

---

HOUSE BILL 3197

---

State of Washington

58th Legislature

2004 Regular Session

By Representatives Schual-Berke, Kagi, Cody, Lantz, Morrell, Clibborn and Rockefeller

Read first time 02/14/2004. Referred to .

1 AN ACT Relating to reporting and analysis of medical malpractice  
2 related information; adding a new chapter to Title 48 RCW; and  
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Claim" means a demand for payment of a loss caused by medical  
8 malpractice.

9 (a) Two or more claims arising out of a single injury or incident  
10 of medical malpractice is one claim.

11 (b) A series of related incidents of medical malpractice is one  
12 claim.

13 (2) "Claimant" means a person filing a claim against a health care  
14 provider or health care facility.

15 (3) "Commissioner" means the insurance commissioner.

16 (4) "Health care facility" or "facility" means a clinic, diagnostic  
17 center, hospital, laboratory, mental health center, nursing home,  
18 office, surgical facility, treatment facility, or similar place where  
19 a health care provider provides health care to patients.

1 (5) "Health care provider" or "provider" means a health care  
2 provider as defined in RCW 48.43.005.

3 (6) "Insuring entity" means:

4 (a) An insurer;

5 (b) A joint underwriting association;

6 (c) A risk retention group; or

7 (d) An unauthorized insurer that provides surplus lines coverage.

8 (7) "Medical malpractice" means a negligent act, error, or omission  
9 in providing or failing to provide professional health care services.

10 NEW SECTION. **Sec. 2.** (1) Beginning on March 1, 2005, every  
11 insuring entity or self-insurer that provides medical malpractice  
12 insurance to any facility or provider in Washington state must report  
13 to the commissioner by the first of each month any claim related to  
14 medical malpractice, if the claim resulted in a final:

15 (a) Judgment in any amount;

16 (b) Settlement in any amount; or

17 (c) Disposition of a medical malpractice claim resulting in no  
18 indemnity payment on behalf of an insured.

19 (2) If a claim is not reported by an insuring entity or self-  
20 insurer under subsection (1) of this section due to limitations in the  
21 medical malpractice coverage of a facility or provider, the facility or  
22 provider must report the claim to the commissioner.

23 (3) Reports under this section must be filed with the commissioner  
24 within thirty days after the claim is resolved.

25 (4)(a) The commissioner may impose a fine against any insuring  
26 entity or surplus lines producer that violates the requirements of this  
27 section.

28 (b) The department of health may impose a fine against any facility  
29 or provider that violates the requirements of this section.

30 NEW SECTION. **Sec. 3.** The reports required under section 2 of this  
31 act must contain the following data in a form prescribed by the  
32 commissioner for each claim:

33 (1) The health care provider's name, address, provider professional  
34 license number, and type of medical specialty for which the provider is  
35 insured; the name of the facility, if any, and the location within the  
36 facility where the injury occurred; and the names and professional

1 license numbers if applicable, of all defendants involved in the claim.  
2 This information is confidential and exempt from public disclosure, but  
3 may be disclosed:

4 (a) Publicly, if the provider or facility provides written consent;  
5 or

6 (b) To the commissioner at any time for the purpose of identifying  
7 multiple or duplicate claims arising out of the same occurrence;

8 (2) The provider or facility policy number or numbers;

9 (3) The date of the loss;

10 (4) The date the claim was reported to the insuring entity, self-  
11 insurer, facility, or provider;

12 (5) The name and address of the claimant. This information is  
13 confidential and exempt from public disclosure, but may be disclosed:

14 (a) Publicly, if the claimant provides written consent; or

15 (b) To the commissioner at any time for the purpose of identifying  
16 multiple or duplicate claims arising out of the same occurrence;

17 (6) The date of suit, if filed;

18 (7) The claimant's age and sex;

19 (8) Specific information about the judgment or settlement  
20 including:

21 (a) The date and amount of any judgment or settlement;

22 (b) Whether the settlement:

23 (i) Was the result of an arbitration, judgment, or mediation; and

24 (ii) Occurred before or after trial;

25 (c) An itemization of:

26 (i) Economic damages, such as incurred and anticipated medical  
27 expense and lost wages;

28 (ii) Noneconomic damages;

29 (iii) Loss adjustment expense, including but not limited to court  
30 costs, attorneys' fees, and costs of expert witnesses; and

31 (d) If there is no judgment or settlement:

32 (i) The date and reason for final disposition; and

33 (ii) The date the claim was closed;

34 (9) A summary of the occurrence that created the claim, which must  
35 include:

36 (a) The final diagnosis for which the patient sought or received  
37 treatment;

1 (b) A description of any misdiagnosis made by the provider of the  
2 actual condition of the patient;

3 (c) The operation, diagnostic, or treatment procedure that caused  
4 the injury;

5 (d) A description of the principal injury that led to the claim;  
6 and

7 (e) The safety management steps the facility or provider has taken  
8 to make similar occurrences or injuries less likely in the future; and

9 (10) Any other information required by the commissioner, by rule,  
10 that helps the commissioner analyze and evaluate the nature, causes,  
11 location, cost, and damages involved in medical malpractice cases.

12 NEW SECTION. **Sec. 4.** The commissioner must prepare aggregate  
13 statistical summaries of closed claims based on calendar year data  
14 submitted under section 2 of this act.

15 (1) At a minimum, data must be sorted by calendar year and calendar  
16 accident year. The commissioner may also decide to display data in  
17 other ways.

18 (2) The summaries must be available by March 31st of each year.

19 NEW SECTION. **Sec. 5.** Beginning in 2006, the commissioner must  
20 prepare an annual report by June 30th that summarizes and analyzes the  
21 closed claim reports for medical malpractice filed under section 2 of  
22 this act and the annual financial reports filed by insurers writing  
23 medical malpractice insurance in this state. The report must include:

24 (1) An analysis of closed claim reports of prior years for which  
25 data are collected and show:

26 (a) Trends in the frequency and severity of claims payments;

27 (b) An itemization of economic and noneconomic damages;

28 (c) The types of medical malpractice for which claims have been  
29 paid; and

30 (d) Any other information the commissioner determines illustrates  
31 trends in closed claims;

32 (2) An analysis of the medical malpractice insurance market in  
33 Washington state, including:

34 (a) An analysis of the financial reports of the insurers with a  
35 combined market share of at least ninety percent of net written medical  
36 malpractice premium in Washington state for the prior calendar year;

1 (b) A loss ratio analysis of medical malpractice insurance written  
2 in Washington state; and

3 (c) A profitability analysis of each insurer writing medical  
4 malpractice insurance;

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

10 (4) A summary of the rate filings for medical malpractice that have  
11 been approved by the commissioner for the prior calendar year,  
12 including an analysis of the trend of direct and incurred losses as  
13 compared to prior years;

14 (5) The commissioner must post reports required by this section on  
15 the internet no later than thirty days after they are due; and

16 (6) The commissioner may adopt rules that require persons and  
17 entities required to report under section 2 of this act to report data  
18 related to:

19 (a) The frequency and severity of open claims for the reporting  
20 period;

21 (b) The aggregate amounts reserved for incurred claims;

22 (c) Changes in reserves from the previous reporting period; and

23 (d) Any other information that helps the commissioner monitor  
24 losses and claims development in the Washington state medical  
25 malpractice insurance market.

26 NEW SECTION. **Sec. 6.** The commissioner may adopt all rules needed  
27 to implement this chapter.

28 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute  
29 a new chapter in Title 48 RCW.

30 NEW SECTION. **Sec. 8.** If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

--- END ---