

SENATE BILL REPORT

SB 5859

AS REPORTED BY COMMITTEE ON WAYS & MEANS, FEBRUARY 8, 1994

Brief Description: Modifying regulation of health professions.

SPONSORS: Senators Talmadge, Deccio, Wojahn and Moyer

SENATE COMMITTEE ON HEALTH & HUMAN SERVICES

Majority Report: That Second Substitute Senate Bill No. 5859 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Talmadge, Chairman; Wojahn, Vice Chairman; Deccio, Erwin, Franklin, Fraser, Hargrove, McAuliffe, McDonald, Moyer, Niemi, Prentice, Quigley and Winsley.

Staff: Rhoda Jones (786-7198)

Hearing Dates: January 13, 1994; January 31, 1994

SENATE COMMITTEE ON WAYS & MEANS

That Second Substitute Senate Bill No. 5859 as recommended by Committee on Health & Human Services be substituted therefor, and the substitute bill do pass.

Signed by Senators Rinehart, Chairman; Quigley, Vice Chairman; Bauer, Cantu, Gaspard, Hargrove, Hochstatter, Moyer, Niemi, Pelz, Snyder, Spanel, Sutherland, Talmadge and Wojahn.

Staff: Linda Brownell (786-7913)

Hearing Dates: February 7, 1994; February 8, 1994

BACKGROUND:

The state currently regulates 40 health care professions. Presently all are in separate boards or advisory committees. Nineteen of the professions are regulated by boards which have rule-making and disciplinary authority, and the remaining 21 professions are under the authority of the Secretary of Health. Boards are staffed primarily by members of the profession they regulate.

The statutory authority for each health care profession is specified in separate health care professional practice acts under Title 18 RCW. Each act includes the level of regulation, either licensure, certification or registration. Each act also specifies the scope of practice, which defines the diagnoses, services, treatments, pharmaceuticals and other technologies the profession can use. Further, these individual acts stipulate education, training and exam

requirements, and the structure and composition of the boards or advisory committees.

However, each act is different and there is considerable variation in how each profession is regulated. There is overlap in the different scopes of practice and discrepancies in how regulatory standards are applied. Over the past decade, the Legislature has attempted to make health professional regulation more uniform and consistent through such legislation as the Uniform Disciplinary Act, the Sunrise Review Act and the Credentialing Act. All of these attempt to establish uniform standards across all professions for licensing, discipline and changes in scope of practice.

However, the application of these uniform acts varies among the professions. This is because separate regulatory authorities are responsible for their implementation.

Despite these reforms, regulatory inconsistencies remain. For example, under the application of the Uniform Disciplinary Act a conviction for same offense may receive markedly different penalties across professions, particularly where there is overlapping scope of practice.

The Legislature is required to intervene in these matters and enact amendments and additions to the practice acts. These range from "housekeeping" changes to complex changes involving very technical issues.

Critics of the current system feel these changes should be made by a non-legislative body that has technical expertise to deliberate over these choices.

SUMMARY:

The original bill was not considered.

EFFECT OF PROPOSED SUBSTITUTE:

The Legislature is removed from its role in regulating health care professionals. That authority is transferred to the Department of Health. The Department of Health is authorized to handle all requests for changes in professional status, from the point when a health profession applies for a change in credentialing or scope of practice, to the execution of a final decision either granting or denying the change. The Secretary of Health is given authority to regulate new professions. Final authority for all decisions is granted to the Secretary of Health.

A new entity at the Department of Health named the Sunrise Review Committee is created to oversee all requests for regulatory changes from the state's regulated health professions. This committee makes recommendations to the secretary on these requests, either referring applicants on to a sunrise review, or recommending denial of the request. Following the sunrise review process, the committee makes

final recommendations to the secretary, who is authorized to have final authority on any change of regulatory status.

The Legislature intends that the secretary's decisions on these matters be based on the recommendations of the Sunrise Review Committee, and minimum criteria which is specified in the act. The health professional licensing boards continue to issue and renew licenses. The secretary can review and nullify the action of a licensing board if the action alters the scope of practice of the health profession. Additional education, training and other requirements may be established as the result of changes in a health profession's scope of practice or level of credentialing.

Further, the Department of Health must conduct a comprehensive review of the present regulatory process for all health care professionals. A multi-disciplinary task force is created and authorized to analyze each of the separate health care professions to determine if their individual standards for scope of practice and credentialing levels accommodate the needs of consumers in this state and meet the goals of health care reform. This committee is to report back to the Legislature by December, 1995 with an analysis of its findings and any proposals for change.

The Secretary of Health must set in rule by July 1, 1995, uniform standards and sanctions to assure the consistent and fair application of the Uniform Disciplinary Act for all health professions. This includes all phases of discipline from assessing the need to investigate to issuing sanctions. By July 1, 1995, boards must delegate adjunctive proceedings to review judges. Additional administrative rules are specified which supplement those in the Administrative Procedure Act.

Restrictions are imposed on releasing information to the public about some types of disciplinary action. Respondents have at least 90 days to submit documents and evidence for consideration in a settlement conference. Extensions may be granted for good cause. Some provisions to the Uniform Disciplinary Act are made retroactive to actions pending or in process on January 1, 1993 or occurring after January 1, 1993.

Most of the 35 health boards and committees are consolidated and placed in a new structure. This will reduce the overall number of boards from 35 to 15, and membership in boards and committees in general from 228 to 145. The restructuring includes creating seven Quality Assurance Commissions each named broadly for the services they provide and boards they represent: Medical, Chiropractic, Dental, Nursing, Allied Physicians, Vision Care, and Physical Health Therapies. The boards that are consolidated into these Quality Assurance Commissions retain whatever rule-making and disciplinary powers they held going into this restructuring. A Mental Health Care Quality Assurance Council is created which includes nine members from different mental health care professions. This commission provides an advisory role for the secretary. Seven existing boards remain unchanged, and

seven existing advisory boards are abolished. One board, the Nursing Home Administrator Board, is transferred to the Department of Social and Health Services.

The Joint Administrative Rules Review Committee may review any guideline, interpretive statement, policy statement, declaratory judgment, advisory opinion and other orders of an administrative agency of the state as these may affect a class of persons.

EFFECT OF PROPOSED SECOND SUBSTITUTE:

The Legislature is removed from its role in regulating health care professionals who seek a change in scope of practice or a new level of credentialing. The authority is transferred to a new commission created, called the Professional Review Commission. This commission under the Department of Health is authorized to act on all requests for changes in professional status, from the point of application, to the execution of a final decision.

The Professional Review Commission has five members, who are appointed by the Governor, and is chaired by the state health officer. The Legislature retains the authority to decide if a new profession should be considered for credentialing, or if an existing one should go through sunset. The existing sunrise review process at the Department of Health remains intact.

The Department of Health must conduct a comprehensive review of the present regulatory process for all health care professionals. A task force is created to do this, and must report back to the Legislature by December, 1995, with an analysis of its findings and any proposals for change.

The Secretary of Health must set in rule by July 1, 1995, uniform standards and sanctions to assure the consistent and fair application of the Uniform Disciplinary Act for all health care professions. The secretary is also authorized to decide when presiding officers must be used to expedite legal matters during the disciplinary process. Further, the secretary must set in rule specific time limits to each phase of the disciplinary process, including assessment, investigation, charging, discovery, settlement and adjudication of complaints.

The dual boards for the medical, dental and chiropractic professions have been consolidated into one Quality Care Commission for each of these professions. All former duties and responsibilities have been retained and transferred to the single commissions.

The Nursing Care Quality Assurance Commission is created, consolidating the Board of Nursing and the Licensed Practical Nursing Board. Membership includes the three nursing professions and two public members, with the same powers and duties as current boards.

The Mental Health Quality Assurance Council is created with nine members representing counselors, social workers and therapists and two nonvoting members, a psychologist and a psychiatrist.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR (Health & Human Services):

Each year the Legislature is asked to consider many bills that propose changes in the scope of practice or levels of credentialing of the health professions. The Legislature has to mediate very technical conflicts between health professions. Creating an objective process for analyzing these requests will help assure that decisions are based on objectively established criteria.

Implementing uniform disciplinary guidelines will help make the discipline process more consistent across the health professions and more responsive to those who use it.

Consolidating health care boards will help reduce administrative costs in governing health care professions. Combining dual boards (medical, dental and chiropractic) and parallel professions (nursing and mental health) helps develop alliances and cooperation which will positively impact health care policy in this state.

TESTIMONY AGAINST (Health & Human Services):

Debates over changes scope of practice and level of credentialing are public policy discussions and belong in the full view of the public, which is the Legislature. There is no way to remove politics from the process and health care professions risk being badly served by a Secretary of Health or a Governor who is unsympathetic with a specific health care profession.

Consolidating boards provides no efficiencies. Boards pay for themselves through their dues and so the savings to the state is minimal.

TESTIFIED (Health & Human Services): Sherman Cox, Ron Weaver, Steve Boruchowitz, Department of Health (pro); Patricia Muchmore, physical therapy (con); Patricia VanWagner, physical therapist (con); Dr. Jack Havens, Veterinary Board of Governors (con); Dr. Jerry Pospisil, WA State Veterinary Medical Assn. (con); Marlyn Sexton, LPN (pro); Nancy Hogan, Licensed Practical Nurses Assn. WA State (pro) Dr. Richard Seamon, WSMA; Cris Kessler, Natl Assn. of Social Workers (pro); Angela Gause, WA Occupational Therapy Assn.; Diane Sosne, 1199 NWISEIU (con); Jeff Larsen, WA Osteopathic Medical Assn., WA Assn of Naturopathic, Society of Occularists, WA Assn. of Physicians Assistants; Frank Morrison, WA Podiatric Medical Assn.;

Melanie Stewart, WA Acupuncture Assn., WA Licensed Massage Practitioners; Steve Lindstrom, Acupuncture Assn. of WA, WA Licensed Massage Practitioners, Assn. of Alcoholism Addiction Programs; Nick Federici, WA Board of Health (pro); Lars Hennum, Pharmacists of Wash.; Steve Wehrly, Chiropractors; Rick Larsen, WA State Dental Assn., Lis Merten, WA State Nurses Assn. (pro); Kathy Spong, WA Assn. of Optometric Physicians

TESTIMONY FOR (Ways & Means): None

TESTIMONY AGAINST (Ways & Means):

It is not appropriate to merge these boards. There is no fiscal savings to consolidation. This legislation repeals the disciplinary account for physicians. Money dedicated for treating substance impaired physicians is channeled in to a more general account.

TESTIFIED (Ways & Means): Jim Whittenburg, Eastern Washington Pharmacists (con); Carl Nelson, Washington State Medical Association