E2SHB 1291 - CONF REPT
By Conference Committee

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** (1) The legislature finds that:

(a) Thousands of patients are injured each year in the United States as a result of medical errors, and that a comprehensive approach is needed to effectively reduce the incidence of medical errors in our health care system. Implementation of proven patient safety strategies can reduce medical errors, and thereby potentially reduce the need for disciplinary actions against licensed health care professionals and facilities, and the frequency and severity of medical malpractice claims; and

(b) Health care providers, health care facilities, and health carriers can and should be supported in their efforts to improve patient safety and reduce medical errors by encouraging health care facilities and providers to communicate openly with patients regarding medical errors that have occurred and steps that can be taken to prevent errors from occurring in the future, encouraging health care facilities and providers to work cooperatively in their patient safety efforts, and increasing funding available to implement proven patient safety strategies.

(2) Through the adoption of this act, the legislature intends to positively influence the safety and quality of care provided in Washington state's health care system.

Sec. 2. RCW 5.64.010 and 1975-'76 2nd ex.s. c 56 s 3 are each amended to read as follows:

(1) In any civil action against a health care provider for personal injuries which is based upon alleged professional negligence ((~~and which is against:~~

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

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

~~(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;~~)), or in any arbitration or mediation proceeding related to such civil action, evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible ((~~to prove liability for the injury~~)).

(2)(a) In a civil action against a health care provider for personal injuries that is based upon alleged professional negligence, or in any arbitration or mediation proceeding related to such civil action, a statement, affirmation, gesture, or conduct identified in (b) of this subsection is inadmissible as evidence if:

(i) More than twenty days before commencement of trial it was conveyed by a health care provider to the injured person, or to a person specified in RCW 7.70.065(1); and

(ii) It relates to the discomfort, pain, suffering, injury, or death of the injured person as the result of the alleged professional negligence.

(b) (a) of this subsection applies to:

(i) Any statement, affirmation, gesture, or conduct expressing apology, fault, sympathy, commiseration, condolence, compassion, or a general sense of benevolence; or

(ii) Any statement or affirmation regarding remedial actions that may be taken to address the act or omission that is the basis for the allegation of negligence.

Sec. 3. RCW 4.24.260 and 1994 sp.s. c 9 s 701 are each amended to read as follows:

((~~Physicians licensed under chapter 18.71 RCW, dentists licensed under chapter 18.32 RCW, and pharmacists licensed under chapter 18.64 RCW~~)) Any member of a health profession listed under RCW 18.130.040 who, in good faith, makes a report, files charges, or presents evidence against another member of ((~~their~~)) a health profession based on the claimed ((~~incompetency or gross misconduct~~)) unprofessional conduct as provided in RCW 18.130.180 or inability to practice with reasonable skill and safety to consumers by reason of any physical or mental condition as provided in RCW 18.130.170 of such person before the ((~~medical quality assurance commission established under chapter 18.71 RCW, in a proceeding under chapter 18.32 RCW, or to the board of pharmacy under RCW 18.64.160~~)) agency, board, or commission responsible for disciplinary activities for the person's profession under chapter 18.130 RCW, shall be immune from civil action for damages arising out of such activities. A person prevailing upon the good faith defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense.

Sec. 4. RCW 18.130.160 and 2001 c 195 s 1 are each amended to read as follows:

Upon a finding, after hearing, that a license holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the disciplining authority may consider the imposition of sanctions, taking into account any prior findings of fact under RCW 18.130.110, any stipulations to informal disposition under RCW 18.130.172, and any action taken by other in-state or out-of-state disciplining authorities, and issue an order providing for one or any combination of the following:

(1) Revocation of the license;

(2) Suspension of the license for a fixed or indefinite term;

(3) Restriction or limitation of the practice;

(4) Requiring the satisfactory completion of a specific program of remedial education or treatment;

(5) The monitoring of the practice by a supervisor approved by the disciplining authority;

(6) Censure or reprimand;

(7) Compliance with conditions of probation for a designated period of time;

(8) Payment of a fine for each violation of this chapter, not to exceed five thousand dollars per violation. Funds received shall be placed in the health professions account;

(9) Denial of the license request;

(10) Corrective action;

(11) Refund of fees billed to and collected from the consumer;

(12) A surrender of the practitioner's license in lieu of other sanctions, which must be reported to the federal data bank.

Any of the actions under this section may be totally or partly stayed by the disciplining authority. In determining what action is appropriate, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder or applicant. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

The licensee or applicant may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued and the licensee has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or inability to practice, or a statement by the licensee acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct or inability to practice. The stipulation entered into pursuant to this subsection shall be considered formal disciplinary action for all purposes.

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

(1) "Adverse event" means any of the following events or occurrences:

(a) An unanticipated death or major permanent loss of function, not related to the natural course of a patient's illness or underlying condition;

(b) A patient suicide while the patient was under care in the hospital;

(c) An infant abduction or discharge to the wrong family;

(d) Sexual assault or rape of a patient or staff member while in the hospital;

(e) A hemolytic transfusion reaction involving administration of blood or blood products having major blood group incompatibilities;

(f) Surgery performed on the wrong patient or wrong body part;

(g) A failure or major malfunction of a facility system such as the heating, ventilation, fire alarm, fire sprinkler, electrical, electronic information management, or water supply which affects any patient diagnosis, treatment, or care service within the facility; or

(h) A fire which affects any patient diagnosis, treatment, or care area of the facility.

The term does not include an incident.

(2) "Ambulatory surgical facility" means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, whether or not the facility is certified under Title XVIII of the federal social security act.

(3) "Childbirth center" means a facility licensed under chapter 18.46 RCW.

(4) "Correctional medical facility" means a part or unit of a correctional facility operated by the department of corrections under chapter 72.10 RCW that provides medical services for lengths of stay in excess of twenty-four hours to offenders.

(5) "Department" means the department of health.

(6) "Health care worker" means an employee, independent contractor, licensee, or other individual who is directly involved in the delivery of health services in a medical facility.

(7) "Hospital" means a facility licensed under chapter 70.41 RCW.

(8) "Incident" means an event, occurrence, or situation involving the clinical care of a patient in a medical facility which:

(a) Results in unanticipated injury to a patient that is less severe than death or major permanent loss of function and is not related to the natural course of the patient's illness or underlying condition; or

(b) Could have injured the patient but did not either cause an unanticipated injury or require the delivery of additional health care services to the patient.

The term does not include an adverse event.

(9) "Medical facility" means an ambulatory surgical facility, childbirth center, hospital, psychiatric hospital, or correctional medical facility.

(10) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW.

NEW SECTION. **Sec. 6.** (1) Each medical facility shall report to the department the occurrence of any adverse event. The report must be submitted to the department within forty-five days after occurrence of the event has been confirmed.

(2) The report shall be filed in a format specified by the department after consultation with medical facilities. It shall identify the facility but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department of health or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180.

(3) Any medical facility or health care worker may report an incident to the department. The report shall be filed in a format specified by the department after consultation with medical facilities and shall identify the facility but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department of health or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180.

(4) If, in the course of investigating a complaint received from an employee of a licensed medical facility, the department determines that the facility has not undertaken efforts to investigate the occurrence

of an adverse event, the department shall direct the facility to undertake an investigation of the event. If a complaint related to a potential adverse event involves care provided in an ambulatory surgical facility, the department shall notify the facility and request that they undertake an investigation of the event. The protections of RCW 43.70.075 apply to complaints related to adverse events or incidents that are submitted in good faith by employees of medical facilities.

NEW SECTION. **Sec. 7.** The department shall:

(1) Receive reports of adverse events and incidents under section 6 of this act;

(2) Investigate adverse events;

(3) Establish a system for medical facilities and the health care workers of a medical facility to report adverse events and incidents, which shall be accessible twenty-four hours a day, seven days a week;

(4) Adopt rules as necessary to implement this act;

(5) Directly or by contract:

(a) Collect, analyze, and evaluate data regarding reports of adverse events and incidents, including the identification of performance indicators and patterns in frequency or severity at certain medical facilities or in certain regions of the state;

(b) Develop recommendations for changes in health care practices and procedures, which may be instituted for the purpose of reducing the number and severity of adverse events and incidents;

(c) Directly advise reporting medical facilities of immediate changes that can be instituted to reduce adverse events and incidents;

(d) Issue recommendations to medical facilities on a facility-specific or on a statewide basis regarding changes, trends, and improvements in health care practices and procedures for the purpose of reducing the number and severity of adverse events and incidents. Prior to issuing recommendations, consideration shall be given to the following factors: Expectation of improved quality care, implementation feasibility, other relevant implementation practices, and the cost impact to patients, payers, and medical facilities. Statewide recommendations shall be issued to medical facilities on a continuing basis and shall be published and posted on the department's publicly accessible web site. The recommendations made to medical

facilities under this section shall not be considered mandatory for licensure purposes unless they are adopted by the department as rules pursuant to chapter 34.05 RCW; and

(e) Monitor implementation of reporting systems addressing adverse events or their equivalent in other states and make recommendations to the governor and the legislature as necessary for modifications to this chapter to keep the system as nearly consistent as possible with similar systems in other states;

(6) Report no later than January 1, 2007, and annually thereafter to the governor and the legislature on the department's activities under this act in the preceding year. The report shall include:

(a) The number of adverse events and incidents reported by medical facilities on a geographical basis and their outcomes;

(b) The information derived from the data collected including any recognized trends concerning patient safety; and

(c) Recommendations for statutory or regulatory changes that may help improve patient safety in the state.

The annual report shall be made available for public inspection and shall be posted on the department's web site;

(7) Conduct all activities under this section in a manner that preserves the confidentiality of documents, materials, or information made confidential by section 9 of this act.

NEW SECTION. **Sec. 8.** (1) Medical facilities licensed by the department shall have in place policies to assure that, when appropriate, information about unanticipated outcomes is provided to patients or their families or any surrogate decision makers identified pursuant to RCW 7.70.065. Notifications of unanticipated outcomes under this section do not constitute an acknowledgment or admission of liability, nor can the fact of notification or the content disclosed be introduced as evidence in a civil action.

(2) Beginning January 1, 2006, the department shall, during the survey of a licensed medical facility, ensure that the policy required in subsection (1) of this section is in place.

NEW SECTION. **Sec. 9.** When a report of an adverse event or incident under section 6 of this act is made by or through a coordinated quality improvement program under RCW 43.70.510 or

70.41.200, or by a peer review committee under RCW 4.24.250, information and documents, including complaints and incident reports, created specifically for and collected and maintained by a quality improvement committee for the purpose of preparing a report of an adverse event or incident shall be subject to the confidentiality protections of those laws and RCW 42.17.310(1)(hh).

Sec. 10. RCW 43.70.110 and 1993 sp.s. c 24 s 918 are each amended to read as follows:

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

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

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

Sec. 11. RCW 43.70.250 and 1996 c 191 s 1 are each amended to read as follows:

It shall be the policy of the state of Washington that the cost of each professional, occupational, or business licensing program be fully borne by the members of that profession, occupation, or business. The secretary shall from time to time establish the amount of all application fees, license fees, registration fees, examination fees, permit fees, renewal fees, and any other fee associated with licensing or regulation of professions, occupations, or businesses administered by the department. In fixing said fees, the secretary shall set the fees for each program at a sufficient level to defray the costs of administering that program and the patient safety fee established in

section 12 of this act. All such fees shall be fixed by rule adopted by the secretary in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

NEW SECTION. **Sec. 12.** A new section is added to chapter 43.70 RCW to read as follows:

(1) The secretary shall increase the licensing fee established under RCW 43.70.110 by two dollars for the health care professionals designated in subsection (2) of this section and by two dollars per licensed bed for the health care facilities designated in subsection (2) of this section. Proceeds of the patient safety fee must be deposited into the patient safety account in section 16 of this act and dedicated to patient safety and medical error reduction efforts that have been proven to improve, or have a substantial likelihood of improving the quality of care provided by health care professionals and facilities.

(2) The health care professionals and facilities subject to the patient safety fee are:

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

(i) Registered nurses and licensed practical nurses licensed under chapter 18.79 RCW;

(ii) Chiropractors licensed under chapter 18.25 RCW;

(iii) Dentists licensed under chapter 18.32 RCW;

(iv) Midwives licensed under chapter 18.50 RCW;

(v) Naturopaths licensed under chapter 18.36A RCW;

(vi) Optometrists licensed under chapter 18.53 RCW;

(vii) Osteopathic physicians licensed under chapter 18.57 RCW;

(viii) Osteopathic physicians' assistants licensed under chapter 18.57A RCW;

(ix) Pharmacists and pharmacies licensed under chapter 18.64 RCW;

(x) Physicians licensed under chapter 18.71 RCW;

(xi) Physician assistants licensed under chapter 18.71A RCW;

(xii) Podiatrists licensed under chapter 18.22 RCW; and

(xiii) Psychologists licensed under chapter 18.83 RCW; and

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

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

(1) One percent of all attorneys' fees received for representation of claimants or defendants in actions brought under this chapter that result in payment to a claimant shall be paid as a patient safety set aside. Proceeds of the patient safety set aside will be distributed by the department of health in the form of grants, loans, or other appropriate arrangements to support strategies that have been proven to reduce medical errors and enhance patient safety, or have a substantial likelihood of reducing medical errors and enhancing patient safety, as provided in section 12 of this act.

(2) A patient safety set aside shall be transmitted to the secretary of the department of health by the attorney who receives fees under subsection (1) of this section for deposit into the patient safety account established in section 16 of this act.

(3) The Washington state supreme court may by rule adopt procedures to implement this section.

NEW SECTION. **Sec. 14.** A new section is added to chapter 43.70 RCW to read as follows:

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

(i) The federal agency for health care quality and research;

(ii) The institute of medicine of the national academy of sciences;

(iii) The joint commission on accreditation of health care organizations; and

(iv) The national quality forum.

(b) The department shall award grants, loans, or other appropriate arrangements for at least two strategies that are designed to meet the goals and recommendations of the federal institute of medicine's

report, "Keeping Patients Safe: Transforming the Work Environment of Nurses."

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

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

NEW SECTION. **Sec. 15.** A new section is added to chapter 43.70 RCW to read as follows:

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

NEW SECTION. **Sec. 16.** A new section is added to chapter 43.70 RCW to read as follows:

The patient safety account is created in the state treasury. All receipts from the fees and set asides created in sections 12 and 13 of this act must be deposited into the account. Expenditures from the account may be used only for the purposes of this act. Moneys in the account may be spent only after appropriation.

NEW SECTION. **Sec. 17.** A new section is added to chapter 43.70 RCW to read as follows:

By December 1, 2008, the department shall report the following information to the governor and the health policy and fiscal committees of the legislature:

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

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

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

Sec. 18. RCW 43.70.510 and 2004 c 145 s 2 are each amended to read as follows:

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

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

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

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

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (6) of this section is not subject to an action for civil damages or other relief as a result of the activity or its consequences. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or

the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement committees of the subject entity, which may be under terms of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

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

(6) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 70.41.200 or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and

accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (4) of this section and RCW 4.24.250.

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

NEW SECTION. **Sec. 19.** The legislature finds that prescription drug errors occur because the pharmacist or nurse cannot read the prescription from the physician or other provider with prescriptive authority. The legislature further finds that legible prescriptions can prevent these errors.

Sec. 20. RCW 69.41.010 and 2003 c 257 s 2 and 2003 c 140 s 11 are each reenacted and amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Community-based care settings" include: Community residential programs for the developmentally disabled, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and boarding homes licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(3) "Deliver" or "delivery" means the actual, constructive, or

attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

(4) "Department" means the department of health.

(5) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Dispenser" means a practitioner who dispenses.

(7) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(8) "Distributor" means a person who distributes.

(9) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(10) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a legend drug between an authorized practitioner and a pharmacy or the transfer of prescription information for a legend drug from one pharmacy to another pharmacy.

(11) "In-home care settings" include an individual's place of temporary and permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings.

(12) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(13) "Legible prescription" means a prescription or medication order issued by a practitioner that is capable of being read and

understood by the pharmacist filling the prescription or the nurse or other practitioner implementing the medication order. A prescription must be hand printed, typewritten, or electronically generated.

(14) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. A nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications, except prefilled insulin syringes.

(15) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(16) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, a naturopath licensed under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or, when acting under the required supervision of a dentist licensed under chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

(17) "Secretary" means the secretary of health or the secretary's designee.

NEW SECTION. **Sec. 21.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 22.** Sections 5 through 9 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec. 23.** Section 12 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005."

E2SHB 1291 - CONF REPT
By Conference Committee

On page 1, line 2 of the title, after "practices;" strike the remainder of the title and insert "amending RCW 5.64.010, 4.24.260, 18.130.160, 43.70.110, 43.70.250, and 43.70.510; reenacting and amending RCW 69.41.010; adding new sections to chapter 43.70 RCW; adding a new section to chapter 7.70 RCW; adding a new chapter to Title 70 RCW; creating new sections; providing an effective date; and declaring an emergency."

--- END ---