

HOUSE BILL REPORT

HB 1237

As Reported by House Committee On:

Insurance, Financial Services & Consumer Protection

Title: An act relating to medical malpractice closed claim reporting.

Brief Description: Modifying medical malpractice closed claim reporting requirements.

Sponsors: Representatives Kirby and Roach; by request of Insurance Commissioner.

Brief History:

Committee Activity:

Insurance, Financial Services & Consumer Protection: 1/23/07, 1/30/07 [DPS].

Brief Summary of Substitute Bill

- Requires health facilities or providers to report medical malpractice closed claim information if their insurer does not report the information.

HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kirby, Chair; Kelley, Vice Chair; Roach, Ranking Minority Member; Strow, Assistant Ranking Minority Member; Hurst, Rodne, Santos and Simpson.

Staff: Jon Hedegard (786-7127).

Background:

The Office of the Insurance Commissioner (OIC) is responsible for the licensing and regulation of insurance companies doing business in this state. This includes insurers offering coverage for medical malpractice.

Risk retention groups (RRG) are primarily regulated by the federal government.

Unauthorized insurers may transact insurance in Washington if the insurance coverage cannot be procured from authorized insurers. Standards to determine when insurance is not available

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from authorized insurers are set in statutes and rules. Unauthorized insurers are not licensed by the OIC; the brokers of insurance placed with unauthorized insurers are licensed by the OIC.

The Department of Health (DOH) oversees licensure and discipline of health facilities and providers.

In 2006, the Legislature passed a law regarding the closed claim reporting of medical malpractice insurance by insuring entities, health facilities, and health care providers.

"Insuring entity" includes:

- insurers;
- a joint underwriting association;
- a risk retention group; and
- an unauthorized insurer providing surplus lines coverage.

Self-insurers and insuring entities that write medical malpractice insurance are required to report medical malpractice closed claims that are closed after January 1, 2008 to the OIC. Closed claim reports must be filed annually by March 1, and must include data for closed claims for the preceding year.

The reports must contain specified data relating to:

- the type of health care provider, specialty, and facility involved;
- the reason for the claim and the severity of the injury;
- the dates when the event occurred, the claim was reported to the insurer, and the suit was filed;
- the injured person's age and sex; and
- information about the settlement, judgment, or other disposition of the claim, including an itemization of damages and litigation expenses.

If a claim is not covered by an insuring entity or self-insurer, the provider or facility must report the claim to the OIC after a final disposition of the claim. The OIC may impose a fine of up to \$250 per day against an insuring entity that is late in filing the required report. The DOH may require a facility or provider to take corrective action to comply with the reporting requirements.

A claimant or the claimant's attorney in a medical malpractice action that results in a final judgment, settlement, or disposition, must report certain data to the OIC. This includes the date and location of the incident, the injured person's age and sex, and information about the amount of judgment or settlement, court costs, attorneys' fees, or expert witness costs incurred in the action.

The OIC must use the data to prepare aggregate statistical summaries of closed claims and an annual report of closed claims and insurer financial reports. The annual report must include specified information, such as:

- trends in frequency and severity of claims;
- types of claims paid;

- a comparison of economic and non-economic damages;
- a distribution of allocated loss adjustment expenses;
- a loss ratio analysis for medical malpractice insurance;
- a profitability analysis for medical malpractice insurers;
- a comparison of loss ratios and profitability; and
- a summary of approved medical malpractice rate filings for the prior year, including analyzing the trend of losses compared to prior years.

Any information in a closed claim report that may result in the identification of a claimant, provider, health care facility, or self-insurer is exempt from public disclosure.

Summary of Substitute Bill:

A facility or provider must report the required closed claim information when:

- the facility or provider is insured by a risk retention group (RRG) that refuses to report the information; and
- the RRG which claims that federal law preempts state law.

A facility or provider must report the required closed claim information when:

- the facility or provider is insured by an unauthorized insurer that refuses to report the information; and
- the unauthorized insurer which claims that federal law or the law of some other jurisdiction provides an exemption from state law or preempts state law.

Risk retention groups cannot be fined for noncompliance with the reporting requirements.

Substitute Bill Compared to Original Bill:

The provision that required that an insured facility or provider must automatically report required closed claim information whenever an insuring entity does not report is narrowed to apply only when: (1) a RRG refuses to report and asserts federal preemption and (2) an unauthorized insurer refuses to report and cites an exemption or preemption under federal law or the laws of another jurisdiction.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The OIC is pleased that the omnibus medical malpractice bill was passed last year. Washington is on the cutting-edge of collection of medical malpractice information. The

information will help legislators make informed decisions in future debates about medical malpractice insurance legislation. During the rule-making process to implement the reporting provisions, risk retention groups told the OIC that the OIC is federally preempted from compelling this information. The OIC disagreed with the analysis of the risk retention groups. The OIC recognized that the most important issue is to make sure the information was captured. A draft bill was developed and circulated this summer. The Washington State Hospital Association (WSHA) recently informed the OIC of a concern with the language in the bill. The WSHA was concerned that a facility might be required to report the information regarding a separately insured provider. The draft amendment that we have provided addresses that issue. The OIC understands that the provider or facility will likely request or contractually require the risk retention group or unauthorized insurer to do the reporting. We understand that the risk retention groups find this acceptable but do not want direct state regulation.

(Opposed) None.

Persons Testifying: Lisa Smego and Beth Berendt, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying: None.