# INITIATIVE MEASURE 330

## PROPOSED TO THE LEGISLATURE

## *Official Ballot Title:*

Initiative Measure No. 330 concerns claims for personal injury or death arising from health care services.

This measure would change laws governing claims for negligent health care, including restricting noneconomic damages to $350,000 (with exception), shortening time limits for filing cases, limiting repayments to insurers and limiting claimants' attorney fees.

Should this measure be enacted into law?

Yes [ ] No [ ]

**Note:** The Official Ballot Title and Explanatory Statement were written by the Attorney General as required by law and revised by the Thurston County Superior Court. The Fiscal Impact Statement was written by the Office of Financial Management. For more in-depth Office of Fiscal Management analysis, visit www.ofm.wa.gov/initiatives/default.htm . The complete text of Initiative Measure 330 begins on page 33.

## *Fiscal Impact Statement*

**Summary of Fiscal Impact**

Initiative 330 would establish restrictions in medical malpractice lawsuits, which may reduce the number of malpractice suits in state courts, lower the number of claims against the state and reduce state insurance-premium costs. The restrictions also may reduce liability and premium costs to local governments. However, conflicting research offers no clear guidance for estimating the magnitude of these potential reductions in state and local government costs. The Initiative also would limit state recovery of worker compensation costs in cases of medical malpractice, costing the Workers Compensation Program an estimated $500,000 to $2 million a year.

**Assumptions for Fiscal Analysis of I-330**

Initiative 330 could reduce costs to the Office of the Administrator of the Courts because the number of hearings in Superior Court related to health care injury or death claims may be reduced. The Initiative also could reduce costs for state and local governments that purchase health insurance for employees or social service programs because it could reduce health insurance premiums and payouts from self-insured tort liability funds.

Various studies have been conducted to determine how changes in law affecting tort liability and insurance can affect costs for courts, insurance premiums and health care. However, individual study results vary widely, predicting no change or both lower and higher costs in these areas. Due to the conflicting research, there is no clear guidance for estimating the magnitude of the fiscal impact of potential reductions on court costs or insurance premiums.

Initiative provisions would result in a loss of $500,000 to $2 million a year in the Department of Labor and Industries' Workers Compensation Program. That is because the Initiative would prevent the agency from collecting costs incurred after an injured worker is re-injured due to medical malpractice.

# INITIATIVE MEASURE 330

## *Explanatory Statement*

### The law as it presently exists:

Statutes and court decisions govern lawsuits for personal injury and injury to property, including lawsuits against health care providers (doctors, dentists, and nurses, among others), and health care facilities (hospitals and clinics, among others) for injuries resulting from health care services. These are sometimes called "malpractice suits."

Where a plaintiff in such a lawsuit proves that he or she was injured by the negligent provision of health care services, the plaintiff is entitled to a court judgment requiring the defendants who caused the injury to compensate the plaintiff for his or her damages. Plaintiffs are entitled to compensation for all "economic damages" caused by the injury, defined as "objectively verifiable monetary losses," such as medical expenses, lost earnings, and loss of the use of property. Plaintiffs also are entitled to recover all "noneconomic damages" caused by the injury, defined as "subjective nonmonetary losses," such as pain, suffering, disfigurement, and emotional distress.

When a plaintiff's damages are caused by the fault of more than one defendant, the court determines the percentage of total fault attributable to each defendant and the percentage of fault attributable to the injured plaintiff, if any. With exceptions, where more than one defendant is at fault for a plaintiff's injury, the plaintiff is entitled to recover damages for the injury from each defendant, only in an amount attributable to each defendant's proportionate share of fault. However, where the defendants were acting together, or where one defendant was an agent of another defendant, that defendant also is held responsible for the fault of the other, and the injured plaintiff may recover from either defendant the total damages attributable to their fault. In addition, where the injured plaintiff is free of fault, he or she may recover up to the total judgment for damages from any or all of the defendants, without regard to each defendant's proportionate share of fault.

An employer may be liable for injuries that were negligently caused by an employee. A hospital may be liable for the acts or omissions of health care providers to whom the hospital granted the privilege of providing services at the hospital. In such cases, the injured party may recover damages from the employer or the employee or from the hospital or health care provider.

The fact that an injured plaintiff has been compensated for his or her damages from another source may not be shown at trial where the plaintiff's damages were paid from the plaintiff's assets, the assets of immediate family members, or by insurance paid for with such assets. Third parties, such as insurance companies, who pay expenses that a plaintiff incurs as the result of an injury, have a right to seek reimbursement from the damages recovered by the plaintiff.

Medical malpractice lawsuits normally must be filed within the later of three years of the event that caused the injury or one year from when the injury reasonably should have been discovered. In any event, such a lawsuit must be filed within eight years of the event that caused the injury, unless discovery of the injury is prevented by fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, in which case it must be started within one year of discovery. Where the injured person is incompetent, the period for filing suit does not run during the time of incompetence. The period for filing suit on behalf of minors is similar, except that discovery of the injury by a parent or guardian is treated the same as discovery by the patient.

When a judgment for injuries includes $100,000 or more to compensate an injured plaintiff for "economic damages" that the plaintiff will suffer in the future, the court is required to provide for periodic payment of such damages, rather than a lump sum payment. If an injured plaintiff dies before receiving all of the payments, the court may modify the award, but may not reduce or terminate an award for lost future earnings.

In medical malpractice actions, the court determines whether a party's attorney fees are reasonable by considering several factors set out in the law, including whether the fee is "fixed" or "contingent." A contingent fee is a specified percentage of the damages recovered by the injured person, and is owed to the attorney only if damages are recovered.

With certain exceptions, parties to a lawsuit must mediate their claims before going to trial. In mediation, a neutral third party assists the parties to try to settle their suit. Parties to a dispute also have the option of submitting the dispute to arbitration rather than going to court. In arbitration, a person other than a judge hears and decides the dispute. Arbitration decisions are subject to very limited review by courts.

## *Explanatory Statement* *(continued)*

### The effect of the proposed measure, if it becomes law:

Initiative 330 applies to lawsuits for injuries resulting from providing health care or related services, or arranging for such services.

With one exception, the Initiative would limit to $350,000 the total combined "noneconomic damages" that can be awarded to each claimant against all health care professionals and health care institutions who are sued in the same case. Where a health care institution is liable for the wrongful acts or omissions of persons other than health care professionals, there is an exception and the total combined limit on "noneconomic damages" would be $700,000 for each claimant. A single claimant would be defined to include all persons claiming to have sustained damages as the result of the injury or death of a single person.

Under the Initiative, when a plaintiff's injury is caused by the fault of more than one health care provider, health care professional, or health care institution, each would be liable for its proportionate share of the injured party's damages, based on its proportion of fault. Exceptions to this rule would exist where the health care defendants acted together, or where one health care defendant is the agent of another, or acts under the direct supervision or control of another. In those circumstances, a health care defendant would be responsible for payment of the proportionate share of the damages attributable to the fault of the other defendant, and the injured plaintiff would be allowed to recover those damages from either. However, unlike current law, there would be no exception allowing an injured plaintiff to recover up to the entire amount of a judgment for damages from any or all defendants in cases where the plaintiff is free of fault.

The Initiative would change current law so that a hospital would be liable for the negligence of a health care provider granted privileges to practice at the hospital only if the health care provider is an actual agent or employee of the hospital. In addition, health care professionals and health care institutions would not be liable for the acts or omissions of any other health care provider who is not an actual agent or employee of the provider, or who was not acting under the provider's direct supervision or control.

The Initiative would allow a party at trial to show that an injured plaintiff has been compensated for his or her damages from any source, including the assets of the plaintiff or the plaintiff's family, or insurance purchased with such assets. Unlike current law, a third party, such as an insurance company, who has compensated the plaintiff for his or her damages would have no right to seek reimbursement from the damages recovered by the plaintiff.

The Initiative would impose a new requirement that a plaintiff give at least ninety days' notice prior to filing a lawsuit. Under the Initiative, lawsuits generally would have to be filed within a shorter period, the sooner of one year from the time the injured party discovers or reasonably should have discovered the cause of the injury, or within three years of the injury-causing event. In the case of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic effect, a lawsuit could be commenced within one year from its discovery. Where the injured person is incompetent, the time for filing a suit would continue to run during the incompetence.

The Initiative would change the law regarding periodic payment of future damages by (1) expanding future damages subject to periodic payment, and (2) reducing from $100,000 to $50,000 future damage awards to be paid periodically. Future damages subject to periodic rather than lump sum payment would include damages for future medical treatment, care or custody, loss of future wages, loss of bodily function, and future pain and suffering. If the plaintiff dies before receiving all payments, upon request of any party, the court would eliminate periodic payments awarded for future medical treatment, care or custody, loss of bodily function, and future pain and suffering. Periodic payments for loss of future earnings would not be reduced, but must be paid to the plaintiff's dependents.

The Initiative would prohibit attorneys from contracting for or collecting contingent fees in medical malpractice lawsuits in an amount more than 40% of the first $50,000 recovered, 33.33% of the next $50,000 recovered, 25% of the next $500,000 recovered, and 15% of any recovery in excess of $600,000.

The Initiative would require mediation in medical malpractice lawsuits with no exceptions. Contracts for health care or related services could require disputes concerning malpractice to be submitted to arbitration. Disputes subject to binding arbitration would not be subject to mediation requirements.

## *Statement For Initiative Measure 330*

Doctors, nurses, and over 320,000 patients who signed petitions placing I-330 on the ballot are united in support of its reforms. I-330 improves health care access, and puts patients' needs ahead of personal injury lawyers.

**KEEP DOCTORS IN WASHINGTON**

Lawsuits by greedy personal injury lawyers force medical liability premiums up and force doctors to restrict services or move out of Washington even if they've never been sued. Over half of Washington doctors statewide have had to refer patients to new physicians for services they can no longer offer. I-330 will keep doctors in Washington and increase health care access.

**PUTTING PATIENTS FIRST**

I-330 establishes a reasonable cap on noneconomic, "pain-and-suffering," damages of $350,000 to $1,050,000. *Under I-330, juries will be able to award unlimited economic damages, enabling patients to recover all medical costs, all current and future lost income, the cost of prescription drugs, and other family needs*. I-330 allows doctors and patients to choose arbitration or mediation instead of costly court battles; *everyone will benefit from speedier resolution and lower fees for personal injury lawyers*.

**LESS MONEY FOR PERSONAL INJURY LAWYERS**

I-330 limits fees for personal injury lawyers using a sliding scale: the higher the award, the more money goes to the injured patient. *Right now, there is no limit on how much money personal injury lawyers can collect, and many routinely receive 40% or more of what juries thought they were setting aside for injured patients!*

Vote Yes on I-330.

For more information, visit www.yesoni330.org or call 877.740.0177.

## *Rebuttal of Statement Against*

Our opponents' arguments are a collection of smokescreens, half-truths and misleading soundbites, but what else would you expect from a campaign run by trial lawyers?

I-330 clearly states "damages awarded for loss of future earnings *may not be reduced or payments terminated* by reason of the death of the judgment creditor." (Section 10, subsection 4)

And I-330 requires patients' *voluntary* consent before arbitration. (Section 8)

Don't buy the lawyers' lies, visit www.theirlipsaremoving.com . I-330: Vote Yes!

***Voters' Pamphlet Argument Prepared by:***

KENNETH ISAACS, M.D., Doctors, Nurses, and Patients for a Healthy Washington; MARIANNE TEFFT, concerned patient; CYNTHIA MARKUS, M.D., J.D., concerned physician and attorney; DANA WALLACE, R.N., Chair, Nurses For I 330/Against I 336; TIMOTHY SHELDON, State Senator (D Potlatch).

## *Statement Against Initiative Measure 330*

**BEFORE YOU VOTE ON I-330, BE SURE TO READ THE FINE PRINT.**

There is a big difference between the ballot description of I-330 and the actual Initiative. I-330 contains 20 pages of fine print. Read it at www.TruthInTheFinePrint.com .

**I-330 GIVES THE INSURANCE INDUSTRY MANY HIDDEN BENEFITS AT YOUR EXPENSE.**

• I-330 allows the insurance industry to pay money they owe you over a period of twenty or thirty years or longer. If you die before they pay what they owe, the insurance company gets to keep your money instead of paying it to your family. [Section 10(4)]

• The insurance industry is raising rates while making record profits. [State Insurance Commissioner 03/01/2005]. Even if I-330 passes, they still don't have to lower doctors' insurance rates. Insurance rates aren't even mentioned in I-330. [I-330, Full Text]

**I-330 WOULD FORCE YOU TO GIVE UP YOUR RIGHT TO YOUR DAY IN COURT.**

• Under I-330, before you can get health insurance, medical care or a prescription, HMOs, insurance companies, and hospitals can force you to sign a mandatory binding arbitration contract saying, *"By signing this contract you are agreeing to have any issue of malpractice decided by neutral arbitration and you are giving up your right to a jury or court trial."* This also applies to nursing and veterans homes. [Section 8(2)]

• Under I-330, the cap on damages applies to all cases of medical negligence, regardless of how bad the negligence or how serious the injury. There are no exceptions even in serious cases of true medical negligence resulting in brain damage, loss of limb, permanent paralysis, or death. I-330 shields the few doctors who repeatedly cause serious injuries. Because I-330 allows continued secrecy, you can never learn who they are. [Section 2(1)]

**VOTE NO ON I-330 – IT'S THE WRONG SOLUTION. READ THE FINE PRINT.**

For more information, visit www.TruthInTheFinePrint.org or call 206.697.4744.

## *Rebuttal of Statement For*

I-330: so bad for patients and taxpayers that seniors, nurses, firefighters and veterans oppose it.

Read the fine print: real cap is $350,000, no exceptions for true medical negligence causing severe injuries; insurance industry keeps the money they owe your families if you die; insurers can force you to give up your day in court to get medical care or prescriptions; insurance industry not required to lower rates.

• The wrong solution. No on I-330.

***Voters' Pamphlet Argument Prepared by:***

HONORABLE EILEEN CODY, R.N., Chair, House Health Care Committee; CHERYL MARSHALL, member, Washington ARC, King County Parent Coalition; HONORABLE MIKE KREIDLER, Insurance Commissioner, State of Washington; KELLY FOX, President, Washington State Council of Fire Fighters; SHEILA MALMBERG, registered nurse practicing Wenatchee and Chelan; WILL PARRY, Washington State Alliance for Retired Americans.

*Complete Text of*

## INITIATIVE MEASURE NO. 330

AN ACT Relating to health care liability reform; amending RCW 4.56.250, 7.70.020, 7.70.070, 7.70.100, 4.16.350, 7.70.080, 74.34.200, 4.22.070, and 4.22.015; adding a new section to chapter 4.56 RCW; adding a new section to chapter 7.04 RCW; adding new sections to chapter 7.70 RCW; and creating new sections.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

**Sec. 1.** RCW 4.56.250 and 1986 c 305 s 301 are each amended to read as follows:

(1) As used in this section, the following terms have the meanings indicated unless the context clearly requires otherwise.

(a) "Economic damages" means objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities.

(b) "Noneconomic damages" means subjective, nonmonetary losses, including((,)) but not limited to pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, loss of ability to enjoy life, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, ((~~and~~)) destruction of the parent-child relationship, and other nonpecuniary damages of any type.

(c) "Bodily injury" means physical injury, sickness, or disease, including death.

(d) "Average annual wage" means the average annual wage in the state of Washington as determined under RCW 50.04.355.

(2) Except as provided in section 2 of this act, in no action seeking damages for personal injury or death may a claimant recover a judgment for noneconomic damages exceeding an amount determined by multiplying 0.43 by the average annual wage and by the life expectancy of the person incurring noneconomic damages, as the life expectancy is determined by the life expectancy tables adopted by the insurance commissioner. For purposes of determining the maximum amount allowable for noneconomic damages, a claimant's life expectancy shall not be less than fifteen years. The limitation contained in this subsection applies to all claims for noneconomic damages made by a claimant who incurred bodily injury. Claims for loss of consortium, loss of society and companionship, destruction of the parent-child relationship, and all other derivative claims asserted by persons who did not sustain bodily injury are to be included within the limitation on claims for noneconomic damages arising from the same bodily injury.

(3) If a case is tried to a jury, the jury shall not be informed of the limitation contained in subsection (2) of this section.

NEW SECTION. **Sec. 2.** A new section is added to chapter 4.56 RCW to read as follows:

(1) In any action or arbitration for damages for injury or death occurring as a result of health care or related services, or the arranging for the provision of health care or related services, whether brought under chapter 7.70 RCW, RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060, 4.24.010, or 48.43.545(1), any other applicable law, or any combination thereof, that is based upon the alleged wrongful acts or omissions of one or more health care professionals, whether or not those health care professionals are named as defendants, the total combined civil liability for noneconomic damages for all health care professionals, all persons, entities, and health care institutions for whose conduct the health care professionals could be held liable, and all persons, entities, and health care institutions that could be held liable for the conduct of any health care professionals, shall not exceed three hundred fifty thousand dollars for each claimant, regardless of the number of health care professionals, health care providers, or health care institutions against whom the claim for injury or death is or could have been asserted or the number of separate causes of action on which the claim is based.

(2) Any and all health care institutions against whom liability is imposed based upon a wrongful act or omission of any health care professional are specifically included within the limitation on liability for noneconomic damages contained in subsection (1) of this section, even if the health care institution also is or could be held liable for a wrongful act or omission of a person other than a health care professional, another health care institution, or a related entity, facility, or institution.

(3) If, in an action or arbitration for injury or death occurring as a result of health care or related services, or the arranging for health care or related services, whether brought under chapter 7.70 RCW, RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060, 4.24.010, or 48.43.545(1), any other applicable law, or any combination thereof, one or more health care institutions are liable for any wrongful acts or omissions of persons other than health care professionals, but are not liable for any alleged wrongful act or omission of any health care professional, the total civil liability for noneconomic damages for each such health care institution, including all persons, entities, and other health care institutions for whose conduct the health care institution could be liable, shall not exceed three hundred fifty thousand dollars for each claimant, and the total combined limit of civil liability for noneconomic damages for all health care institutions, including all persons, entities, and other health care institutions for whose conduct the health care institutions could be held liable, shall not exceed seven hundred thousand dollars for each claimant, regardless of the number of health care institutions, health care professionals, or health care providers against whom the claim for damages for injury or death is or could have been asserted or the number of separate causes of action on which the claim is based.

(4) A claimant shall not be permitted to obtain more than

one recovery of noneconomic damages by splitting his or her claim or cause of action for damages for injury or death occurring as a result of health care or related services, or the arranging for the provision of health care or related services, or by bringing separate actions for such injury or death against more than one health care professional or health care institution. A claimant who has recovered noneconomic damages in one action for damages for injury or death occurring as a result of health care or related services, or the arranging for the provision of health care or related services, shall be precluded from seeking or recovering additional noneconomic damages for the injury or death in any other action.

(5) If the jury's assessment of noneconomic damages exceeds the limitations contained in subsection (1), (2), or (3) of this section, nothing in RCW 4.44.450 precludes the court from entering a judgment that limits the total amount of noneconomic damages to those limits provided in subsections (1), (2), and (3) of this section.

(6) If a case is tried to a jury, the jury shall not be informed of the limitations on noneconomic damages contained in subsections (1), (2), and (3) of this section.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claimant" means a person, including a decedent's estate, seeking or who has sought recovery of damages in an action or arbitration for injury or death occurring as a result of health care or related services, or the arranging for the provision of health care or related services. All persons claiming to have sustained damages as a result of the injury or death of a single person are considered a single claimant, and the limitations on noneconomic damages specified in subsections (1), (2), and (3) of this section shall include all noneconomic damages claimed by or on behalf of the person whose injury or death occurred as a result of health care or related services, or the arranging for the provision of health care or related services, as well as all claims for noneconomic damages asserted by or on behalf of others arising from the same injury or death.

(b) "Economic damages" has the meaning set forth in RCW 4.56.250(1)(a).

(c) "Health care institution" means any entity, whether or not incorporated, facility, or institution that is licensed, registered, or certified by this state to provide health care or related services or to arrange for the provision of health care or related services, including, but not limited to, an ambulatory diagnostic, treatment, or surgical facility, an adult family home, an ambulance, aid, or emergency medical service, a blood bank or blood center, a boarding home, a community health center, a community mental health center, a comprehensive community health center, a disability insurer, a drug and alcohol treatment center, an extended care facility, a group home, a health carrier, a health care service contractor, a health maintenance organization, a home health agency, a hospice, a hospice care center, a hospital, an independent clinical laboratory, an in-home services agency, an intermediate care facility, a kidney disease treatment facility, a long-term care facility, a migrant health center, a nursing home, a pharmacy, a psychiatric hospital, a psychiatric, neuropsychiatric, or mental health facility, a rehabilitation facility, a renal dialysis center, a rural health care facility, a skilled nursing facility, a soldiers or veterans home, a sperm bank, a tissue bank, a tribal clinic, or a visiting nurse service, including any related entity, facility, or institution owned or operated by the health care institution, and any officer, director, employee, agent, or apparent agent of the health care institution or such related entity, facility, or institution, acting in the course and scope of his or her employment or agency, including in the event such officer, director, employee, or agent is deceased, his or her estate or personal representative.

(d) "Health care professional" means:

(i) Any health care provider described in RCW 7.70.020 (1) and (2);

(ii) Any clinic, corporation, limited liability company, partnership, or limited liability partnership comprised of one or more of the health care providers described in RCW 7.70.020(1), and any officer, director, employee, agent, or apparent agent thereof acting within the scope of his or her employment or agency, including in the event such officer, director, employee, agent, or apparent agent is deceased, his or her estate or personal representative; or

(iii) Any entity, facility, or institution that is owned or operated by a health care provider described in RCW 7.70.020(1), or by a clinic, corporation, limited liability company, partnership, or limited liability partnership comprised of one or more of the health care providers described in RCW 7.70.020(1), and any officer, director, employee, agent, or apparent agent thereof acting in the course and scope of his or her employment or agency, including in the event such officer, director, employee, agent, or apparent agent is deceased, his or her estate or personal representative.

(e) "Health care provider" means any person or entity described in RCW 7.70.020.

(f) "Noneconomic damages" has the meaning set forth in RCW 4.56.250(1)(b).

**Sec. 3.** RCW 7.70.020 and 1995 c 323 s 3 are each amended to read as follows:

As used in this chapter "health care provider" means either:

(1) A person licensed, registered, or certified by this state to provide health care or related services, including, but not limited to, a licensed acupuncturist, a physician, an osteopathic physician, a dentist, a nurse, an optometrist, a podiatric physician and surgeon, a chiropractor, a physical therapist, a psychologist, a pharmacist, an optician, a physician's assistant, a midwife, an osteopathic physician's assistant, an advanced registered nurse practitioner, a drugless healer, a naturopath, a dental hygienist, a denturist, an ocularist, an occupational therapist, a pharmacy assistant, a radiologic technologist, a nursing assistant, a respiratory

care practitioner, a health care assistant, a dietician, a nutritionist, a surgical technologist, a mental health counselor, a marriage and family therapist, a social worker, or a physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his or her estate or personal representative;

(2) An employee or agent of a person described in ((~~part~~)) subsection (1) ((~~above~~)) of this section, acting in the course and scope of his or her employment or agency, including, in the event such employee or agent is deceased, his or her estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in ((~~part~~)) subsection (1) ((~~above~~)) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his or her employment or agency, including in the event such officer, director, employee, or agent is deceased, his or her estate or personal representative.

**Sec. 4.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12 are each amended to read as follows:

(1) Except as set forth in subsection (2) of this section, the court shall, in any action under this chapter, determine the reasonableness of each party's attorneys' fees. The court shall take into consideration the following:

((~~(1)~~)) (a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

((~~(2)~~)) (b) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

((~~(3)~~)) (c) The fee customarily charged in the locality for similar legal services;

((~~(4)~~)) (d) The amount involved and the results obtained;

((~~(5)~~)) (e) The time limitations imposed by the client or by the circumstances;

((~~(6)~~)) (f) The nature and length of the professional relationship with the client;

((~~(7)~~)) (g) The experience, reputation, and ability of the lawyer or lawyers performing the services;

((~~(8)~~)) (h) Whether the fee is fixed or contingent.

(2)(a) An attorney may not contract for or collect a contingency fee for representing a person in connection with an action for damages for injury or death occurring as a result of health care or related services, or the arranging for the provision of health care or related services, in excess of the following limits:

(i) Forty percent of the first fifty thousand dollars recovered;

(ii) Thirty-three and one-third percent of the next fifty thousand dollars recovered;

(iii) Twenty-five percent of the next five hundred thousand dollars recovered;

(iv) Fifteen percent of any amount in which the recovery exceeds six hundred thousand dollars.

(b) The limitations in this section apply regardless of whether the recovery is by judgment, settlement, arbitration, mediation, or other form of alternative dispute resolution.

(c) If periodic payments are awarded to the plaintiff, the court shall place a total value on these payments and include this amount in computing the total award from which attorneys' fees are calculated under this subsection.

(d) For purposes of this subsection, "recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with the arbitration, litigation, or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office overhead costs or charges are not deductible disbursements or costs for such purposes.

(3) Subsection (2) of this section applies to all contingency fee arrangements or agreements, including any modification of the amount of any contingency fee, entered into after the effective date of this section.

**Sec. 5.** RCW 7.70.100 and 1993 c 492 s 419 are each amended to read as follows:

(1) No action for damages for injury or death occurring as a result of health care or related services, or the arranging for the provision of health care or related services, may be commenced unless the defendant has been given at least ninety days' notice of the intention to commence the action. If the notice is served within ninety days before the expiration of the applicable statute of limitations, the time for the commencement of the action must be extended ninety days from the service of the notice.

(2) The provisions of subsection (1) of this section are not applicable with respect to any defendant whose name is unknown to the plaintiff at the time of filing the complaint and who is identified therein by a fictitious name.

(3) After the filing of the ninety-day presuit notice, and before a superior court trial, all causes of action, whether based in tort, contract, or otherwise, for damages ((~~arising from~~)) for injury or death occurring as a result of health care or related services, or the arranging for the provision of health care or related services, provided after July 1, 1993, shall be subject to mandatory mediation prior to trial.

((~~(2)~~)) (4) The supreme court shall by rule adopt procedures to implement mandatory mediation of actions under this chapter. The rules shall require mandatory mediation without exception and address, at a minimum:

(a) Procedures for the appointment of, and qualifications of, mediators. A mediator shall have experience or expertise related to actions arising from injury occurring as a result of health care, and be a member of the state bar association who has been admitted to the bar for a minimum of five years or who is a retired judge. The parties may stipulate to a nonlawyer mediator. The court may prescribe additional qualifications of mediators;

(b) Appropriate limits on the amount or manner of compensation of mediators;

(c) The number of days following the filing of a claim ((~~under this chapter~~)) within which a mediator must be selected;

(d) The method by which a mediator is selected. The rule shall provide for designation of a mediator by the superior court if the parties are unable to agree upon a mediator;

(e) The number of days following the selection of a mediator within which a mediation conference must be held;

(f) A means by which mediation of an action ((~~under this chapter~~)) may be waived by a mediator who has determined that the claim is not appropriate for mediation; and

(g) Any other matters deemed necessary by the court.

((~~(3)~~)) (5) Mediators shall not impose discovery schedules upon the parties.

(6) The supreme court shall by rule also adopt procedures for the parties to certify to the court the manner of mediation used by the parties to comply with this section.

**Sec. 6.** RCW 4.16.350 and 1998 c 147 s 1 are each amended to read as follows:

(1) Any civil action or arbitration for damages for injury or death occurring as a result of health care or related services, or the arranging for the provision of health care or related services, which is provided after June 25, 1976, against((~~:~~

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

~~(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or~~

~~(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;~~)) a health care provider as defined in RCW 7.70.020, or a health care institution as defined in section 2(7)(c) of this act, based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury, death, or condition, or within one year of the time the patient or his or her representative or custodial parent or guardian discovered or reasonably should have discovered that the injury, death, or condition was caused by said act or omission, whichever period ((~~expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, until the date the patient or the patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.~~

~~For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.~~

~~For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years~~)) occurs first.

(2) In no event may an action be commenced more than three years after the act or omission alleged to have caused the injury or condition except:

(a) Upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, in which case the patient or the patient's representative has one year from the date the patient or the patient's representative or custodial parent or guardian has actual knowledge of the act of fraud or concealment or of the presence of the foreign body within which to commence a civil action for damages.

(b) In the case of a minor, upon proof that the minor's custodial parent or guardian and the defendant or the defendant's insurer have committed fraud or collusion in the failure to bring an action on behalf of the minor, in which case the patient or the patient's representative has one year from the date the patient or the patient's representative other than the custodial parent or guardian who committed the fraud or collusion has actual knowledge of the fraud or collusion, or one year from the date of the minor's eighteenth birthday, whichever provides a longer period.

(c) In the case of a minor under the full age of six years, in which case the action on behalf of the minor must be commenced within three years, or prior to the minor's eighth birthday, whichever provides a longer period.

(3) For purposes of this section, the tolling provisions of RCW 4.16.190 do not apply.

(4) This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in RCW 4.16.340(5).

(5) This section applies to all causes of action for injury or death occurring as a result of health care or related services, or the arranging for the provision of health care or related services, filed on or after the effective date of this section.

However, any action which, if filed on or after the effective date of this section, would have been timely under former law, but now would be barred under the chapter . . . Laws of 2005 amendments contained in this section, may be brought within one year following the effective date of this section.

(6) Any action not commenced in accordance with this section is barred.

**Sec. 7.** RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each amended to read as follows:

(1) Any party may present evidence to the trier of fact that the patient or claimant has already been, or will be, compensated for the injury complained of from ((~~any source except the assets of the patient, his representative, or his immediate family, or insurance purchased with such assets. In the event such evidence is admitted, the plaintiff may present evidence of an obligation to repay such compensation. Insurance bargained for or provided on behalf of an employee shall be considered insurance purchased with the assets of the employee~~)) a collateral source. In the event the evidence is admitted, the other party may present evidence of any amount that was paid or contributed to secure the right to any compensation. Compensation as used in this section shall mean payment of money or other property to or on behalf of the patient or claimant, rendering of services to the patient free of charge to the patient or claimant, or indemnification of expenses incurred by or on behalf of the patient or claimant. Notwithstanding this section, evidence of compensation by a defendant health care provider may be offered only by that provider.

(2) Unless otherwise provided by superseding federal law, there is no right of subrogation or reimbursement from the patient's or claimant's tort recovery with respect to compensation covered in subsection (1) of this section.

NEW SECTION. **Sec. 8.** A new section is added to chapter 7.04 RCW to read as follows:

(1) A contract for health care or related services that contains a provision for arbitration of a dispute as to professional negligence of a health care provider as defined in RCW 7.70.020, whether brought under chapter 7.70 RCW, RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060, or 4.24.010, any other applicable law, or any combination thereof, must have the provision as the first article of the contract and the provision must be expressed in the following language:

"It is understood that any dispute as to medical malpractice that is as to whether any health care or related services rendered under this contract were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered, will be determined by submission to arbitration as provided by Washington law, and not by a lawsuit or resort to court process except as Washington law provides for judicial review of arbitration proceedings. Both parties to this contract, by entering into it, are giving up their constitutional right to have such a dispute decided in a court of law before a jury, and instead are accepting the use of arbitration."

(2) Immediately before the signature line provided for the individual contracting for the health care or related services, there must appear the following in at least ten-point bold red type:

"NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY ISSUE OF MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE ONE OF THIS CONTRACT."

(3) Once signed, such a contract governs all subsequent open-book account transactions for health care or related services for which the contract was signed until or unless rescinded by written notice within thirty days of signature. Written notice of such rescission may be given by a guardian or other legal representative of the patient if the patient is incapacitated or a minor.

(4) Where the contract is one for health care or related services to a minor, it may not be disaffirmed if signed by the minor's parent or legal guardian.

(5) A contract for the provision of health care or related services that contains a provision for arbitration of a dispute as to professional negligence of a health care provider shall not be deemed a contract of adhesion, or unconscionable, or otherwise improper, where it complies with subsections (1) through (3) of this section.

(6) Subsections (1) through (3) of this section do not apply to any health benefit plan contract offered by an organization regulated under Title 48 RCW that has been negotiated to contain an arbitration agreement with subscribers and enrollees under such a contract.

NEW SECTION. **Sec. 9.** A new section is added to chapter 7.70 RCW to read as follows:

RCW 7.70.100, 7.70.110, 7.70.120, and 7.70.130 do not apply if there is a contract for binding arbitration under section 8 of this act.

NEW SECTION. **Sec. 10.** A new section is added to chapter 7.70 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Future damages" includes damages for future health care or related services, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering of the judgment creditor.

(b) "Periodic payments" means the payment of money or delivery of other property to the judgment creditor at regular intervals.

(2) In any action for damages for injury occurring as a result of health care or related services, or for the arranging for the provision of health care or related services, the court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic

payments rather than by a lump-sum payment if the award equals or exceeds fifty thousand dollars in future damages. In entering a judgment ordering the payment of future damages by periodic payments, the court shall make a specific finding as to the dollar amount of periodic payments which will compensate the judgment creditor for such future damages. As a condition to authorizing periodic payments of future damages, the court shall require the judgment debtor who is not adequately insured to post security adequate to ensure full payment of such damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security, or so much as remains, to the judgment debtor.

(3)(a) The judgment ordering the payment of future damages by periodic payments must specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments must be made. The payments are only subject to modification in the event of the death of the judgment creditor.

(b) In the event that the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the payments, as specified in (a) of this subsection, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor all damages caused by the failure to make such periodic payments, including court costs and attorneys' fees.

(4) In the event of the death of the judgment creditor, the court, upon petition of any party in interest, shall modify the judgment to eliminate future periodic payments of damages awarded for future medical treatment, care or custody, loss of bodily function, or future pain and suffering of the judgment creditor. However, money damages awarded for loss of future earnings may not be reduced or payments terminated by reason of the death of the judgment creditor, but must be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately prior to his or her death. In such cases, the court that rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this subsection (4).

(5) Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments ceases and any security given under subsection (2) of this section reverts to the judgment debtor.

(6) For purposes of this section, the provisions of RCW 4.56.250 do not apply.

(7) It is intended in enacting this section to authorize, in actions for damages for injury occurring as a result of health care or related services, or the arranging for the provision of health care or related services, the entry of judgments that provide for the payment of future damages through periodic payments rather than lump-sum payments. By authorizing periodic payment judgments, it is further intended that the courts will utilize such judgments to provide compensation sufficient to meet the needs of an injured plaintiff and those persons who are dependent on the plaintiff for whatever period is necessary while eliminating the potential windfall from a lump-sum recovery that was intended to provide for the care of an injured plaintiff over an extended period who then dies shortly after the judgment is paid, leaving the balance of the judgment award to persons and purposes for which it was not intended. It is also intended that all elements of the periodic payment program be specified with certainty in the judgment ordering such payments and that the judgment not be subject to modification at some future time that might alter the specifications of the original judgment, except in the event of the death of the judgment creditor.

NEW SECTION. **Sec. 11.** It is intended in enacting sections 12 and 13 of this act that health care providers should remain personally liable for their own negligent or wrongful acts or omissions in connection with the provision of health care services, but that their vicarious liability for the negligent or wrongful acts or omissions of others should be curtailed. To that end, it is intended that *Adamski v. Tacoma General Hospital*, 20 Wn. App. 98, 579 P.2d 970 (1978), and its holding that hospitals may be held liable for a physician's acts or omissions under so-called "apparent agency" or "ostensible agency" theories should be reversed, so that hospitals will not be liable for the act or omission of a health care provider granted hospital privileges unless the health care provider is an actual agent or employee of the hospital. It is further intended that, notwithstanding any generally applicable principle of vicarious liability to the contrary, individual health care professionals will not be liable for the negligent or wrongful acts of others, except those who were acting under their direct supervision and control.

NEW SECTION. **Sec. 12.** A new section is added to chapter 7.70 RCW to read as follows:

A public or private hospital shall be liable for an act or omission of a health care provider granted privileges to provide health care at the hospital only if the health care provider is an actual agent or employee of the hospital and the act or omission of the health care provider occurred while the health care provider was acting within the course and scope of the health care provider's agency or employment with the hospital.

NEW SECTION. **Sec. 13.** A new section is added to chapter 7.70 RCW to read as follows:

A person who is a health care provider under RCW 7.70.020 (1) or (2) shall not be personally liable for any act or omission of any other health care provider who was not the person's actual agent or employee or who was not acting under the person's direct supervision and control at the time of the act or omission.

**Sec. 14.** RCW 74.34.200 and 1999 c 176 s 15 are each amended to read as follows:

(1) In addition to other remedies available under the law, a vulnerable adult who has been subjected to abandonment, abuse, financial exploitation, or neglect either while residing in a facility or in the case of a person residing at home who receives care from a home health, hospice, or home care agency, or an individual provider, shall have a cause of action for damages on account of his or her injuries, pain and suffering, and loss of property sustained thereby. This action shall be available where the defendant is or was a corporation, trust, unincorporated association, partnership, administrator, employee, agent, officer, partner, or director of a facility, or of a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW, as now or subsequently designated, or an individual provider.

(2) It is the intent of the legislature, however, that where there is a dispute about the care or treatment of a vulnerable adult, the parties should use the least formal means available to try to resolve the dispute. Where feasible, parties are encouraged but not mandated to employ direct discussion with the health care provider, use of the long-term care ombudsman or other intermediaries, and, when necessary, recourse through licensing or other regulatory authorities.

(3) In an action brought under this section, a prevailing plaintiff shall be awarded his or her actual damages, together with the costs of the suit((~~, including a reasonable attorney's fee~~)). The term "costs" includes((~~, but is not limited to,~~)) the reasonable fees for a guardian((~~,~~)) and guardian ad litem, ((~~and experts,~~)) if any, that ((~~may be~~)) were necessary to the litigation of a claim brought under this section.

NEW SECTION. **Sec. 15.** In the event that the Washington state supreme court or other court of competent jurisdiction rules or affirms that section 2 of this act is unconstitutional, then the prescribed limitations on noneconomic damages set forth in section 2 of this act take effect upon the ratification of a state constitutional amendment that empowers the legislature to enact limits on the amount of noneconomic damages recoverable in any or all civil causes of action or upon the enactment by the United States congress of a law permitting such limitations on noneconomic damages, whichever occurs first.

**Sec. 16.** RCW 4.22.070 and 1993 c 496 s 1 are each amended to read as follows:

(1) In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages except entities immune from liability to the claimant under Title 51 RCW. The sum of the percentages of the total fault attributed to at-fault entities shall equal one hundred percent. The entities whose fault shall be determined include the claimant or person suffering personal injury or incurring property damage, defendants, third-party defendants, entities ((~~released by~~)) who have entered into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with the claimant, entities with any other individual defense against the claimant, and entities immune from liability to the claimant, but shall not include those entities immune from liability to the claimant under Title 51 RCW. Judgment shall be entered against each defendant except those entities who have ((~~been released by~~)) entered into a release, covenant not to sue, covenant not to enforce judgment, or similar agreement with the claimant or are immune from liability to the claimant or have prevailed on any other individual defense against the claimant in an amount which represents that party's proportionate share of the claimant's total damages. The liability of each defendant shall be several only and shall not be joint except:

(a) A party shall be responsible for the fault of another person or for payment of the proportionate share of another party where both were acting in concert or when a person was acting as an agent or servant of the party.

(b) If the trier of fact determines that the claimant or party suffering bodily injury or incurring property damages was not at fault, the defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the ((~~claimants [claimant's]~~)) claimant's total damages.

(2) Notwithstanding the provisions of subsection (1)(a) and (b) of this section, in an action for damages for injury or death occurring as a result of health care or related services, or the arranging for the provision of health care or related services, whether brought under chapter 7.70 RCW, RCW 4.20.010, 4.20.020, 4.20.046, 4.24.010, or 48.43.545(1), any other applicable law, or any combination thereof, the liability of each health care provider, health care professional, and health care institution, as those terms are defined in section 2(7) of this act, shall be several only except that a party shall be responsible for the fault of another person or for payment of the proportionate share of another party where both were acting in concert or when a person was acting as the actual agent or servant of the party or was acting under the party's direct supervision and control.

(3) If a defendant is jointly and severally liable under one of the exceptions listed in subsection((~~s~~)) (1)(a) ((~~or (1)~~)), (b), or (2) of this section, such defendant's rights to contribution against another jointly and severally liable defendant, and the effect of settlement by either such defendant, shall be determined under RCW 4.22.040, 4.22.050, and 4.22.060.

(((~~3~~))) (4) (a) Nothing in this section affects any cause of action relating to hazardous wastes or substances or solid waste disposal sites.

(b) Nothing in this section shall affect a cause of action arising from the tortious interference with contracts or business relations.

(c) Nothing in this section shall affect any cause of action

## *Complete Text of*
## INITIATIVE MEASURE NO. 330
*(continued)*

arising from the manufacture or marketing of a fungible product in a generic form which contains no clearly identifiable shape, color, or marking.

**Sec. 17.** RCW 4.22.015 and 1981 c 27 s 9 are each amended to read as follows:

"Fault" includes acts or omissions, including misuse of a product, that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability or liability on a product liability claim. The term also includes breach of warranty, unreasonable assumption of risk, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

A comparison of fault for any purpose under RCW 4.22.005 through ((~~4.22.060~~)) 4.22.070 shall involve consideration of both the nature of the conduct of the parties to the action and the extent of the causal relation between such conduct and the damages.

NEW SECTION. **Sec. 18.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 19.** Sections 1 through 3, 7, 10 through 14, 16, and 17 of this act apply to all causes of action, whether filed or not, that the parties have not settled or in which judgment has not been entered before the effective date of this section.

NEW SECTION. **Sec. 20.** Sections 5, 8, and 9 of this act apply to all causes of action filed on or after the effective date of this section.

## *Complete Text of*
## INITIATIVE MEASURE NO. 336

AN ACT Relating to health care quality protection; amending RCW 18.71.015, 7.70.050, 18.71.0195, and 70.02.010; adding a new section to chapter 48.19 RCW; adding a new section to chapter 18.130 RCW; adding a new section to chapter 18.71 RCW; adding new sections to chapter 7.70 RCW; adding a new section to chapter 70.02 RCW; adding a new chapter to Title 48 RCW; creating a new section; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

**PART I - Medical Liability Insurance Transparency and Market Options**

NEW SECTION. **Sec. 101.** The legislature declares that the business and practice of health care vitally affects the public interest. The legislature 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. The legislature further 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. 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. Therefore, it is the intent of the legislature to increase consumer access to information regarding medical malpractice liability and insurance and to reduce costs by increasing patient safety and information.

NEW SECTION. **Sec. 102.** (1) The insurance commissioner shall notify the public of any rate filing by an insurer for a rate change affecting medical malpractice that is less than fifteen percent of the then applicable rate. The filing is approved forty-five days after public notice unless:

(a) A consumer or his or her representative requests a hearing within thirty days of public notice and the commissioner grants the hearing;

(b) The commissioner on his or her own motion determines to hold a hearing; or

(c) The commissioner disapproves the filing.

(2) If the rate filing increase is fifteen percent or greater,