SENATE BILL REPORT
SSB 5263

As Passed Senate, March 1, 2007

Title: An act relating to medical malpractice closed claim reporting.

Brief Description: Modifying medical malpractice closed claim reporting requirements.

Sponsors: Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators Franklin, Hobbs, Berkey and Hatfield; by request of Insurance Commissioner).

Brief History:
Committee Activity: Financial Institutions & Insurance: 1/24/07, 1/31/07 [DPS].
Passed Senate: 3/01/07, 47-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: That Substitute Senate Bill No. 5263 be substituted therefor, and the substitute bill do pass.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Benton, Ranking Minority Member; Franklin, Hatfield, Parlette and Schoesler.

Staff: Diane Smith (786-7410)

Background: Risk retention groups (RRGs) were created by the federal Liability Risk Retention Act of 1986. RRGs are captive insurance companies, owned by their members, to provide third-party liability coverage such as medical malpractice insurance. Other examples are professional liability, errors and omissions, and directors and officers insurance.

RRGs must be chartered and licensed as liability insurance companies under the laws of one of the 50 states. This includes a feasibility study approved by the chartering state. Washington law, when implementing the federal law, requires that every policy RRG issues state, in large type, that RRGs may not be subject to all of the insurance laws and regulations of the state. RRGs are not allowed to join or contribute to any insurance insolvency guaranty fund. Once state-chartered and licensed, they may conduct interstate operations.

In 2006, a comprehensive Health Care Liability Reform Act was enacted in Washington. It imposes reporting requirements for closed medical malpractice claims beginning January 1, 2008. The information required from the insuring entities is that which helps the insurance commissioner monitor losses and claim development patterns in the medical malpractice insurance market. The insuring entities required to report include RRGs. Reported information is protected and exempt from public disclosure.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

If a claim is not covered by insurance, the health care provider or facility named in the malpractice claim must make the report to the insurance commissioner. RRGs may not make this report on behalf of their insured clients because their clients are insured and an RRG may interpret the law such that federal law preempts this state requirement.

Summary of Substitute Bill: When a medical malpractice claim is not reported by the insuring entity, the health care provider or facility named in the malpractice claim must make the required reporting to the insurance commissioner. This captures reporting of the closed claim when that claim is insured by an RRG and when the insuring entity is an unauthorized insurer asserting some other legal reason why it is not required to report to the insurance commissioner.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Of premium volume in Washington, unauthorized, or surplus lines, insurance makes up 30 percent and RRGs make up 5 percent to 6 percent. An RRG told the Office of the Insurance Commissioner (OIC) that it is not subject to the Washington reporting requirement and will not report. In order to implement the Legislature's plan from last year's legislation, the OIC must determine the full scope of medical malpractice insurance claims. This bill will require reporting from this large segment of the medical malpractice insurance market. The proposed alternative language accomplishes the same intent of the original language but with improved drafting.

Persons Testifying: PRO: Beth Berendt and Lisa Smego, OIC.