

SENATE BILL REPORT

SB 6412

As of January 27, 2010

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

Brief Description: Concerning medical malpractice closed claim reporting.

Sponsors: Senator Hobbs; by request of Insurance Commissioner.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/26/10.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Diane Smith (786-7410)

Background: The insurance code provides that insuring entities, self-insurers, health facilities, and health care providers must report to the Office of Insurance Commissioner (OIC) about various matters pertaining to medical malpractice claims that were closed on or after January 1, 2008.

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

Closed claim reports must be filed annually by March 1, and must include data for closed claims for the preceding year.

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 Department of Health, Department of Licensing, or Department of Social & Health Services may require a facility or provider to take corrective action to comply with the reporting requirements.

If a facility or provider is insured by an unauthorized insurer who refuses to report closed claims based on a preemption by another jurisdiction, then the facility or provider must make the report on the unauthorized insurer's behalf.

A claimant or the claimant's attorney in a medical malpractice action that results in a final judgment, settlement, or disposition, must also report certain data to the OIC.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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. Some of this information includes trends in frequency and severity of claims; types of claims paid; a comparison of economic and noneconomic 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 Bill: Existing reporting responsibilities are clarified. The report by attorneys must be made within 60 days after the claim is resolved. Failure to report may result in a \$50 fine, as well as additional \$50 fines for each 30-day period the claim remains unreported. Any penalties collected go to the general fund.

The duty to report closed claims that falls on the facility or provider whose unauthorized insurer refuses to report, is extended to the captive insurer that refuses to report.

The reports by those other than attorneys must also be made within 60 days of the close of the claim unless the commissioner agrees in writing to accept electronic transmission from that entity. If the commissioner allows for electronic transmission, then the due date remains March 1. The requirement that insuring entities, self-insurers, facilities and providers file closed claim data electronically is changed to the reporter's election.

Any regulatory entity must require the provider or facility that does comply to take corrective action and then the regulatory entity may take disciplinary action.

Among the data that must be reported are the policy limits of the liability insurance policy covering the claim, any punitive damages, and an estimate of noneconomic damages.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill updates the statutes requiring closed medical malpractice claims reporting. It arises from 2007 legislation that was designed to capture data as aligned with the National Association of Insurance Commissioners (NAIC) requirements. This is a mostly technical change. It puts a close to problems by adding enforcement provisions to encourage reporting on time and accurately. It adds a few data point elements to conform to the NAIC model. We add punitive damages and estimated non-economic damages. We include captive insurers. Reporting needs to be quicker so that auditing can be timely. A clarifying amendment is needed to acknowledge that settlement

does not have a final deadline. Sometimes guardianships, liens, and subrogations can extend into the future. Perhaps final disposition would cover that. I will submit a tweak. There is no notice of the new requirement; but over time, it will become known. Our preference is for the OIC to keep the fine money.

Persons Testifying: PRO: Drew Bouton, Lisa Smego, OIC; Larry Shannon, Washington State Association of Justice.