
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5540

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Deccio, Wojahn and Thibaudeau; by request of Department of Health)

Read first time 02/04/2000.

1 AN ACT Relating to the disclosure of hospital information;
2 amending RCW 70.41.150 and 70.41.200; reenacting and amending RCW
3 42.17.310; and adding new sections to chapter 70.41 RCW.

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

5 **Sec. 1.** RCW 70.41.150 and 1985 c 213 s 24 are each amended to read
6 as follows:

7 Information received by the department through filed reports,
8 inspection, or as otherwise authorized under this chapter, (~~shall~~
9 ~~not~~) may be disclosed publicly (~~in such manner as to identify~~
10 ~~individuals or hospitals, except in a proceeding involving the question~~
11 ~~of licensure. Such records of the department shall at all times be~~
12 ~~available to the council and the members thereof~~), as permitted under
13 chapter 42.17 RCW, subject to the following provisions:

14 (1) Licensing inspections, or complaint investigations regardless
15 of findings, shall, as requested, be disclosed no sooner than three
16 business days after the hospital has received the resulting assessment
17 report;

1 (2) Information regarding administrative action against the license
2 shall, as requested, be disclosed after the hospital has received the
3 documents initiating the administrative action;

4 (3) Information about complaints that did not warrant an
5 investigation shall not be disclosed except to notify the hospital and
6 the complainant that the complaint did not warrant an investigation.
7 If requested, the individual complainant shall receive information on
8 other like complaints that have been reported against the hospital; and

9 (4) Information disclosed pursuant to this section shall not
10 disclose individual names.

11 NEW SECTION. Sec. 2. A new section is added to chapter 70.41 RCW
12 to read as follows:

13 Any complaint against a hospital and event notification required by
14 the department that concerns patient well-being shall be investigated.

15 **Sec. 3.** RCW 70.41.200 and 1994 sp.s. c 9 s 742 are each amended to
16 read as follows:

17 (1) Every hospital shall maintain a coordinated quality improvement
18 program for the improvement of the quality of health care services
19 rendered to patients and the identification and prevention of medical
20 malpractice. The program shall include at least the following:

21 (a) The establishment of a quality improvement committee with the
22 responsibility to review the services rendered in the hospital, both
23 retrospectively and prospectively, in order to improve the quality of
24 medical care of patients and to prevent medical malpractice. The
25 committee shall oversee and coordinate the quality improvement and
26 medical malpractice prevention program and shall (~~insure~~) ensure that
27 information gathered pursuant to the program is used to review and to
28 revise hospital policies and procedures;

29 (b) A medical staff privileges sanction procedure through which
30 credentials, physical and mental capacity, and competence in delivering
31 health care services are periodically reviewed as part of an evaluation
32 of staff privileges;

33 (c) The periodic review of the credentials, physical and mental
34 capacity, and competence in delivering health care services of all
35 persons who are employed or associated with the hospital;

1 (d) A procedure for the prompt resolution of grievances by patients
2 or their representatives related to accidents, injuries, treatment, and
3 other events that may result in claims of medical malpractice;

4 (e) The maintenance and continuous collection of information
5 concerning the hospital's experience with negative health care outcomes
6 and incidents injurious to patients, patient grievances, professional
7 liability premiums, settlements, awards, costs incurred by the hospital
8 for patient injury prevention, and safety improvement activities;

9 (f) The maintenance of relevant and appropriate information
10 gathered pursuant to (a) through (e) of this subsection concerning
11 individual physicians within the physician's personnel or credential
12 file maintained by the hospital;

13 (g) Education programs dealing with quality improvement, patient
14 safety, injury prevention, staff responsibility to report professional
15 misconduct, the legal aspects of patient care, improved communication
16 with patients, and causes of malpractice claims for staff personnel
17 engaged in patient care activities; and

18 (h) Policies to ensure compliance with the reporting requirements
19 of this section.

20 (2) Any person who, in substantial good faith, provides information
21 to further the purposes of the quality improvement and medical
22 malpractice prevention program or who, in substantial good faith,
23 participates on the quality improvement committee shall not be subject
24 to an action for civil damages or other relief as a result of such
25 activity.

26 (3) Information and documents, including complaints and incident
27 reports, created specifically for, and collected, and maintained by a
28 quality improvement committee are not subject to discovery or
29 introduction into evidence in any civil action, and no person who was
30 in attendance at a meeting of such committee or who participated in the
31 creation, collection, or maintenance of information or documents
32 specifically for the committee shall be permitted or required to
33 testify in any civil action as to the content of such proceedings or
34 the documents and information prepared specifically for the committee.
35 This subsection does not preclude: (a) In any civil action, the
36 discovery of the identity of persons involved in the medical care that
37 is the basis of the civil action whose involvement was independent of
38 any quality improvement activity; (b) in any civil action, the
39 testimony of any person concerning the facts which form the basis for

1 the institution of such proceedings of which the person had personal
2 knowledge acquired independently of such proceedings; (c) in any civil
3 action by a health care provider regarding the restriction or
4 revocation of that individual's clinical or staff privileges,
5 introduction into evidence information collected and maintained by
6 quality improvement committees regarding such health care provider; (d)
7 in any civil action, disclosure of the fact that staff privileges were
8 terminated or restricted, including the specific restrictions imposed,
9 if any and the reasons for the restrictions; or (e) in any civil
10 action, discovery and introduction into evidence of the patient's
11 medical records required by regulation of the department of health to
12 be made regarding the care and treatment received.

13 (4) Each quality improvement committee shall, on at least a
14 semiannual basis, report to the governing board of the hospital in
15 which the committee is located. The report shall review the quality
16 improvement activities conducted by the committee, and any actions
17 taken as a result of those activities.

18 (5) The department of health shall adopt such rules as are deemed
19 appropriate to effectuate the purposes of this section.

20 (6) The medical quality assurance commission or the board of
21 osteopathic medicine and surgery, as appropriate, may review and audit
22 the records of committee decisions in which a physician's privileges
23 are terminated or restricted. Each hospital shall produce and make
24 accessible to the commission or board the appropriate records and
25 otherwise facilitate the review and audit. Information so gained shall
26 not be subject to the discovery process and confidentiality shall be
27 respected as required by subsection (3) of this section. Failure of a
28 hospital to comply with this subsection is punishable by a civil
29 penalty not to exceed two hundred fifty dollars.

30 (7) The department, the joint commission on accreditation of health
31 care organizations, and any other accrediting organization may review
32 and audit the records of a quality improvement committee or peer review
33 committee in connection with their inspection and review of hospitals.
34 Information so obtained shall not be subject to the discovery process,
35 and confidentiality shall be respected as required by subsection (3) of
36 this section. Each hospital shall produce and make accessible to the
37 department the appropriate records and otherwise facilitate the review
38 and audit.

1 (8) Violation of this section shall not be considered negligence
2 per se.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.41 RCW
4 to read as follows:

5 Every hospital shall post in conspicuous locations a notice of the
6 department's hospital complaint toll-free telephone number. The form
7 of the notice shall be approved by the department.

8 **Sec. 5.** RCW 42.17.310 and 1999 c 326 s 3, 1999 c 290 s 1, and 1999
9 c 215 s 1 are each reenacted and amended to read as follows:

10 (1) The following are exempt from public inspection and copying:

11 (a) Personal information in any files maintained for students in
12 public schools, patients or clients of public institutions or public
13 health agencies, or welfare recipients.

14 (b) Personal information in files maintained for employees,
15 appointees, or elected officials of any public agency to the extent
16 that disclosure would violate their right to privacy.

17 (c) Information required of any taxpayer in connection with the
18 assessment or collection of any tax if the disclosure of the
19 information to other persons would (i) be prohibited to such persons by
20 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
21 taxpayer's right to privacy or result in unfair competitive
22 disadvantage to the taxpayer.

23 (d) Specific intelligence information and specific investigative
24 records compiled by investigative, law enforcement, and penology
25 agencies, and state agencies vested with the responsibility to
26 discipline members of any profession, the nondisclosure of which is
27 essential to effective law enforcement or for the protection of any
28 person's right to privacy.

29 (e) Information revealing the identity of persons who are witnesses
30 to or victims of crime or who file complaints with investigative, law
31 enforcement, or penology agencies, other than the public disclosure
32 commission, if disclosure would endanger any person's life, physical
33 safety, or property. If at the time a complaint is filed the
34 complainant, victim or witness indicates a desire for disclosure or
35 nondisclosure, such desire shall govern. However, all complaints filed
36 with the public disclosure commission about any elected official or

1 candidate for public office must be made in writing and signed by the
2 complainant under oath.

3 (f) Test questions, scoring keys, and other examination data used
4 to administer a license, employment, or academic examination.

5 (g) Except as provided by chapter 8.26 RCW, the contents of real
6 estate appraisals, made for or by any agency relative to the
7 acquisition or sale of property, until the project or prospective sale
8 is abandoned or until such time as all of the property has been
9 acquired or the property to which the sale appraisal relates is sold,
10 but in no event shall disclosure be denied for more than three years
11 after the appraisal.

12 (h) Valuable formulae, designs, drawings, computer source code or
13 object code, and research data obtained by any agency within five years
14 of the request for disclosure when disclosure would produce private
15 gain and public loss.

16 (i) Preliminary drafts, notes, recommendations, and intra-agency
17 memorandums in which opinions are expressed or policies formulated or
18 recommended except that a specific record shall not be exempt when
19 publicly cited by an agency in connection with any agency action.

20 (j) Records which are relevant to a controversy to which an agency
21 is a party but which records would not be available to another party
22 under the rules of pretrial discovery for causes pending in the
23 superior courts.

24 (k) Records, maps, or other information identifying the location of
25 archaeological sites in order to avoid the looting or depredation of
26 such sites.

27 (l) Any library record, the primary purpose of which is to maintain
28 control of library materials, or to gain access to information, which
29 discloses or could be used to disclose the identity of a library user.

30 (m) Financial information supplied by or on behalf of a person,
31 firm, or corporation for the purpose of qualifying to submit a bid or
32 proposal for (i) a ferry system construction or repair contract as
33 required by RCW 47.60.680 through 47.60.750 or (ii) highway
34 construction or improvement as required by RCW 47.28.070.

35 (n) Railroad company contracts filed prior to July 28, 1991, with
36 the utilities and transportation commission under RCW 81.34.070, except
37 that the summaries of the contracts are open to public inspection and
38 copying as otherwise provided by this chapter.

1 (o) Financial and commercial information and records supplied by
2 private persons pertaining to export services provided pursuant to
3 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
4 export projects pursuant to RCW 43.23.035.

5 (p) Financial disclosures filed by private vocational schools under
6 chapters 28B.85 and 28C.10 RCW.

7 (q) Records filed with the utilities and transportation commission
8 or attorney general under RCW 80.04.095 that a court has determined are
9 confidential under RCW 80.04.095.

10 (r) Financial and commercial information and records supplied by
11 businesses or individuals during application for loans or program
12 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
13 or during application for economic development loans or program
14 services provided by any local agency.

15 (s) Membership lists or lists of members or owners of interests of
16 units in timeshare projects, subdivisions, camping resorts,
17 condominiums, land developments, or common-interest communities
18 affiliated with such projects, regulated by the department of
19 licensing, in the files or possession of the department.

20 (t) All applications for public employment, including the names of
21 applicants, resumes, and other related materials submitted with respect
22 to an applicant.

23 (u) The residential addresses and residential telephone numbers of
24 employees or volunteers of a public agency which are held by the agency
25 in personnel records, employment or volunteer rosters, or mailing lists
26 of employees or volunteers.

27 (v) The residential addresses and residential telephone numbers of
28 the customers of a public utility contained in the records or lists
29 held by the public utility of which they are customers, except that
30 this information may be released to the division of child support or
31 the agency or firm providing child support enforcement for another
32 state under Title IV-D of the federal social security act, for the
33 establishment, enforcement, or modification of a support order.

34 (w)(i) The federal social security number of individuals governed
35 under chapter 18.130 RCW maintained in the files of the department of
36 health, except this exemption does not apply to requests made directly
37 to the department from federal, state, and local agencies of
38 government, and national and state licensing, credentialing,
39 investigatory, disciplinary, and examination organizations; (ii) the

1 current residential address and current residential telephone number of
2 a health care provider governed under chapter 18.130 RCW maintained in
3 the files of the department, if the provider requests that this
4 information be withheld from public inspection and copying, and
5 provides to the department an accurate alternate or business address
6 and business telephone number. On or after January 1, 1995, the
7 current residential address and residential telephone number of a
8 health care provider governed under RCW 18.130.140 maintained in the
9 files of the department shall automatically be withheld from public
10 inspection and copying unless the provider specifically requests the
11 information be released, and except as provided for under RCW
12 42.17.260(9).

13 (x) Information obtained by the board of pharmacy as provided in
14 RCW 69.45.090.

15 (y) Information obtained by the board of pharmacy or the department
16 of health and its representatives as provided in RCW 69.41.044,
17 69.41.280, and 18.64.420.

18 (z) Financial information, business plans, examination reports, and
19 any information produced or obtained in evaluating or examining a
20 business and industrial development corporation organized or seeking
21 certification under chapter 31.24 RCW.

22 (aa) Financial and commercial information supplied to the state
23 investment board by any person when the information relates to the
24 investment of public trust or retirement funds and when disclosure
25 would result in loss to such funds or in private loss to the providers
26 of this information.

27 (bb) Financial and valuable trade information under RCW 51.36.120.

28 (cc) Client records maintained by an agency that is a domestic
29 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
30 crisis center as defined in RCW 70.125.030.

31 (dd) Information that identifies a person who, while an agency
32 employee: (i) Seeks advice, under an informal process established by
33 the employing agency, in order to ascertain his or her rights in
34 connection with a possible unfair practice under chapter 49.60 RCW
35 against the person; and (ii) requests his or her identity or any
36 identifying information not be disclosed.

37 (ee) Investigative records compiled by an employing agency
38 conducting a current investigation of a possible unfair practice under

1 chapter 49.60 RCW or of a possible violation of other federal, state,
2 or local laws prohibiting discrimination in employment.

3 (ff) Business related information protected from public inspection
4 and copying under RCW 15.86.110.

5 (gg) Financial, commercial, operations, and technical and research
6 information and data submitted to or obtained by the clean Washington
7 center in applications for, or delivery of, program services under
8 chapter 70.95H RCW.

9 (hh) Information and documents created specifically for, and
10 collected and maintained by a quality improvement committee pursuant to
11 RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW
12 4.24.250, regardless of which agency is in possession of the
13 information and documents.

14 (ii) Personal information in files maintained in a data base
15 created under RCW 43.07.360.

16 (jj) Financial and commercial information requested by the public
17 stadium authority from any person or organization that leases or uses
18 the stadium and exhibition center as defined in RCW 36.102.010.

19 (kk) Names of individuals residing in emergency or transitional
20 housing that are furnished to the department of revenue or a county
21 assessor in order to substantiate a claim for property tax exemption
22 under RCW 84.36.043.

23 (ll) The names, residential addresses, residential telephone
24 numbers, and other individually identifiable records held by an agency
25 in relation to a vanpool, carpool, or other ride-sharing program or
26 service. However, these records may be disclosed to other persons who
27 apply for ride-matching services and who need that information in order
28 to identify potential riders or drivers with whom to share rides.

29 (mm) The personally identifying information of current or former
30 participants or applicants in a paratransit or other transit service
31 operated for the benefit of persons with disabilities or elderly
32 persons.

33 (nn) The personally identifying information of persons who acquire
34 and use transit passes and other fare payment media including, but not
35 limited to, stored value smart cards and magnetic strip cards, except
36 that an agency may disclose this information to a person, employer,
37 educational institution, or other entity that is responsible, in whole
38 or in part, for payment of the cost of acquiring or using a transit
39 pass or other fare payment media, or to the news media when reporting

1 on public transportation or public safety. This information may also
2 be disclosed at the agency's discretion to governmental agencies or
3 groups concerned with public transportation or public safety.

4 (oo) Proprietary financial and commercial information that the
5 submitting entity, with review by the department of health,
6 specifically identifies at the time it is submitted and that is
7 provided to or obtained by the department of health in connection with
8 an application for, or the supervision of, an antitrust exemption
9 sought by the submitting entity under RCW 43.72.310. If a request for
10 such information is received, the submitting entity must be notified of
11 the request. Within ten business days of receipt of the notice, the
12 submitting entity shall provide a written statement of the continuing
13 need for confidentiality, which shall be provided to the requester.
14 Upon receipt of such notice, the department of health shall continue to
15 treat information designated under this section as exempt from
16 disclosure. If the requester initiates an action to compel disclosure
17 under this chapter, the submitting entity must be joined as a party to
18 demonstrate the continuing need for confidentiality.

19 (pp) Records maintained by the board of industrial insurance
20 appeals that are related to appeals of crime victims' compensation
21 claims filed with the board under RCW 7.68.110.

22 (qq) Financial and commercial information supplied by or on behalf
23 of a person, firm, corporation, or entity under chapter 28B.95 RCW
24 relating to the purchase or sale of tuition units and contracts for the
25 purchase of multiple tuition units.

26 (rr) Any records of investigative reports prepared by any state,
27 county, municipal, or other law enforcement agency pertaining to sex
28 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
29 defined in RCW 71.09.020, which have been transferred to the Washington
30 association of sheriffs and police chiefs for permanent electronic
31 retention and retrieval pursuant to RCW 40.14.070(2)(b).

32 (2) Except for information described in subsection (1)(c)(i) of
33 this section and confidential income data exempted from public
34 inspection pursuant to RCW 84.40.020, the exemptions of this section
35 are inapplicable to the extent that information, the disclosure of
36 which would violate personal privacy or vital governmental interests,
37 can be deleted from the specific records sought. No exemption may be
38 construed to permit the nondisclosure of statistical information not
39 descriptive of any readily identifiable person or persons.

1 (3) Inspection or copying of any specific records exempt under the
2 provisions of this section may be permitted if the superior court in
3 the county in which the record is maintained finds, after a hearing
4 with notice thereof to every person in interest and the agency, that
5 the exemption of such records is clearly unnecessary to protect any
6 individual's right of privacy or any vital governmental function.

7 (4) Agency responses refusing, in whole or in part, inspection of
8 any public record shall include a statement of the specific exemption
9 authorizing the withholding of the record (or part) and a brief
10 explanation of how the exemption applies to the record withheld.

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.41 RCW
12 to read as follows:

13 The department is authorized to adopt rules necessary to implement
14 sections 1, 2, and 4 of this act.

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