
SUBSTITUTE HOUSE BILL 2084

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Prentice, Cole, Brekke, Braddock, Anderson, Day and Leonard).

Read first time March 6, 1991.

1 AN ACT Relating to nonphysician health practitioners; amending RCW
2 70.43.020, 70.43.030, and 74.09.522; adding a new section to chapter
3 70.43 RCW; adding a new section to chapter 70.58 RCW; repealing RCW
4 70.58.085; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.43 RCW
7 to read as follows:

8 (1) For the purpose of this section, "health practitioner" means a
9 nurse midwife licensed under the authorization of the Washington state
10 board of nursing pursuant to chapter 18.88 RCW, and, effective January
11 1, 1993, a midwife licensed pursuant to chapter 18.50 RCW.

12 (2) After December 31, 1991, it is unlawful for any hospital
13 licensed under this chapter, except a hospital that directly employs
14 its medical staff, to prohibit a health practitioner from being
15 accorded clinical privileges and appointed to all categories of staff

1 membership if the hospital offers health services that can be performed
2 by the health practitioner within the scope of her or his practice and
3 consistent with standards set forth in subsection (3) of this section.

4 If a health practitioner submits a completed application for staff
5 membership or clinical privileges to a hospital, the hospital has one
6 hundred twenty calendar days to grant or deny the application. No
7 hospital may deny such an application, terminate or reduce the rights
8 and responsibilities attending the staff membership of a health
9 practitioner, or reduce, suspend, revoke, or refuse to renew his or her
10 clinical privileges, without providing the following minimum procedural
11 protection:

12 (a) A contemporaneous written explanation containing the explicit
13 reasons for taking the action;

14 (b) Reasonable advance notice of the right to a fair hearing that
15 would afford the applicant an opportunity to adequately prepare a
16 rebuttal to the stated reasons for the action;

17 (c) A fair hearing, including the right to present evidence and
18 call witnesses in her or his behalf;

19 (d) The right to have retained counsel present at the hearing if
20 the hospital is represented by counsel at the hearing;

21 (e) A written decision containing the explicit reasons for taking
22 the action and substantially based on the evidence produced at the
23 hearing; and

24 (f) Access to a complete record documenting all preliminary and
25 final decisions and proceedings related to the decisions.

26 (3) Clinical privileges shall be determined on an individual basis
27 and commensurate with an applicant's education, training, experience,
28 demonstrated current competence, and within her or his scope of
29 practice. In implementing these criteria, each hospital shall
30 formulate and apply reasonable, nondiscriminatory standards for the

1 evaluation of an applicant's credentials as it would with other health
2 professionals. As part of its overall responsibility for the operation
3 of a hospital, the governing body, or designated persons so
4 functioning, shall ensure that decisions on clinical privileges and
5 staff membership are based on an objective evaluation of an applicant's
6 credentials, free of anticompetitive intent or purpose. Whenever
7 possible, the credentials committee and other staff who evaluate and
8 determine the qualifications of applicants for clinical privileges and
9 staff membership shall include members of the applicant's profession.

10 The following are not valid factors for consideration in the
11 determination of qualifications for staff membership or clinical
12 privileges:

13 (a) An applicant's membership or lack of membership in a
14 professional society or association;

15 (b) An applicant's decision to advertise, lower fees, or engage in
16 other competitive acts intended to solicit business;

17 (c) An applicant's participation in prepaid group health plans,
18 salaried employment, or any other manner of delivering health services
19 on other than a fee-for-service basis;

20 (d) An applicant's support for, training of, or participation in a
21 private group practice with members of a particular class of health
22 professional;

23 (e) An applicant's practices with respect to testifying in
24 malpractice suits, disciplinary actions, or any other type of
25 proceeding; and

26 (f) An applicant's willingness to send a certain number of patients
27 or clients who are in need of hospital services to a particular
28 hospital.

29 Each hospital shall formulate procedures to ensure that the
30 foregoing factors play no part when decisions regarding clinical

1 privileges and staff membership are made. In any action brought by an
2 individual against a hospital regarding a determination of clinical
3 privileges or staff membership, the hospital shall have the burden of
4 proving that none of these considerations were a factor in the
5 determination.

6 **Sec. 2.** RCW 70.43.020 and 1986 c 205 s 2 are each amended to read
7 as follows:

8 The governing body of any hospital, except any hospital which
9 employs its medical staff, in considering and acting upon applications
10 for staff membership or professional privileges within the scope of the
11 applicants' respective licenses, shall not discriminate against a
12 qualified person solely on the basis of whether such person is licensed
13 under chapter((s)) 18.71, 18.57, or 18.22 RCW, or chapter 18.88 or
14 18.50 RCW as provided in section 1 of this act.

15 **Sec. 3.** RCW 70.43.030 and 1986 c 205 s 3 are each amended to read
16 as follows:

17 Any person who is aggrieved may apply to superior court for a
18 preliminary or permanent injunction restraining a violation of RCW
19 70.43.010 ((or)), 70.43.020, or section 1 of this act. This action is
20 an additional remedy not dependent on the adequacy of the remedy at
21 law. Nothing in this chapter shall require a hospital to grant staff
22 membership or professional privileges until a final determination is
23 made upon the merits by the hospital governing body.

24 **Sec. 4.** RCW 74.09.522 and 1989 c 260 s 2 are each amended to read
25 as follows:

26 (1) For the purposes of this section, "managed health care system"
27 means any health care organization, including health care providers,

1 insurers, health care service contractors, health maintenance
2 organizations, health insuring organizations, or any combination
3 thereof, that provides directly or by contract health care services
4 covered under RCW 74.09.520 and rendered by licensed providers, on a
5 prepaid capitated case management basis and that meets the requirements
6 of section 1903(m)(1)(A) of Title XIX of the federal social security
7 act.

8 (2) No later than July 1, 1991, the department of social and health
9 services shall enter into agreements with managed health care systems
10 to provide health care services to recipients of aid to families with
11 dependent children under the following conditions:

12 (a) Agreements shall be made for at least thirty thousand
13 recipients state-wide;

14 (b) Agreements in at least one county shall include enrollment of
15 all recipients of aid to families with dependent children;

16 (c) To the extent that this provision is consistent with section
17 1903(m) of Title XIX of the federal social security act, recipients
18 shall have a choice of systems in which to enroll and shall have the
19 right to terminate their enrollment in a system(~~(: PROVIDED, That)~~).
20 The department may limit recipient termination of enrollment without
21 cause to the first month of a period of enrollment, which period shall
22 not exceed six months(~~(: AND PROVIDED FURTHER, That)~~). The department
23 shall not restrict a recipient's right to terminate enrollment in a
24 system for cause;

25 (d) To ensure that recipients enrolled in managed health care
26 systems have access to a full range of health care services, the
27 department shall explore incentives for participating managed health
28 care systems to contract with nurse midwives licensed under the
29 authorization of the Washington state board of nursing pursuant to
30 chapter 18.88 RCW, and, effective January 1, 1993, midwives licensed

1 pursuant to chapter 18.50 RCW, who practice in the geographic area
2 covered by the agreement, to provide services within their scope of
3 practice as defined by chapters 18.88 and 18.50 RCW;

4 (e) To the extent that this provision is consistent with section
5 1903(m) of Title XIX of the federal social security act, participating
6 managed health care systems shall not enroll a disproportionate number
7 of medical assistance recipients within the total numbers of persons
8 served by the managed health care systems, except that this subsection
9 (d) shall not apply to entities described in subparagraph (B) of
10 section 1903(m) of Title XIX of the federal social security act;

11 ~~((e))~~ (f) Prior to negotiating with any managed health care
12 system, the department shall estimate, on an actuarially sound basis,
13 the expected cost of providing the health care services expressed in
14 terms of upper and lower limits, and recognizing variations in the cost
15 of providing the services through the various systems and in different
16 project areas. In negotiating with managed health care systems the
17 department shall adopt a uniform procedure to negotiate and enter into
18 contractual arrangements, including standards regarding the quality of
19 services to be provided; and financial integrity of the responding
20 system;

21 ~~((f))~~ (g) The department shall seek waivers from federal
22 requirements as necessary to implement this chapter;

23 ~~((g))~~ (h) The department shall, wherever possible, enter into
24 prepaid capitation contracts that include inpatient care. However, if
25 this is not possible or feasible, the department may enter into prepaid
26 capitation contracts that do not include inpatient care;

27 ~~((h))~~ (i) The department shall define those circumstances under
28 which a managed health care system is responsible for out-of-system
29 services and assure that recipients shall not be charged for such
30 services; and

1 (~~(i)~~) (j) Nothing in this section prevents the department from
2 entering into similar agreements for other groups of people eligible to
3 receive services under chapter 74.09 RCW.

4 (3) The department shall seek to obtain a large number of contracts
5 with providers of health services to medicaid recipients. The
6 department shall ensure that publicly supported community health
7 centers and providers in rural areas, who show serious intent and
8 apparent capability to participate in the project as managed health
9 care systems are seriously considered as providers in the project. The
10 department shall coordinate these projects with the plans developed
11 under chapter 70.47 RCW.

12 (4) The department shall work jointly with the state of Oregon and
13 other states in this geographical region in order to develop
14 recommendations to be presented to the appropriate federal agencies and
15 the United States congress for improving health care of the poor, while
16 controlling related costs.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.58 RCW
18 to read as follows:

19 (1) The department of health shall establish and operate an
20 heirloom birth certificate program that shall offer a distinctive
21 design certificate to parents. The department shall aggressively
22 promote the sale of the heirloom birth certificate in hospitals and
23 other appropriate places. The charge to the parents shall be not less
24 than fifty dollars but not more than seventy-five dollars per
25 certificate. Funds from the sale of heirloom birth certificates shall
26 be distributed as follows:

27 (a) No more than five percent of the funds shall be expended for
28 administrative purposes;

1 (b) At least fifty percent of the amount, less administrative
2 costs, shall be provided to the Washington council for the prevention
3 of child abuse and neglect pursuant to RCW 43.121.100, but in no case
4 shall the amount be less than that received by the council for the
5 fiscal year 1991; and

6 (c) Up to fifty percent of the amount, less administrative costs,
7 shall be provided for a scholarship and loan repayment program for
8 certified nurse midwives licensed under the authorization of the
9 Washington state board of nursing pursuant to chapter 18.88 RCW and
10 midwives licensed under chapter 18.50 RCW, or for students pursuing
11 education leading to certification or licensure under chapter 18.88 or
12 18.50 RCW. The amount shall be equally divided between the two
13 categories of midwives.

14 (2) Funds collected for the purposes of subsection (1)(c) of this
15 section shall be disbursed by the higher education coordinating board
16 as follows:

17 (a) If Senate Bill No. 5514 is enacted, the funds shall be
18 deposited in the health professional loan repayment and scholarship
19 program trust fund created therein. The deposited funds shall be
20 expended for loan repayment and scholarship awards to midwives or
21 midwifery students described in subsection (1)(c) of this section. In
22 the event that midwives are not declared eligible for awards under the
23 loan repayment or scholarship program authorized by Senate Bill No.
24 5514, the funds shall be held in trust until midwives are determined
25 eligible and shall then be expended.

26 (b) If Senate Bill No. 5514 is not enacted, the higher education
27 coordinating board shall expend the funds as awards to students
28 pursuing licensure as midwives or certified nurse midwives under the
29 physician, midwife, and pharmacist scholarship program authorized under
30 chapter 70.180 RCW.

1 NEW SECTION. **Sec. 6.** RCW 70.58.085 and 1987 c 351 s 6 are
2 each repealed.