
HOUSE BILL 1933

State of Washington

59th Legislature

2005 Regular Session

By Representatives Schual-Berke, Morrell and Lantz

Read first time 02/10/2005. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to reporting and analysis of medical malpractice
2 related information; adding a new section to chapter 7.70 RCW; adding
3 a new chapter to Title 48 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Claim" means a demand for payment of a loss caused by medical
8 malpractice.

9 (a) Two or more claims, or a single claim naming multiple health
10 care providers or facilities, arising out of a single injury or
11 incident of medical malpractice is one claim.

12 (b) A series of related incidents of medical malpractice is one
13 claim.

14 (2) "Claimant" means a person filing a claim against a health care
15 provider or health care facility.

16 (3) "Closed claim" means a claim concluded with or without payment
17 and for which all administrative activity has been finalized by the
18 insuring entity or self-insurer.

19 (4) "Commissioner" means the insurance commissioner.

1 (5) "Health care facility" or "facility" means a clinic, diagnostic
2 center, hospital, laboratory, mental health center, nursing home,
3 office, surgical facility, treatment facility, or similar place where
4 a health care provider provides health care to patients.

5 (6) "Health care provider" or "provider" means a physician licensed
6 under chapter 18.71 RCW, an osteopathic physician licensed under
7 chapter 18.57 RCW, a podiatric physician licensed under chapter 18.22
8 RCW, a dentist licensed under chapter 18.32 RCW, a chiropractor
9 licensed under chapter 18.25 RCW, an advance registered nurse
10 practitioner licensed under chapter 18.79 RCW, a physician assistant
11 licensed under chapter 18.71A RCW, and a naturopath licensed under
12 chapter 18.36A RCW.

13 (7) "Insuring entity" means:

14 (a) An insurer;

15 (b) A joint underwriting association;

16 (c) A risk retention group; or

17 (d) An unauthorized insurer that provides surplus lines coverage.

18 (8) "Medical malpractice" means a negligent act, error, or omission
19 in providing or failing to provide professional health care services
20 that is actionable under chapter 7.70 RCW.

21 (9) "Self-insurer" means any health care provider, facility, or
22 other individual or entity that assumes operational or financial risk
23 for claims of medical malpractice.

24 NEW SECTION. **Sec. 2.** (1) Beginning April 1, 2006, every self-
25 insurer or insuring entity that provides medical malpractice insurance
26 to any facility or provider in Washington state must report to the
27 commissioner any closed claim related to medical malpractice, if the
28 claim resulted in a final:

29 (a) Judgment in any amount;

30 (b) Settlement or payment in any amount; or

31 (c) Disposition of a medical malpractice claim resulting in no
32 indemnity payment on behalf of an insured.

33 (2) If a claim is not reported by an insuring entity or self-
34 insurer under subsection (1) of this section due to limitations in the
35 medical malpractice coverage of a facility or provider, the facility or
36 provider must report the claim to the commissioner.

1 (3) Reports under this section must be filed with the commissioner
2 within sixty days after the claim is closed by the insuring entity or
3 self-insurer.

4 (4)(a) The commissioner may impose a fine of up to two hundred
5 fifty dollars per day per case against any insuring entity that
6 violates the requirements of this section. The total fine per case may
7 not exceed ten thousand dollars.

8 (b) The department of health may impose a fine of up to two hundred
9 fifty dollars per day per case against any facility or provider that
10 violates the requirements of this section. The total fine per case may
11 not exceed ten thousand dollars.

12 NEW SECTION. **Sec. 3.** The reports required under section 2 of this
13 act must contain the following data in a form prescribed by the
14 commissioner for each claim:

15 (1) A unique number assigned to the claim by the insuring entity or
16 self-insurer to serve as an identifier for the claim;

17 (2) The type of health care provider, including the provider's
18 medical specialty; the type of facility, if any, and the location
19 within the facility where the injury occurred;

20 (3) The date of the event that resulted in the claim;

21 (4) The county or counties in which the event that resulted in the
22 claim occurred;

23 (5) The date the claim was reported to the insuring entity, self-
24 insurer, facility, or provider;

25 (6) The date of suit, if filed;

26 (7) The claimant's age and sex;

27 (8) Specific information about the judgment or settlement
28 including:

29 (a) The date and amount of any judgment or settlement;

30 (b) Whether the settlement:

31 (i) Was the result of a judgment, arbitration, or mediation; and

32 (ii) Occurred before or after trial;

33 (c) For claims that result in a verdict or judgment that itemizes
34 damages:

35 (i) Economic damages, such as incurred and anticipated medical
36 expense and lost wages;

37 (ii) Noneconomic damages; and

1 (iii) Allocated loss adjustment expense, including but not limited
2 to court costs, attorneys' fees, and costs of expert witnesses;

3 (d) For claims that do not result in a verdict or judgment that
4 itemizes damages:

5 (i) Total damages; and

6 (ii) Allocated loss adjustment expense, including but not limited
7 to court costs, attorneys' fees, and costs of expert witnesses; and

8 (e) If there is no judgment or settlement:

9 (i) The date and reason for final disposition; and

10 (ii) The date the claim was closed; and

11 (9) The reason for the medical malpractice claim. The commissioner
12 shall use the same coding of reasons for malpractice claims as those
13 used for mandatory reporting to the national practitioner data bank, in
14 the federal department of health and human services, as provided in 42
15 U.S.C. Secs. 11131 and 11134, as amended.

16 NEW SECTION. **Sec. 4.** The commissioner must prepare aggregate
17 statistical summaries of closed claims based on calendar year data
18 submitted under section 2 of this act.

19 (1) At a minimum, data must be sorted by calendar year and calendar
20 incident year. The commissioner may also decide to display data in
21 other ways.

22 (2) The summaries must be available by March 31st of each year.

23 (3) Information included in an individual closed claim report
24 submitted by an insurer or self-insurer under this chapter is
25 confidential, is exempt from public disclosure, and may not be made
26 available by the commissioner to the public.

27 NEW SECTION. **Sec. 5.** Beginning in 2006, the commissioner must
28 prepare an annual report by June 30th that summarizes and analyzes the
29 closed claim reports for medical malpractice filed under section 2 of
30 this act and the annual financial reports filed by insurers writing
31 medical malpractice insurance in this state. The report must include:

32 (1) An analysis of closed claim reports of prior years for which
33 data are collected and show:

34 (a) Trends in the frequency and severity of claims payments;

35 (b) An itemization of economic and noneconomic damages;

36 (c) An itemization of allocated loss adjustment expenses;

1 (d) The types of medical malpractice for which claims have been
2 paid; and

3 (e) Any other information the commissioner determines illustrates
4 trends in closed claims;

5 (2) An analysis of the medical malpractice insurance market in
6 Washington state, including:

7 (a) An analysis of the financial reports of the insurers with a
8 combined market share of at least ninety percent of net written medical
9 malpractice premium in Washington state for the prior calendar year;

10 (b) A loss ratio analysis of medical malpractice insurance written
11 in Washington state; and

12 (c) A profitability analysis of each insurer writing medical
13 malpractice insurance;

14 (3) A comparison of loss ratios and the profitability of medical
15 malpractice insurance in Washington state to other states based on
16 financial reports filed with the national association of insurance
17 commissioners and any other source of information the commissioner
18 deems relevant;

19 (4) A summary of the rate filings for medical malpractice that have
20 been approved by the commissioner for the prior calendar year,
21 including an analysis of the trend of direct and incurred losses as
22 compared to prior years;

23 (5) The commissioner must post reports required by this section on
24 the internet no later than thirty days after they are due; and

25 (6) The commissioner may adopt rules that require insuring entities
26 and self-insurers required to report under section 2(1) of this act to
27 report data related to:

28 (a) The frequency and severity of open claims for the reporting
29 period;

30 (b) The aggregate amounts reserved for incurred claims;

31 (c) Changes in reserves from the previous reporting period; and

32 (d) Any other information that helps the commissioner monitor
33 losses and claims development in the Washington state medical
34 malpractice insurance market.

35 NEW SECTION. **Sec. 6.** The commissioner shall adopt all rules
36 needed to implement this chapter. To ensure that claimants, health
37 care providers, health care facilities, and self-insurers cannot be

1 individually identified when data is disclosed to the public, the
2 commissioner shall adopt rules that require the protection of
3 information that, in combination, could result in the ability to
4 identify the claimant, health care provider, health care facility, or
5 self-insurer in a particular claim or collection of claims.

6 NEW SECTION. **Sec. 7.** A new section is added to chapter 7.70 RCW
7 to read as follows:

8 In any action filed under this chapter that results in a final:

9 (1) Judgment in any amount;

10 (2) Settlement or payment in any amount; or

11 (3) Disposition resulting in no indemnity payment,

12 the claimant or his or her attorney shall report to the office of the
13 insurance commissioner on forms provided by the commissioner any court
14 costs, attorneys' fees, or costs of expert witnesses incurred in
15 pursuing the action.

16 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act constitute
17 a new chapter in Title 48 RCW.

18 NEW SECTION. **Sec. 9.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

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