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**SUBSTITUTE SENATE BILL 5318**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Thibaudeau, Keiser, Kline, Franklin, Poulsen, McAuliffe and Kohl-Welles)

READ FIRST TIME 02/25/05.

1       AN ACT Relating to improving health care professional and health  
2 care facility patient safety practices; amending RCW 43.70.110,  
3 43.70.250, and 5.64.010; adding new sections to chapter 43.70 RCW;  
4 adding a new section to chapter 7.70 RCW; creating new sections;  
5 providing an effective date; and declaring an emergency.

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

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

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

16       (b) Health care providers, health care facilities, and health  
17 carriers can and should be supported in their efforts to improve  
18 patient safety and reduce medical errors by encouraging health care  
19 facilities and providers to communicate openly with patients regarding

1 medical errors that have occurred and steps that can be taken to  
2 prevent errors from occurring in the future, encouraging health care  
3 facilities and providers to work cooperatively in their patient safety  
4 efforts, and increasing funding available to implement proven patient  
5 safety strategies.

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

9 **PART I: FUNDING PATIENT SAFETY EFFORTS**

10 **Sec. 101.** RCW 43.70.110 and 1993 sp.s. c 24 s 918 are each amended  
11 to read as follows:

12 (1) The secretary shall charge fees to the licensee for obtaining  
13 a license. After June 30, 1995, municipal corporations providing  
14 emergency medical care and transportation services pursuant to chapter  
15 18.73 RCW shall be exempt from such fees, provided that such other  
16 emergency services shall only be charged for their pro rata share of  
17 the cost of licensure and inspection, if appropriate. The secretary  
18 may waive the fees when, in the discretion of the secretary, the fees  
19 would not be in the best interest of public health and safety, or when  
20 the fees would be to the financial disadvantage of the state.

21 (2) Except as provided in section 103 of this act, fees charged  
22 shall be based on, but shall not exceed, the cost to the department for  
23 the licensure of the activity or class of activities and may include  
24 costs of necessary inspection.

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

28 **Sec. 102.** RCW 43.70.250 and 1996 c 191 s 1 are each amended to  
29 read as follows:

30 It shall be the policy of the state of Washington that the cost of  
31 each professional, occupational, or business licensing program be fully  
32 borne by the members of that profession, occupation, or business. The  
33 secretary shall from time to time establish the amount of all  
34 application fees, license fees, registration fees, examination fees,  
35 permit fees, renewal fees, and any other fee associated with licensing

1 or regulation of professions, occupations, or businesses administered  
2 by the department. In fixing said fees, the secretary shall set the  
3 fees for each program at a sufficient level to defray the costs of  
4 administering that program and the patient safety fee established in  
5 section 103 of this act. All such fees shall be fixed by rule adopted  
6 by the secretary in accordance with the provisions of the  
7 administrative procedure act, chapter 34.05 RCW.

8 NEW SECTION. Sec. 103. A new section is added to chapter 43.70  
9 RCW to read as follows:

10 (1) The secretary shall increase the licensing fee established  
11 under RCW 43.70.110 by two dollars for the health care professionals  
12 designated in subsection (2) of this section and by two dollars per  
13 licensed bed for the health care facilities designated in subsection  
14 (2) of this section. Proceeds of the patient safety fee must be  
15 deposited into the patient safety account in section 107 of this act  
16 and dedicated to patient safety and medical error reduction efforts  
17 that have been proven to improve, or have a substantial likelihood of  
18 improving the quality of care provided by health care professionals and  
19 facilities.

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

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

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

26 (ii) Chiropractors licensed under chapter 18.25 RCW;

27 (iii) Dentists licensed under chapter 18.32 RCW;

28 (iv) Midwives licensed under chapter 18.50 RCW;

29 (v) Naturopaths licensed under chapter 18.36A RCW;

30 (vi) Optometrists licensed under chapter 18.53 RCW;

31 (vii) Osteopathic physicians licensed under chapter 18.57 RCW;

32 (viii) Osteopathic physicians' assistants licensed under chapter  
33 18.57A RCW;

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

35 (x) Physicians licensed under chapter 18.71 RCW;

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

37 (xii) Podiatrists licensed under chapter 18.22 RCW; and

1 (xiii) Psychologists licensed under chapter 18.83 RCW; and  
2 (b) Hospitals licensed under chapter 70.41 RCW and psychiatric  
3 hospitals licensed under chapter 71.12 RCW.

4 NEW SECTION. **Sec. 104.** A new section is added to chapter 7.70 RCW  
5 to read as follows:

6 (1)(a) One percent of any attorney contingency fee as contracted  
7 with a prevailing plaintiff in any action for damages based upon  
8 injuries resulting from health care shall be deducted from the  
9 contingency fee as a patient safety set aside. Proceeds of the patient  
10 safety set aside will be distributed by the department of health in the  
11 form of grants, loans, or other appropriate arrangements to support  
12 strategies that have been proven to reduce medical errors and enhance  
13 patient safety, or have a substantial likelihood of reducing medical  
14 errors and enhancing patient safety, as provided in section 103 of this  
15 act.

16 (b) A patient safety set aside shall be transmitted to the  
17 secretary of the department of health by the person or entity paying  
18 the claim, settlement, or verdict for deposit into the patient safety  
19 account established in section 107 of this act.

20 (c) The supreme court shall by rule adopt procedures to implement  
21 this section.

22 (2) If the patient safety set aside established by this section is  
23 invalidated by the Washington state supreme court, then any attorney  
24 representing a claimant who receives a settlement or verdict in any  
25 action for damages based upon injuries resulting from health care under  
26 this chapter shall provide information to the claimant regarding the  
27 existence and purpose of the patient safety account and notify the  
28 claimant that he or she may make a contribution to that account under  
29 section 106 of this act.

30 NEW SECTION. **Sec. 105.** A new section is added to chapter 43.70  
31 RCW to read as follows:

32 (1)(a) Patient safety fee and set aside proceeds shall be  
33 administered by the department, after seeking input from health care  
34 providers engaged in direct patient care activities, health care  
35 facilities, health care provider organizations, and other interested  
36 parties. In developing criteria for the award of grants, loans, or

1 other appropriate arrangements under this section, the department shall  
2 rely primarily upon evidence-based practices to improve patient safety  
3 that have been identified and recommended by governmental and private  
4 organizations, including, but not limited to:

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

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

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

9 (iv) The national quality forum.

10 (b) The department shall award grants, loans, or other appropriate  
11 arrangements for at least two strategies that are designed to meet the  
12 goals and recommendations of the federal institute of medicine's  
13 report, "Keeping Patients Safe: Transforming the Work Environment of  
14 Nurses."

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

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

27 NEW SECTION. **Sec. 106.** A new section is added to chapter 43.70  
28 RCW to read as follows:

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

34 NEW SECTION. **Sec. 107.** A new section is added to chapter 43.70  
35 RCW to read as follows:

36 The patient safety account is created in the state treasury. All

1 receipts from the fees and set asides created in sections 103 and 104  
2 of this act must be deposited into the account. Expenditures from the  
3 account may be used only for the purposes of this act. Moneys in the  
4 account may be spent only after appropriation.

5 NEW SECTION. **Sec. 108.** A new section is added to chapter 43.70  
6 RCW to read as follows:

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

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

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

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

18 **PART II: ENCOURAGING PATIENT SAFETY THROUGH**  
19 **COMMUNICATIONS WITH PATIENTS**

20 **Sec. 201.** RCW 5.64.010 and 1975-'76 2nd ex.s. c 56 s 3 are each  
21 amended to read as follows:

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

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

33 ~~(2) An employee or agent of a person described in subsection (1) of~~  
34 ~~this section, acting in the course and scope of his employment,~~

1 including, in the event such employee or agent is deceased, his estate  
2 or personal representative; or

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

14 (2) In a civil action against a health care provider for personal  
15 injuries which is based upon alleged professional negligence, or in any  
16 arbitration or mediation proceeding related to such civil action:

17 (a) Any and all statements, affirmations, gestures, or conduct  
18 expressing apology, fault, sympathy, commiseration, condolence,  
19 compassion, or a general sense of benevolence; or

20 (b) Any and all statements or affirmations regarding remedial  
21 actions that may be taken to address the act or omission that is the  
22 basis for the allegation of negligence;

23 which were in the past or are made by a health care provider to the  
24 injured person, a relative of the injured person, or a representative  
25 of the injured person and which relate to the discomfort, pain,  
26 suffering, injury, or death of the injured person as the result of the  
27 alleged professional negligence shall be inadmissible as evidence of an  
28 admission of liability or as evidence of an admission against interest.

29 (3) For the purposes of this section:

30 (a) "Health care provider" has the same meaning provided in RCW  
31 7.70.020.

32 (b) "Relative" means:

33 (i) An injured person's spouse, parent, grandparent, stepfather,  
34 stepmother, child, grandchild, brother, sister, half brother, half  
35 sister, or spouse's parents;

36 (ii) Relationships in (b)(i) of this subsection that are  
37 established with an injured person as a result of adoption; and

