

AN ACT Relating to actions against emergency health care providers; amending RCW 7.70.020; amending RCW 7.70.030.

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

Sec. 1 RCW 7.70.020 and 1995 c 323 s 3 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context requires otherwise ~~"health care provider" means either:~~

(1) "Emergency facility health care" means any health care, including, but not limited to screenings, examinations, evaluations, treatments, surgeries, services pursuant to obligations imposed by 42. U.S.C. s.1395dd (EMTALA regulation), provided by a physician, or, to the extent permitted by law, other person licensed by this state to provide health care or related services, to a person while admitted to an emergency health care facility.

(2) "Emergency health care facility" means: (1) a hospital emergency department or other department of the hospital, surgical or otherwise, where an admitted hospital emergency department patient is taken for further treatment, or (2) other locally recognized emergency care facility.

(3) "Health care provider" means either:

(a1) A person licensed by this state to provide health care or related services, including, but not limited to, a licensed acupuncturist, a physician, osteopathic physician, dentist, nurse, optometrist, podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, midwife, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his or her estate or personal representative;

(b2) An employee or agent of a person described in part (a1) above, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his or her estate or personal representative; or

(c3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in part (a1) above, 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, including in the event such officer, director, employee, or agent is deceased, his or her estate or personal representative.

Sec. 2. RCW 7.70.030 and 1975-76 2nd ex.s. c 56 s 8 are each amended to read as follows:

(1) No award shall be made in any action or arbitration for damages for injury

occurring as the result of health care which is provided after June 25, 1976, unless the plaintiff establishes one or more of the following propositions:

(a) That injury resulted from the failure of a health care provider to follow the accepted standard of care;

(b) That a health care provider promised the patient or his representative that the injury suffered would not occur;

(c) That injury resulted from health care to which the patient or his representative did not consent.

Except as provided in subsection (2) of this section or as ~~Unless~~ otherwise provided in this chapter, the plaintiff shall have the burden of proving each fact essential to an award by a preponderance of the evidence.

(2) In any action or arbitration for damages for injury incurring as the result of emergency facility health care which is provided after _____, 2006, the plaintiff shall have the burden of proving each fact essential to an award by clear, cogent, and convincing evidence.