

## HI 336 - DIGEST

Finds that increases in rate filings in insurance have widespread impact in the availability and affordability of medical malpractice liability insurance. In some cases, excessive rate increases result in limiting the availability of affordable insurance in markets, which in turn threatens the viability of the services or products that are to be insured.

Finds that there are several contributing causes to the current medical liability problem, and addressing these causes requires reducing medical errors while increasing patient safety and information and reducing the cost of our medical liability system.

Declares that it is in the public interest to maintain an efficient and expeditious regulatory environment in which to conduct the business of insurance. This interest must be balanced by the equally important public interest in promoting a greater range of medical liability insurance options to increase accessibility and affordability of this insurance and increase transparency when excessive rate filings impact the very health care practices and businesses that are to be insured.

Declares an intent to increase consumer access to information regarding medical malpractice liability and insurance and to reduce costs by increasing patient safety and information.

Creates a supplemental malpractice insurance program to provide an excess layer of liability coverage for medical malpractice claims.

Provides that a board of governors will oversee the operations of the program. The management and operations of the program are subject to the supervision and approval of the board.

Provides that the program must charge an annual premium to health care facilities and providers who decide to buy excess medical malpractice liability coverage from the program. The program must use this money to pay claims, administrative costs, and other expenses of the program.

Requires the program to file an annual statement with the commissioner by March 1st of each year. The statement must contain information about the program's transactions, financial condition, and operations during the past calendar year. The commissioner may establish rules for the form and content of this statement.

Provides that, if a health care facility or provider buys insurance to establish proof of financial responsibility, the insuring entity that provides underlying coverage must certify in writing to the program that the facility or provider has medical malpractice coverage with limits of liability as

specified in this act. The limits set forth in this act apply to any joint liability of a provider and his or her corporation or partnership.

Declares that the minimum retained limits of liability are: (1) For health care providers: (a) Two hundred fifty thousand dollars per claim; and (b) annual aggregate limits of seven hundred fifty thousand dollars;

(2) For facilities with fewer than twenty-five employees that do not provide surgical services: (a) Two hundred fifty thousand dollars per claim; and (b) annual aggregate limits of one million two hundred fifty thousand dollars;

(3) For hospitals with a capacity of less than one hundred beds: (a) Five hundred thousand dollars per claim; and (b) annual aggregate limits of five million dollars;

(4) For hospitals with a capacity of one hundred or more beds: (a) Five hundred thousand dollars per claim; and (b) annual aggregate limits of eight million dollars;

(5) For health maintenance organizations that do not provide hospital services: (a) Five hundred thousand dollars per claim; and (b) annual aggregate limits of five million dollars;

(6) For health maintenance organizations that provide hospital services: (a) Five hundred thousand dollars per claim; and (b) annual aggregate limits of eight million dollars; and

(7) For all other types of health care facilities: (a) Five hundred thousand dollars per claim; and (b) annual aggregate limits of three million dollars.

Provides that, beginning in 2007, the commissioner must prepare an annual report by June 30th that summarizes and analyzes the closed claim reports for medical malpractice filed under section 126 of this act and the annual financial reports filed by insurers writing medical malpractice insurance in this state.

Declares that the legislature may appropriate for the biennium ending June 30, 2007, any sum of money it deems necessary to the department of health to: (1) Provide capital and surplus to the supplemental malpractice insurance program; and

(2) Pay administrative expenses incurred to establish the supplemental malpractice insurance program.

Declares that no person who has been found to have within a ten-year period committed three or more incidents of medical malpractice shall be licensed or continue to be licensed by the commission to practice medicine.

Provides that nothing in this act limits the authority of the disciplining authority to revoke a license or take other disciplinary action when the license holder has committed only one or two acts of unprofessional conduct.

Provides that, upon receipt of a written request from a patient or an immediate family member of a deceased or

disabled family member to examine or copy records made or received in the course of business by a health care facility or provider relating to any adverse medical incident, the health care facility or provider, as promptly as required by the circumstances, but not later than fifteen working days after receiving the request, shall: (1) Make the information available for examination during regular business hours and provide a copy, if requested, to the patient or an immediate family member of a deceased or disabled family member. In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained; or

(2) Inform the patient or an immediate family member of a deceased or disabled patient if the information does not exist or cannot be found.

Declares that, in any action under chapter 7.70 RCW, each side shall presumptively be entitled to only two expert witnesses on an issue, except upon a showing of necessity. Where there are multiple parties on a side and the parties cannot agree as to which experts will be called on an issue, the court, upon a showing of necessity, shall allow additional experts on an issue to be called as the court deems appropriate.

Provides that, in any action under this act, an attorney that has drafted, or assisted in drafting and filing an action, counterclaim, cross-claim, third-party claim, or a defense to a claim, upon signature and filing, certifies that to the best of the party's or attorney's knowledge, information, and belief, formed after reasonable inquiry it is not frivolous, and is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause frivolous litigation.

Declares that, if an action is signed and filed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the action, counterclaim, cross-claim, third-party claim, or a defense to a claim, including a reasonable attorney fee. The procedures governing the enforcement of RCW 4.84.185 shall apply to this provision.

Requires that, within one hundred twenty days after filing a lawsuit under this chapter, the attorney of record, or the plaintiff if pro se, must file a certificate of merit. The certificate must state that the attorney or pro se plaintiff has consulted with a qualified expert who believes on a more probable than not basis that the claim set forth satisfies at least one of the basis for recovery under this

chapter. Upon a showing of good cause, a court may extend the time frame for filing the certificate for a period not to exceed sixty days.