

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 2292

59th Legislature
2006 Regular Session

Passed by the House February 28, 2006
Yeas 82 Nays 15

Speaker of the House of Representatives

Passed by the Senate February 22, 2006
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2292** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 2292

AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Lantz, Cody, Campbell, Kirby, Flannigan, Williams, Linville, Springer, Clibborn, Wood, Fromhold, Morrell, Hunt, Moeller, Green, Kilmer, Conway, O'Brien, Sells, Kenney, Kessler, Chase, Upthegrove, Ormsby, Lovick, McCoy and Santos)

READ FIRST TIME 01/18/06.

1 AN ACT Relating to improving health care by increasing patient
2 safety, reducing medical errors, reforming medical malpractice
3 insurance, and resolving medical malpractice claims fairly without
4 imposing mandatory limits on damage awards or fees; amending RCW
5 5.64.010, 4.24.260, 18.71.015, 18.130.160, 43.70.075, 43.70.510,
6 42.56.400, 48.18.290, 48.18.2901, 48.18.100, 48.18.103, 48.19.043,
7 48.19.060, 4.16.190, 7.70.100, and 7.70.080; reenacting and amending
8 RCW 42.17.310 and 69.41.010; reenacting RCW 4.16.350; adding new
9 sections to chapter 7.70 RCW; adding a new section to chapter 48.18
10 RCW; adding a new chapter to Title 70 RCW; adding a new chapter to
11 Title 48 RCW; adding a new chapter to Title 7 RCW; creating new
12 sections; prescribing penalties; providing an effective date; and
13 providing an expiration date.

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

15 NEW SECTION. **Sec. 1.** The legislature finds that access to safe,
16 affordable health care is one of the most important issues facing the
17 citizens of Washington state. The legislature further finds that the
18 rising cost of medical malpractice insurance has caused some
19 physicians, particularly those in high-risk specialties such as

1 obstetrics and emergency room practice, to be unavailable when and
2 where the citizens need them the most. The answers to these problems
3 are varied and complex, requiring comprehensive solutions that
4 encourage patient safety practices, increase oversight of medical
5 malpractice insurance, and making the civil justice system more
6 understandable, fair, and efficient for all the participants.

7 It is the intent of the legislature to prioritize patient safety
8 and the prevention of medical errors above all other considerations as
9 legal changes are made to address the problem of high malpractice
10 insurance premiums. Thousands of patients are injured each year as a
11 result of medical errors, many of which can be avoided by supporting
12 health care providers, facilities, and carriers in their efforts to
13 reduce the incidence of those mistakes. It is also the legislature's
14 intent to provide incentives to settle cases before resorting to court,
15 and to provide the option of a more fair, efficient, and streamlined
16 alternative to trials for those for whom settlement negotiations do not
17 work. Finally, it is the intent of the legislature to provide the
18 insurance commissioner with the tools and information necessary to
19 regulate medical malpractice insurance rates and policies so that they
20 are fair to both the insurers and the insured.

21 **PART I - PATIENT SAFETY**

22 **Encouraging Patient Safety Through Communications With Patients**

23 **Sec. 101.** RCW 5.64.010 and 1975-'76 2nd ex.s. c 56 s 3 are each
24 amended to read as follows:

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

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

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

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

16 (2)(a) In a civil action against a health care provider for
17 personal injuries that is based upon alleged professional negligence,
18 or in any arbitration or mediation proceeding related to such civil
19 action, a statement, affirmation, gesture, or conduct identified in (b)
20 of this subsection is not admissible as evidence if:

21 (i) It was conveyed by a health care provider to the injured
22 person, or to a person specified in RCW 7.70.065 (1)(a) or (2)(a)
23 within thirty days of the act or omission that is the basis for the
24 allegation of professional negligence or within thirty days of the time
25 the health care provider discovered the act or omission that is the
26 basis for the allegation of professional negligence, whichever period
27 expires later; and

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

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

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

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

1 **Encouraging Reports of Unprofessional Conduct or Lack of**
2 **Capacity to Practice Safely**

3 **Sec. 102.** RCW 4.24.260 and 1994 sp.s. c 9 s 701 are each amended
4 to read as follows:

5 (~~Physicians licensed under chapter 18.71 RCW, dentists licensed~~
6 ~~under chapter 18.32 RCW, and pharmacists licensed under chapter 18.64~~
7 ~~RCW~~) Any member of a health profession listed under RCW 18.130.040
8 who, in good faith, makes a report, files charges, or presents evidence
9 against another member of (~~their~~) a health profession based on the
10 claimed (~~incompetency or gross misconduct~~) unprofessional conduct as
11 provided in RCW 18.130.180 or inability to practice with reasonable
12 skill and safety to consumers by reason of any physical or mental
13 condition as provided in RCW 18.130.170 of such person before the
14 (~~medical quality assurance commission established under chapter 18.71~~
15 ~~RCW, in a proceeding under chapter 18.32 RCW, or to the board of~~
16 ~~pharmacy under RCW 18.64.160~~) agency, board, or commission responsible
17 for disciplinary activities for the person's profession under chapter
18 18.130 RCW, shall be immune from civil action for damages arising out
19 of such activities. A person prevailing upon the good faith defense
20 provided for in this section is entitled to recover expenses and
21 reasonable attorneys' fees incurred in establishing the defense.

22 **Medical Quality Assurance Commission Consumer Membership**

23 **Sec. 103.** RCW 18.71.015 and 1999 c 366 s 4 are each amended to
24 read as follows:

25 The Washington state medical quality assurance commission is
26 established, consisting of thirteen individuals licensed to practice
27 medicine in the state of Washington under this chapter, two individuals
28 who are licensed as physician assistants under chapter 18.71A RCW, and
29 (~~four~~) six individuals who are members of the public. At least two
30 of the public members shall not be from the health care industry. Each
31 congressional district now existing or hereafter created in the state
32 must be represented by at least one physician member of the commission.
33 The terms of office of members of the commission are not affected by
34 changes in congressional district boundaries. Public members of the
35 commission may not be a member of any other health care licensing board
36 or commission, or have a fiduciary obligation to a facility rendering

1 health services regulated by the commission, or have a material or
2 financial interest in the rendering of health services regulated by the
3 commission.

4 The members of the commission shall be appointed by the governor.
5 Members of the initial commission may be appointed to staggered terms
6 of one to four years, and thereafter all terms of appointment shall be
7 for four years. The governor shall consider such physician and
8 physician assistant members who are recommended for appointment by the
9 appropriate professional associations in the state. In appointing the
10 initial members of the commission, it is the intent of the legislature
11 that, to the extent possible, the existing members of the board of
12 medical examiners and medical disciplinary board repealed under section
13 336, chapter 9, Laws of 1994 sp. sess. be appointed to the commission.
14 No member may serve more than two consecutive full terms. Each member
15 shall hold office until a successor is appointed.

16 Each member of the commission must be a citizen of the United
17 States, must be an actual resident of this state, and, if a physician,
18 must have been licensed to practice medicine in this state for at least
19 five years.

20 The commission shall meet as soon as practicable after appointment
21 and elect officers each year. Meetings shall be held at least four
22 times a year and at such place as the commission determines and at such
23 other times and places as the commission deems necessary. A majority
24 of the commission members appointed and serving constitutes a quorum
25 for the transaction of commission business.

26 The affirmative vote of a majority of a quorum of the commission is
27 required to carry any motion or resolution, to adopt any rule, or to
28 pass any measure. The commission may appoint panels consisting of at
29 least three members. A quorum for the transaction of any business by
30 a panel is a minimum of three members. A majority vote of a quorum of
31 the panel is required to transact business delegated to it by the
32 commission.

33 Each member of the commission shall be compensated in accordance
34 with RCW 43.03.265 and in addition thereto shall be reimbursed for
35 travel expenses incurred in carrying out the duties of the commission
36 in accordance with RCW 43.03.050 and 43.03.060. Any such expenses
37 shall be paid from funds appropriated to the department of health.

1 Whenever the governor is satisfied that a member of a commission
2 has been guilty of neglect of duty, misconduct, or malfeasance or
3 misfeasance in office, the governor shall file with the secretary of
4 state a statement of the causes for and the order of removal from
5 office, and the secretary shall forthwith send a certified copy of the
6 statement of causes and order of removal to the last known post office
7 address of the member.

8 Vacancies in the membership of the commission shall be filled for
9 the unexpired term by appointment by the governor.

10 The members of the commission are immune from suit in an action,
11 civil or criminal, based on its disciplinary proceedings or other
12 official acts performed in good faith as members of the commission.

13 Whenever the workload of the commission requires, the commission
14 may request that the secretary appoint pro tempore members of the
15 commission. When serving, pro tempore members of the commission have
16 all of the powers, duties, and immunities, and are entitled to all of
17 the emoluments, including travel expenses, of regularly appointed
18 members of the commission.

19 **Health Care Provider Discipline**

20 **Sec. 104.** RCW 18.130.160 and 2001 c 195 s 1 are each amended to
21 read as follows:

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

- 31 (1) Revocation of the license;
- 32 (2) Suspension of the license for a fixed or indefinite term;
- 33 (3) Restriction or limitation of the practice;
- 34 (4) Requiring the satisfactory completion of a specific program of
35 remedial education or treatment;

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

3 (6) Censure or reprimand;

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

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

9 (9) Denial of the license request;

10 (10) Corrective action;

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

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

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

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

34 **Increasing Patient Safety Through**
35 **Disclosure and Analysis of Adverse Events**

1 NEW SECTION. **Sec. 105.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Adverse health event" or "adverse event" means the list of
4 serious reportable events adopted by the national quality forum in
5 2002, in its consensus report on serious reportable events in health
6 care. The department shall update the list, through adoption of rules,
7 as subsequent changes are made by the national quality forum. The term
8 does not include an incident.

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

13 (3) "Childbirth center" means a facility licensed under chapter
14 18.46 RCW.

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

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

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

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

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

26 (a) Results in unanticipated injury to a patient that is not
27 related to the natural course of the patient's illness or underlying
28 condition and does not constitute an adverse event; or

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

32 "Incident" does not include an adverse event.

33 (9) "Independent entity" means that entity that the department of
34 health contracts with under section 108 of this act to receive
35 notifications and reports of adverse events and incidents, and carry
36 out the activities specified in section 108 of this act.

37 (10) "Medical facility" means a childbirth center, hospital,
38 psychiatric hospital, or correctional medical facility. An ambulatory

1 surgical facility shall be considered a medical facility for purposes
2 of this chapter upon the effective date of any requirement for state
3 registration or licensure of ambulatory surgical facilities.

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

6 NEW SECTION. **Sec. 106.** (1) The legislature intends to establish
7 an adverse health events and incident reporting system that is designed
8 to facilitate quality improvement in the health care system, improve
9 patient safety and decrease medical errors in a nonpunitive manner.
10 The reporting system shall not be designed to punish errors by health
11 care practitioners or health care facility employees.

12 (2) Each medical facility shall notify the department of health
13 regarding the occurrence of any adverse event and file a subsequent
14 report as provided in this section. Notification must be submitted to
15 the department within forty-eight hours of confirmation by the medical
16 facility that an adverse event has occurred. A subsequent report must
17 be submitted to the department within forty-five days after
18 confirmation by the medical facility that an adverse event has
19 occurred. The notification and report shall be submitted to the
20 department using the internet-based system established under section
21 108(2) of this act.

22 (3) The notification and report shall be filed in a format
23 specified by the department after consultation with medical facilities
24 and the independent entity. The format shall identify the facility,
25 but shall not include any identifying information for any of the health
26 care professionals, facility employees, or patients involved. This
27 provision does not modify the duty of a hospital to make a report to
28 the department of health or a disciplinary authority if a licensed
29 practitioner has committed unprofessional conduct as defined in RCW
30 18.130.180.

31 (4) As part of the report filed under this section, the medical
32 facility must conduct a root cause analysis of the event, describe the
33 corrective action plan that will be implemented consistent with the
34 findings of the analysis, or provide an explanation of any reasons for
35 not taking corrective action. The department shall adopt rules, in
36 consultation with medical facilities and the independent entity,
37 related to the form and content of the root cause analysis and

1 corrective action plan. In developing the rules, consideration shall
2 be given to existing standards for root cause analysis or corrective
3 action plans adopted by the joint commission on accreditation of health
4 facilities and other national or governmental entities.

5 (5) If, in the course of investigating a complaint received from an
6 employee of a medical facility, the department determines that the
7 facility has not reported an adverse event or undertaken efforts to
8 investigate the occurrence of an adverse event, the department shall
9 direct the facility to report or to undertake an investigation of the
10 event.

11 (6) The protections of RCW 43.70.075 apply to reports of adverse
12 events that are submitted in good faith by employees of medical
13 facilities.

14 NEW SECTION. **Sec. 107.** (1) The department shall:

15 (a) Receive and investigate, where necessary, notifications and
16 reports of adverse events, including root cause analyses and corrective
17 action plans submitted as part of reports, and communicate to
18 individual facilities the department's conclusions, if any, regarding
19 an adverse event reported by a facility; and

20 (b) Adopt rules as necessary to implement this chapter.

21 (2) The department may enforce the reporting requirements of
22 section 106 of this act using their existing enforcement authority
23 provided in chapter 18.46 RCW for childbirth centers, chapter 70.41 RCW
24 for hospitals, and chapter 71.12 RCW for psychiatric hospitals.

25 NEW SECTION. **Sec. 108.** (1) The department shall contract with a
26 qualified, independent entity to receive notifications and reports of
27 adverse events and incidents, and carry out the activities specified in
28 this section. In establishing qualifications for, and choosing the
29 independent entity, the department shall strongly consider the patient
30 safety organization criteria included in the federal patient safety and
31 quality improvement act of 2005, P.L. 109-41, and any regulations
32 adopted to implement this chapter.

33 (2) The independent entity shall:

34 (a) In collaboration with the department of health, establish an
35 internet-based system for medical facilities and the health care
36 workers of a medical facility to submit notifications and reports of

1 adverse events and incidents, which shall be accessible twenty-four
2 hours a day, seven days a week. The system shall be a portal to report
3 both adverse events and incidents, and notifications and reports of
4 adverse events shall be immediately transmitted to the department. The
5 system shall be a secure system that protects the confidentiality of
6 personal health information and provider and facility specific
7 information submitted in notifications and reports, including
8 appropriate encryption and an accurate means of authenticating the
9 identify of users of the system;

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

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

17 (d) Directly advise reporting medical facilities of immediate
18 changes that can be instituted to reduce adverse events or incidents;

19 (e) Issue recommendations to medical facilities on a
20 facility-specific or on a statewide basis regarding changes, trends,
21 and improvements in health care practices and procedures for the
22 purpose of reducing the number and severity of adverse events or
23 incidents. Prior to issuing recommendations, consideration shall be
24 given to the following factors: Expectation of improved quality of
25 care, implementation feasibility, other relevant implementation
26 practices, and the cost impact to patients, payers, and medical
27 facilities. Statewide recommendations shall be issued to medical
28 facilities on a continuing basis and shall be published and posted on
29 a publicly accessible web site. The recommendations made to medical
30 facilities under this section shall not be considered mandatory for
31 licensure purposes unless they are adopted by the department as rules
32 pursuant to chapter 34.05 RCW; and

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

1 (3) The independent entity shall report no later than January 1,
2 2008, and annually thereafter to the governor and the legislature on
3 the activities under this chapter in the preceding year. The report
4 shall include:

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

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

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

11 The annual report shall be made available for public inspection and
12 shall be posted on the department's and the independent entity's web
13 site.

14 (4) The independent entity shall conduct all activities under this
15 section in a manner that preserves the confidentiality of facilities,
16 documents, materials, or information made confidential by section 110
17 of this act.

18 (5) Medical facilities and health care workers may report incidents
19 to the independent entity. The report shall be filed in a format
20 specified by the independent entity, after consultation with the
21 department and medical facilities, and shall identify the facility but
22 shall not include any identifying information for any of the health
23 care professionals, facility employees, or patients involved. This
24 provision does not modify the duty of a hospital to make a report to
25 the department or a disciplinary authority if a licensed practitioner
26 has committed unprofessional conduct as defined in RCW 18.130.180. The
27 protections of RCW 43.70.075 apply to reports of incidents that are
28 submitted in good faith by employees of medical facilities.

29 **Sec. 109.** RCW 43.70.075 and 1995 c 265 s 19 are each amended to
30 read as follows:

31 (1) The identity of a whistleblower who complains, in good faith,
32 to the department of health about the improper quality of care by a
33 health care provider, or in a health care facility, as defined in RCW
34 43.72.010, or who submits a notification or report of an adverse event
35 or an incident, in good faith, to the department of health under
36 section 106 of this act or to the independent entity under section 108
37 of this act, shall remain confidential. The provisions of RCW 4.24.500

1 through 4.24.520, providing certain protections to persons who
2 communicate to government agencies, shall apply to complaints and
3 notifications or reports of adverse events or incidents filed under
4 this section. The identity of the whistleblower shall remain
5 confidential unless the department determines that the complaint or
6 notification or report of the adverse event or incident was not made in
7 good faith. An employee who is a whistleblower, as defined in this
8 section, and who as a result of being a whistleblower has been
9 subjected to workplace reprisal or retaliatory action has the remedies
10 provided under chapter 49.60 RCW.

11 (2)(a) "Improper quality of care" means any practice, procedure,
12 action, or failure to act that violates any state law or rule of the
13 applicable state health licensing authority under Title 18 or chapters
14 70.41, 70.96A, 70.127, 70.175, 71.05, 71.12, and 71.24 RCW, and
15 enforced by the department of health. Each health disciplinary
16 authority as defined in RCW 18.130.040 may, with consultation and
17 interdisciplinary coordination provided by the state department of
18 health, adopt rules defining accepted standards of practice for their
19 profession that shall further define improper quality of care.
20 Improper quality of care shall not include good faith personnel actions
21 related to employee performance or actions taken according to
22 established terms and conditions of employment.

23 (b) "Reprisal or retaliatory action" means but is not limited to:
24 Denial of adequate staff to perform duties; frequent staff changes;
25 frequent and undesirable office changes; refusal to assign meaningful
26 work; unwarranted and unsubstantiated report of misconduct pursuant to
27 Title 18 RCW; letters of reprimand or unsatisfactory performance
28 evaluations; demotion; reduction in pay; denial of promotion;
29 suspension; dismissal; denial of employment; and a supervisor or
30 superior encouraging coworkers to behave in a hostile manner toward the
31 whistleblower.

32 (c) "Whistleblower" means a consumer, employee, or health care
33 professional who in good faith reports alleged quality of care concerns
34 to the department of health.

35 (3) Nothing in this section prohibits a health care facility from
36 making any decision exercising its authority to terminate, suspend, or
37 discipline an employee who engages in workplace reprisal or retaliatory
38 action against a whistleblower.

1 (4) The department shall adopt rules to implement procedures for
2 filing, investigation, and resolution of whistleblower complaints that
3 are integrated with complaint procedures under Title 18 RCW for health
4 professionals or health care facilities.

5 NEW SECTION. **Sec. 110.** (1) When a notification or report of an
6 adverse event or incident under section 106 or 108 of this act is made
7 by or through a coordinated quality improvement program under RCW
8 43.70.510 or 70.41.200, or by a peer review committee under RCW
9 4.24.250, information and documents, including complaints and incident
10 reports, created specifically for and collected and maintained by a
11 quality improvement committee for the purpose of preparing a
12 notification or report of an adverse event or incident, and the
13 notification or report itself, shall be subject to the confidentiality
14 protections of those laws and RCW 42.17.310(1)(hh) and 42.56.360(1)(c).

15 (2) When a notification or report of an adverse event or incident
16 made by a health care worker under section 106 or 108 of this act uses
17 information and documents, including complaints and incident reports,
18 created specifically for and collected and maintained by a quality
19 improvement committee under RCW 43.70.510 or 70.41.200 or a peer review
20 committee under RCW 4.24.250, the notification or report itself and the
21 information or documents used for the purpose of preparing the
22 notification or report, shall be subject to the confidentiality
23 protections of those laws and RCW 42.17.310(1)(hh) and 42.56.360(1)(c).

24 **Sec. 111.** RCW 42.17.310 and 2005 c 424 s 16, 2005 c 349 s 1, 2005
25 c 312 s 6, 2005 c 284 s 1, 2005 c 172 s 13, and 2005 c 33 s 4 are each
26 reenacted and amended to read as follows:

27 (1) The following are exempt from public inspection and copying:

28 (a) Personal information in any files maintained for students in
29 public schools, patients or clients of public institutions or public
30 health agencies, or welfare recipients.

31 (b) Personal information in files maintained for employees,
32 appointees, or elected officials of any public agency to the extent
33 that disclosure would violate their right to privacy.

34 (c) Information required of any taxpayer in connection with the
35 assessment or collection of any tax if the disclosure of the
36 information to other persons would (i) be prohibited to such persons by

1 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
2 taxpayer's right to privacy or result in unfair competitive
3 disadvantage to the taxpayer.

4 (d) Specific intelligence information and specific investigative
5 records compiled by investigative, law enforcement, and penology
6 agencies, and state agencies vested with the responsibility to
7 discipline members of any profession, the nondisclosure of which is
8 essential to effective law enforcement or for the protection of any
9 person's right to privacy.

10 (e) Information revealing the identity of persons who are witnesses
11 to or victims of crime or who file complaints with investigative, law
12 enforcement, or penology agencies, other than the public disclosure
13 commission, if disclosure would endanger any person's life, physical
14 safety, or property. If at the time a complaint is filed the
15 complainant, victim or witness indicates a desire for disclosure or
16 nondisclosure, such desire shall govern. However, all complaints filed
17 with the public disclosure commission about any elected official or
18 candidate for public office must be made in writing and signed by the
19 complainant under oath.

20 (f) Test questions, scoring keys, and other examination data used
21 to administer a license, employment, or academic examination.

22 (g) Except as provided by chapter 8.26 RCW, the contents of real
23 estate appraisals, made for or by any agency relative to the
24 acquisition or sale of property, until the project or prospective sale
25 is abandoned or until such time as all of the property has been
26 acquired or the property to which the sale appraisal relates is sold,
27 but in no event shall disclosure be denied for more than three years
28 after the appraisal.

29 (h) Valuable formulae, designs, drawings, computer source code or
30 object code, and research data obtained by any agency within five years
31 of the request for disclosure when disclosure would produce private
32 gain and public loss.

33 (i) Preliminary drafts, notes, recommendations, and intra-agency
34 memorandums in which opinions are expressed or policies formulated or
35 recommended except that a specific record shall not be exempt when
36 publicly cited by an agency in connection with any agency action.

37 (j) Records which are relevant to a controversy to which an agency

1 is a party but which records would not be available to another party
2 under the rules of pretrial discovery for causes pending in the
3 superior courts.

4 (k) Records, maps, or other information identifying the location of
5 archaeological sites in order to avoid the looting or depredation of
6 such sites.

7 (l) Any library record, the primary purpose of which is to maintain
8 control of library materials, or to gain access to information, which
9 discloses or could be used to disclose the identity of a library user.

10 (m) Financial information supplied by or on behalf of a person,
11 firm, or corporation for the purpose of qualifying to submit a bid or
12 proposal for (i) a ferry system construction or repair contract as
13 required by RCW 47.60.680 through 47.60.750 or (ii) highway
14 construction or improvement as required by RCW 47.28.070.

15 (n) Railroad company contracts filed prior to July 28, 1991, with
16 the utilities and transportation commission under RCW 81.34.070, except
17 that the summaries of the contracts are open to public inspection and
18 copying as otherwise provided by this chapter.

19 (o) Financial and commercial information and records supplied by
20 private persons pertaining to export services provided pursuant to
21 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
22 export projects pursuant to RCW 43.23.035.

23 (p) Financial disclosures filed by private vocational schools under
24 chapters 28B.85 and 28C.10 RCW.

25 (q) Records filed with the utilities and transportation commission
26 or attorney general under RCW 80.04.095 that a court has determined are
27 confidential under RCW 80.04.095.

28 (r) Financial and commercial information and records supplied by
29 businesses or individuals during application for loans or program
30 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
31 or during application for economic development loans or program
32 services provided by any local agency.

33 (s) Membership lists or lists of members or owners of interests of
34 units in timeshare projects, subdivisions, camping resorts,
35 condominiums, land developments, or common-interest communities
36 affiliated with such projects, regulated by the department of
37 licensing, in the files or possession of the department.

1 (t) All applications for public employment, including the names of
2 applicants, resumes, and other related materials submitted with respect
3 to an applicant.

4 (u) The residential addresses, residential telephone numbers,
5 personal wireless telephone numbers, personal electronic mail
6 addresses, Social Security numbers, and emergency contact information
7 of employees or volunteers of a public agency, and the names, dates of
8 birth, residential addresses, residential telephone numbers, personal
9 wireless telephone numbers, personal electronic mail addresses, Social
10 Security numbers, and emergency contact information of dependents of
11 employees or volunteers of a public agency, which are held by any
12 public agency in personnel records, public employment related records,
13 or volunteer rosters, or are included in any mailing list of employees
14 or volunteers of any public agency. For purposes of this subsection,
15 "employees" includes independent provider home care workers as defined
16 in RCW 74.39A.240.

17 (v) The residential addresses and residential telephone numbers of
18 the customers of a public utility contained in the records or lists
19 held by the public utility of which they are customers, except that
20 this information may be released to the division of child support or
21 the agency or firm providing child support enforcement for another
22 state under Title IV-D of the federal social security act, for the
23 establishment, enforcement, or modification of a support order.

24 (w)(i) The federal social security number of individuals governed
25 under chapter 18.130 RCW maintained in the files of the department of
26 health, except this exemption does not apply to requests made directly
27 to the department from federal, state, and local agencies of
28 government, and national and state licensing, credentialing,
29 investigatory, disciplinary, and examination organizations; (ii) the
30 current residential address and current residential telephone number of
31 a health care provider governed under chapter 18.130 RCW maintained in
32 the files of the department, if the provider requests that this
33 information be withheld from public inspection and copying, and
34 provides to the department an accurate alternate or business address
35 and business telephone number. On or after January 1, 1995, the
36 current residential address and residential telephone number of a
37 health care provider governed under RCW 18.130.040 maintained in the
38 files of the department shall automatically be withheld from public

1 inspection and copying unless the provider specifically requests the
2 information be released, and except as provided for under RCW
3 42.17.260(9).

4 (x) Information obtained by the board of pharmacy as provided in
5 RCW 69.45.090.

6 (y) Information obtained by the board of pharmacy or the department
7 of health and its representatives as provided in RCW 69.41.044,
8 69.41.280, and 18.64.420.

9 (z) Financial information, business plans, examination reports, and
10 any information produced or obtained in evaluating or examining a
11 business and industrial development corporation organized or seeking
12 certification under chapter 31.24 RCW.

13 (aa) Financial and commercial information supplied to the state
14 investment board by any person when the information relates to the
15 investment of public trust or retirement funds and when disclosure
16 would result in loss to such funds or in private loss to the providers
17 of this information.

18 (bb) Financial and valuable trade information under RCW 51.36.120.

19 (cc) Client records maintained by an agency that is a domestic
20 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
21 crisis center as defined in RCW 70.125.030.

22 (dd) Information that identifies a person who, while an agency
23 employee: (i) Seeks advice, under an informal process established by
24 the employing agency, in order to ascertain his or her rights in
25 connection with a possible unfair practice under chapter 49.60 RCW
26 against the person; and (ii) requests his or her identity or any
27 identifying information not be disclosed.

28 (ee) Investigative records compiled by an employing agency
29 conducting a current investigation of a possible unfair practice under
30 chapter 49.60 RCW or of a possible violation of other federal, state,
31 or local laws prohibiting discrimination in employment.

32 (ff) Business related information protected from public inspection
33 and copying under RCW 15.86.110.

34 (gg) Financial, commercial, operations, and technical and research
35 information and data submitted to or obtained by the clean Washington
36 center in applications for, or delivery of, program services under
37 chapter 70.95H RCW.

1 (hh) Information and documents created specifically for, and
2 collected and maintained by, a quality improvement committee pursuant
3 to RCW 43.70.510 or 70.41.200, by a peer review committee under RCW
4 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640
5 or 18.20.390, and notifications or reports of adverse events or
6 incidents made under section 106 or 108 of this act, regardless of
7 which agency is in possession of the information and documents.

8 (ii) Personal information in files maintained in a data base
9 created under RCW 43.07.360.

10 (jj) Financial and commercial information requested by the public
11 stadium authority from any person or organization that leases or uses
12 the stadium and exhibition center as defined in RCW 36.102.010.

13 (kk) Names of individuals residing in emergency or transitional
14 housing that are furnished to the department of revenue or a county
15 assessor in order to substantiate a claim for property tax exemption
16 under RCW 84.36.043.

17 (ll) The names, residential addresses, residential telephone
18 numbers, and other individually identifiable records held by an agency
19 in relation to a vanpool, carpool, or other ride-sharing program or
20 service. However, these records may be disclosed to other persons who
21 apply for ride-matching services and who need that information in order
22 to identify potential riders or drivers with whom to share rides.

23 (mm) The personally identifying information of current or former
24 participants or applicants in a paratransit or other transit service
25 operated for the benefit of persons with disabilities or elderly
26 persons.

27 (nn) The personally identifying information of persons who acquire
28 and use transit passes and other fare payment media including, but not
29 limited to, stored value smart cards and magnetic strip cards, except
30 that an agency may disclose this information to a person, employer,
31 educational institution, or other entity that is responsible, in whole
32 or in part, for payment of the cost of acquiring or using a transit
33 pass or other fare payment media, or to the news media when reporting
34 on public transportation or public safety. This information may also
35 be disclosed at the agency's discretion to governmental agencies or
36 groups concerned with public transportation or public safety.

37 (oo) Proprietary financial and commercial information that the
38 submitting entity, with review by the department of health,

1 specifically identifies at the time it is submitted and that is
2 provided to or obtained by the department of health in connection with
3 an application for, or the supervision of, an antitrust exemption
4 sought by the submitting entity under RCW 43.72.310. If a request for
5 such information is received, the submitting entity must be notified of
6 the request. Within ten business days of receipt of the notice, the
7 submitting entity shall provide a written statement of the continuing
8 need for confidentiality, which shall be provided to the requester.
9 Upon receipt of such notice, the department of health shall continue to
10 treat information designated under this section as exempt from
11 disclosure. If the requester initiates an action to compel disclosure
12 under this chapter, the submitting entity must be joined as a party to
13 demonstrate the continuing need for confidentiality.

14 (pp) Records maintained by the board of industrial insurance
15 appeals that are related to appeals of crime victims' compensation
16 claims filed with the board under RCW 7.68.110.

17 (qq) Financial and commercial information supplied by or on behalf
18 of a person, firm, corporation, or entity under chapter 28B.95 RCW
19 relating to the purchase or sale of tuition units and contracts for the
20 purchase of multiple tuition units.

21 (rr) Any records of investigative reports prepared by any state,
22 county, municipal, or other law enforcement agency pertaining to sex
23 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
24 defined in RCW 71.09.020, which have been transferred to the Washington
25 association of sheriffs and police chiefs for permanent electronic
26 retention and retrieval pursuant to RCW 40.14.070(2)(b).

27 (ss) Credit card numbers, debit card numbers, electronic check
28 numbers, card expiration dates, or bank or other financial account
29 numbers, except when disclosure is expressly required by or governed by
30 other law.

31 (tt) Financial information, including but not limited to account
32 numbers and values, and other identification numbers supplied by or on
33 behalf of a person, firm, corporation, limited liability company,
34 partnership, or other entity related to an application for a horse
35 racing license submitted pursuant to RCW 67.16.260(1)(b), liquor
36 license, gambling license, or lottery retail license.

37 (uu) Records maintained by the employment security department and

1 subject to chapter 50.13 RCW if provided to another individual or
2 organization for operational, research, or evaluation purposes.

3 (vv) Individually identifiable information received by the work
4 force training and education coordinating board for research or
5 evaluation purposes.

6 (ww) Those portions of records assembled, prepared, or maintained
7 to prevent, mitigate, or respond to criminal terrorist acts, which are
8 acts that significantly disrupt the conduct of government or of the
9 general civilian population of the state or the United States and that
10 manifest an extreme indifference to human life, the public disclosure
11 of which would have a substantial likelihood of threatening public
12 safety, consisting of:

13 (i) Specific and unique vulnerability assessments or specific and
14 unique response or deployment plans, including compiled underlying data
15 collected in preparation of or essential to the assessments, or to the
16 response or deployment plans; and

17 (ii) Records not subject to public disclosure under federal law
18 that are shared by federal or international agencies, and information
19 prepared from national security briefings provided to state or local
20 government officials related to domestic preparedness for acts of
21 terrorism.

22 (xx) Commercial fishing catch data from logbooks required to be
23 provided to the department of fish and wildlife under RCW 77.12.047,
24 when the data identifies specific catch location, timing, or
25 methodology and the release of which would result in unfair competitive
26 disadvantage to the commercial fisher providing the catch data.
27 However, this information may be released to government agencies
28 concerned with the management of fish and wildlife resources.

29 (yy) Sensitive wildlife data obtained by the department of fish and
30 wildlife. However, sensitive wildlife data may be released to
31 government agencies concerned with the management of fish and wildlife
32 resources. Sensitive wildlife data includes:

33 (i) The nesting sites or specific locations of endangered species
34 designated under RCW 77.12.020, or threatened or sensitive species
35 classified by rule of the department of fish and wildlife;

36 (ii) Radio frequencies used in, or locational data generated by,
37 telemetry studies; or

1 (iii) Other location data that could compromise the viability of a
2 specific fish or wildlife population, and where at least one of the
3 following criteria are met:

4 (A) The species has a known commercial or black market value;

5 (B) There is a history of malicious take of that species; or

6 (C) There is a known demand to visit, take, or disturb, and the
7 species behavior or ecology renders it especially vulnerable or the
8 species has an extremely limited distribution and concentration.

9 (zz) The personally identifying information of persons who acquire
10 recreational licenses under RCW 77.32.010 or commercial licenses under
11 chapter 77.65 or 77.70 RCW, except name, address of contact used by the
12 department, and type of license, endorsement, or tag. However, the
13 department of fish and wildlife may disclose personally identifying
14 information to:

15 (i) Government agencies concerned with the management of fish and
16 wildlife resources;

17 (ii) The department of social and health services, child support
18 division, and to the department of licensing in order to implement RCW
19 77.32.014 and 46.20.291; and

20 (iii) Law enforcement agencies for the purpose of firearm
21 possession enforcement under RCW 9.41.040.

22 (aaa)(i) Discharge papers of a veteran of the armed forces of the
23 United States filed at the office of the county auditor before July 1,
24 2002, that have not been commingled with other recorded documents.
25 These records will be available only to the veteran, the veteran's next
26 of kin, a deceased veteran's properly appointed personal representative
27 or executor, a person holding that veteran's general power of attorney,
28 or to anyone else designated in writing by that veteran to receive the
29 records.

30 (ii) Discharge papers of a veteran of the armed forces of the
31 United States filed at the office of the county auditor before July 1,
32 2002, that have been commingled with other records, if the veteran has
33 recorded a "request for exemption from public disclosure of discharge
34 papers" with the county auditor. If such a request has been recorded,
35 these records may be released only to the veteran filing the papers,
36 the veteran's next of kin, a deceased veteran's properly appointed
37 personal representative or executor, a person holding the veteran's

1 general power of attorney, or anyone else designated in writing by the
2 veteran to receive the records.

3 (iii) Discharge papers of a veteran filed at the office of the
4 county auditor after June 30, 2002, are not public records, but will be
5 available only to the veteran, the veteran's next of kin, a deceased
6 veteran's properly appointed personal representative or executor, a
7 person holding the veteran's general power of attorney, or anyone else
8 designated in writing by the veteran to receive the records.

9 (iv) For the purposes of this subsection (1)(aaa), next of kin of
10 deceased veterans have the same rights to full access to the record.
11 Next of kin are the veteran's widow or widower who has not remarried,
12 son, daughter, father, mother, brother, and sister.

13 (bbb) Those portions of records containing specific and unique
14 vulnerability assessments or specific and unique emergency and escape
15 response plans at a city, county, or state adult or juvenile
16 correctional facility, the public disclosure of which would have a
17 substantial likelihood of threatening the security of a city, county,
18 or state adult or juvenile correctional facility or any individual's
19 safety.

20 (ccc) Information compiled by school districts or schools in the
21 development of their comprehensive safe school plans pursuant to RCW
22 28A.320.125, to the extent that they identify specific vulnerabilities
23 of school districts and each individual school.

24 (ddd) Information regarding the infrastructure and security of
25 computer and telecommunications networks, consisting of security
26 passwords, security access codes and programs, access codes for secure
27 software applications, security and service recovery plans, security
28 risk assessments, and security test results to the extent that they
29 identify specific system vulnerabilities.

30 (eee) Information obtained and exempted or withheld from public
31 inspection by the health care authority under RCW 41.05.026, whether
32 retained by the authority, transferred to another state purchased
33 health care program by the authority, or transferred by the authority
34 to a technical review committee created to facilitate the development,
35 acquisition, or implementation of state purchased health care under
36 chapter 41.05 RCW.

37 (fff) Proprietary data, trade secrets, or other information that
38 relates to: (i) A vendor's unique methods of conducting business; (ii)

1 data unique to the product or services of the vendor; or (iii)
2 determining prices or rates to be charged for services, submitted by
3 any vendor to the department of social and health services for purposes
4 of the development, acquisition, or implementation of state purchased
5 health care as defined in RCW 41.05.011.

6 (ggg) The personally identifying information of persons who acquire
7 and use transponders or other technology to facilitate payment of
8 tolls. This information may be disclosed in aggregate form as long as
9 the data does not contain any personally identifying information. For
10 these purposes aggregate data may include the census tract of the
11 account holder as long as any individual personally identifying
12 information is not released. Personally identifying information may be
13 released to law enforcement agencies only for toll enforcement
14 purposes. Personally identifying information may be released to law
15 enforcement agencies for other purposes only if the request is
16 accompanied by a court order.

17 (hhh) Financial, commercial, operations, and technical and research
18 information and data submitted to or obtained by the life sciences
19 discovery fund authority in applications for, or delivery of, grants
20 under chapter 43.350 RCW, to the extent that such information, if
21 revealed, would reasonably be expected to result in private loss to the
22 providers of this information.

23 (iii) Records of mediation communications that are privileged under
24 chapter 7.07 RCW.

25 (2) Except for information described in subsection (1)(c)(i) of
26 this section and confidential income data exempted from public
27 inspection pursuant to RCW 84.40.020, the exemptions of this section
28 are inapplicable to the extent that information, the disclosure of
29 which would violate personal privacy or vital governmental interests,
30 can be deleted from the specific records sought. No exemption may be
31 construed to permit the nondisclosure of statistical information not
32 descriptive of any readily identifiable person or persons.

33 (3) Inspection or copying of any specific records exempt under the
34 provisions of this section may be permitted if the superior court in
35 the county in which the record is maintained finds, after a hearing
36 with notice thereof to every person in interest and the agency, that
37 the exemption of such records is clearly unnecessary to protect any
38 individual's right of privacy or any vital governmental function.

1 (4) Agency responses refusing, in whole or in part, inspection of
2 any public record shall include a statement of the specific exemption
3 authorizing the withholding of the record (or part) and a brief
4 explanation of how the exemption applies to the record withheld.

5 **Sec. 112.** RCW 42.56.360 and 2005 c 274 s 416 are each amended to
6 read as follows:

7 (1) The following health care information is exempt from disclosure
8 under this chapter:

9 (a) Information obtained by the board of pharmacy as provided in
10 RCW 69.45.090;

11 (b) Information obtained by the board of pharmacy or the department
12 of health and its representatives as provided in RCW 69.41.044,
13 69.41.280, and 18.64.420;

14 (c) Information and documents created specifically for, and
15 collected and maintained by a quality improvement committee under RCW
16 43.70.510 or 70.41.200, or by a peer review committee under RCW
17 4.24.250, and notifications or reports of adverse events or incidents
18 made under section 106 or 108 of this act, regardless of which agency
19 is in possession of the information and documents;

20 (d)(i) Proprietary financial and commercial information that the
21 submitting entity, with review by the department of health,
22 specifically identifies at the time it is submitted and that is
23 provided to or obtained by the department of health in connection with
24 an application for, or the supervision of, an antitrust exemption
25 sought by the submitting entity under RCW 43.72.310;

26 (ii) If a request for such information is received, the submitting
27 entity must be notified of the request. Within ten business days of
28 receipt of the notice, the submitting entity shall provide a written
29 statement of the continuing need for confidentiality, which shall be
30 provided to the requester. Upon receipt of such notice, the department
31 of health shall continue to treat information designated under this
32 subsection (1)(d) as exempt from disclosure;

33 (iii) If the requester initiates an action to compel disclosure
34 under this chapter, the submitting entity must be joined as a party to
35 demonstrate the continuing need for confidentiality;

36 (e) Records of the entity obtained in an action under RCW 18.71.300
37 through 18.71.340;

1 (f) Except for published statistical compilations and reports
2 relating to the infant mortality review studies that do not identify
3 individual cases and sources of information, any records or documents
4 obtained, prepared, or maintained by the local health department for
5 the purposes of an infant mortality review conducted by the department
6 of health under RCW 70.05.170; and

7 (g) Complaints filed under chapter 18.130 RCW after July 27, 1997,
8 to the extent provided in RCW 18.130.095(1).

9 (2) Chapter 70.02 RCW applies to public inspection and copying of
10 health care information of patients.

11 **Coordinated Quality Improvement Programs**

12 **Sec. 113.** RCW 43.70.510 and 2004 c 145 s 2 are each amended to
13 read as follows:

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

24 (b) All such programs shall comply with the requirements of RCW
25 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to
26 reflect the structural organization of the institution, facility,
27 professional societies or organizations, health care service
28 contractors, health maintenance organizations, health carriers, or any
29 other person or entity providing health care coverage under chapter
30 48.42 RCW that is subject to the jurisdiction and regulation of any
31 state agency or any subdivision thereof, unless an alternative quality
32 improvement program substantially equivalent to RCW 70.41.200(1)(a) is
33 developed. All such programs, whether complying with the requirement
34 set forth in RCW 70.41.200(1)(a) or in the form of an alternative
35 program, must be approved by the department before the discovery
36 limitations provided in subsections (3) and (4) of this section and the

1 exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section
2 shall apply. In reviewing plans submitted by licensed entities that
3 are associated with physicians' offices, the department shall ensure
4 that the exemption under RCW 42.17.310(1)(hh) and the discovery
5 limitations of this section are applied only to information and
6 documents related specifically to quality improvement activities
7 undertaken by the licensed entity.

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

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

36 (4) Information and documents, including complaints and incident
37 reports, created specifically for, and collected, and maintained by a
38 quality improvement committee are not subject to discovery or

1 introduction into evidence in any civil action, and no person who was
2 in attendance at a meeting of such committee or who participated in the
3 creation, collection, or maintenance of information or documents
4 specifically for the committee shall be permitted or required to
5 testify in any civil action as to the content of such proceedings or
6 the documents and information prepared specifically for the committee.
7 This subsection does not preclude: (a) In any civil action, the
8 discovery of the identity of persons involved in the medical care that
9 is the basis of the civil action whose involvement was independent of
10 any quality improvement activity; (b) in any civil action, the
11 testimony of any person concerning the facts that form the basis for
12 the institution of such proceedings of which the person had personal
13 knowledge acquired independently of such proceedings; (c) in any civil
14 action by a health care provider regarding the restriction or
15 revocation of that individual's clinical or staff privileges,
16 introduction into evidence information collected and maintained by
17 quality improvement committees regarding such health care provider; (d)
18 in any civil action challenging the termination of a contract by a
19 state agency with any entity maintaining a coordinated quality
20 improvement program under this section if the termination was on the
21 basis of quality of care concerns, introduction into evidence of
22 information created, collected, or maintained by the quality
23 improvement committees of the subject entity, which may be under terms
24 of a protective order as specified by the court; (e) in any civil
25 action, disclosure of the fact that staff privileges were terminated or
26 restricted, including the specific restrictions imposed, if any and the
27 reasons for the restrictions; or (f) in any civil action, discovery and
28 introduction into evidence of the patient's medical records required by
29 rule of the department of health to be made regarding the care and
30 treatment received.

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

34 (6) A coordinated quality improvement program may share information
35 and documents, including complaints and incident reports, created
36 specifically for, and collected and maintained by a quality improvement
37 committee or a peer review committee under RCW 4.24.250 with one or
38 more other coordinated quality improvement programs maintained in

1 accordance with this section or with RCW 70.41.200 or a peer review
2 committee under RCW 4.24.250, for the improvement of the quality of
3 health care services rendered to patients and the identification and
4 prevention of medical malpractice. The privacy protections of chapter
5 70.02 RCW and the federal health insurance portability and
6 accountability act of 1996 and its implementing regulations apply to
7 the sharing of individually identifiable patient information held by a
8 coordinated quality improvement program. Any rules necessary to
9 implement this section shall meet the requirements of applicable
10 federal and state privacy laws. Information and documents disclosed by
11 one coordinated quality improvement program to another coordinated
12 quality improvement program or a peer review committee under RCW
13 4.24.250 and any information and documents created or maintained as a
14 result of the sharing of information and documents shall not be subject
15 to the discovery process and confidentiality shall be respected as
16 required by subsection (4) of this section and RCW 4.24.250.

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

19 **Prescription Legibility**

20 NEW SECTION. **Sec. 114.** The legislature finds that prescription
21 drug errors occur because the pharmacist or nurse cannot read the
22 prescription from the physician or other provider with prescriptive
23 authority. The legislature further finds that legible prescriptions
24 can prevent these errors.

25 **Sec. 115.** RCW 69.41.010 and 2003 c 257 s 2 and 2003 c 140 s 11 are
26 each reenacted and amended to read as follows:

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

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

32 (a) A practitioner; or

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

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

7 (3) "Deliver" or "delivery" means the actual, constructive, or
8 attempted transfer from one person to another of a legend drug, whether
9 or not there is an agency relationship.

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

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

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

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

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

19 (9) "Drug" means:

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

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

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

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

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

37 (11) "In-home care settings" include an individual's place of

1 temporary and permanent residence, but does not include acute care or
2 skilled nursing facilities, and does not include community-based care
3 settings.

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

7 (13) "Legible prescription" means a prescription or medication
8 order issued by a practitioner that is capable of being read and
9 understood by the pharmacist filling the prescription or the nurse or
10 other practitioner implementing the medication order. A prescription
11 must be hand printed, typewritten, or electronically generated.

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

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

30 (16) "Practitioner" means:

31 (a) A physician under chapter 18.71 RCW, an osteopathic physician
32 or an osteopathic physician and surgeon under chapter 18.57 RCW, a
33 dentist under chapter 18.32 RCW, a podiatric physician and surgeon
34 under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a
35 registered nurse, advanced registered nurse practitioner, or licensed
36 practical nurse under chapter 18.79 RCW, an optometrist under chapter
37 18.53 RCW who is certified by the optometry board under RCW 18.53.010,
38 an osteopathic physician assistant under chapter 18.57A RCW, a

1 physician assistant under chapter 18.71A RCW, a naturopath licensed
2 under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or,
3 when acting under the required supervision of a dentist licensed under
4 chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

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

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

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

15 **PART II - INSURANCE INDUSTRY REFORM**

16 **Medical Malpractice Closed Claim Reporting**

17 NEW SECTION. **Sec. 201.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires otherwise.

19 (1) "Claim" means a demand for monetary damages for injury or death
20 caused by medical malpractice, and a voluntary indemnity payment for
21 injury or death caused by medical malpractice made in the absence of a
22 demand for monetary damages.

23 (2) "Claimant" means a person, including a decedent's estate, who
24 is seeking or has sought monetary damages for injury or death caused by
25 medical malpractice.

26 (3) "Closed claim" means a claim that has been settled or otherwise
27 disposed of by the insuring entity, self-insurer, facility, or
28 provider. A claim may be closed with or without an indemnity payment
29 to a claimant.

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

31 (5) "Economic damages" has the same meaning as in RCW
32 4.56.250(1)(a).

33 (6) "Health care facility" or "facility" means a clinic, diagnostic
34 center, hospital, laboratory, mental health center, nursing home,

1 office, surgical facility, treatment facility, or similar place where
2 a health care provider provides health care to patients, and includes
3 entities described in RCW 7.70.020(3).

4 (7) "Health care provider" or "provider" has the same meaning as in
5 RCW 7.70.020 (1) and (2).

6 (8) "Insuring entity" means:

7 (a) An insurer;

8 (b) A joint underwriting association;

9 (c) A risk retention group; or

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

11 (9) "Medical malpractice" means an actual or alleged negligent act,
12 error, or omission in providing or failing to provide health care
13 services that is actionable under chapter 7.70 RCW.

14 (10) "Noneconomic damages" has the same meaning as in RCW
15 4.56.250(1)(b).

16 (11) "Self-insurer" means any health care provider, facility, or
17 other individual or entity that assumes operational or financial risk
18 for claims of medical malpractice.

19 NEW SECTION. **Sec. 202.** (1) For claims closed on or after January
20 1, 2008:

21 (a) Every insuring entity or self-insurer that provides medical
22 malpractice insurance to any facility or provider in Washington state
23 must report each medical malpractice closed claim to the commissioner.

24 (b) If a claim is not covered by an insuring entity or self-
25 insurer, the facility or provider named in the claim must report it to
26 the commissioner after a final claim disposition has occurred due to a
27 court proceeding or a settlement by the parties. Instances in which a
28 claim may not be covered by an insuring entity or self-insurer include,
29 but are not limited to, situations in which the:

30 (i) Facility or provider did not buy insurance or maintained a
31 self-insured retention that was larger than the final judgment or
32 settlement;

33 (ii) Claim was denied by an insuring entity or self-insurer because
34 it did not fall within the scope of the insurance coverage agreement;
35 or

36 (iii) Annual aggregate coverage limits had been exhausted by other
37 claim payments.

1 (2) Beginning in 2009, reports required under subsection (1) of
2 this section must be filed by March 1st, and include data for all
3 claims closed in the preceding calendar year and any adjustments to
4 data reported in prior years. The commissioner may adopt rules that
5 require insuring entities, self-insurers, facilities, or providers to
6 file closed claim data electronically.

7 (3) The commissioner may impose a fine of up to two hundred fifty
8 dollars per day against any insuring entity that violates the
9 requirements of this section.

10 (4) The department of health, department of licensing or department
11 of social and health services may require a provider or facility to
12 take corrective action to assure compliance with the requirements of
13 this section.

14 NEW SECTION. **Sec. 203.** Reports required under section 202 of this
15 act must contain the following information in a form and coding
16 protocol prescribed by the commissioner that, to the extent possible
17 and still fulfill the purposes of this chapter, are consistent with the
18 format for data reported to the national practitioner data bank:

19 (1) Claim and incident identifiers, including:

20 (a) A claim identifier assigned to the claim by the insuring
21 entity, self-insurer, facility, or provider; and

22 (b) An incident identifier if companion claims have been made by a
23 claimant. For the purposes of this section, "companion claims" are
24 separate claims involving the same incident of medical malpractice made
25 against other providers or facilities;

26 (2) The medical specialty of the provider who was primarily
27 responsible for the incident of medical malpractice that led to the
28 claim;

29 (3) The type of health care facility where the medical malpractice
30 incident occurred;

31 (4) The primary location within a facility where the medical
32 malpractice incident occurred;

33 (5) The geographic location, by city and county, where the medical
34 malpractice incident occurred;

35 (6) The injured person's sex and age on the incident date;

36 (7) The severity of malpractice injury using the national
37 practitioner data bank severity scale;

1 (8) The dates of:
2 (a) The incident that was the proximate cause of the claim;
3 (b) Notice to the insuring entity, self-insurer, facility, or
4 provider;
5 (c) Suit, if filed;
6 (d) Final indemnity payment, if any; and
7 (e) Final action by the insuring entity, self-insurer, facility, or
8 provider to close the claim;
9 (9) Settlement information that identifies the timing and final
10 method of claim disposition, including:
11 (a) Claims settled by the parties;
12 (b) Claims disposed of by a court, including the date disposed; or
13 (c) Claims disposed of by alternative dispute resolution, such as
14 arbitration, mediation, private trial, and other common dispute
15 resolution methods; and
16 (d) Whether the settlement occurred before or after trial, if a
17 trial occurred;
18 (10) Specific information about the indemnity payments and defense
19 expenses, as follows:
20 (a) For claims disposed of by a court that result in a verdict or
21 judgment that itemizes damages:
22 (i) The total verdict or judgment;
23 (ii) If there is more than one defendant, the total indemnity paid
24 by or on behalf of this facility or provider;
25 (iii) Economic damages;
26 (iv) Noneconomic damages; and
27 (v) Allocated loss adjustment expense, including but not limited to
28 court costs, attorneys' fees, and costs of expert witnesses; and
29 (b) For claims that do not result in a verdict or judgment that
30 itemizes damages:
31 (i) The total amount of the settlement;
32 (ii) If there is more than one defendant, the total indemnity paid
33 by or on behalf of this facility or provider;
34 (iii) Paid and estimated economic damages; and
35 (iv) Allocated loss adjustment expense, including but not limited
36 to court costs, attorneys' fees, and costs of expert witnesses;
37 (11) The reason for the medical malpractice claim. The reporting

1 entity must use the same allegation group and act or omission codes
2 used for mandatory reporting to the national practitioner data bank;
3 and

4 (12) Any other claim-related data the commissioner determines to be
5 necessary to monitor the medical malpractice marketplace, if such data
6 are reported:

- 7 (a) To the national practitioner data bank; or
- 8 (b) Voluntarily by members of the physician insurers association of
9 America as part of the association's data-sharing project.

10 NEW SECTION. **Sec. 204.** The commissioner must prepare aggregate
11 statistical summaries of closed claims based on data submitted under
12 section 202 of this act.

13 (1) At a minimum, the commissioner must summarize data by calendar
14 year and calendar/incident year. The commissioner may also decide to
15 display data in other ways if the commissioner:

- 16 (a) Protects information as required under section 206(2) of this
17 act; and
- 18 (b) Exempts from disclosure data described in RCW 42.56.400(11).

19 (2) The summaries must be available by April 30th of each year,
20 unless the commissioner notifies legislative committees by March 15th
21 that data are not available and informs the committees when the
22 summaries will be completed.

23 (3) Information included in an individual closed claim report
24 submitted by an insuring entity, self-insurer, provider, or facility
25 under this chapter is confidential and exempt from public disclosure,
26 and the commissioner must not make these data available to the public.

27 NEW SECTION. **Sec. 205.** Beginning in 2010, the commissioner must
28 prepare an annual report that summarizes and analyzes the closed claim
29 reports for medical malpractice filed under sections 202 and 209 of
30 this act and the annual financial reports filed by authorized insurers
31 writing medical malpractice insurance in this state. The commissioner
32 must complete the report by June 30th, unless the commissioner notifies
33 legislative committees by June 1st that data are not available and
34 informs the committees when the summaries will be completed.

35 (1) The report must include:

1 (a) An analysis of reported closed claims from prior years for
2 which data are collected. The analysis must show:

3 (i) Trends in the frequency and severity of claim payments;

4 (ii) A comparison of economic and noneconomic damages;

5 (iii) A distribution of allocated loss adjustment expenses and
6 other legal expenses;

7 (iv) The types of medical malpractice for which claims have been
8 paid; and

9 (v) Any other information the commissioner finds relevant to trends
10 in medical malpractice closed claims if the commissioner:

11 (A) Protects information as required under section 206(2) of this
12 act; and

13 (B) Exempts from disclosure data described in RCW 42.56.400(11);

14 (b) An analysis of the medical malpractice insurance market in
15 Washington state, including:

16 (i) An analysis of the financial reports of the authorized insurers
17 with a combined market share of at least ninety percent of direct
18 written medical malpractice premium in Washington state for the prior
19 calendar year;

20 (ii) A loss ratio analysis of medical malpractice insurance written
21 in Washington state; and

22 (iii) A profitability analysis of the authorized insurers with a
23 combined market share of at least ninety percent of direct written
24 medical malpractice premium in Washington state for the prior calendar
25 year;

26 (c) A comparison of loss ratios and the profitability of medical
27 malpractice insurance in Washington state to other states based on
28 financial reports filed with the national association of insurance
29 commissioners and any other source of information the commissioner
30 deems relevant; and

31 (d) A summary of the rate filings for medical malpractice that have
32 been approved by the commissioner for the prior calendar year,
33 including an analysis of the trend of direct incurred losses as
34 compared to prior years.

35 (2) The commissioner must post reports required by this section on
36 the internet no later than thirty days after they are due.

37 (3) The commissioner may adopt rules that require insuring entities

1 and self-insurers required to report under section 202 of this act and
2 subsection (1)(a) of this section to report data related to:

3 (a) The frequency and severity of closed claims for the reporting
4 period; and

5 (b) Any other closed claim information that helps the commissioner
6 monitor losses and claim development patterns in the Washington state
7 medical malpractice insurance market.

8 NEW SECTION. **Sec. 206.** The commissioner must adopt all rules
9 needed to implement this chapter. The rules must:

10 (1) Identify which insuring entity or self-insurer has the primary
11 obligation to report a closed claim when more than one insuring entity
12 or self-insurer is providing medical malpractice liability coverage to
13 a single health care provider or a single health care facility that has
14 been named in a claim;

15 (2) Protect information that, alone or in combination with other
16 data, could result in the ability to identify a claimant, health care
17 provider, health care facility, or self-insurer involved in a
18 particular claim or collection of claims; and

19 (3) Specify standards and methods for the reporting by claimants,
20 insuring entities, self-insurers, facilities, and providers.

21 NEW SECTION. **Sec. 207.** (1) If the national association of
22 insurance commissioners adopts revised model statistical reporting
23 standards for medical malpractice insurance, the commissioner must
24 analyze the new reporting standards and report this information to the
25 legislature, as follows:

26 (a) An analysis of any differences between the model reporting
27 standards and:

28 (i) Sections 201 through 206 of this act; and

29 (ii) Any statistical plans that the commissioner has adopted under
30 RCW 48.19.370; and

31 (b) Recommendations, if any, about legislative changes necessary to
32 implement the model reporting standards.

33 (2) The commissioner must submit the report required under
34 subsection (1) of this section to the following legislative committees
35 by the first day of December in the year after the national association

1 of insurance commissioners adopts new model medical malpractice
2 reporting standards:

3 (a) The house of representatives committees on health care;
4 financial institutions and insurance; and judiciary; and

5 (b) The senate committees on health and long-term care; financial
6 institutions, housing and consumer protection; and judiciary.

7 NEW SECTION. **Sec. 208.** This chapter does not amend or modify the
8 statistical reporting requirements that apply to insurers under RCW
9 48.19.370.

10 NEW SECTION. **Sec. 209.** A new section is added to chapter 7.70 RCW
11 to read as follows:

12 (1) As used in this section:

13 (a) "Claim" has the same meaning as in section 201(1) of this act.

14 (b) "Claimant" has the same meaning as in section 201(2) of this
15 act.

16 (c) "Commissioner" has the same meaning as in section 201(4) of
17 this act.

18 (d) "Medical malpractice" has the same meaning as in section 201(9)
19 of this act.

20 (2)(a) For claims settled or otherwise disposed of on or after
21 January 1, 2008, the claimant or his or her attorney must report data
22 to the commissioner if any action filed under this chapter results in
23 a final:

24 (i) Judgment in any amount;

25 (ii) Settlement or payment in any amount; or

26 (iii) Disposition resulting in no indemnity payment.

27 (b) As used in this subsection, "data" means:

28 (i) The date of the incident of medical malpractice that was the
29 principal cause of the action;

30 (ii) The principal county in which the incident of medical
31 malpractice occurred;

32 (iii) The date of suit, if filed;

33 (iv) The injured person's sex and age on the incident date; and

34 (v) Specific information about the disposition, judgment, or
35 settlement, including:

36 (A) The date and amount of any judgment or settlement;

- 1 (B) Court costs;
- 2 (C) Attorneys' fees; and
- 3 (D) Costs of expert witnesses.

4 **Sec. 210.** RCW 42.56.400 and 2005 c 274 s 420 are each amended to
5 read as follows:

6 The following information relating to insurance and financial
7 institutions is exempt from disclosure under this chapter:

8 (1) Records maintained by the board of industrial insurance appeals
9 that are related to appeals of crime victims' compensation claims filed
10 with the board under RCW 7.68.110;

11 (2) Information obtained and exempted or withheld from public
12 inspection by the health care authority under RCW 41.05.026, whether
13 retained by the authority, transferred to another state purchased
14 health care program by the authority, or transferred by the authority
15 to a technical review committee created to facilitate the development,
16 acquisition, or implementation of state purchased health care under
17 chapter 41.05 RCW;

18 (3) The names and individual identification data of all viators
19 regulated by the insurance commissioner under chapter 48.102 RCW;

20 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

21 (5) Information provided under RCW 48.05.510 through 48.05.535,
22 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
23 through 48.46.625;

24 (6) Information gathered under chapter 19.85 RCW or RCW 34.05.328
25 that can be identified to a particular business;

26 (7) Examination reports and information obtained by the department
27 of financial institutions from banks under RCW 30.04.075, from savings
28 banks under RCW 32.04.220, from savings and loan associations under RCW
29 33.04.110, from credit unions under RCW 31.12.565, from check cashers
30 and sellers under RCW 31.45.030(3), and from securities brokers and
31 investment advisers under RCW 21.20.100, all of which is confidential
32 and privileged information;

33 (8) Information provided to the insurance commissioner under RCW
34 48.110.040(3);

35 (9) Documents, materials, or information obtained by the insurance
36 commissioner under RCW 48.02.065, all of which are confidential and
37 privileged; (~~and~~)

1 (10) Confidential proprietary and trade secret information provided
2 to the commissioner under RCW 48.31C.020 through 48.31C.050 and
3 48.31C.070; and

4 (11) Data filed under sections 202, 203, 205, and 209 of this act
5 that, alone or in combination with any other data, may reveal the
6 identity of a claimant, health care provider, health care facility,
7 insuring entity, or self-insurer involved in a particular claim or a
8 collection of claims. For the purposes of this subsection:

9 (a) "Claimant" has the same meaning as in section 201(2) of this
10 act.

11 (b) "Health care facility" has the same meaning as in section
12 201(6) of this act.

13 (c) "Health care provider" has the same meaning as in section
14 201(7) of this act.

15 (d) "Insuring entity" has the same meaning as in section 201(8) of
16 this act.

17 (e) "Self-insurer" has the same meaning as in section 201(11) of
18 this act.

19 **Underwriting Standards**

20 NEW SECTION. Sec. 211. A new section is added to chapter 48.18
21 RCW to read as follows:

22 (1) For the purposes of this section:

23 (a) "Affiliate" has the same meaning as in RCW 48.31B.005(1).

24 (b) "Claim" means a demand for monetary damages by a claimant.

25 (c) "Claimant" means a person, including a decedent's estate, who
26 is seeking or has sought monetary damages for injury or death caused by
27 medical malpractice.

28 (d) "Tier" has the same meaning as in RCW 48.18.545(1)(h).

29 (e) "Underwrite" or "underwriting" means the process of selecting,
30 rejecting, or pricing a risk, and includes each of these activities:

31 (i) Evaluation, selection, and classification of risk, including
32 placing a risk with an affiliate insurer that has higher rates and/or
33 rating plan components that will result in higher premiums;

34 (ii) Application of classification plans, rates, rating rules, and
35 rating tiers to an insured risk; and

36 (iii) Determining eligibility for:

1 (A) Insurance coverage provisions;

2 (B) Higher policy limits; or

3 (C) Premium payment plans.

4 (2) During each underwriting process, an insurer may consider the
5 following factors only in combination with other substantive
6 underwriting factors:

7 (a) An insured has inquired about the nature or scope of coverage
8 under a medical malpractice insurance policy;

9 (b) An insured has notified their insurer about an incident that
10 may be covered under the terms of their medical malpractice insurance
11 policy, and that incident does not result in a claim; or

12 (c) A claim made against an insured was closed by the insurer
13 without payment. An insurer may consider the effect of multiple claims
14 if they have a significant effect on the insured's risk profile.

15 (3) If any underwriting activity related to the insured's risk
16 profile results in higher premiums as described under subsection (1)(e)
17 (i) and (ii) of this section or reduced coverage as described under
18 subsection (1)(e)(iii) of this section, the insurer must provide
19 written notice to the insured, in clear and simple language, that
20 describes the significant risk factors which led to the underwriting
21 action. The commissioner must adopt rules that define the components
22 of a risk profile that require notice under this subsection.

23 **Sec. 212.** RCW 48.18.290 and 1997 c 85 s 1 are each amended to read
24 as follows:

25 (1) Cancellation by the insurer of any policy which by its terms is
26 cancellable at the option of the insurer, or of any binder based on
27 such policy which does not contain a clearly stated expiration date,
28 may be effected as to any interest only upon compliance with the
29 following:

30 ~~(a) ((Written notice of such cancellation, accompanied by the
31 actual reason therefor, must be actually delivered or mailed to the
32 named insured not less than forty five days prior to the effective date
33 of the cancellation except for cancellation of insurance policies for
34 nonpayment of premiums, which notice shall be not less than ten days
35 prior to such date and except for cancellation of fire insurance
36 policies under chapter 48.53 RCW, which notice shall not be less than~~

1 ~~five days prior to such date;))~~ For all insurance policies other than
2 medical malpractice insurance policies or fire insurance policies
3 canceled under RCW 48.53.040:

4 (i) The insurer must deliver or mail written notice of cancellation
5 to the named insured at least forty-five days before the effective date
6 of the cancellation; and

7 (ii) The cancellation notice must include the insurer's actual
8 reason for canceling the policy.

9 (b) For medical malpractice insurance policies:

10 (i) The insurer must deliver or mail written notice of the
11 cancellation to the named insured at least ninety days before the
12 effective date of the cancellation; and

13 (ii) The cancellation notice must include the insurer's actual
14 reason for canceling the policy and describe the significant risk
15 factors that led to the insurer's underwriting action, as defined under
16 section 211(1)(e) of this act.

17 (c) If an insurer cancels a policy described under (a) or (b) of
18 this subsection for nonpayment of premium, the insurer must deliver or
19 mail the cancellation notice to the named insured at least ten days
20 before the effective date of the cancellation.

21 (d) If an insurer cancels a fire insurance policy under RCW
22 48.53.040, the insurer must deliver or mail the cancellation notice to
23 the named insured at least five days before the effective date of the
24 cancellation.

25 (e) Like notice must also be so delivered or mailed to each
26 mortgagee, pledgee, or other person shown by the policy to have an
27 interest in any loss which may occur thereunder. For purposes of this
28 subsection (1)((~~b~~)) (e), "delivered" includes electronic transmittal,
29 facsimile, or personal delivery.

30 (2) The mailing of any such notice shall be effected by depositing
31 it in a sealed envelope, directed to the addressee at his or her last
32 address as known to the insurer or as shown by the insurer's records,
33 with proper prepaid postage affixed, in a letter depository of the
34 United States post office. The insurer shall retain in its records any
35 such item so mailed, together with its envelope, which was returned by
36 the post office upon failure to find, or deliver the mailing to, the
37 addressee.

1 (3) The affidavit of the individual making or supervising such a
2 mailing, shall constitute prima facie evidence of such facts of the
3 mailing as are therein affirmed.

4 (4) The portion of any premium paid to the insurer on account of
5 the policy, unearned because of the cancellation and in amount as
6 computed on the pro rata basis, must be actually paid to the insured or
7 other person entitled thereto as shown by the policy or by any
8 endorsement thereon, or be mailed to the insured or such person as soon
9 as possible, and no later than forty-five days after the date of notice
10 of cancellation to the insured for homeowners', dwelling fire, and
11 private passenger auto. Any such payment may be made by cash, or by
12 check, bank draft, or money order.

13 (5) This section shall not apply to contracts of life or disability
14 insurance without provision for cancellation prior to the date to which
15 premiums have been paid, or to contracts of insurance procured under
16 the provisions of chapter 48.15 RCW.

17 **Sec. 213.** RCW 48.18.2901 and 2002 c 347 s 1 are each amended to
18 read as follows:

19 (1) Each insurer (~~((shall be required to))~~) must renew any (~~(contract~~
20 ~~of))~~) insurance policy subject to RCW 48.18.290 unless one of the
21 following situations exists:

22 (~~((The insurer gives the named insured at least forty five days'~~
23 ~~notice in writing as provided for in RCW 48.18.290, that it proposes to~~
24 ~~refuse to renew the insurance contract upon its expiration date; and~~
25 ~~sets forth in that writing the actual reason for refusing to renew))~~)

26 (i) For all insurance policies subject to RCW 48.18.290(1)(a):

27 (A) The insurer must deliver or mail written notice of nonrenewal
28 to the named insured at least forty-five days before the expiration
29 date of the policy; and

30 (B) The notice must include the insurer's actual reason for
31 refusing to renew the policy.

32 (ii) For medical malpractice insurance policies subject to RCW
33 48.18.290(1)(b):

34 (A) The insurer must deliver or mail written notice of the
35 nonrenewal to the named insured at least ninety days before the
36 expiration date of the policy; and

1 (B) The notice must include the insurer's actual reason for
2 refusing to renew the policy and describe the significant risk factors
3 that led to the insurer's underwriting action, as defined under section
4 211(1)(e) of this act;

5 (b) At least twenty days prior to its expiration date, the insurer
6 has communicated, either directly or through its agent, its willingness
7 to renew in writing to the named insured and has included in that
8 writing a statement of the amount of the premium or portion thereof
9 required to be paid by the insured to renew the policy, and the insured
10 fails to discharge when due his or her obligation in connection with
11 the payment of such premium or portion thereof;

12 (c) The insured has procured equivalent coverage prior to the
13 expiration of the policy period;

14 (d) The contract is evidenced by a written binder containing a
15 clearly stated expiration date which has expired according to its
16 terms; or

17 (e) The contract clearly states that it is not renewable, and is
18 for a specific line, subclassification, or type of coverage that is not
19 offered on a renewable basis. This subsection (1)(e) does not restrict
20 the authority of the insurance commissioner under this code.

21 (2) Any insurer failing to include in the notice required by
22 subsection (1)(b) of this section the amount of any increased premium
23 resulting from a change of rates and an explanation of any change in
24 the contract provisions shall renew the policy if so required by that
25 subsection according to the rates and contract provisions applicable to
26 the expiring policy. However, renewal based on the rates and contract
27 provisions applicable to the expiring policy shall not prevent the
28 insurer from making changes in the rates and/or contract provisions of
29 the policy once during the term of its renewal after at least twenty
30 days' advance notice of such change has been given to the named
31 insured.

32 (3) Renewal of a policy shall not constitute a waiver or estoppel
33 with respect to grounds for cancellation which existed before the
34 effective date of such renewal, or with respect to cancellation of fire
35 policies under chapter 48.53 RCW.

36 (4) "Renewal" or "to renew" means the issuance and delivery by an
37 insurer of a contract of insurance replacing at the end of the contract
38 period a contract of insurance previously issued and delivered by the

1 same insurer, or the issuance and delivery of a certificate or notice
2 extending the term of a contract beyond its policy period or term.
3 However, (a) any contract of insurance with a policy period or term of
4 six months or less whether or not made continuous for successive terms
5 upon the payment of additional premiums shall for the purpose of RCW
6 48.18.290 and 48.18.293 through 48.18.295 be considered as if written
7 for a policy period or term of six months; and (b) any policy written
8 for a term longer than one year or any policy with no fixed expiration
9 date, shall, for the purpose of RCW 48.18.290 and 48.18.293 through
10 48.18.295, be considered as if written for successive policy periods or
11 terms of one year.

12 (5) A midterm blanket reduction in rate, approved by the
13 commissioner, for medical malpractice insurance shall not be considered
14 a renewal for purposes of this section.

15 **Prior Approval of Medical Malpractice Insurance Rates**

16 **Sec. 214.** RCW 48.18.100 and 2005 c 223 s 8 are each amended to
17 read as follows:

18 (1) No insurance policy form or application form where written
19 application is required and is to be attached to the policy, or printed
20 life or disability rider or endorsement form may be issued, delivered,
21 or used unless it has been filed with and approved by the commissioner.
22 This section does not apply to:

23 (a) Surety bond forms;

24 (b) Forms filed under RCW 48.18.103;

25 (c) Forms exempted from filing requirements by the commissioner
26 under RCW 48.18.103;

27 (d) Manuscript policies, riders, or endorsements of unique
28 character designed for and used with relation to insurance upon a
29 particular subject; or

30 (e) Contracts of insurance procured under the provisions of chapter
31 48.15 RCW.

32 (2) Every such filing containing a certification, in a form
33 approved by the commissioner, by either the chief executive officer of
34 the insurer or by an actuary who is a member of the American academy of
35 actuaries, attesting that the filing complies with Title 48 RCW and
36 Title 284 of the Washington Administrative Code, may be used by the

1 insurer immediately after filing with the commissioner. The
2 commissioner may order an insurer to cease using a certified form upon
3 the grounds set forth in RCW 48.18.110. This subsection does not apply
4 to certain types of policy forms designated by the commissioner by
5 rule.

6 (3) Except as provided in RCW 48.18.103, every filing that does not
7 contain a certification pursuant to subsection (2) of this section must
8 be made not less than thirty days in advance of issuance, delivery, or
9 use. At the expiration of the thirty days, the filed form shall be
10 deemed approved unless prior thereto it has been affirmatively approved
11 or disapproved by order of the commissioner. The commissioner may
12 extend by not more than an additional fifteen days the period within
13 which he or she may affirmatively approve or disapprove any form, by
14 giving notice of the extension before expiration of the initial thirty-
15 day period. At the expiration of the period that has been extended,
16 and in the absence of prior affirmative approval or disapproval, the
17 form shall be deemed approved. The commissioner may withdraw any
18 approval at any time for cause. By approval of any form for immediate
19 use, the commissioner may waive any unexpired portion of the initial
20 thirty-day waiting period.

21 (4) The commissioner's order disapproving any form or withdrawing
22 a previous approval must state the grounds for disapproval.

23 (5) No form may knowingly be issued or delivered as to which the
24 commissioner's approval does not then exist.

25 (6) The commissioner may, by rule, exempt from the requirements of
26 this section any class or type of insurance policy forms if filing and
27 approval is not desirable or necessary for the protection of the
28 public.

29 (7) Every member or subscriber to a rating organization must adhere
30 to the form filings made on its behalf by the organization. Deviations
31 from the organization are permitted only when filed with the
32 commissioner in accordance with this chapter.

33 (8) Medical malpractice insurance form filings are subject to the
34 provisions of this section.

35 **Sec. 215.** RCW 48.18.103 and 2005 c 223 s 9 are each amended to
36 read as follows:

37 (1) It is the intent of the legislature to assist the purchasers of

1 commercial property casualty insurance by allowing policies to be
2 issued more expeditiously and provide a more competitive market for
3 forms.

4 (2) Commercial property casualty policies may be issued prior to
5 filing the forms.

6 (3) All commercial property casualty forms must be filed with the
7 commissioner within thirty days after an insurer issues any policy
8 using them. This subsection does not apply to:

9 (a) Types or classes of forms that the commissioner exempts from
10 filing by rule; and

11 (b) Manuscript policies, riders, or endorsements of unique
12 character designed for and used with relation to insurance upon a
13 particular subject.

14 (4) If, within thirty days after a commercial property casualty
15 form has been filed, the commissioner finds that the form does not meet
16 the requirements of this chapter, the commissioner shall disapprove the
17 form and give notice to the insurer or rating organization that made
18 the filing, specifying how the form fails to meet the requirements and
19 stating when, within a reasonable period thereafter, the form shall be
20 deemed no longer effective. The commissioner may extend the time for
21 review an additional fifteen days by giving notice to the insurer prior
22 to the expiration of the original thirty-day period.

23 (5) Upon a final determination of a disapproval of a policy form
24 under subsection (4) of this section, the insurer must amend any
25 previously issued disapproved form by endorsement to comply with the
26 commissioner's disapproval.

27 (6) For purposes of this section, "commercial property casualty"
28 means insurance pertaining to a business, profession, occupation,
29 nonprofit organization, or public entity for the lines of property and
30 casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or
31 48.11.070, but does not mean medical malpractice insurance.

32 (7) Except as provided in subsection (5) of this section, the
33 disapproval shall not affect any contract made or issued prior to the
34 expiration of the period set forth in the notice of disapproval.

35 (8) Every member or subscriber to a rating organization must adhere
36 to the form filings made on its behalf by the organization. An insurer
37 may deviate from forms filed on its behalf by an organization only if

1 the insurer files the forms with the commissioner in accordance with
2 this chapter.

3 (9) In the event a hearing is held on the actions of the
4 commissioner under subsection (4) of this section, the burden of proof
5 shall be on the commissioner.

6 **Sec. 216.** RCW 48.19.043 and 2003 c 248 s 7 are each amended to
7 read as follows:

8 (1) It is the intent of the legislature to assist the purchasers of
9 commercial property casualty insurance by allowing policies to be
10 issued more expeditiously and provide a more competitive market for
11 rates.

12 (2) Notwithstanding the provisions of RCW 48.19.040(1), commercial
13 property casualty policies may be issued prior to filing the rates.
14 All commercial property casualty rates shall be filed with the
15 commissioner within thirty days after an insurer issues any policy
16 using them.

17 (3) If, within thirty days after a commercial property casualty
18 rate has been filed, the commissioner finds that the rate does not meet
19 the requirements of this chapter, the commissioner shall disapprove the
20 filing and give notice to the insurer or rating organization that made
21 the filing, specifying how the filing fails to meet the requirements
22 and stating when, within a reasonable period thereafter, the filing
23 shall be deemed no longer effective. The commissioner may extend the
24 time for review another fifteen days by giving notice to the insurer
25 prior to the expiration of the original thirty-day period.

26 (4) Upon a final determination of a disapproval of a rate filing
27 under subsection (3) of this section, the insurer shall issue an
28 endorsement changing the rate to comply with the commissioner's
29 disapproval from the date the rate is no longer effective.

30 (5) For purposes of this section, "commercial property casualty"
31 means insurance pertaining to a business, profession, occupation,
32 nonprofit organization, or public entity for the lines of property and
33 casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or
34 48.11.070, but does not mean medical malpractice insurance.

35 (6) Except as provided in subsection (4) of this section, the
36 disapproval shall not affect any contract made or issued prior to the
37 expiration of the period set forth in the notice of disapproval.

1 (7) In the event a hearing is held on the actions of the
2 commissioner under subsection (3) of this section, the burden of proof
3 is on the commissioner.

4 **Sec. 217.** RCW 48.19.060 and 1997 c 428 s 4 are each amended to
5 read as follows:

6 (1) The commissioner shall review a filing as soon as reasonably
7 possible after made, to determine whether it meets the requirements of
8 this chapter.

9 (2) Except as provided in RCW 48.19.070 and 48.19.043:

10 (a) No such filing shall become effective within thirty days after
11 the date of filing with the commissioner, which period may be extended
12 by the commissioner for an additional period not to exceed fifteen days
13 if he or she gives notice within such waiting period to the insurer or
14 rating organization which made the filing that he or she needs such
15 additional time for the consideration of the filing. The commissioner
16 may, upon application and for cause shown, waive such waiting period or
17 part thereof as to a filing that he or she has not disapproved.

18 (b) A filing shall be deemed to meet the requirements of this
19 chapter unless disapproved by the commissioner within the waiting
20 period or any extension thereof.

21 (3) Medical malpractice insurance rate filings are subject to the
22 provisions of this section.

23 **PART III - HEALTH CARE LIABILITY REFORM**

24 **Statutes of Limitations and Repose**

25 NEW SECTION. **Sec. 301.** The purpose of this section and section
26 302 of this act is to respond to the court's decision in *DeYoung v.*
27 *Providence Medical Center*, 136 Wn.2d 136 (1998), by expressly stating
28 the legislature's rationale for the eight-year statute of repose in RCW
29 4.16.350.

30 The legislature recognizes that the eight-year statute of repose
31 alone may not solve the crisis in the medical insurance industry.
32 However, to the extent that the eight-year statute of repose has an
33 effect on medical malpractice insurance, that effect will tend to
34 reduce rather than increase the cost of malpractice insurance.

1 Whether or not the statute of repose has the actual effect of
2 reducing insurance costs, the legislature finds it will provide
3 protection against claims, however few, that are stale, based on
4 untrustworthy evidence, or that place undue burdens on defendants.

5 In accordance with the court's opinion in *DeYoung*, the legislature
6 further finds that compelling even one defendant to answer a stale
7 claim is a substantial wrong, and setting an outer limit to the
8 operation of the discovery rule is an appropriate aim.

9 The legislature further finds that an eight-year statute of repose
10 is a reasonable time period in light of the need to balance the
11 interests of injured plaintiffs and the health care industry.

12 The legislature intends to reenact RCW 4.16.350 with respect to the
13 eight-year statute of repose and specifically set forth for the court
14 the legislature's legitimate rationale for adopting the eight-year
15 statute of repose. The legislature further intends that the eight-year
16 statute of repose reenacted by section 302 of this act be applied to
17 actions commenced on or after the effective date of this section.

18 **Sec. 302.** RCW 4.16.350 and 1998 c 147 s 1 are each reenacted to
19 read as follows:

20 Any civil action for damages for injury occurring as a result of
21 health care which is provided after June 25, 1976 against:

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

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

34 (3) An entity, whether or not incorporated, facility, or
35 institution employing one or more persons described in subsection (1)
36 of this section, including, but not limited to, a hospital, clinic,
37 health maintenance organization, or nursing home; or an officer,

1 director, employee, or agent thereof acting in the course and scope of
2 his employment, including, in the event such officer, director,
3 employee, or agent is deceased, his estate or personal representative;
4 based upon alleged professional negligence shall be commenced within
5 three years of the act or omission alleged to have caused the injury or
6 condition, or one year of the time the patient or his representative
7 discovered or reasonably should have discovered that the injury or
8 condition was caused by said act or omission, whichever period expires
9 later, except that in no event shall an action be commenced more than
10 eight years after said act or omission: PROVIDED, That the time for
11 commencement of an action is tolled upon proof of fraud, intentional
12 concealment, or the presence of a foreign body not intended to have a
13 therapeutic or diagnostic purpose or effect, until the date the patient
14 or the patient's representative has actual knowledge of the act of
15 fraud or concealment, or of the presence of the foreign body; the
16 patient or the patient's representative has one year from the date of
17 the actual knowledge in which to commence a civil action for damages.

18 For purposes of this section, notwithstanding RCW 4.16.190, the
19 knowledge of a custodial parent or guardian shall be imputed to a
20 person under the age of eighteen years, and such imputed knowledge
21 shall operate to bar the claim of such minor to the same extent that
22 the claim of an adult would be barred under this section. Any action
23 not commenced in accordance with this section shall be barred.

24 For purposes of this section, with respect to care provided after
25 June 25, 1976, and before August 1, 1986, the knowledge of a custodial
26 parent or guardian shall be imputed as of April 29, 1987, to persons
27 under the age of eighteen years.

28 This section does not apply to a civil action based on intentional
29 conduct brought against those individuals or entities specified in this
30 section by a person for recovery of damages for injury occurring as a
31 result of childhood sexual abuse as defined in RCW 4.16.340(5).

32 **Sec. 303.** RCW 4.16.190 and 1993 c 232 s 1 are each amended to read
33 as follows:

34 (1) Unless otherwise provided in this section, if a person entitled
35 to bring an action mentioned in this chapter, except for a penalty or
36 forfeiture, or against a sheriff or other officer, for an escape, be at
37 the time the cause of action accrued either under the age of eighteen

1 years, or incompetent or disabled to such a degree that he or she
2 cannot understand the nature of the proceedings, such incompetency or
3 disability as determined according to chapter 11.88 RCW, or imprisoned
4 on a criminal charge prior to sentencing, the time of such disability
5 shall not be a part of the time limited for the commencement of action.

6 (2) Subsection (1) of this section with respect to a person under
7 the age of eighteen years does not apply to the time limited for the
8 commencement of an action under RCW 4.16.350.

9 **Certificate of Merit**

10 NEW SECTION. **Sec. 304.** A new section is added to chapter 7.70 RCW
11 to read as follows:

12 (1) In an action against an individual health care provider under
13 this chapter for personal injury or wrongful death in which the injury
14 is alleged to have been caused by an act or omission that violates the
15 accepted standard of care, the plaintiff must file a certificate of
16 merit at the time of commencing the action. If the action is commenced
17 within forty-five days prior to the expiration of the applicable
18 statute of limitations, the plaintiff must file the certificate of
19 merit no later than forty-five days after commencing the action.

20 (2) The certificate of merit must be executed by a health care
21 provider who meets the qualifications of an expert in the action. If
22 there is more than one defendant in the action, the person commencing
23 the action must file a certificate of merit for each defendant.

24 (3) The certificate of merit must contain a statement that the
25 person executing the certificate of merit believes, based on the
26 information known at the time of executing the certificate of merit,
27 that there is a reasonable probability that the defendant's conduct did
28 not follow the accepted standard of care required to be exercised by
29 the defendant.

30 (4) Upon motion of the plaintiff, the court may grant an additional
31 period of time to file the certificate of merit, not to exceed ninety
32 days, if the court finds there is good cause for the extension.

33 (5)(a) Failure to file a certificate of merit that complies with
34 the requirements of this section is grounds for dismissal of the case.

35 (b) If a case is dismissed for failure to file a certificate of
36 merit that complies with the requirements of this section, the filing

1 of the claim against the health care provider shall not be used against
2 the health care provider in professional liability insurance rate
3 setting, personal credit history, or professional licensing and
4 credentialing.

5 **Voluntary Arbitration**

6 NEW SECTION. **Sec. 305.** This chapter applies to any cause of
7 action for damages for personal injury or wrongful death based on
8 alleged professional negligence in the provision of health care where
9 all parties to the action have agreed to submit the dispute to
10 arbitration under this chapter in accordance with the requirements of
11 section 306 of this act.

12 NEW SECTION. **Sec. 306.** (1) Parties in an action covered under
13 section 305 of this act may elect to submit the dispute to arbitration
14 under this chapter in accordance with the requirements in this section.

15 (a) A claimant may elect to submit the dispute to arbitration under
16 this chapter by including such election in the complaint filed at the
17 commencement of the action. A defendant may elect to submit the
18 dispute to arbitration under this chapter by including such election in
19 the defendant's answer to the complaint. The dispute will be submitted
20 to arbitration under this chapter only if all parties to the action
21 elect to submit the dispute to arbitration.

22 (b) If the parties do not initially elect to submit the dispute to
23 arbitration in accordance with (a) of this subsection, the parties may
24 make such an election at any time during the pendency of the action by
25 filing a stipulation with the court in which all parties to the action
26 agree to submit the dispute to arbitration under this chapter.

27 (2) A party that does not initially elect to submit a dispute to
28 arbitration under this chapter must file a declaration with the court
29 that meets the following requirements:

30 (a) In the case of a claimant, the declaration must be filed at the
31 time of commencing the action and must state that the attorney
32 representing the claimant presented the claimant with a copy of the
33 provisions of this chapter before commencing the action and that the
34 claimant elected not to submit the dispute to arbitration under this
35 chapter; and

1 (b) In the case of a defendant, the declaration must be filed at
2 the time of filing the answer and must state that the attorney
3 representing the defendant presented the defendant with a copy of the
4 provisions of this chapter before filing the defendant's answer and
5 that the defendant elected not to submit the dispute to arbitration
6 under this chapter.

7 NEW SECTION. **Sec. 307.** (1) An arbitrator shall be selected by
8 agreement of the parties no later than forty-five days after: (a) The
9 date all defendants elected arbitration in the answer where the parties
10 elected arbitration in the initial complaint and answer; or (b) the
11 date of the stipulation where the parties agreed to enter into
12 arbitration after the commencement of the action through a stipulation
13 filed with the court. The parties may agree to select more than one
14 arbitrator to conduct the arbitration.

15 (2) If the parties are unable to agree to an arbitrator by the time
16 specified in subsection (1) of this section, each side may submit the
17 names of three arbitrators to the court, and the court shall select an
18 arbitrator from among the submitted names within fifteen days of being
19 notified that the parties are unable to agree to an arbitrator. If
20 none of the parties submit any names of potential arbitrators, the
21 court shall select an arbitrator.

22 NEW SECTION. **Sec. 308.** The arbitrator may conduct the arbitration
23 in such manner as the arbitrator considers appropriate so as to aid in
24 the fair and expeditious disposition of the proceeding subject to the
25 requirements of this section and section 309 of this act.

26 (1)(a) Except as provided in (b) of this subsection, each party is
27 entitled to two experts on the issue of liability, two experts on the
28 issue of damages, and one rebuttal expert.

29 (b) Where there are multiple parties on one side, the arbitrator
30 shall determine the number of experts that are allowed based on the
31 minimum number of experts necessary to ensure a fair and economic
32 resolution of the action.

33 (2)(a) Unless the arbitrator determines that exceptional
34 circumstances require additional discovery, each party is entitled to
35 the following discovery from any other party:

36 (i) Twenty-five interrogatories, including subparts;

1 (ii) Ten requests for admission; and

2 (iii) In accordance with applicable court rules:

3 (A) Requests for production of documents and things, and for entry
4 upon land for inspection and other purposes; and

5 (B) Requests for physical and mental examinations of persons.

6 (b) The parties shall be entitled to the following depositions:

7 (i) Depositions of parties and any expert that a party expects to
8 call as a witness. Except by order of the arbitrator for good cause
9 shown, the length of the deposition of a party or an expert witness
10 shall be limited to four hours.

11 (ii) Depositions of other witnesses. Unless the arbitrator
12 determines that exceptional circumstances require additional
13 depositions, the total number of depositions of persons who are not
14 parties or expert witnesses is limited to five depositions per side,
15 each of which may last no longer than two hours in length. In the
16 deposition of a fact witness, each side is entitled to examine for one
17 hour of the deposition.

18 (3) An arbitrator may issue a subpoena for the attendance of a
19 witness and for the production of records and other evidence at any
20 hearing and may administer oaths. A subpoena must be served in the
21 manner for service of subpoenas in a civil action and, upon motion to
22 the court by a party to the arbitration proceeding or the arbitrator,
23 enforced in the manner for enforcement of subpoenas in a civil action.

24 NEW SECTION. **Sec. 309.** (1) An arbitration under this chapter
25 shall be conducted according to the time frames specified in this
26 section. The time frames provided in this section run from the date
27 all defendants have agreed to arbitration in their answers where the
28 parties elected arbitration in the initial complaint and answer, and
29 from the date of the execution of the stipulation where the parties
30 agreed to enter into arbitration after the commencement of the action
31 through a stipulation filed with the court. The arbitrator shall issue
32 a case scheduling order in every case specifying the dates by which the
33 requirements of (b) through (f) of this subsection must be completed.

34 (a) Within forty-five days, the claimant shall provide stipulations
35 for all relevant medical records to the defendants.

36 (b) Within one hundred twenty days, the claimant shall disclose to

1 the defendants the names and curriculum vitae or other documentation of
2 qualifications of any expert the claimant expects to call as a witness.

3 (c) Within one hundred forty days, each defendant shall disclose to
4 the claimants the names and curriculum vitae or other documentation of
5 qualifications of any expert the defendant expects to call as a
6 witness.

7 (d) Within one hundred sixty days, each party shall disclose to the
8 other parties the name and curriculum vitae or other documentation of
9 qualifications of any rebuttal expert the party expects to call as a
10 witness.

11 (e) Within two hundred forty days, all discovery shall be
12 completed.

13 (f) Within two hundred seventy days, the arbitration hearing shall
14 commence subject to the limited authority of the arbitrator to extend
15 this deadline under subsection (2) of this section.

16 (2) It is the express public policy of the legislature that
17 arbitration hearings under this chapter be commenced no later than
18 twelve months after the parties elect to submit the dispute to
19 arbitration. The arbitrator may grant a continuance of the
20 commencement of the arbitration hearing to a date more than twelve
21 months after the parties elect to submit the dispute to arbitration
22 only where a party shows that exceptional circumstances create an undue
23 and unavoidable hardship on the party.

24 NEW SECTION. Sec. 310. (1) The arbitrator shall issue a decision
25 in writing and signed by the arbitrator within fourteen days after the
26 completion of the arbitration hearing and shall promptly deliver a copy
27 of the decision to each of the parties or their attorneys.

28 (2) The arbitrator may not make an award of damages under this
29 chapter that exceeds one million dollars for both economic and
30 noneconomic damages.

31 (3) The arbitrator may not make an award of damages under this
32 chapter under a theory of ostensible agency liability.

33 (4) With or without the request of a party, the arbitrator shall
34 review the reasonableness of each party's attorneys' fees taking into
35 account the factors enumerated in RCW 4.24.005.

36 (5) The fees and expenses of the arbitrator shall be paid by the
37 nonprevailing parties.

1 NEW SECTION. **Sec. 311.** After a party to the arbitration
2 proceeding receives notice of a decision, the party may file a motion
3 with the court for a judgment in accordance with the decision, at which
4 time the court shall issue such a judgment unless the decision is
5 modified, corrected, or vacated as provided in section 312 of this act.

6 NEW SECTION. **Sec. 312.** There is no right to a trial de novo on an
7 appeal of the arbitrator's decision. An appeal of the arbitrator's
8 decision is limited to the bases for appeal provided in RCW
9 7.04A.230(1) (a) through (d) and 7.04A.240, or equivalent provisions in
10 a successor statute.

11 NEW SECTION. **Sec. 313.** The provisions of chapter 7.04A RCW do not
12 apply to arbitrations conducted under this chapter except to the extent
13 specifically provided in this chapter.

14 **Mandatory Mediation**

15 **Sec. 314.** RCW 7.70.100 and 1993 c 492 s 419 are each amended to
16 read as follows:

17 (1) No action based upon a health care provider's professional
18 negligence may be commenced unless the defendant has been given at
19 least ninety days' notice of the intention to commence the action. If
20 the notice is served within ninety days of the expiration of the
21 applicable statute of limitations, the time for the commencement of the
22 action must be extended ninety days from the service of the notice.

23 (2) The provisions of subsection (1) of this section are not
24 applicable with respect to any defendant whose name is unknown to the
25 plaintiff at the time of filing the complaint and who is identified
26 therein by a fictitious name.

27 (3) After the filing of the ninety-day presuit notice, and before
28 a superior court trial, all causes of action, whether based in tort,
29 contract, or otherwise, for damages arising from injury occurring as a
30 result of health care provided after July 1, 1993, shall be subject to
31 mandatory mediation prior to trial except as provided in subsection (6)
32 of this section.

33 ~~((+2))~~ (4) The supreme court shall by rule adopt procedures to
34 implement mandatory mediation of actions under this chapter. The

1 ~~((rules shall))~~ implementation contemplates the adoption of rules by
2 the supreme court which will require mandatory mediation without
3 exception unless subsection (6) of this section applies. The rules on
4 mandatory mediation shall address, at a minimum:

5 (a) Procedures for the appointment of, and qualifications of,
6 mediators. A mediator shall have experience or expertise related to
7 actions arising from injury occurring as a result of health care, and
8 be a member of the state bar association who has been admitted to the
9 bar for a minimum of five years or who is a retired judge. The parties
10 may stipulate to a nonlawyer mediator. The court may prescribe
11 additional qualifications of mediators;

12 (b) Appropriate limits on the amount or manner of compensation of
13 mediators;

14 (c) The number of days following the filing of a claim under this
15 chapter within which a mediator must be selected;

16 (d) The method by which a mediator is selected. The rule shall
17 provide for designation of a mediator by the superior court if the
18 parties are unable to agree upon a mediator;

19 (e) The number of days following the selection of a mediator within
20 which a mediation conference must be held;

21 (f) A means by which mediation of an action under this chapter may
22 be waived by a mediator who has determined that the claim is not
23 appropriate for mediation; and

24 (g) Any other matters deemed necessary by the court.

25 ~~((+3+))~~ (5) Mediators shall not impose discovery schedules upon the
26 parties.

27 (6) The mandatory mediation requirement of subsection (4) of this
28 section does not apply to an action subject to mandatory arbitration
29 under chapter 7.06 RCW or to an action in which the parties have
30 agreed, subsequent to the arisal of the claim, to submit the claim to
31 arbitration under chapter 7.04A or 7.-- (sections 305 through 313 of
32 this act) RCW.

33 (7) The implementation also contemplates the adoption of a rule by
34 the supreme court for procedures for the parties to certify to the
35 court the manner of mediation used by the parties to comply with this
36 section.

1 **Collateral Sources**

2 **Sec. 315.** RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each
3 amended to read as follows:

4 Any party may present evidence to the trier of fact that the
5 ~~((patient))~~ plaintiff has already been compensated for the injury
6 complained of from any source except the assets of the ~~((patient, his))~~
7 plaintiff, the plaintiff's representative, or ~~((his))~~ the plaintiff's
8 immediate family~~((, or insurance purchased with such assets))~~. In the
9 event such evidence is admitted, the plaintiff may present evidence of
10 an obligation to repay such compensation and evidence of any amount
11 paid by the plaintiff, or his or her representative or immediate
12 family, to secure the right to the compensation. ~~((Insurance bargained~~
13 ~~for or provided on behalf of an employee shall be considered insurance~~
14 ~~purchased with the assets of the employee.))~~ Compensation as used in
15 this section shall mean payment of money or other property to or on
16 behalf of the ~~((patient))~~ plaintiff, rendering of services to the
17 ~~((patient))~~ plaintiff free of charge to the ~~((patient))~~ plaintiff, or
18 indemnification of expenses incurred by or on behalf of the ~~((patient))~~
19 plaintiff. Notwithstanding this section, evidence of compensation by
20 a defendant health care provider may be offered only by that provider.

21 **Preventing Frivolous Lawsuits**

22 NEW SECTION. **Sec. 316.** A new section is added to chapter 7.70 RCW
23 to read as follows:

24 In any action under this section, an attorney that has drafted, or
25 assisted in drafting and filing an action, counterclaim, cross-claim,
26 third-party claim, or a defense to a claim, upon signature and filing,
27 certifies that to the best of the party's or attorney's knowledge,
28 information, and belief, formed after reasonable inquiry it is not
29 frivolous, and is well grounded in fact and is warranted by existing
30 law or a good faith argument for the extension, modification, or
31 reversal of existing law, and that it is not interposed for any
32 improper purpose, such as to harass or to cause frivolous litigation.
33 If an action is signed and filed in violation of this rule, the court,
34 upon motion or upon its own initiative, may impose upon the person who
35 signed it, a represented party, or both, an appropriate sanction, which
36 may include an order to pay to the other party or parties the amount of

1 the reasonable expenses incurred because of the filing of the action,
2 counterclaim, cross-claim, third-party claim, or a defense to a claim,
3 including a reasonable attorney fee. The procedures governing the
4 enforcement of RCW 4.84.185 shall apply to this section.

5 **PART IV - MISCELLANEOUS PROVISIONS**

6 NEW SECTION. **Sec. 401.** Part headings and subheadings used in this
7 act are not any part of the law.

8 NEW SECTION. **Sec. 402.** (1) Sections 105 through 108 and 110 of
9 this act constitute a new chapter in Title 70 RCW.

10 (2) Sections 201 through 208 of this act constitute a new chapter
11 in Title 48 RCW.

12 (3) Sections 305 through 313 of this act constitute a new chapter
13 in Title 7 RCW.

14 NEW SECTION. **Sec. 403.** Sections 211, 212, and 213 of this act
15 apply to insurance policies issued or renewed on or after January 1,
16 2007.

17 NEW SECTION. **Sec. 404.** Section 111 of this act expires July 1,
18 2006.

19 NEW SECTION. **Sec. 405.** Sections 112 and 210 of this act take
20 effect July 1, 2006.

21 NEW SECTION. **Sec. 406.** If specific funding for the purposes of
22 sections 105 through 112 of this act, referencing sections 105 through
23 112 of this act by bill or chapter number and section numbers, is not
24 provided by June 30, 2006, in the omnibus appropriations act, sections
25 105 through 112 of this act are null and void.

26 NEW SECTION. **Sec. 407.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other

1 persons or circumstances is not affected.

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