
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; and reenacting and amending RCW
3 42.17.310.

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 (1) 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 (a) Licensing inspections, or complaint investigations, may be
15 disclosed no sooner than three business days after the hospital has
16 received the resulting assessment report;

17 (b) Information regarding administrative action against the license
18 may be disclosed after the hospital has received the documents
19 initiating the administrative action;

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

6 (d) Information disclosed pursuant to this section shall not
7 disclose individual names; and

8 (e) Event notification required by the department from hospitals
9 shall be disclosed only as industry-wide aggregate data, as part of
10 department inspections, or in investigations of individual hospitals.

11 (2) The department may adopt rules necessary to implement this
12 section.

13 **Sec. 2.** RCW 70.41.200 and 1994 sp.s. c 9 s 742 are each amended to
14 read as follows:

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

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

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

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

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

37 (e) The maintenance and continuous collection of information
38 concerning the hospital's experience with negative health care outcomes

1 and incidents injurious to patients, patient grievances, professional
2 liability premiums, settlements, awards, costs incurred by the hospital
3 for patient injury prevention, and safety improvement activities;

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

8 (g) Education programs dealing with quality improvement, patient
9 safety, injury prevention, staff responsibility to report professional
10 misconduct, the legal aspects of patient care, improved communication
11 with patients, and causes of malpractice claims for staff personnel
12 engaged in patient care activities; and

13 (h) Policies to ensure compliance with the reporting requirements
14 of this section.

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

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

1 quality improvement committees regarding such health care provider; (d)
2 in any civil action, disclosure of the fact that staff privileges were
3 terminated or restricted, including the specific restrictions imposed,
4 if any and the reasons for the restrictions; or (e) in any civil
5 action, discovery and introduction into evidence of the patient's
6 medical records required by regulation of the department of health to
7 be made regarding the care and treatment received.

8 (4) Each quality improvement committee shall, on at least a
9 semiannual basis, report to the governing board of the hospital in
10 which the committee is located. The report shall review the quality
11 improvement activities conducted by the committee, and any actions
12 taken as a result of those activities.

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

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

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

34 (8) Violation of this section shall not be considered negligence
35 per se.

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

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

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

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

7 (c) Information required of any taxpayer in connection with the
8 assessment or collection of any tax if the disclosure of the
9 information to other persons would (i) be prohibited to such persons by
10 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
11 taxpayer's right to privacy or result in unfair competitive
12 disadvantage to the taxpayer.

13 (d) Specific intelligence information and specific investigative
14 records compiled by investigative, law enforcement, and penology
15 agencies, and state agencies vested with the responsibility to
16 discipline members of any profession, the nondisclosure of which is
17 essential to effective law enforcement or for the protection of any
18 person's right to privacy.

19 (e) Information revealing the identity of persons who are witnesses
20 to or victims of crime or who file complaints with investigative, law
21 enforcement, or penology agencies, other than the public disclosure
22 commission, if disclosure would endanger any person's life, physical
23 safety, or property. If at the time a complaint is filed the
24 complainant, victim or witness indicates a desire for disclosure or
25 nondisclosure, such desire shall govern. However, all complaints filed
26 with the public disclosure commission about any elected official or
27 candidate for public office must be made in writing and signed by the
28 complainant under oath.

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

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

38 (h) Valuable formulae, designs, drawings, computer source code or
39 object code, and research data obtained by any agency within five years

1 of the request for disclosure when disclosure would produce private
2 gain and public loss.

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

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

11 (k) Records, maps, or other information identifying the location of
12 archaeological sites in order to avoid the looting or depredation of
13 such sites.

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

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

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

26 (o) Financial and commercial information and records supplied by
27 private persons pertaining to export services provided pursuant to
28 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
29 export projects pursuant to RCW 43.23.035.

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

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

35 (r) Financial and commercial information and records supplied by
36 businesses or individuals during application for loans or program
37 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
38 or during application for economic development loans or program
39 services provided by any local agency.

1 (s) Membership lists or lists of members or owners of interests of
2 units in timeshare projects, subdivisions, camping resorts,
3 condominiums, land developments, or common-interest communities
4 affiliated with such projects, regulated by the department of
5 licensing, in the files or possession of the department.

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

9 (u) The residential addresses and residential telephone numbers of
10 employees or volunteers of a public agency which are held by the agency
11 in personnel records, employment or volunteer rosters, or mailing lists
12 of employees or volunteers.

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

20 (w)(i) The federal social security number of individuals governed
21 under chapter 18.130 RCW maintained in the files of the department of
22 health, except this exemption does not apply to requests made directly
23 to the department from federal, state, and local agencies of
24 government, and national and state licensing, credentialing,
25 investigatory, disciplinary, and examination organizations; (ii) the
26 current residential address and current residential telephone number of
27 a health care provider governed under chapter 18.130 RCW maintained in
28 the files of the department, if the provider requests that this
29 information be withheld from public inspection and copying, and
30 provides to the department an accurate alternate or business address
31 and business telephone number. On or after January 1, 1995, the
32 current residential address and residential telephone number of a
33 health care provider governed under RCW 18.130.140 maintained in the
34 files of the department shall automatically be withheld from public
35 inspection and copying unless the provider specifically requests the
36 information be released, and except as provided for under RCW
37 42.17.260(9).

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

1 (y) Information obtained by the board of pharmacy or the department
2 of health and its representatives as provided in RCW 69.41.044,
3 69.41.280, and 18.64.420.

4 (z) Financial information, business plans, examination reports, and
5 any information produced or obtained in evaluating or examining a
6 business and industrial development corporation organized or seeking
7 certification under chapter 31.24 RCW.

8 (aa) Financial and commercial information supplied to the state
9 investment board by any person when the information relates to the
10 investment of public trust or retirement funds and when disclosure
11 would result in loss to such funds or in private loss to the providers
12 of this information.

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

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

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

23 (ee) Investigative records compiled by an employing agency
24 conducting a current investigation of a possible unfair practice under
25 chapter 49.60 RCW or of a possible violation of other federal, state,
26 or local laws prohibiting discrimination in employment.

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

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

33 (hh) Information and documents created specifically for, and
34 collected and maintained by a quality improvement committee pursuant to
35 RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW
36 4.24.250, regardless of which agency is in possession of the
37 information and documents.

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

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

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

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

14 (mm) The personally identifying information of current or former
15 participants or applicants in a paratransit or other transit service
16 operated for the benefit of persons with disabilities or elderly
17 persons.

18 (nn) The personally identifying information of persons who acquire
19 and use transit passes and other fare payment media including, but not
20 limited to, stored value smart cards and magnetic strip cards, except
21 that an agency may disclose this information to a person, employer,
22 educational institution, or other entity that is responsible, in whole
23 or in part, for payment of the cost of acquiring or using a transit
24 pass or other fare payment media, or to the news media when reporting
25 on public transportation or public safety. This information may also
26 be disclosed at the agency's discretion to governmental agencies or
27 groups concerned with public transportation or public safety.

28 (oo) Proprietary financial and commercial information that the
29 submitting entity, with review by the department of health,
30 specifically identifies at the time it is submitted and that is
31 provided to or obtained by the department of health in connection with
32 an application for, or the supervision of, an antitrust exemption
33 sought by the submitting entity under RCW 43.72.310. If a request for
34 such information is received, the submitting entity must be notified of
35 the request. Within ten business days of receipt of the notice, the
36 submitting entity shall provide a written statement of the continuing
37 need for confidentiality, which shall be provided to the requester.
38 Upon receipt of such notice, the department of health shall continue to
39 treat information designated under this section as exempt from

1 disclosure. If the requester initiates an action to compel disclosure
2 under this chapter, the submitting entity must be joined as a party to
3 demonstrate the continuing need for confidentiality.

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

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

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

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

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

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

--- END ---