

# HOUSE BILL REPORT

## HB 1243

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**As Reported by House Committee On:**  
Health Care

**Title:** An act relating to increasing patient safety through disclosure and analysis of adverse events.

**Brief Description:** Increasing patient safety through disclosure and analysis of adverse events.

**Sponsors:** Representatives Green, Cody, Morrell, Appleton, Moeller, Darneille, Lovick, Kessler, Dickerson, Campbell, Linville, Chase, Ormsby, Haigh and Santos.

**Brief History:**

**Committee Activity:**

Health Care: 2/4/05, 2/11/05 [DPS].

### Brief Summary of Substitute Bill

- Requires that medical facilities submit reports to the Department of Health when an adverse event or incident occurs.
- Provides that evidence of statements of apology or remedial acts by a health care provider is inadmissible in an action for professional negligence.

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### HOUSE COMMITTEE ON HEALTH CARE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Cody, Chair; Morrell, Vice Chair; Appleton, Clibborn, Green, Lantz, Moeller and Schual-Berke.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Bailey, Ranking Minority Member; Curtis, Assistant Ranking Minority Member; Alexander, Condotta, Hinkle and Skinner.

**Staff:** Chris Blake (786-7392).

#### **Background:**

##### Reporting Adverse Events

Each hospital is required to inform the Department of Health when certain events occur in its facility. These events include unanticipated deaths or major permanent losses of function; patient suicides; infant abductions or discharges to the wrong family; sexual assault or rape; transfusions with major blood incompatibilities; surgery performed on the wrong patient or

site; major facility system malfunctions; or fires affecting patient care or treatment. Hospitals must report this information within two business days of the hospital leaders learning of the event.

#### Offers of Settlement

Under both a statute and a court rule, evidence of furnishing or offering to pay medical expenses needed as the result of an injury is not admissible in a civil action to prove liability for the injury. In addition, a court rule provides that evidence of offers of compromise are not admissible to prove liability for a claim. Evidence of conduct or statements made in compromise negotiations are likewise not admissible.

In 2002, the Legislature passed legislation that makes expressions of sympathy relating to the pain, suffering, or death of an injured person inadmissible in a civil trial. A statement of fault, however, is not made inadmissible under this provision.

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### **Summary of Substitute Bill:**

#### Reporting of Events and Incidents

Medical facilities, which include ambulatory surgical facilities, childbirth centers, correctional medical facilities, hospitals, and psychiatric hospitals, must report the occurrence of an adverse event to the Department of Health (Department) within forty-five days of the occurrence of the event. Adverse events are defined as: unanticipated deaths or major permanent losses of function; patient suicides; infant abductions or discharges to the wrong family; sexual assault or rape; transfusions with major blood incompatibilities; surgery performed on the wrong patient or site; major facility system malfunctions; or fires affecting patient care or treatment.

Medical facilities or health care workers may report the occurrence of an incident to the Department. An incident is defined as an event involving clinical care that (1) could have injured the patient, but did not cause any injury or require the provision of additional health care services, or (2) resulted in an unanticipated injury less severe than death or a major permanent loss of function. Upon receipt of a complaint by a medical worker, the Department may require that the medical facility conduct an investigation.

Reports of both adverse events and incidents shall identify the facility, but may not identify any health care professionals, employees, or patients involved in the event or incident. Medical facilities must provide written notification to patients that may have been affected by the adverse event.

The Department is responsible for investigating reports of adverse events and establishing a system for medical facilities and health care workers to report adverse events and incidents. In addition, the Department or a contractor of the Department must: evaluate the data from the reports to identify patterns of adverse events and incidents, recommend ways to reduce the number and severity of adverse events and incidents, advise reporting medical facilities of changes that can be made to reduce adverse events and incidents, and make statewide

recommendations regarding developments in health care practices and procedures. Recommendations by the Department or its contractor may be considered for licensing purposes, but are not mandatory unless adopted in rule. As of January 1, 2007 the Department must begin reporting annually to the Legislature and the Governor regarding the number of adverse events and incidents, information derived from the reports received, and recommendations for legal changes to improve patient safety.

Reports that are made pursuant to a coordinated quality improvement committee or peer review committee have the same protections from discovery or introduction into evidence in a civil proceeding as those committees have.

#### Statements of Apology

Limitations on the admissibility of evidence in civil proceedings of offers to pay medical expenses to prove liability for an injury in professional negligence cases are expanded to protect (1) statements or conduct expressing apology, fault, or sympathy, or (2) statements regarding remedial actions that may be taken to address the act. This evidence is not admissible in a civil proceeding for any purposes.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill adds correctional medical facilities to the definition of medical facilities. It also changes the term "serious event" to "adverse event" and expands the definition of "incidents" to include unanticipated injuries that are less severe than adverse events.

Provisions regarding reports of incidents by health care workers are removed. Upon receipt of a complaint by a medical facility employee, the Department of Health is authorized to direct a medical facility to conduct an investigation.

The use of evidence of offers to pay medical expenses, statements of apologies, and statements regarding remedial actions is prohibited in all situations, not just to prove liability for injuries.

The emergency clause is removed and reporting requirements become effective April 1, 2006.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect July 1, 2005, except for section 3, regarding reporting adverse events, which takes effect April 1, 2006.

**Testimony For:** By permitting confidential reporting of adverse events, this bill will allow medical facilities to learn from each other's mistakes to improve safety in the delivery of health care. This bill helps to fill the need for information that can be used to identify problems and solutions and to share that knowledge.

(With concerns or questions) Confidentiality protections regarding information about adverse outcomes should not be expanded.

**Testimony Against:** None.

**Persons Testifying:** (In support) Representative Green, prime sponsor; Laurie Jenkins, Department of Health; Lisa Thatcher, Washington State Hospital Association; and Karen Merrikin, Group Health Cooperative.

(In support with concerns) Pat Greenstreet, Washington State Trial Lawyer Association.

(With questions) Rowland Thompson, Allied Daily Newspapers.

**Persons Signed In To Testify But Not Testifying:** None.