

INITIATIVE 330

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 330 to the Legislature is a true and correct copy as it was received by this office.

1 AN ACT Relating to health care liability reform; amending RCW
2 4.56.250, 7.70.020, 7.70.070, 7.70.100, 4.16.350, 7.70.080, 74.34.200,
3 4.22.070, and 4.22.015; adding a new section to chapter 4.56 RCW;
4 adding a new section to chapter 7.04 RCW; adding new sections to
5 chapter 7.70 RCW; and creating new sections.

6 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 4.56.250 and 1986 c 305 s 301 are each amended to read
8 as follows:

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

11 (a) "Economic damages" means objectively verifiable monetary
12 losses, including medical expenses, loss of earnings, burial costs,
13 loss of use of property, cost of replacement or repair, cost of
14 obtaining substitute domestic services, loss of employment, and loss of
15 business or employment opportunities.

16 (b) "Noneconomic damages" means subjective, nonmonetary losses,
17 including((7)) but not limited to pain, suffering, inconvenience,
18 mental anguish, disability or disfigurement incurred by the injured
19 party, loss of ability to enjoy life, emotional distress, loss of

1 society and companionship, loss of consortium, injury to reputation and
2 humiliation, ((and)) destruction of the parent-child relationship, and
3 other nonpecuniary damages of any type.

4 (c) "Bodily injury" means physical injury, sickness, or disease,
5 including death.

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

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

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

25 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.56 RCW
26 to read as follows:

27 (1) In any action or arbitration for damages for injury or death
28 occurring as a result of health care or related services, or the
29 arranging for the provision of health care or related services, whether
30 brought under chapter 7.70 RCW, RCW 4.20.010, 4.20.020, 4.20.046,
31 4.20.060, 4.24.010, or 48.43.545(1), any other applicable law, or any
32 combination thereof, that is based upon the alleged wrongful acts or
33 omissions of one or more health care professionals, whether or not
34 those health care professionals are named as defendants, the total
35 combined civil liability for noneconomic damages for all health care
36 professionals, all persons, entities, and health care institutions for
37 whose conduct the health care professionals could be held liable, and
38 all persons, entities, and health care institutions that could be held

1 liable for the conduct of any health care professionals, shall not
2 exceed three hundred fifty thousand dollars for each claimant,
3 regardless of the number of health care professionals, health care
4 providers, or health care institutions against whom the claim for
5 injury or death is or could have been asserted or the number of
6 separate causes of action on which the claim is based.

7 (2) Any and all health care institutions against whom liability is
8 imposed based upon a wrongful act or omission of any health care
9 professional are specifically included within the limitation on
10 liability for noneconomic damages contained in subsection (1) of this
11 section, even if the health care institution also is or could be held
12 liable for a wrongful act or omission of a person other than a health
13 care professional, another health care institution, or a related
14 entity, facility, or institution.

15 (3) If, in an action or arbitration for injury or death occurring
16 as a result of health care or related services, or the arranging for
17 health care or related services, whether brought under chapter 7.70
18 RCW, RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060, 4.24.010, or
19 48.43.545(1), any other applicable law, or any combination thereof, one
20 or more health care institutions are liable for any wrongful acts or
21 omissions of persons other than health care professionals, but are not
22 liable for any alleged wrongful act or omission of any health care
23 professional, the total civil liability for noneconomic damages for
24 each such health care institution, including all persons, entities, and
25 other health care institutions for whose conduct the health care
26 institution could be liable, shall not exceed three hundred fifty
27 thousand dollars for each claimant, and the total combined limit of
28 civil liability for noneconomic damages for all health care
29 institutions, including all persons, entities, and other health care
30 institutions for whose conduct the health care institutions could be
31 held liable, shall not exceed seven hundred thousand dollars for each
32 claimant, regardless of the number of health care institutions, health
33 care professionals, or health care providers against whom the claim for
34 damages for injury or death is or could have been asserted or the
35 number of separate causes of action on which the claim is based.

36 (4) A claimant shall not be permitted to obtain more than one
37 recovery of noneconomic damages by splitting his or her claim or cause
38 of action for damages for injury or death occurring as a result of
39 health care or related services, or the arranging for the provision of

1 health care or related services, or by bringing separate actions for
2 such injury or death against more than one health care professional or
3 health care institution. A claimant who has recovered noneconomic
4 damages in one action for damages for injury or death occurring as a
5 result of health care or related services, or the arranging for the
6 provision of health care or related services, shall be precluded from
7 seeking or recovering additional noneconomic damages for the injury or
8 death in any other action.

9 (5) If the jury's assessment of noneconomic damages exceeds the
10 limitations contained in subsection (1), (2), or (3) of this section,
11 nothing in RCW 4.44.450 precludes the court from entering a judgment
12 that limits the total amount of noneconomic damages to those limits
13 provided in subsections (1), (2), and (3) of this section.

14 (6) If a case is tried to a jury, the jury shall not be informed of
15 the limitations on noneconomic damages contained in subsections (1),
16 (2), and (3) of this section.

17 (7) The definitions in this subsection apply throughout this
18 section unless the context clearly requires otherwise.

19 (a) "Claimant" means a person, including a decedent's estate,
20 seeking or who has sought recovery of damages in an action or
21 arbitration for injury or death occurring as a result of health care or
22 related services, or the arranging for the provision of health care or
23 related services. All persons claiming to have sustained damages as a
24 result of the injury or death of a single person are considered a
25 single claimant, and the limitations on noneconomic damages specified
26 in subsections (1), (2), and (3) of this section shall include all
27 noneconomic damages claimed by or on behalf of the person whose injury
28 or death occurred as a result of health care or related services, or
29 the arranging for the provision of health care or related services, as
30 well as all claims for noneconomic damages asserted by or on behalf of
31 others arising from the same injury or death.

32 (b) "Economic damages" has the meaning set forth in RCW
33 4.56.250(1)(a).

34 (c) "Health care institution" means any entity, whether or not
35 incorporated, facility, or institution that is licensed, registered, or
36 certified by this state to provide health care or related services or
37 to arrange for the provision of health care or related services,
38 including, but not limited to, an ambulatory diagnostic, treatment, or
39 surgical facility, an adult family home, an ambulance, aid, or

1 emergency medical service, a blood bank or blood center, a boarding
2 home, a community health center, a community mental health center, a
3 comprehensive community health center, a disability insurer, a drug and
4 alcohol treatment center, an extended care facility, a group home, a
5 health carrier, a health care service contractor, a health maintenance
6 organization, a home health agency, a hospice, a hospice care center,
7 a hospital, an independent clinical laboratory, an in-home services
8 agency, an intermediate care facility, a kidney disease treatment
9 facility, a long-term care facility, a migrant health center, a nursing
10 home, a pharmacy, a psychiatric hospital, a psychiatric,
11 neuropsychiatric, or mental health facility, a rehabilitation facility,
12 a renal dialysis center, a rural health care facility, a skilled
13 nursing facility, a soldiers or veterans home, a sperm bank, a tissue
14 bank, a tribal clinic, or a visiting nurse service, including any
15 related entity, facility, or institution owned or operated by the
16 health care institution, and any officer, director, employee, agent, or
17 apparent agent of the health care institution or such related entity,
18 facility, or institution, acting in the course and scope of his or her
19 employment or agency, including in the event such officer, director,
20 employee, or agent is deceased, his or her estate or personal
21 representative.

22 (d) "Health care professional" means:

23 (i) Any health care provider described in RCW 7.70.020 (1) and (2);

24 (ii) Any clinic, corporation, limited liability company,
25 partnership, or limited liability partnership comprised of one or more
26 of the health care providers described in RCW 7.70.020(1), and any
27 officer, director, employee, agent, or apparent agent thereof acting
28 within the scope of his or her employment or agency, including in the
29 event such officer, director, employee, agent, or apparent agent is
30 deceased, his or her estate or personal representative; or

31 (iii) Any entity, facility, or institution that is owned or
32 operated by a health care provider described in RCW 7.70.020(1), or by
33 a clinic, corporation, limited liability company, partnership, or
34 limited liability partnership comprised of one or more of the health
35 care providers described in RCW 7.70.020(1), and any officer, director,
36 employee, agent, or apparent agent thereof acting in the course and
37 scope of his or her employment or agency, including in the event such

1 officer, director, employee, agent, or apparent agent is deceased, his
2 or her estate or personal representative.

3 (e) "Health care provider" means any person or entity described in
4 RCW 7.70.020.

5 (f) "Noneconomic damages" has the meaning set forth in RCW
6 4.56.250(1)(b).

7 **Sec. 3.** RCW 7.70.020 and 1995 c 323 s 3 are each amended to read
8 as follows:

9 As used in this chapter "health care provider" means either:

10 (1) A person licensed, registered, or certified by this state to
11 provide health care or related services, including, but not limited to,
12 a licensed acupuncturist, a physician, an osteopathic physician, a
13 dentist, a nurse, an optometrist, a podiatric physician and surgeon, a
14 chiropractor, a physical therapist, a psychologist, a pharmacist, an
15 optician, a physician's assistant, a midwife, an osteopathic
16 physician's assistant, an advanced registered nurse practitioner, a
17 drugless healer, a naturopath, a dental hygienist, a denturist, an
18 ocularist, an occupational therapist, a pharmacy assistant, a
19 radiologic technologist, a nursing assistant, a respiratory care
20 practitioner, a health care assistant, a dietician, a nutritionist, a
21 surgical technologist, a mental health counselor, a marriage and family
22 therapist, a social worker, or a physician's trained mobile intensive
23 care paramedic, including, in the event such person is deceased, his or
24 her estate or personal representative;

25 (2) An employee or agent of a person described in ~~((part))~~
26 subsection (1) (~~above~~) of this section, acting in the course and
27 scope of his or her employment or agency, including, in the event such
28 employee or agent is deceased, his or her estate or personal
29 representative; or

30 (3) An entity, whether or not incorporated, facility, or
31 institution employing one or more persons described in ~~((part))~~
32 subsection (1) (~~above~~) of this section, including, but not limited
33 to, a hospital, clinic, health maintenance organization, or nursing
34 home; or an officer, director, employee, or agent thereof acting in the
35 course and scope of his or her employment or agency, including in the
36 event such officer, director, employee, or agent is deceased, his or
37 her estate or personal representative.

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

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

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

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

13 ~~((+3))~~ (c) The fee customarily charged in the locality for similar
14 legal services;

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

16 ~~((+5))~~ (e) The time limitations imposed by the client or by the
17 circumstances;

18 ~~((+6))~~ (f) The nature and length of the professional relationship
19 with the client;

20 ~~((+7))~~ (g) The experience, reputation, and ability of the lawyer
21 or lawyers performing the services;

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

23 (2)(a) An attorney may not contract for or collect a contingency
24 fee for representing a person in connection with an action for damages
25 for injury or death occurring as a result of health care or related
26 services, or the arranging for the provision of health care or related
27 services, in excess of the following limits:

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

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

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

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

35 (b) The limitations in this section apply regardless of whether the
36 recovery is by judgment, settlement, arbitration, mediation, or other
37 form of alternative dispute resolution.

38 (c) If periodic payments are awarded to the plaintiff, the court
39 shall place a total value on these payments and include this amount in

1 computing the total award from which attorneys' fees are calculated
2 under this subsection.

3 (d) For purposes of this subsection, "recovered" means the net sum
4 recovered after deducting any disbursements or costs incurred in
5 connection with the arbitration, litigation, or settlement of the
6 claim. Costs of medical care incurred by the plaintiff and the
7 attorney's office overhead costs or charges are not deductible
8 disbursements or costs for such purposes.

9 (3) Subsection (2) of this section applies to all contingency fee
10 arrangements or agreements, including any modification of the amount of
11 any contingency fee, entered into after the effective date of this
12 section.

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

15 (1) No action for damages for injury or death occurring as a result
16 of health care or related services, or the arranging for the provision
17 of health care or related services, may be commenced unless the
18 defendant has been given at least ninety days' notice of the intention
19 to commence the action. If the notice is served within ninety days
20 before the expiration of the applicable statute of limitations, the
21 time for the commencement of the action must be extended ninety days
22 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)) for injury or
30 death occurring as a result of health care or related services, or the
31 arranging for the provision of health care or related services,
32 provided after July 1, 1993, shall be subject to mandatory mediation
33 prior to trial.

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

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

8 (b) Appropriate limits on the amount or manner of compensation of
9 mediators;

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

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

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

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

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

21 ~~((+3))~~ (5) Mediators shall not impose discovery schedules upon the
22 parties.

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

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

28 (1) Any civil action or arbitration for damages for injury or death
29 occurring as a result of health care or related services, or the
30 arranging for the provision of health care or related services, which
31 is provided after June 25, 1976, against ((÷

32 ~~(1) A person licensed by this state to provide health care or~~
33 ~~related services, including, but not limited to, a physician,~~
34 ~~osteopathic physician, dentist, nurse, optometrist, podiatric physician~~
35 ~~and surgeon, chiropractor, physical therapist, psychologist,~~
36 ~~pharmacist, optician, physician's assistant, osteopathic physician's~~
37 ~~assistant, nurse practitioner, or physician's trained mobile intensive~~

1 care paramedic, including, in the event such person is deceased, his
2 estate or personal representative;

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

7 (3) An entity, whether or not incorporated, facility, or
8 institution employing one or more persons described in subsection (1)
9 of this section, including, but not limited to, a hospital, clinic,
10 health maintenance organization, or nursing home; or an officer,
11 director, employee, or agent thereof acting in the course and scope of
12 his employment, including, in the event such officer, director,
13 employee, or agent is deceased, his estate or personal
14 representative;)) a health care provider as defined in RCW 7.70.020, or
15 a health care institution as defined in section 2(7)(c) of this act,
16 based upon alleged professional negligence shall be commenced within
17 three years of the act or omission alleged to have caused the injury,
18 death, or condition, or within one year of the time the patient or his
19 or her representative or custodial parent or guardian discovered or
20 reasonably should have discovered that the injury, death, or condition
21 was caused by said act or omission, whichever period ((~~expires later,~~
22 ~~except that in no event shall an action be commenced more than eight~~
23 ~~years after said act or omission:~~ PROVIDED, That the time for
24 commencement of an action is tolled upon proof of fraud, intentional
25 concealment, or the presence of a foreign body not intended to have a
26 therapeutic or diagnostic purpose or effect, until the date the patient
27 or the patient's representative has actual knowledge of the act of
28 fraud or concealment, or of the presence of the foreign body; the
29 patient or the patient's representative has one year from the date of
30 the actual knowledge in which to commence a civil action for damages.

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

37 For purposes of this section, with respect to care provided after
38 June 25, 1976, and before August 1, 1986, the knowledge of a custodial

1 ~~parent or guardian shall be imputed as of April 29, 1987, to persons~~
2 ~~under the age of eighteen years))~~ occurs first.

3 (2) In no event may an action be commenced more than three years
4 after the act or omission alleged to have caused the injury or
5 condition except:

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

13 (b) In the case of a minor, upon proof that the minor's custodial
14 parent or guardian and the defendant or the defendant's insurer have
15 committed fraud or collusion in the failure to bring an action on
16 behalf of the minor, in which case the patient or the patient's
17 representative has one year from the date the patient or the patient's
18 representative other than the custodial parent or guardian who
19 committed the fraud or collusion has actual knowledge of the fraud or
20 collusion, or one year from the date of the minor's eighteenth
21 birthday, whichever provides a longer period.

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

26 (3) For purposes of this section, the tolling provisions of RCW
27 4.16.190 do not apply.

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

33 (5) This section applies to all causes of action for injury or
34 death occurring as a result of health care or related services, or the
35 arranging for the provision of health care or related services, filed
36 on or after the effective date of this section. However, any action
37 which, if filed on or after the effective date of this section, would
38 have been timely under former law, but now would be barred under the
39 chapter . . . , Laws of 2005 amendments contained in this section, may

1 be brought within one year following the effective date of this
2 section.

3 (6) Any action not commenced in accordance with this section is
4 barred.

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

7 (1) Any party may present evidence to the trier of fact that the
8 patient or claimant has already been, or will be, compensated for the
9 injury complained of from ((any source except the assets of the
10 patient, his representative, or his immediate family, or insurance
11 purchased with such assets. In the event such evidence is admitted,
12 the plaintiff may present evidence of an obligation to repay such
13 compensation. Insurance bargained for or provided on behalf of an
14 employee shall be considered insurance purchased with the assets of the
15 employee)) a collateral source. In the event the evidence is admitted,
16 the other party may present evidence of any amount that was paid or
17 contributed to secure the right to any compensation. Compensation as
18 used in this section shall mean payment of money or other property to
19 or on behalf of the patient or claimant, rendering of services to the
20 patient free of charge to the patient or claimant, or indemnification
21 of expenses incurred by or on behalf of the patient or claimant.
22 Notwithstanding this section, evidence of compensation by a defendant
23 health care provider may be offered only by that provider.

24 (2) Unless otherwise provided by superseding federal law, there is
25 no right of subrogation or reimbursement from the patient's or
26 claimant's tort recovery with respect to compensation covered in
27 subsection (1) of this section.

28 NEW SECTION. **Sec. 8.** A new section is added to chapter 7.04 RCW
29 to read as follows:

30 (1) A contract for health care or related services that contains a
31 provision for arbitration of a dispute as to professional negligence of
32 a health care provider as defined in RCW 7.70.020, whether brought
33 under chapter 7.70 RCW, RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060, or
34 4.24.010, any other applicable law, or any combination thereof, must
35 have the provision as the first article of the contract and the
36 provision must be expressed in the following language:

1 "It is understood that any dispute as to medical malpractice that
2 is as to whether any health care or related services rendered under
3 this contract were unnecessary or unauthorized or were improperly,
4 negligently, or incompetently rendered, will be determined by
5 submission to arbitration as provided by Washington law, and not by a
6 lawsuit or resort to court process except as Washington law provides
7 for judicial review of arbitration proceedings. Both parties to this
8 contract, by entering into it, are giving up their constitutional right
9 to have such a dispute decided in a court of law before a jury, and
10 instead are accepting the use of arbitration."

11 (2) Immediately before the signature line provided for the
12 individual contracting for the health care or related services, there
13 must appear the following in at least ten-point bold red type:

14 "NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY
15 ISSUE OF MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING
16 UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE ONE OF THIS
17 CONTRACT."

18 (3) Once signed, such a contract governs all subsequent open-book
19 account transactions for health care or related services for which the
20 contract was signed until or unless rescinded by written notice within
21 thirty days of signature. Written notice of such rescission may be
22 given by a guardian or other legal representative of the patient if the
23 patient is incapacitated or a minor.

24 (4) Where the contract is one for health care or related services
25 to a minor, it may not be disaffirmed if signed by the minor's parent
26 or legal guardian.

27 (5) A contract for the provision of health care or related services
28 that contains a provision for arbitration of a dispute as to
29 professional negligence of a health care provider shall not be deemed
30 a contract of adhesion, or unconscionable, or otherwise improper, where
31 it complies with subsections (1) through (3) of this section.

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

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

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

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

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

8 (a) "Future damages" includes damages for future health care or
9 related services, care or custody, loss of future earnings, loss of
10 bodily function, or future pain and suffering of the judgment creditor.

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

13 (2) In any action for damages for injury occurring as a result of
14 health care or related services, or for the arranging for the provision
15 of health care or related services, the court shall, at the request of
16 either party, enter a judgment ordering that money damages or its
17 equivalent for future damages of the judgment creditor be paid in whole
18 or in part by periodic payments rather than by a lump-sum payment if
19 the award equals or exceeds fifty thousand dollars in future damages.
20 In entering a judgment ordering the payment of future damages by
21 periodic payments, the court shall make a specific finding as to the
22 dollar amount of periodic payments which will compensate the judgment
23 creditor for such future damages. As a condition to authorizing
24 periodic payments of future damages, the court shall require the
25 judgment debtor who is not adequately insured to post security adequate
26 to ensure full payment of such damages awarded by the judgment. Upon
27 termination of periodic payments of future damages, the court shall
28 order the return of this security, or so much as remains, to the
29 judgment debtor.

30 (3)(a) The judgment ordering the payment of future damages by
31 periodic payments must specify the recipient or recipients of the
32 payments, the dollar amount of the payments, the interval between
33 payments, and the number of payments or the period of time over which
34 payments must be made. The payments are only subject to modification
35 in the event of the death of the judgment creditor.

36 (b) In the event that the court finds that the judgment debtor has
37 exhibited a continuing pattern of failing to make the payments, as
38 specified in (a) of this subsection, the court shall find the judgment

1 debtor in contempt of court and, in addition to the required periodic
2 payments, shall order the judgment debtor to pay the judgment creditor
3 all damages caused by the failure to make such periodic payments,
4 including court costs and attorneys' fees.

5 (4) In the event of the death of the judgment creditor, the court,
6 upon petition of any party in interest, shall modify the judgment to
7 eliminate future periodic payments of damages awarded for future
8 medical treatment, care or custody, loss of bodily function, or future
9 pain and suffering of the judgment creditor. However, money damages
10 awarded for loss of future earnings may not be reduced or payments
11 terminated by reason of the death of the judgment creditor, but must be
12 paid to persons to whom the judgment creditor owed a duty of support,
13 as provided by law, immediately prior to his or her death. In such
14 cases, the court that rendered the original judgment may, upon petition
15 of any party in interest, modify the judgment to award and apportion
16 the unpaid future damages in accordance with this subsection (4).

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

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

23 (7) It is intended in enacting this section to authorize, in
24 actions for damages for injury occurring as a result of health care or
25 related services, or the arranging for the provision of health care or
26 related services, the entry of judgments that provide for the payment
27 of future damages through periodic payments rather than lump-sum
28 payments. By authorizing periodic payment judgments, it is further
29 intended that the courts will utilize such judgments to provide
30 compensation sufficient to meet the needs of an injured plaintiff and
31 those persons who are dependent on the plaintiff for whatever period is
32 necessary while eliminating the potential windfall from a lump-sum
33 recovery that was intended to provide for the care of an injured
34 plaintiff over an extended period who then dies shortly after the
35 judgment is paid, leaving the balance of the judgment award to persons
36 and purposes for which it was not intended. It is also intended that
37 all elements of the periodic payment program be specified with
38 certainty in the judgment ordering such payments and that the judgment
39 not be subject to modification at some future time that might alter the

1 specifications of the original judgment, except in the event of the
2 death of the judgment creditor.

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

20 NEW SECTION. **Sec. 12.** A new section is added to chapter 7.70 RCW
21 to read as follows:

22 A public or private hospital shall be liable for an act or omission
23 of a health care provider granted privileges to provide health care at
24 the hospital only if the health care provider is an actual agent or
25 employee of the hospital and the act or omission of the health care
26 provider occurred while the health care provider was acting within the
27 course and scope of the health care provider's agency or employment
28 with the hospital.

29 NEW SECTION. **Sec. 13.** A new section is added to chapter 7.70 RCW
30 to read as follows:

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

1 **Sec. 14.** RCW 74.34.200 and 1999 c 176 s 15 are each amended to
2 read as follows:

3 (1) In addition to other remedies available under the law, a
4 vulnerable adult who has been subjected to abandonment, abuse,
5 financial exploitation, or neglect either while residing in a facility
6 or in the case of a person residing at home who receives care from a
7 home health, hospice, or home care agency, or an individual provider,
8 shall have a cause of action for damages on account of his or her
9 injuries, pain and suffering, and loss of property sustained thereby.
10 This action shall be available where the defendant is or was a
11 corporation, trust, unincorporated association, partnership,
12 administrator, employee, agent, officer, partner, or director of a
13 facility, or of a home health, hospice, or home care agency licensed or
14 required to be licensed under chapter 70.127 RCW, as now or
15 subsequently designated, or an individual provider.

16 (2) It is the intent of the legislature, however, that where there
17 is a dispute about the care or treatment of a vulnerable adult, the
18 parties should use the least formal means available to try to resolve
19 the dispute. Where feasible, parties are encouraged but not mandated
20 to employ direct discussion with the health care provider, use of the
21 long-term care ombudsman or other intermediaries, and, when necessary,
22 recourse through licensing or other regulatory authorities.

23 (3) In an action brought under this section, a prevailing plaintiff
24 shall be awarded his or her actual damages, together with the costs of
25 the suit(~~(, including a reasonable attorney's fee)~~). The term "costs"
26 includes(~~(, but is not limited to,)~~) the reasonable fees for a
27 guardian(~~(,)~~) and guardian ad litem, (~~(and experts,)~~) if any, that
28 (~~(may be)~~) were necessary to the litigation of a claim brought under
29 this section.

30 NEW SECTION. **Sec. 15.** In the event that the Washington state
31 supreme court or other court of competent jurisdiction rules or affirms
32 that section 2 of this act is unconstitutional, then the prescribed
33 limitations on noneconomic damages set forth in section 2 of this act
34 take effect upon the ratification of a state constitutional amendment
35 that empowers the legislature to enact limits on the amount of
36 noneconomic damages recoverable in any or all civil causes of action or
37 upon the enactment by the United States congress of a law permitting
38 such limitations on noneconomic damages, whichever occurs first.

1 **Sec. 16.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read
2 as follows:

3 (1) In all actions involving fault of more than one entity, the
4 trier of fact shall determine the percentage of the total fault which
5 is attributable to every entity which caused the claimant's damages
6 except entities immune from liability to the claimant under Title 51
7 RCW. The sum of the percentages of the total fault attributed to at-
8 fault entities shall equal one hundred percent. The entities whose
9 fault shall be determined include the claimant or person suffering
10 personal injury or incurring property damage, defendants, third-party
11 defendants, entities ~~((released by))~~ who have entered into a release,
12 covenant not to sue, covenant not to enforce judgment, or similar
13 agreement with the claimant, entities with any other individual defense
14 against the claimant, and entities immune from liability to the
15 claimant, but shall not include those entities immune from liability to
16 the claimant under Title 51 RCW. Judgment shall be entered against
17 each defendant except those entities who have ~~((been released by))~~
18 entered into a release, covenant not to sue, covenant not to enforce
19 judgment, or similar agreement with the claimant or are immune from
20 liability to the claimant or have prevailed on any other individual
21 defense against the claimant in an amount which represents that party's
22 proportionate share of the claimant's total damages. The liability of
23 each defendant shall be several only and shall not be joint except:

24 (a) A party shall be responsible for the fault of another person or
25 for payment of the proportionate share of another party where both were
26 acting in concert or when a person was acting as an agent or servant of
27 the party.

28 (b) If the trier of fact determines that the claimant or party
29 suffering bodily injury or incurring property damages was not at fault,
30 the defendants against whom judgment is entered shall be jointly and
31 severally liable for the sum of their proportionate shares of the
32 ~~((claimants [claimant's]))~~ claimant's total damages.

33 (2) Notwithstanding the provisions of subsection (1)(a) and (b) of
34 this section, in an action for damages for injury or death occurring as
35 a result of health care or related services, or the arranging for the
36 provision of health care or related services, whether brought under
37 chapter 7.70 RCW, RCW 4.20.010, 4.20.020, 4.20.046, 4.24.010, or
38 48.43.545(1), any other applicable law, or any combination thereof, the
39 liability of each health care provider, health care professional, and

1 health care institution, as those terms are defined in section 2(7) of
2 this act, shall be several only except that a party shall be
3 responsible for the fault of another person or for payment of the
4 proportionate share of another party where both were acting in concert
5 or when a person was acting as the actual agent or servant of the party
6 or was acting under the party's direct supervision and control.

7 (3) If a defendant is jointly and severally liable under one of the
8 exceptions listed in subsection(~~(s)~~) (1)(a) (~~(or (1))~~), (b), or (2) of
9 this section, such defendant's rights to contribution against another
10 jointly and severally liable defendant, and the effect of settlement by
11 either such defendant, shall be determined under RCW 4.22.040,
12 4.22.050, and 4.22.060.

13 (~~(3)~~) (4)(a) Nothing in this section affects any cause of action
14 relating to hazardous wastes or substances or solid waste disposal
15 sites.

16 (b) Nothing in this section shall affect a cause of action arising
17 from the tortious interference with contracts or business relations.

18 (c) Nothing in this section shall affect any cause of action
19 arising from the manufacture or marketing of a fungible product in a
20 generic form which contains no clearly identifiable shape, color, or
21 marking.

22 **Sec. 17.** RCW 4.22.015 and 1981 c 27 s 9 are each amended to read
23 as follows:

24 "Fault" includes acts or omissions, including misuse of a product,
25 that are in any measure negligent or reckless toward the person or
26 property of the actor or others, or that subject a person to strict
27 tort liability or liability on a product liability claim. The term
28 also includes breach of warranty, unreasonable assumption of risk, and
29 unreasonable failure to avoid an injury or to mitigate damages. Legal
30 requirements of causal relation apply both to fault as the basis for
31 liability and to contributory fault.

32 A comparison of fault for any purpose under RCW 4.22.005 through
33 (~~(4.22.060)~~) 4.22.070 shall involve consideration of both the nature of
34 the conduct of the parties to the action and the extent of the causal
35 relation between such conduct and the damages.

36 NEW SECTION. **Sec. 18.** If any provision of this act or its
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 19.** Sections 1 through 3, 7, 10 through 14, 16,
4 and 17 of this act apply to all causes of action, whether filed or not,
5 that the parties have not settled or in which judgment has not been
6 entered before the effective date of this section.

7 NEW SECTION. **Sec. 20.** Sections 5, 8, and 9 of this act apply to
8 all causes of action filed on or after the effective date of this
9 section.

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