a quality improvement committee with the
5 responsibility to review the services rendered in the hospital, both
6 retrospectively and prospectively, in order to improve the quality of
7 medical care of patients and to prevent medical malpractice. The
8 committee shall oversee and coordinate the quality improvement and
9 medical malpractice prevention program and shall ensure that
10 information gathered pursuant to the program is used to review and to
11 revise hospital policies and procedures;

12 (b) A medical staff privileges sanction procedure through which
13 credentials, physical and mental capacity, and competence in delivering
14 health care services are periodically reviewed as part of an evaluation
15 of staff privileges;

16 (c) The periodic review of the credentials, physical and mental
17 capacity, and competence in delivering health care services of all
18 persons who are employed or associated with the hospital;

19 (d) A procedure for the prompt resolution of grievances by patients
20 or their representatives related to accidents, injuries, treatment, and
21 other events that may result in claims of medical malpractice;

22 (e) The maintenance and continuous collection of information
23 concerning the hospital's experience with negative health care outcomes
24 and incidents injurious to patients, patient grievances, professional
25 liability premiums, settlements, awards, costs incurred by the hospital
26 for patient injury prevention, and safety improvement activities;

27 (f) The maintenance of relevant and appropriate information
28 gathered pursuant to (a) through (e) of this subsection concerning
29 individual physicians within the physician's personnel or credential
30 file maintained by the hospital;

31 (g) Education programs dealing with quality improvement, patient
32 safety, medication errors, injury prevention, staff responsibility to
33 report professional misconduct, the legal aspects of patient care,
34 improved communication with patients, and causes of malpractice claims
35 for staff personnel engaged in patient care activities; and

36 (h) Policies to ensure compliance with the reporting requirements
37 of this section.

1 (2) Any person who, in substantial good faith, provides information
2 to further the purposes of the quality improvement and medical
3 malpractice prevention program or who, in substantial good faith,
4 participates on the quality improvement committee shall not be subject
5 to an action for civil damages or other relief as a result of such
6 activity.

7 (3) Information and documents, including complaints and incident
8 reports, created specifically for, and collected, and maintained by a
9 quality improvement committee are not subject to discovery or
10 introduction into evidence in any civil action, and no person who was
11 in attendance at a meeting of such committee or who participated in the
12 creation, collection, or maintenance of information or documents
13 specifically for the committee shall be permitted or required to
14 testify in any civil action as to the content of such proceedings or
15 the documents and information prepared specifically for the committee.
16 This subsection does not preclude: (a) In any civil action, the
17 discovery of the identity of persons involved in the medical care that
18 is the basis of the civil action whose involvement was independent of
19 any quality improvement activity; (b) in any civil action, the
20 testimony of any person concerning the facts which form the basis for
21 the institution of such proceedings of which the person had personal
22 knowledge acquired independently of such proceedings; (c) in any civil
23 action by a health care provider regarding the restriction or
24 revocation of that individual's clinical or staff privileges,
25 introduction into evidence information collected and maintained by
26 quality improvement committees regarding such health care provider; (d)
27 in any civil action, disclosure of the fact that staff privileges were
28 terminated or restricted, including the specific restrictions imposed,
29 if any and the reasons for the restrictions; or (e) in any civil
30 action, discovery and introduction into evidence of the patient's
31 medical records required by regulation of the department of health to
32 be made regarding the care and treatment received.

33 (4) Each quality improvement committee shall, on at least a
34 semiannual basis, report to the governing board of the hospital in
35 which the committee is located. The report shall review the quality
36 improvement activities conducted by the committee, and any actions
37 taken as a result of those activities.

1 (5) The department of health shall adopt such rules as are deemed
2 appropriate to effectuate the purposes of this section.

3 (6) The medical quality assurance commission or the board of
4 osteopathic medicine and surgery, as appropriate, may review and audit
5 the records of committee decisions in which a physician's privileges
6 are terminated or restricted. Each hospital shall produce and make
7 accessible to the commission or board the appropriate records and
8 otherwise facilitate the review and audit. Information so gained shall
9 not be subject to the discovery process and confidentiality shall be
10 respected as required by subsection (3) of this section. Failure of a
11 hospital to comply with this subsection is punishable by a civil
12 penalty not to exceed two hundred fifty dollars.

13 (7) The department, the joint commission on accreditation of health
14 care organizations, and any other accrediting organization may review
15 and audit the records of a quality improvement committee or peer review
16 committee in connection with their inspection and review of hospitals.
17 Information so obtained shall not be subject to the discovery process,
18 and confidentiality shall be respected as required by subsection (3) of
19 this section. Each hospital shall produce and make accessible to the
20 department the appropriate records and otherwise facilitate the review
21 and audit.

22 (8) A coordinated quality improvement program may share information
23 and documents, including complaints and incident reports, created
24 specifically for, and collected and maintained by a quality improvement
25 committee or a peer review committee under RCW 4.24.250 with one or
26 more other coordinated quality improvement programs maintained in
27 accordance with this section or with RCW 43.70.510, for the improvement
28 of the quality of health care services rendered to patients and the
29 identification and prevention of medical malpractice. Information and
30 documents disclosed by one coordinated quality improvement program to
31 another coordinated quality improvement program and any information and
32 documents created or maintained as a result of the sharing of
33 information and documents shall not be subject to the discovery process
34 and confidentiality shall be respected as required by subsection (3) of
35 this section and RCW 4.24.250.

36 (9) Violation of this section shall not be considered negligence
37 per se.

1 **Sec. 16.** RCW 43.70.110 and 1993 sp.s. c 24 s 918 are each amended
2 to read as follows:

3 (1) The secretary shall charge fees to the licensee for obtaining
4 a license. After June 30, 1995, municipal corporations providing
5 emergency medical care and transportation services pursuant to chapter
6 18.73 RCW shall be exempt from such fees, provided that such other
7 emergency services shall only be charged for their pro rata share of
8 the cost of licensure and inspection, if appropriate. The secretary
9 may waive the fees when, in the discretion of the secretary, the fees
10 would not be in the best interest of public health and safety, or when
11 the fees would be to the financial disadvantage of the state.

12 (2) Except as provided in section 18 of this act, fees charged
13 shall be based on, but shall not exceed, the cost to the department for
14 the licensure of the activity or class of activities and may include
15 costs of necessary inspection.

16 (3) Department of health advisory committees may review fees
17 established by the secretary for licenses and comment upon the
18 appropriateness of the level of such fees.

19 **Sec. 17.** RCW 43.70.250 and 1996 c 191 s 1 are each amended to read
20 as follows:

21 It shall be the policy of the state of Washington that the cost of
22 each professional, occupational, or business licensing program be fully
23 borne by the members of that profession, occupation, or business. The
24 secretary shall from time to time establish the amount of all
25 application fees, license fees, registration fees, examination fees,
26 permit fees, renewal fees, and any other fee associated with licensing
27 or regulation of professions, occupations, or businesses administered
28 by the department. In fixing (~~said~~) such fees, the secretary shall
29 set the fees for each program at a sufficient level to defray the costs
30 of administering that program and the patient safety fee established in
31 section 18 of this act. All such fees shall be fixed by rule adopted
32 by the secretary in accordance with the provisions of the
33 administrative procedure act, chapter 34.05 RCW.

34 NEW SECTION. **Sec. 18.** A new section is added to chapter 43.70 RCW
35 to read as follows:

36 (1) The secretary shall increase the licensing fee established

1 under RCW 43.70.110 by two dollars per year for the health care
2 professionals designated in subsection (2) of this section and by two
3 dollars per licensed bed per year for the health care facilities
4 designated in subsection (2) of this section. Proceeds of the patient
5 safety fee must be deposited into the patient safety account in section
6 22 of this act and dedicated to patient safety and medical error
7 reduction efforts that have been proven to improve, or have a
8 substantial likelihood of improving, the quality of care provided by
9 health care professionals and facilities.

10 (2) Health care professionals and facilities subject to the one
11 percent patient safety fee are:

12 (a) The following health care professionals licensed under Title 18
13 RCW:

14 (i) Advanced registered nurse practitioners, registered nurses, and
15 licensed practical nurses licensed under chapter 18.79 RCW;

16 (ii) Chiropractors licensed under chapter 18.25 RCW;

17 (iii) Dentists licensed under chapter 18.32 RCW;

18 (iv) Midwives licensed under chapter 18.50 RCW;

19 (v) Naturopaths licensed under chapter 18.36A RCW;

20 (vi) Nursing home administrators licensed under chapter 18.52 RCW;

21 (vii) Optometrists licensed under chapter 18.53 RCW;

22 (viii) Osteopathic physicians licensed under chapter 18.57 RCW;

23 (ix) Osteopathic physicians' assistants licensed under chapter
24 18.57A RCW;

25 (x) Pharmacists and pharmacies licensed under chapter 18.64 RCW;

26 (xi) Physicians licensed under chapter 18.71 RCW;

27 (xii) Physician assistants licensed under chapter 18.71A RCW;

28 (xiii) Podiatrists licensed under chapter 18.22 RCW; and

29 (xiv) Psychologists licensed under chapter 18.83 RCW; and

30 (b) Hospitals licensed under chapter 70.41 RCW and psychiatric
31 hospitals licensed under chapter 71.12 RCW.

32 NEW SECTION. **Sec. 19.** A new section is added to chapter 7.70 RCW
33 to read as follows:

34 (1) One percent of the present value of the settlement or verdict
35 in any action for damages based upon injuries resulting from health
36 care shall be deducted from the settlement or verdict as a patient
37 safety set aside. Proceeds of the patient safety set aside shall be

1 distributed by the department of health in the form of grants, loans,
2 or other appropriate arrangements to support strategies that have been
3 proven to reduce medical errors and enhance patient safety as provided
4 in section 18 of this act.

5 (2) Patient safety set asides shall be transmitted to the secretary
6 of the department of health for deposit into the patient safety account
7 established in section 22 of this act.

8 (3) The supreme court shall by rule adopt procedures to implement
9 this section.

10 NEW SECTION. **Sec. 20.** A new section is added to chapter 43.70 RCW
11 to read as follows:

12 (1) Patient safety fee and set aside proceeds shall be administered
13 by the department, after seeking input from health care providers
14 engaged in direct patient care activities, health care facilities, and
15 other interested parties. In developing criteria for the award of
16 grants, loans, or other appropriate arrangements under this section,
17 the department shall rely primarily upon evidence-based practices to
18 improve patient safety that have been identified and recommended by
19 governmental and private organizations, including, but not limited to:

- 20 (a) The federal agency for health care quality and research;
- 21 (b) The federal institute of medicine;
- 22 (c) The joint commission on accreditation of health care
23 organizations; and
- 24 (d) The national quality forum.

25 (2) Projects that have been proven to reduce medical errors and
26 enhance patient safety shall receive priority for funding over those
27 that are not proven, but have a substantial likelihood of reducing
28 medical errors and enhancing patient safety. All project proposals
29 must include specific performance and outcome measures by which to
30 evaluate the effectiveness of the project. Project proposals that do
31 not propose to use a proven patient safety strategy must include, in
32 addition to performance and outcome measures, a detailed description of
33 the anticipated outcomes of the project based upon any available
34 related research and the steps for achieving those outcomes.

35 (3) The department may use a portion of the patient safety fee
36 proceeds for the costs of administering the program.

1 NEW SECTION. **Sec. 21.** A new section is added to chapter 43.70 RCW
2 to read as follows:

3 The secretary may solicit and accept grants or other funds from
4 public and private sources to support patient safety and medical error
5 reduction efforts under this act. Any grants or funds received may be
6 used to enhance these activities as long as program standards
7 established by the secretary are maintained.

8 NEW SECTION. **Sec. 22.** A new section is added to chapter 43.70 RCW
9 to read as follows:

10 The patient safety account is created in the custody of the state
11 treasurer. All receipts from contributions authorized in sections 18
12 and 19 of this act must be deposited into the account. Expenditures
13 from the account may be used only for the purposes of this act. Only
14 the secretary or the secretary's designee may authorize expenditures
15 from the account. The account is subject to allotment procedures under
16 chapter 43.88 RCW, but an appropriation is not required for
17 expenditures.

18 NEW SECTION. **Sec. 23.** A new section is added to chapter 43.70 RCW
19 to read as follows:

20 By December 1, 2007, the department shall report the following
21 information to the governor and the health policy and fiscal committees
22 of the legislature:

23 (1) The amount of patient safety fees and set asides deposited to
24 date in the patient safety account;

25 (2) The criteria for distribution of grants, loans, or other
26 appropriate arrangements under this act; and

27 (3) A description of the medical error reduction and patient safety
28 grants and loans distributed to date, including the stated performance
29 measures, activities, timelines, and detailed information regarding
30 outcomes for each project.

31 NEW SECTION. **Sec. 24.** It is the intent of the legislature by
32 enacting sections 25 and 26 of this act that health care providers
33 should remain personally liable for their own negligent or wrongful
34 acts or omissions in connection with the provision of health care
35 services, but that their vicarious liability for the negligent or

1 wrongful acts or omissions of others should be curtailed. To that end,
2 it is the intent of the legislature that *Adamski v. Tacoma General*
3 *Hospital*, 20 Wn. App. 98, 579 P.2d 970 (1978), and its holding that
4 hospitals may be held liable for a physician's acts or omissions under
5 so-called "apparent agency" or "ostensible agency" theories should be
6 reversed, so that hospitals will not be liable for the act or omission
7 of a health care provider granted hospital privileges unless the health
8 care provider is an actual agent or employee of the hospital. It is
9 further the intent of the legislature that, notwithstanding any
10 generally applicable principle of vicarious liability to the contrary,
11 individual health care professionals will not be liable for the
12 negligent or wrongful acts of others, except those who were acting
13 under their direct supervision and control.

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

16 A public or private hospital shall be liable for an act or omission
17 of a health care provider granted privileges to provide health care at
18 the hospital only if the health care provider is an actual agent or
19 employee of the hospital and the act or omission of the health care
20 provider occurred while the health care provider was acting within the
21 course and scope of the health care provider's agency or employment
22 with the hospital.

23 NEW SECTION. **Sec. 26.** A new section is added to chapter 7.70 RCW
24 to read as follows:

25 A person who is a health care provider under RCW 7.70.020 (1) or
26 (2) shall not be personally liable for any act or omission of any other
27 health care provider who was not the person's actual agent or employee
28 or who was not acting under the person's direct supervision and control
29 at the time of the act or omission.

30 NEW SECTION. **Sec. 27.** Unless otherwise provided in sections 1
31 through 12 of this act, sections 1 through 12 of this act apply to all
32 causes of action filed on or after the effective date of this section.

33 NEW SECTION. **Sec. 28.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the
2 remainder of the act or the application of the provision to other
3 persons or circumstances is not affected.

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