SENATE BILL REPORT
SB 6412

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 3, 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, 2/02/10, 2/03/10 [DPS, DNP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 6412 be substituted therefor, and the substitute bill do pass.
Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin and McDermott.

Minority Report: Do not pass.
Signed by Senators Parlette and Schoesler.

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

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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.

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: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute):

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.