
SENATE BILL 5778

State of Washington

55th Legislature

1997 Regular Session

By Senators Deccio and Wojahn

Read first time 02/12/97. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to referrals to the department of health by the
2 legislature to review proposed substantial changes to scope of practice
3 or level of regulation of health professions; amending RCW 18.120.010,
4 18.120.020, 18.120.030, 18.120.040, and 18.120.050; adding a new
5 section to chapter 18.120 RCW; providing an effective date; and
6 declaring an emergency.

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

8 **Sec. 1.** RCW 18.120.010 and 1990 c 33 s 554 are each amended to
9 read as follows:

10 (1) The purpose of this chapter is to establish guidelines for the
11 regulation of health professions not licensed or otherwise regulated
12 prior to July ((24, 1983)) 1, 1997, and those licensed or regulated
13 health professions which seek to substantially increase their scope of
14 practice((~~PROVIDED, That~~)). The provisions of this chapter are not
15 intended and shall not be construed to: (a) Apply to any regulatory
16 entity created prior to July ((24, 1983)) 1, 1997, except as provided
17 in this chapter; (b) affect the powers and responsibilities of the
18 superintendent of public instruction or state board of education under
19 RCW 28A.305.130 and 28A.410.010; (c) apply to or interfere in any way

1 with the practice of religion or to any kind of treatment by prayer;
2 and (d) apply to any remedial or technical amendments to any statutes
3 which licensed or regulated activity before July ~~((24, 1983))~~ 1, 1997.
4 The legislature believes that all individuals should be permitted to
5 enter into a health profession unless there is ~~((an overwhelming))~~ a
6 demonstrable need for the state to protect the interests of the public
7 by ~~((restricting))~~ regulating entry into the profession. Where such a
8 need is identified, the regulation adopted by the state should be set
9 at ~~((the least restrictive))~~ a level consistent with the public
10 interest ~~((to be protected))~~.

11 ~~((2) ((It is the intent of this chapter that no regulation shall,~~
12 ~~after July 24, 1983, be imposed upon any health profession except for~~
13 ~~the exclusive purpose of protecting the public interest.))~~ All bills
14 introduced in the legislature to regulate a health profession for the
15 first time ~~((should be reviewed according to the following criteria.~~
16 ~~A health profession should be regulated by the state only when))~~,
17 change the level of regulation, or substantially increase the scope of
18 practice should first be referred to the department of health for
19 review and recommendations. In responding to a legislative request
20 after July 1, 1997, for review and recommendations, the department
21 shall base its review and recommendations on one or more of the
22 following criteria:

23 (a) Unregulated practice can clearly harm or endanger the health,
24 safety, or welfare of the public ~~((, and the potential for the harm is~~
25 ~~easily recognizable and not remote or dependent upon tenuous~~
26 ~~argument))~~;

27 (b) The public needs and can reasonably be expected to benefit from
28 an assurance of initial and continuing professional ability and
29 availability; ~~((and))~~

30 (c) The public cannot be effectively protected by other means ~~((in~~
31 ~~a more cost-beneficial manner))~~;

32 (d) Regulated practice will promote effective health outcomes;

33 (e) Public access to a competent health care provider work force
34 will be increased; or

35 (f) The public will benefit from enhanced competition among health
36 care providers.

37 (3) After evaluating the criteria in subsection (2) of this section
38 and considering total governmental and societal costs and benefits, if
39 the department recommends and the legislature finds that it is

1 necessary to regulate a health profession not previously regulated by
2 law, the least restrictive alternative method of regulation should be
3 implemented, consistent with the public interest ((and this section:

4 ~~(a) Where existing common law and statutory civil actions and~~
5 ~~criminal prohibitions are not sufficient to eradicate existing harm,~~
6 ~~the regulation should provide for stricter civil actions and criminal~~
7 ~~prosecutions;~~

8 ~~(b) Where a service is being performed for individuals involving a~~
9 ~~hazard to the public health, safety, or welfare, the regulation should~~
10 ~~impose inspection requirements and enable an appropriate state agency~~
11 ~~to enforce violations by injunctive relief in court, including, but not~~
12 ~~limited to, regulation of the business activity providing the service~~
13 ~~rather than the employees of the business;~~

14 ~~(c) Where the threat to the public health, safety, or economic~~
15 ~~well-being is relatively small as a result of the operation of the~~
16 ~~health profession, the regulation should implement a system of~~
17 ~~registration;~~

18 ~~(d) Where the consumer may have a substantial basis for relying on~~
19 ~~the services of a practitioner, the regulation should implement a~~
20 ~~system of certification; or~~

21 ~~(e) Where apparent that adequate regulation cannot be achieved by~~
22 ~~means other than licensing, the regulation should implement a system of~~
23 ~~licensing)).~~

24 **Sec. 2.** RCW 18.120.020 and 1996 c 178 s 9 are each amended to read
25 as follows:

26 The definitions contained in this section shall apply throughout
27 this chapter unless the context clearly requires otherwise.

28 (1) "Applicant group" includes any health professional group or
29 organization, any individual, or any other interested party which
30 proposes that any health professional group not presently regulated be
31 regulated or which proposes to substantially increase the scope of
32 practice of the profession.

33 (2) "Certificate" and "certification" mean a voluntary process by
34 which a statutory regulatory entity grants recognition to an individual
35 who (a) has met certain prerequisite qualifications specified by that
36 regulatory entity, and (b) may assume or use "certified" in the title
37 or designation to perform prescribed health professional tasks.

1 (3) (~~("Grandfather clause" means a provision in a regulatory~~
2 ~~statute applicable to practitioners actively engaged in the regulated~~
3 ~~health profession prior to the effective date of the regulatory statute~~
4 ~~which exempts the practitioners from meeting the prerequisite~~
5 ~~qualifications set forth in the regulatory statute to perform~~
6 ~~prescribed occupational tasks.)) "Department" means the department of
7 health.~~

8 (4) "Health professions" means and includes the following health
9 and health-related licensed or regulated professions and occupations:
10 Podiatric medicine and surgery under chapter 18.22 RCW; chiropractic
11 under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW;
12 dentistry under chapter 18.32 RCW; denturism under chapter 18.30 RCW;
13 dispensing opticians under chapter 18.34 RCW; hearing ~~((aids))~~
14 instruments under chapter 18.35 RCW; naturopaths under chapter 18.36A
15 RCW; embalming and funeral directing under chapter 18.39 RCW; midwifery
16 under chapter 18.50 RCW; nursing home administration under chapter
17 18.52 RCW; optometry under chapters 18.53 and 18.54 RCW; ocularists
18 under chapter 18.55 RCW; osteopathic medicine and surgery under
19 chapters 18.57 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A
20 RCW; medicine under chapters 18.71 and 18.71A RCW; emergency medicine
21 under chapter 18.73 RCW; physical therapy under chapter 18.74 RCW;
22 practical nurses under chapter 18.79 RCW; psychologists under chapter
23 18.83 RCW; registered nurses under chapter 18.79 RCW; occupational
24 therapists licensed under chapter 18.59 RCW; respiratory care
25 practitioners certified under chapter 18.89 RCW; veterinarians and
26 animal technicians under chapter 18.92 RCW; health care assistants
27 under chapter 18.135 RCW; massage practitioners under chapter 18.108
28 RCW; acupuncturists licensed under chapter 18.06 RCW; persons
29 registered or certified under chapter 18.19 RCW; dietitians and
30 nutritionists certified by chapter 18.138 RCW; radiologic technicians
31 under chapter 18.84 RCW; and nursing assistants registered or certified
32 under chapter 18.88A RCW.

33 (5) "Inspection" means the periodic examination of practitioners by
34 a state agency in order to ascertain whether the practitioners'
35 occupation is being carried out in a fashion consistent with the public
36 health, safety, and welfare.

37 (6) "Legislative committees of reference" means the standing
38 legislative committees designated by the respective rules committees of

1 the senate and house of representatives to consider proposed
2 legislation to regulate health professions not previously regulated.

3 (7) "License," "licensing," and "licensure" mean permission to
4 engage in a health profession which would otherwise be unlawful in the
5 state in the absence of the permission. A license is granted to those
6 individuals who meet prerequisite qualifications to perform prescribed
7 health professional tasks and for the use of a particular title.

8 (8) "Professional license" means an individual, nontransferable
9 authorization to carry on a health activity based on qualifications
10 which include: (a) Graduation from an accredited or approved program,
11 and (b) acceptable performance on a qualifying examination or series of
12 examinations.

13 (9) "Practitioner" means an individual who (a) has achieved
14 knowledge and skill by practice, and (b) is actively engaged in a
15 specified health profession.

16 (10) "Public member" means an individual who is not, and never was,
17 a member of the health profession being regulated or the spouse of a
18 member, or an individual who does not have and never has had a material
19 financial interest in either the rendering of the health professional
20 service being regulated or an activity directly related to the
21 profession being regulated.

22 (11) "Registration" means the formal notification which, prior to
23 rendering services, a practitioner shall submit to a state agency
24 setting forth the name and address of the practitioner; the location,
25 nature and operation of the health activity to be practiced; and, if
26 required by the regulatory entity, a description of the service to be
27 provided.

28 (12) "Regulatory entity" means any board, commission, agency,
29 division, or other unit or subunit of state government which regulates
30 one or more professions, occupations, industries, businesses, or other
31 endeavors in this state.

32 (13) "State agency" includes every state office, department, board,
33 commission, regulatory entity, and agency of the state, and, where
34 provided by law, programs and activities involving less than the full
35 responsibility of a state agency.

36 **Sec. 3.** RCW 18.120.030 and 1991 c 332 s 6 are each amended to read
37 as follows:

1 After July ~~((24, 1983))~~ 1, 1997, if appropriate, applicant groups
2 shall explain each of the following factors ~~((to the extent requested~~
3 ~~by the legislative committees of reference))~~ and provide other
4 information requested by the department of health:

5 (1) A definition of the problem and why regulation is necessary(~~(:~~

6 ~~(a) The nature of the potential harm to the public if the health~~
7 ~~profession is not regulated, and the extent to which there is a threat~~
8 ~~to public health and safety;~~

9 ~~(b) The extent to which consumers need and will benefit from a~~
10 ~~method of regulation identifying competent practitioners, indicating~~
11 ~~typical employers, if any, of practitioners in the health profession;~~
12 ~~and~~

13 ~~(c) The extent of autonomy a practitioner has, as indicated by:~~

14 ~~(i) The extent to which the health profession calls for independent~~
15 ~~judgment and the extent of skill or experience required in making the~~
16 ~~independent judgment; and~~

17 ~~(ii) The extent to which practitioners are supervised))~~);

18 (2) The efforts made to address the problem(~~(:~~

19 ~~(a) Voluntary efforts, if any, by members of the health profession~~
20 ~~to:~~

21 ~~(i) Establish a code of ethics; or~~

22 ~~(ii) Help resolve disputes between health practitioners and~~
23 ~~consumers; and~~

24 ~~(b) Recourse to and the extent of use of applicable law and whether~~
25 ~~it could be strengthened to control the problem))~~);

26 (3) The alternatives considered(~~(:~~

27 ~~(a) Regulation of business employers or practitioners rather than~~
28 ~~employee practitioners;~~

29 ~~(b) Regulation of the program or service rather than the individual~~
30 ~~practitioners;~~

31 ~~(c) Registration of all practitioners;~~

32 ~~(d) Certification of all practitioners;~~

33 ~~(e) Other alternatives;~~

34 ~~(f) Why the use of the alternatives specified in this subsection~~
35 ~~would not be adequate to protect the public interest; and~~

36 ~~(g) Why licensing would serve to protect the public interest))~~);

37 (4) The benefit to the public if regulation is granted(~~(:~~

1 (a) The extent to which the incidence of specific problems present
2 in the unregulated health profession can reasonably be expected to be
3 reduced by regulation;

4 (b) Whether the public can identify qualified practitioners;

5 (c) The extent to which the public can be confident that qualified
6 practitioners are competent:

7 (i) Whether the proposed regulatory entity would be a board
8 composed of members of the profession and public members, or a state
9 agency, or both, and, if appropriate, their respective responsibilities
10 in administering the system of registration, certification, or
11 licensure, including the composition of the board and the number of
12 public members, if any; the powers and duties of the board or state
13 agency regarding examinations and for cause revocation, suspension, and
14 nonrenewal of registrations, certificates, or licenses; the
15 promulgation of rules and canons of ethics; the conduct of inspections;
16 the receipt of complaints and disciplinary action taken against
17 practitioners; and how fees would be levied and collected to cover the
18 expenses of administering and operating the regulatory system;

19 (ii) If there is a grandfather clause, whether such practitioners
20 will be required to meet the prerequisite qualifications established by
21 the regulatory entity at a later date;

22 (iii) The nature of the standards proposed for registration,
23 certification, or licensure as compared with the standards of other
24 jurisdictions;

25 (iv) Whether the regulatory entity would be authorized to enter
26 into reciprocity agreements with other jurisdictions;

27 (v) The nature and duration of any training including, but not
28 limited to, whether the training includes a substantial amount of
29 supervised field experience; whether training programs exist in this
30 state; if there will be an experience requirement; whether the
31 experience must be acquired under a registered, certificated, or
32 licensed practitioner; whether there are alternative routes of entry or
33 methods of meeting the prerequisite qualifications; whether all
34 applicants will be required to pass an examination; and, if an
35 examination is required, by whom it will be developed and how the costs
36 of development will be met; and

37 (vi) What additional training programs are anticipated to be
38 necessary to assure training accessible state wide; the anticipated
39 time required to establish the additional training programs; the types

1 of institutions capable of providing the training; a description of how
2 training programs will meet the needs of the expected work force,
3 including reentry workers, minorities, placebound students, and others;

4 (d) Assurance of the public that practitioners have maintained
5 their competence:

6 (i) Whether the registration, certification, or licensure will
7 carry an expiration date; and

8 (ii) Whether renewal will be based only upon payment of a fee, or
9 whether renewal will involve reexamination, peer review, or other
10 enforcement));

11 (5) The extent to which regulation might harm the public((:

12 (a) The extent to which regulation will restrict entry into the
13 health profession:

14 (i) Whether the proposed standards are more restrictive than
15 necessary to insure safe and effective performance; and

16 (ii) Whether the proposed legislation requires registered,
17 certificated, or licensed practitioners in other jurisdictions who
18 migrate to this state to qualify in the same manner as state applicants
19 for registration, certification, and licensure when the other
20 jurisdiction has substantially equivalent requirements for
21 registration, certification, or licensure as those in this state; and

22 (b) Whether there are similar professions to that of the applicant
23 group which should be included in, or portions of the applicant group
24 which should be excluded from, the proposed legislation));

25 (6) The maintenance of standards((:

26 (a) Whether effective quality assurance standards exist in the
27 health profession, such as legal requirements associated with specific
28 programs that define or enforce standards, or a code of ethics; and

29 (b) How the proposed legislation will assure quality:

30 (i) The extent to which a code of ethics, if any, will be adopted;
31 and

32 (ii) The grounds for suspension or revocation of registration,
33 certification, or licensure));

34 (7) A description of the group proposed for regulation, including
35 a list of associations, organizations, and other groups representing
36 the practitioners in this state, an estimate of the number of
37 practitioners in each group, and whether the groups represent different
38 levels of practice; ((and))

39 (8) The expected costs of regulation((:

1 ~~(a) The impact registration, certification, or licensure will have~~
2 ~~on the costs of the services to the public;~~

3 ~~(b) The cost to the state and to the general public of implementing~~
4 ~~the proposed legislation; and~~

5 ~~(c) The cost to the state and the members of the group proposed for~~
6 ~~regulation for the required education, including projected tuition and~~
7 ~~expenses and expected increases in training programs, staffing, and~~
8 ~~enrollments at state training institutions));~~

9 (9) A description of similar regulatory activities in other states
10 or jurisdictions; and

11 (10) The impact of regulation on competition among health
12 professionals and the change in availability of the practitioner group
13 to the public.

14 **Sec. 4.** RCW 18.120.040 and 1989 1st ex.s. c 9 s 305 are each
15 amended to read as follows:

16 Applicant groups shall submit a written report explaining the
17 factors enumerated in RCW 18.120.030 to the ~~((legislative committees of~~
18 ~~reference, copies of which shall be sent to the state board of health~~
19 ~~and the)) department ~~((of health for review and comment))~~. The
20 department may request from the applicant group additional information
21 the department determines is needed to make its recommendations. The
22 ~~((state board of health and the)) department ~~((of health))~~ shall review
23 and make recommendations ~~((based))~~ on the report submitted by applicant
24 groups ~~((to the extent requested by the legislative committees))~~ and
25 comments solicited from the state board of health and others.~~~~

26 **Sec. 5.** RCW 18.120.050 and 1984 c 279 s 58 are each amended to
27 read as follows:

28 ~~((Requirements for licensees to engage in continuing education as~~
29 ~~a condition of continued licensure has not been proven to be an~~
30 ~~effective method of guaranteeing or improving the competence of~~
31 ~~licensees or the quality of care received by the consumer. The~~
32 ~~legislature has serious reservations concerning the appropriateness of~~
33 ~~mandated continuing education.)) Any legislative proposal which
34 contains a continuing education requirement should be accompanied by
35 evidence that such a requirement has been proven effective for the
36 profession addressed in the legislation.~~

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.120 RCW
2 to read as follows:

3 The department shall develop and promulgate a manual describing the
4 criteria to be met and the process of review for applicant groups. The
5 department shall consult with representatives of health professions in
6 the development and any subsequent amendment of the manual.

7 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 July 1, 1997.

--- END ---