

HOUSE BILL REPORT

HB 1291

As Reported by House Committee On:

Health Care
Appropriations

Title: An act relating to improving health care professional and health care facility patient safety practices.

Brief Description: Improving patient safety practices.

Sponsors: Representatives Cody, Bailey, Morrell, Hinkle, Green, Moeller, Kessler, Haigh, Linville, Kagi, Santos and Ormsby.

Brief History:

Committee Activity:

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

Appropriations: 2/23/05, 3/2/05 [DP2S(w/o sub HC)].

Brief Summary of Second Substitute Bill

- Creates the Patient Safety Account to fund patient safety and medical error reduction programs through funds raised by (1) a charge to health care providers and facilities, and (2) payment of 1 percent of attorneys' fees in actions for injuries resulting from health care.
- Provides that evidence of offers to pay medical expenses, statements of apology, or remedial acts by a health care provider is inadmissible in an action for professional negligence.

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cody, Chair; Morrell, Vice Chair; Bailey, Ranking Minority Member; Appleton, Clibborn, Green, Lantz, Moeller and Schual-Berke.

Minority Report: Do not pass. Signed by 5 members: Representatives Curtis, Assistant Ranking Minority Member; Alexander, Condotta, Hinkle and Skinner.

Staff: Chris Blake (786-7392).

Background:

Quality Improvement and Patient Safety Measures

In 1999, the Institute of Medicine reported that between 44,000 and 98,000 people die in the United States every year due to medical errors. At the federal level, the Agency for Healthcare Research and Quality (AHRQ) funds research to reduce medical errors and increase patient safety. In 2001, AHRQ provided almost \$50 million in funding for 94 grants related to health care work conditions, the use of information technology, medical errors data reporting, and other patient safety projects.

In Washington, hospitals maintain quality improvement committees to improve the quality of health care services and prevent medical malpractice. Quality improvement proceedings review medical staff privileges and employee competency, collect information related to negative health care outcomes, and conduct safety improvement activities. Provider groups and medical facilities other than hospitals are encouraged to conduct similar activities.

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.

Summary of Substitute Bill:

Patient Safety Account

The "Patient Safety Account" (Account) is created. The Account is to be funded in two ways. First, the Secretary of Health must collect a \$2 surcharge on licenses for 16 health professions and \$2 per licensed bed are charged to acute care hospitals and psychiatric hospitals. Second, 1 percent of the fees collected by attorneys in medical malpractice cases where the plaintiff received money in a settlement or judgment must be provided to the Department of Health (Department) for transfer into the Account.

The Account is an appropriated account that is to be used for grants, loans, and other arrangements that support efforts to reduce medical errors and enhance patient safety. The Department must establish criteria for the types of programs to receive funds. The criteria must emphasize evidence-based practices recommended by governmental and private organizations including the Agency for Healthcare Research and Quality, the Institute of Medicine, the Joint Commission on Accreditation of Health Care Organizations, and the National Quality Forum. At least two of the projects must implement recommendations of the Institute of Medicine's report *Keeping Patients Safe: Transforming the Work Environment of Nurses*. Funding priority is given to projects that are proven to enhance patient safety and reduce medical errors as opposed to those that only have a substantial likelihood of doing so.

By December 1, 2008, the Department must report to the Legislature about the funds raised, criteria developed, and projects funded.

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.

Coordinated Quality Improvement Programs

The types of programs that may apply to the Department of Health to become coordinated quality improvement programs are expanded to include consortiums of health care providers that consist of at least five health care providers.

Prescription Legibility

Prescriptions for legend drugs must either be hand-printed, typewritten, or generated electronically.

Substitute Bill Compared to Original Bill:

The substitute bill expands the collection of 1 percent of the fees of a plaintiff's attorney in a medical malpractice case to include 1 percent of the fees of a defense attorney.

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

Consortiums of health care providers that consist of at least five health care providers may qualify to become coordinated quality improvement programs.

Prescriptions for legend drugs must be hand-printed, typewritten, or generated electronically.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except for section 103, regarding a surcharge on healthcare provider and facility licenses, which takes effect July 1, 2005.

Testimony For: This bill establishes sound policy for improving health care for patients.

(With concerns) The funding burden should be borne by both plaintiffs' and defendants' attorneys.

Testimony Against: None.

Persons Testifying: (In support) Anne Tan Piazza, Washington State Nurses Association; and Karen Merrikin, Group Health Cooperative.

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

(With concerns) Mark Johnson, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care. Signed by 17 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia and Schual-Berke.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Bailey, Buri, Clements, Hinkle, Pearson, Priest, Talcott and Walsh.

Staff: Amy Hanson (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Health Care:

Nursing home administrators are not included as a health care provider subject to the \$2 surcharge on licenses.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except for section 103, regarding a surcharge on healthcare provider and facility licenses, which takes effect July 1, 2005.

Testimony For: Nursing home administrators do not provide care or engage in the practice of medicine and therefore should not be subject to the additional fee. We support the funding mechanism, but it is disproportionately borne by what is in essence a Business and Occupation tax on successful plaintiff lawyers who have brought the most meritorious of cases to a resolution and that is going to be two-thirds of the funding source for this mechanism. We have concerns about the expansiveness of the apology section. Early admissions and apologies have become a proven and true mechanisms to cut down on the incidence and costs of malpractice litigation. It is the scope of this that we would like to continue to work to change.

Testimony Against: None.

Persons Testifying: Deb Murphy, Washington Association of Housing and Services for the Aging; and Larry Shannon, Washington State Trial Lawyers Association.

Persons Signed In To Testify But Not Testifying: None.