
SECOND SUBSTITUTE HOUSE BILL 1618

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Skinner, Dyer, Conway, Zellinsky, Cody, Backlund, Parlette and Clements)

Read first time 01/22/98. Referred to Committee on .

1 AN ACT Relating to treatment programs for impaired physicians;
2 amending RCW 18.71.0195, 18.71.300, 18.71.310, 18.71.320, 18.71.330,
3 18.71.340, 18.130.070, 18.130.080, 18.130.175, and 18.130.300; adding
4 a new section to chapter 18.71 RCW; adding a new section to chapter
5 18.57 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the self-imposed
8 license surcharge on physician licenses to fund a program to help
9 physicians with chemical dependency or mental illness is not being
10 fully spent on that program. It is the intent of the legislature that
11 the program be fully funded and that funds collected into the impaired
12 physician account be spent only on the program.

13 **Sec. 2.** RCW 18.71.0195 and 1994 sp.s. c 9 s 328 are each amended
14 to read as follows:

15 (1) The contents of any report file under RCW 18.130.070 shall be
16 confidential and exempt from public disclosure pursuant to chapter
17 42.17 RCW, except that it may be reviewed (a) by the licensee involved
18 or his or her counsel or authorized representative who may submit any

1 additional exculpatory or explanatory statements or other information,
2 which statements or other information shall be included in the file, or
3 (b) by a representative of the commission, or investigator thereof, who
4 has been assigned to review the activities of a licensed physician.

5 Upon a determination that a report is without merit, the
6 commission's records may be purged of information relating to the
7 report.

8 (2) Every individual, medical association, medical society,
9 hospital, medical service bureau, health insurance carrier or agent,
10 professional liability insurance carrier, professional standards review
11 organization, ~~((and))~~ agency of the federal, state, or local government
12 ~~((shall be)),~~ or the entity established by RCW 18.71.300 and its
13 officers, agents, and employees are immune from civil liability,
14 whether direct or derivative, for providing information to the
15 commission under RCW 18.130.070, or for which an individual health care
16 provider has immunity under the provisions of RCW 4.24.240, 4.24.250,
17 or 4.24.260.

18 **Sec. 3.** RCW 18.71.300 and 1994 sp.s. c 9 s 329 are each amended to
19 read as follows:

20 ~~((Unless the context clearly requires otherwise,))~~ The definitions
21 in this section apply throughout RCW 18.71.310 through 18.71.340 unless
22 the context clearly requires otherwise.

23 (1) ~~(("Committee"))~~ "Entity" means a nonprofit corporation formed
24 by physicians who have expertise in the areas of ~~((alcoholism))~~ alcohol
25 abuse, drug abuse, ~~((or))~~ alcoholism, other drug addictions, and mental
26 illness and who broadly represent the physicians of the state and that
27 has been designated to perform any or all of the activities set forth
28 in RCW 18.71.310(1) ~~((pursuant to rules adopted))~~ by the commission
29 ~~((under chapter 34.05 RCW)).~~

30 (2) "Impaired" or "impairment" means the ~~((presence of the diseases~~
31 ~~of alcoholism, drug abuse, mental illness))~~ inability to practice
32 medicine with reasonable skill and safety to patients by reason of
33 physical or mental illness including alcohol abuse, drug abuse,
34 alcoholism, other drug addictions, or other debilitating conditions.

35 (3) "Impaired physician program" means the program for the
36 prevention, detection, intervention, ~~((and))~~ monitoring, and treatment
37 of impaired physicians established by the commission pursuant to RCW
38 18.71.310(1).

1 (4) "Physician" or "practitioner" means a person licensed under
2 this chapter, chapter 18.71A RCW, or a professional licensed under
3 another chapter of Title 18 RCW whose disciplining authority has a
4 contract with the entity for an impaired practitioner program for its
5 license holders.

6 (5) "Treatment program" means a plan of care and rehabilitation
7 services provided by those organizations or persons authorized to
8 provide such services to be approved by the commission or entity for
9 impaired physicians taking part in the impaired physician program
10 created by RCW 18.71.310.

11 **Sec. 4.** RCW 18.71.310 and 1997 c 79 s 2 are each amended to read
12 as follows:

13 (1) The commission shall enter into a contract with the
14 ~~((committee))~~ entity to implement an impaired physician program. The
15 commission may enter into a contract with the entity for up to six
16 years in length. The impaired physician program may include any or all
17 of the following:

18 (a) ~~((Contracting))~~ Entering into relationships supportive of the
19 impaired physician program with ~~((providers of))~~ professionals who
20 provide either evaluation or treatment ~~((programs))~~ services, or both;

21 (b) Receiving and ~~((evaluating))~~ assessing reports of suspected
22 impairment from any source;

23 (c) Intervening in cases of verified impairment, or in cases where
24 there is reasonable cause to suspect impairment;

25 (d) Upon reasonable cause, referring suspected or verified impaired
26 physicians ~~((to))~~ for evaluation or treatment ~~((programs))~~;

27 (e) Monitoring the treatment and rehabilitation of impaired
28 physicians including those ordered by the commission;

29 (f) Providing ~~((post-treatment))~~ monitoring and continuing
30 treatment and rehabilitative support of ~~((rehabilitative impaired))~~
31 physicians;

32 (g) Performing such other activities as agreed upon by the
33 commission and the ~~((committee))~~ entity; and

34 (h) Providing prevention and education services.

35 (2) A contract entered into under subsection (1) of this section
36 shall be financed by a surcharge of ~~((up to))~~ twenty-five dollars per
37 year on each license renewal or issuance of a new license to be
38 collected by the department of health from every physician ~~((and~~

1 ~~surgeon~~) licensed under this chapter, or a physician assistant
2 licensed under chapter 18.71A RCW, in addition to other license fees.
3 These moneys shall be placed in the (~~health professions~~) impaired
4 physician account to be used solely for the implementation of the
5 impaired physician program.

6 **Sec. 5.** RCW 18.71.320 and 1994 sp.s. c 9 s 331 are each amended to
7 read as follows:

8 The (~~committee~~) entity shall develop procedures in consultation
9 with the commission for:

10 (1) Periodic reporting of statistical information regarding
11 impaired physician activity;

12 (2) Periodic disclosure and joint review of such information as the
13 commission may deem appropriate regarding reports received, contacts or
14 investigations made, and the disposition of each report(~~(:—PROVIDED,~~
15 ~~That))~~). However, the (~~committee~~) entity shall not disclose any
16 personally identifiable information except as provided in subsections
17 (3) and (4) of this section;

18 (3) Immediate reporting to the commission of the name and results
19 of any contact or investigation regarding any suspected or verified
20 impaired physician who is reasonably believed probably to constitute an
21 imminent danger to himself or herself or to the public;

22 (4) Reporting to the commission, in a timely fashion, any suspected
23 or verified impaired physician who (~~refuses~~) fails to cooperate with
24 the (~~committee, refuses~~) entity, fails to submit to evaluation or
25 treatment, or whose impairment is not substantially alleviated through
26 treatment, (~~and~~) or who, in the opinion of the (~~committee~~) entity,
27 is probably unable to practice medicine with reasonable skill and
28 safety(~~(. However, impairment, in and of itself, shall not give rise~~
29 ~~to a presumption of the inability to practice medicine with reasonable~~
30 ~~skill and safety))~~);

31 (5) Informing each participant of the impaired physician program of
32 the program procedures, the responsibilities of program participants,
33 and the possible consequences of noncompliance with the program.

34 **Sec. 6.** RCW 18.71.330 and 1994 sp.s. c 9 s 332 are each amended to
35 read as follows:

36 If the commission has reasonable cause to believe that a physician
37 is impaired, the commission shall cause an evaluation of such physician

1 to be conducted by the ((committee)) entity or the ((committee's))
2 entity's designee or the commission's designee for the purpose of
3 determining if there is an impairment. The ((committee)) entity or
4 appropriate designee shall report the findings of its evaluation to the
5 commission.

6 **Sec. 7.** RCW 18.71.340 and 1987 c 416 s 6 are each amended to read
7 as follows:

8 All ((committee)) entity records are not subject to disclosure
9 pursuant to chapter 42.17 RCW.

10 **Sec. 8.** RCW 18.130.070 and 1989 c 373 s 19 are each amended to
11 read as follows:

12 (1) The disciplining authority may adopt rules requiring any
13 person, including, but not limited to, licensees, corporations,
14 organizations, health care facilities, impaired practitioner programs,
15 or voluntary substance abuse monitoring programs approved by the
16 disciplining authority and state or local governmental agencies, to
17 report to the disciplining authority any conviction, determination, or
18 finding that a license holder has committed an act which constitutes
19 unprofessional conduct, or to report information to the disciplining
20 authority, an impaired practitioner program, or voluntary substance
21 abuse monitoring program approved by the disciplining authority, which
22 indicates that the license holder may not be able to practice his or
23 her profession with reasonable skill and safety to consumers as a
24 result of a mental or physical condition. To facilitate meeting the
25 intent of this section, the cooperation of agencies of the federal
26 government is requested by reporting any conviction, determination, or
27 finding that a federal employee or contractor regulated by the
28 disciplinary authorities enumerated in this chapter has committed an
29 act which constituted unprofessional conduct and reporting any
30 information which indicates that a federal employee or contractor
31 regulated by the disciplinary authorities enumerated in this chapter
32 may not be able to practice his or her profession with reasonable skill
33 and safety as a result of a mental or physical condition.

34 (2) If a person fails to furnish a required report, the
35 disciplining authority may petition the superior court of the county in
36 which the person resides or is found, and the court shall issue to the

1 person an order to furnish the required report. A failure to obey the
2 order is a contempt of court as provided in chapter 7.21 RCW.

3 (3) A person is immune from civil liability, whether direct or
4 derivative, for providing information to the disciplining authority
5 pursuant to the rules adopted under subsection (1) of this section.

6 (4) The holder of a license subject to the jurisdiction of this
7 chapter shall report to the disciplining authority any conviction,
8 determination, or finding that the licensee has committed
9 unprofessional conduct or is unable to practice with reasonable skill
10 or safety. Failure to report within thirty days of notice of the
11 conviction, determination, or finding constitutes grounds for
12 disciplinary action.

13 **Sec. 9.** RCW 18.130.080 and 1986 c 259 s 5 are each amended to read
14 as follows:

15 A person, including but not limited to consumers, licensees,
16 corporations, organizations, health care facilities, impaired
17 practitioner programs, or voluntary substance abuse monitoring programs
18 approved by disciplining authorities, and state and local governmental
19 agencies, may submit a written complaint to the disciplining authority
20 charging a license holder or applicant with unprofessional conduct and
21 specifying the grounds therefor or to report information to the
22 disciplining authority, or voluntary substance abuse monitoring
23 program, or an impaired practitioner program approved by the
24 disciplining authority, which indicates that the license holder may not
25 be able to practice his or her profession with reasonable skill and
26 safety to consumers as a result of a mental or physical condition. If
27 the disciplining authority determines that the complaint merits
28 investigation, or if the disciplining authority has reason to believe,
29 without a formal complaint, that a license holder or applicant may have
30 engaged in unprofessional conduct, the disciplining authority shall
31 investigate to determine whether there has been unprofessional conduct.
32 A person who files a complaint or reports information under this
33 section in good faith is immune from suit in any civil action related
34 to the filing or contents of the complaint.

35 **Sec. 10.** RCW 18.130.175 and 1993 c 367 s 3 are each amended to
36 read as follows:

1 (1) In lieu of disciplinary action under RCW 18.130.160 and if the
2 disciplining authority determines that the unprofessional conduct may
3 be the result of substance abuse, the disciplining authority may refer
4 the license holder to a voluntary substance abuse monitoring program
5 approved by the disciplining authority.

6 The cost of the treatment shall be the responsibility of the
7 license holder, but the responsibility does not preclude payment by an
8 employer, existing insurance coverage, or other sources. Primary
9 alcoholism or other drug addiction treatment shall be provided by
10 approved treatment programs under RCW 70.96A.020(~~(:—PROVIDED, That)~~)
11 or by any other provider approved by the entity established under
12 chapter 18.71 RCW or the medical quality assurance commission.
13 However, nothing shall prohibit the disciplining authority from
14 approving additional services and programs as an adjunct to primary
15 alcoholism or other drug addiction treatment. The disciplining
16 authority may also approve the use of out-of-state programs. Referral
17 of the license holder to the program shall be done only with the
18 consent of the license holder. Referral to the program may also
19 include probationary conditions for a designated period of time. If
20 the license holder does not consent to be referred to the program or
21 does not successfully complete the program, the disciplining authority
22 may take appropriate action under RCW 18.130.160. The secretary shall
23 adopt uniform rules for the evaluation by the disciplinary authority of
24 a relapse or program violation on the part of a license holder in the
25 substance abuse monitoring program. The evaluation shall encourage
26 program participation with additional conditions, in lieu of
27 disciplinary action, when the disciplinary authority determines that
28 the license holder is able to continue to practice with reasonable
29 skill and safety.

30 (2) In addition to approving substance abuse monitoring programs
31 that may receive referrals from the disciplining authority, the
32 disciplining authority may establish by rule requirements for
33 participation of license holders who are not being investigated or
34 monitored by the disciplining authority for substance abuse. License
35 holders voluntarily participating in the approved programs without
36 being referred by the disciplining authority shall not be subject to
37 disciplinary action under RCW 18.130.160 for their substance abuse, and
38 shall not have their participation made known to the disciplining

1 authority, if they meet the requirements of this section and the
2 program in which they are participating.

3 (3) The license holder shall sign a waiver allowing the program to
4 release information to the disciplining authority if the licensee does
5 not comply with the requirements of this section or is unable to
6 practice with reasonable skill or safety. The substance abuse program
7 shall report to the disciplining authority any license holder who fails
8 to comply with the requirements of this section or the program or who,
9 in the opinion of the program, is unable to practice with reasonable
10 skill or safety. License holders shall report to the disciplining
11 authority if they fail to comply with this section or do not complete
12 the program's requirements. License holders may, upon the agreement of
13 the program and disciplining authority, reenter the program if they
14 have previously failed to comply with this section.

15 (4) The treatment and pretreatment records of license holders
16 referred to or voluntarily participating in approved programs shall be
17 confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and
18 shall not be subject to discovery by subpoena or admissible as evidence
19 except for monitoring records reported to the disciplining authority
20 for cause as defined in subsection (3) of this section. Monitoring
21 records relating to license holders referred to the program by the
22 disciplining authority or relating to license holders reported to the
23 disciplining authority by the program for cause, shall be released to
24 the disciplining authority at the request of the disciplining
25 authority. Records held by the disciplining authority under this
26 section shall be exempt from RCW 42.17.250 through 42.17.450 and shall
27 not be subject to discovery by subpoena except by the license holder.

28 (5) "Substance abuse," as used in this section, means the
29 impairment, as determined by the disciplining authority, of a license
30 holder's professional services by an addiction to, a dependency on, or
31 the use of alcohol, legend drugs, or controlled substances.

32 (6) This section does not affect an employer's right or ability to
33 make employment-related decisions regarding a license holder. This
34 section does not restrict the authority of the disciplining authority
35 to take disciplinary action for any other unprofessional conduct.

36 (7) A person who, in good faith, reports information or takes
37 action in connection with this section is immune from civil liability
38 for reporting information or taking the action.

1 (a) The immunity from civil liability provided by this section
2 shall be liberally construed to accomplish the purposes of this section
3 and the persons entitled to immunity shall include:

4 (i) An approved monitoring treatment program;

5 (ii) The professional association operating the program;

6 (iii) Members, employees, or agents of the program or association;

7 (iv) Persons reporting a license holder as being possibly impaired
8 or providing information about the license holder's impairment; and

9 (v) Professionals supervising or monitoring the course of the
10 impaired license holder's treatment or rehabilitation.

11 (b) The courts are strongly encouraged to impose sanctions on
12 clients and their attorneys whose allegations under this subsection are
13 not made in good faith and are without either reasonable objective,
14 substantive grounds, or both.

15 (c) The immunity provided in this section is in addition to any
16 other immunity provided by law.

17 **Sec. 11.** RCW 18.130.300 and 1994 sp.s. c 9 s 605 are each amended
18 to read as follows:

19 (1) The secretary, members of the boards or commissions, or
20 individuals acting on their behalf are immune from suit in any action,
21 civil or criminal, based on any disciplinary proceedings or other
22 official acts performed in the course of their duties.

23 (2) A voluntary substance abuse monitoring program or an impaired
24 practitioner program approved by a disciplining authority, or
25 individuals acting on their behalf, are immune from suit in a civil
26 action based on any disciplinary proceedings or other official acts
27 performed in the course of their duties.

28 NEW SECTION. **Sec. 12.** A new section is added to chapter 18.71 RCW
29 to read as follows:

30 The impaired physician account is created in the custody of the
31 state treasurer. All receipts from RCW 18.71.310 from license
32 surcharges on physicians and physician assistants shall be deposited
33 into the account. Expenditures from the account may only be used for
34 the impaired physician program under this chapter. Only the secretary
35 of health or the secretary's designee may authorize expenditures from
36 the account. No appropriation is required for expenditures from this
37 account.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 18.57 RCW
2 to read as follows:

3 The board may assess an additional fee of up to twenty-five dollars
4 on each licensee solely for physician assistants participating in a
5 physician health program.

6 NEW SECTION. **Sec. 14.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

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