
HOUSE BILL 2786

State of Washington

58th Legislature

2004 Regular Session

By Representatives Cody, Campbell, Morrell, Schual-Berke, Lantz, Clibborn, G. Simpson, Moeller, Upthegrove and Kagi

Read first time 01/20/2004. Referred to Committee on Health Care.

1 AN ACT Relating to improving health care professional and health
2 care facility patient safety practices; amending RCW 4.24.250,
3 43.70.510, 70.41.200, 43.70.110, and 43.70.250; adding new sections to
4 chapter 43.70 RCW; adding a new section to chapter 7.70 RCW; creating
5 new sections; providing an effective date; and providing an expiration
6 date.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

9 (a) Thousands of patients are injured each year in the United
10 States as a result of medical errors, and that a comprehensive approach
11 is needed to effectively reduce the incidence of medical errors in our
12 health care system. Implementation of proven patient safety strategies
13 can reduce medical errors, and thereby potentially reduce the need for
14 disciplinary actions against licensed health care professionals and
15 facilities, and the frequency and severity of medical malpractice
16 claims; and

17 (b) Health care providers, health care facilities, and health
18 carriers can and should be supported in their efforts to improve
19 patient safety and reduce medical errors by authorizing the sharing of

1 successful quality improvement efforts, encouraging health care
2 facilities and providers to work cooperatively in their patient safety
3 efforts, and increasing funding available to implement proven patient
4 safety strategies.

5 (2) Through the adoption of this act, the legislature intends to
6 positively influence the safety and quality of care provided in
7 Washington state's health care system.

8 **PART I: ENCOURAGING PATIENT SAFETY THROUGH**
9 **SHARED QUALITY IMPROVEMENT EFFORTS**

10 **Sec. 101.** RCW 4.24.250 and 1981 c 181 s 1 are each amended to read
11 as follows:

12 (1) Any health care provider as defined in RCW 7.70.020 (1) and (2)
13 as now existing or hereafter amended who, in good faith, files charges
14 or presents evidence against another member of their profession based
15 on the claimed incompetency or gross misconduct of such person before
16 a regularly constituted review committee or board of a professional
17 society or hospital whose duty it is to evaluate the competency and
18 qualifications of members of the profession, including limiting the
19 extent of practice of such person in a hospital or similar institution,
20 or before a regularly constituted committee or board of a hospital
21 whose duty it is to review and evaluate the quality of patient care,
22 shall be immune from civil action for damages arising out of such
23 activities. The proceedings, reports, and written records of such
24 committees or boards, or of a member, employee, staff person, or
25 investigator of such a committee or board, shall not be subject to
26 subpoena or discovery proceedings in any civil action, except actions
27 arising out of the recommendations of such committees or boards
28 involving the restriction or revocation of the clinical or staff
29 privileges of a health care provider as defined above.

30 (2) A coordinated quality improvement program maintained in
31 accordance with RCW 43.70.510 or 70.41.200 may share information and
32 documents, including complaints and incident reports, created
33 specifically for, and collected and maintained by a coordinated quality
34 improvement committee or committees or boards under subsection (1) of
35 this section, with one or more other coordinated quality improvement
36 programs for the improvement of the quality of health care services

1 rendered to patients and the identification and prevention of medical
2 malpractice. Information and documents disclosed by one coordinated
3 quality improvement program to another coordinated quality improvement
4 program and any information and documents created or maintained as a
5 result of the sharing of information and documents shall not be subject
6 to the discovery process and confidentiality shall be respected as
7 required by subsection (1) of this section and by RCW 43.70.510(4) and
8 70.41.200(3).

9 **Sec. 102.** RCW 43.70.510 and 1995 c 267 s 7 are each amended to
10 read as follows:

11 (1)(a) Health care institutions and medical facilities, other than
12 hospitals, that are licensed by the department, professional societies
13 or organizations, health care service contractors, health maintenance
14 organizations, health carriers approved pursuant to chapter 48.43 RCW,
15 and any other person or entity providing health care coverage under
16 chapter 48.42 RCW that is subject to the jurisdiction and regulation of
17 any state agency or any subdivision thereof may maintain a coordinated
18 quality improvement program for the improvement of the quality of
19 health care services rendered to patients and the identification and
20 prevention of medical malpractice as set forth in RCW 70.41.200.

21 (b) All such programs shall comply with the requirements of RCW
22 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h) as modified to
23 reflect the structural organization of the institution, facility,
24 professional societies or organizations, health care service
25 contractors, health maintenance organizations, health carriers, or any
26 other person or entity providing health care coverage under chapter
27 48.42 RCW that is subject to the jurisdiction and regulation of any
28 state agency or any subdivision thereof, unless an alternative quality
29 improvement program substantially equivalent to RCW 70.41.200(1)(a) is
30 developed. All such programs, whether complying with the requirement
31 set forth in RCW 70.41.200(1)(a) or in the form of an alternative
32 program, must be approved by the department before the discovery
33 limitations provided in subsections (3) and (4) of this section and the
34 exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section
35 shall apply. In reviewing plans submitted by licensed entities that
36 are associated with physicians' offices, the department shall ensure
37 that the exemption under RCW 42.17.310(1)(hh) and the discovery

1 limitations of this section are applied only to information and
2 documents related specifically to quality improvement activities
3 undertaken by the licensed entity.

4 (2) Health care provider groups of (~~ten~~) five or more providers
5 may maintain a coordinated quality improvement program for the
6 improvement of the quality of health care services rendered to patients
7 and the identification and prevention of medical malpractice as set
8 forth in RCW 70.41.200. All such programs shall comply with the
9 requirements of RCW 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h)
10 as modified to reflect the structural organization of the health care
11 provider group. All such programs must be approved by the department
12 before the discovery limitations provided in subsections (3) and (4) of
13 this section and the exemption under RCW 42.17.310(1)(hh) and
14 subsection (5) of this section shall apply.

15 (3) 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. Any person or entity participating in a coordinated quality
21 improvement program that shares information or documents with one or
22 more other programs in substantial good faith and in accordance with
23 applicable confidentiality and disclosure requirements of the
24 coordinated quality improvement committee is not subject to an action
25 for civil damages or other relief arising out of the act of sharing
26 them.

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

1 any quality improvement activity; (b) in any civil action, the
2 testimony of any person concerning the facts that form the basis for
3 the institution of such proceedings of which the person had personal
4 knowledge acquired independently of such proceedings; (c) in any civil
5 action by a health care provider regarding the restriction or
6 revocation of that individual's clinical or staff privileges,
7 introduction into evidence information collected and maintained by
8 quality improvement committees regarding such health care provider; (d)
9 in any civil action challenging the termination of a contract by a
10 state agency with any entity maintaining a coordinated quality
11 improvement program under this section if the termination was on the
12 basis of quality of care concerns, introduction into evidence of
13 information created, collected, or maintained by the quality
14 improvement committees of the subject entity, which may be under terms
15 of a protective order as specified by the court; (e) in any civil
16 action, disclosure of the fact that staff privileges were terminated or
17 restricted, including the specific restrictions imposed, if any and the
18 reasons for the restrictions; or (f) in any civil action, discovery and
19 introduction into evidence of the patient's medical records required by
20 rule of the department of health to be made regarding the care and
21 treatment received.

22 (5) Information and documents created specifically for, and
23 collected and maintained by a quality improvement committee are exempt
24 from disclosure under chapter 42.17 RCW.

25 (6) A coordinated quality improvement program may share information
26 and documents, including complaints and incident reports, created
27 specifically for, and collected and maintained by a quality improvement
28 committee or a peer review committee under RCW 4.24.250 with one or
29 more other coordinated quality improvement programs maintained in
30 accordance with this section or with RCW 70.41.200, for the improvement
31 of the quality of health care services rendered to patients and the
32 identification and prevention of medical malpractice. Information and
33 documents disclosed by one coordinated quality improvement program to
34 another coordinated quality improvement program and any information and
35 documents created or maintained as a result of the sharing of
36 information and documents shall not be subject to the discovery process
37 and confidentiality shall be respected as required by subsection (4) of
38 this section and RCW 4.24.250.

1 (7) The department of health shall adopt rules as are necessary to
2 implement this section.

3 **Sec. 103.** RCW 70.41.200 and 2000 c 6 s 3 are each amended to read
4 as follows:

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

9 (a) The establishment of a quality improvement committee with the
10 responsibility to review the services rendered in the hospital, both
11 retrospectively and prospectively, in order to improve the quality of
12 medical care of patients and to prevent medical malpractice. The
13 committee shall oversee and coordinate the quality improvement and
14 medical malpractice prevention program and shall ensure that
15 information gathered pursuant to the program is used to review and to
16 revise hospital policies and procedures;

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

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

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

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

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

36 (g) Education programs dealing with quality improvement, patient
37 safety, medication errors, injury prevention, staff responsibility to

1 report professional misconduct, the legal aspects of patient care,
2 improved communication with patients, and causes of malpractice claims
3 for staff personnel engaged in patient care activities; and

4 (h) Policies to ensure compliance with the reporting requirements
5 of this section.

6 (2) Any person who, in substantial good faith, provides information
7 to further the purposes of the quality improvement and medical
8 malpractice prevention program or who, in substantial good faith,
9 participates on the quality improvement committee shall not be subject
10 to an action for civil damages or other relief as a result of such
11 activity. Any person or entity participating in a coordinated quality
12 improvement program that shares information or documents with one or
13 more other programs in substantial good faith and in accordance with
14 applicable confidentiality and disclosure requirements of the
15 coordinated quality improvement committee is not subject to an action
16 for civil damages or other relief arising out of the act of sharing
17 them.

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

1 terminated or restricted, including the specific restrictions imposed,
2 if any and the reasons for the restrictions; or (e) in any civil
3 action, discovery and introduction into evidence of the patient's
4 medical records required by regulation of the department of health to
5 be made regarding the care and treatment received.

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

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

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

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

32 (8) A coordinated quality improvement program may share information
33 and documents, including complaints and incident reports, created
34 specifically for, and collected and maintained by a quality improvement
35 committee or a peer review committee under RCW 4.24.250 with one or
36 more other coordinated quality improvement programs maintained in
37 accordance with this section or with RCW 43.70.510, for the improvement
38 of the quality of health care services rendered to patients and the

1 identification and prevention of medical malpractice. Information and
2 documents disclosed by one coordinated quality improvement program to
3 another coordinated quality improvement program and any information and
4 documents created or maintained as a result of the sharing of
5 information and documents shall not be subject to the discovery process
6 and confidentiality shall be respected as required by subsection (3) of
7 this section and RCW 4.24.250.

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

10 **PART II: FUNDING PATIENT SAFETY EFFORTS**

11 **Sec. 201.** RCW 43.70.110 and 1993 sp.s. c 24 s 918 are each amended
12 to read as follows:

13 (1) The secretary shall charge fees to the licensee for obtaining
14 a license. After June 30, 1995, municipal corporations providing
15 emergency medical care and transportation services pursuant to chapter
16 18.73 RCW shall be exempt from such fees, provided that such other
17 emergency services shall only be charged for their pro rata share of
18 the cost of licensure and inspection, if appropriate. The secretary
19 may waive the fees when, in the discretion of the secretary, the fees
20 would not be in the best interest of public health and safety, or when
21 the fees would be to the financial disadvantage of the state.

22 (2) Except as provided in section 203 of this act, fees charged
23 shall be based on, but shall not exceed, the cost to the department for
24 the licensure of the activity or class of activities and may include
25 costs of necessary inspection.

26 (3) Department of health advisory committees may review fees
27 established by the secretary for licenses and comment upon the
28 appropriateness of the level of such fees.

29 **Sec. 202.** RCW 43.70.250 and 1996 c 191 s 1 are each amended to
30 read as follows:

31 It shall be the policy of the state of Washington that the cost of
32 each professional, occupational, or business licensing program be fully
33 borne by the members of that profession, occupation, or business. The
34 secretary shall from time to time establish the amount of all
35 application fees, license fees, registration fees, examination fees,

1 permit fees, renewal fees, and any other fee associated with licensing
2 or regulation of professions, occupations, or businesses administered
3 by the department. In fixing said fees, the secretary shall set the
4 fees for each program at a sufficient level to defray the costs of
5 administering that program and the patient safety fee established in
6 section 203 of this act. All such fees shall be fixed by rule adopted
7 by the secretary in accordance with the provisions of the
8 administrative procedure act, chapter 34.05 RCW.

9 NEW SECTION. **Sec. 203.** A new section is added to chapter 43.70
10 RCW to read as follows:

11 (1) The secretary shall increase the licensing fee established
12 under RCW 43.70.110 by two dollars per year for the health care
13 professionals designated in subsection (2) of this section and by two
14 dollars per licensed bed per year for the health care facilities
15 designated in subsection (2) of this section. Proceeds of the patient
16 safety fee must be deposited into the patient safety account in section
17 207 of this act and dedicated to patient safety and medical error
18 reduction efforts that have been proven to improve, or have a
19 substantial likelihood of improving the quality of care provided by
20 health care professionals and facilities.

21 (2) The health care professionals and facilities subject to the
22 patient safety fee are:

23 (a) The following health care professionals licensed under Title 18
24 RCW:

25 (i) Advanced registered nurse practitioners, registered nurses, and
26 licensed practical nurses licensed under chapter 18.79 RCW;

27 (ii) Chiropractors licensed under chapter 18.25 RCW;

28 (iii) Dentists licensed under chapter 18.32 RCW;

29 (iv) Midwives licensed under chapter 18.50 RCW;

30 (v) Naturopaths licensed under chapter 18.36A RCW;

31 (vi) Nursing home administrators licensed under chapter 18.52 RCW;

32 (vii) Optometrists licensed under chapter 18.53 RCW;

33 (viii) Osteopathic physicians licensed under chapter 18.57 RCW;

34 (ix) Osteopathic physicians' assistants licensed under chapter
35 18.57A RCW;

36 (x) Pharmacists and pharmacies licensed under chapter 18.64 RCW;

37 (xi) Physicians licensed under chapter 18.71 RCW;

1 (xii) Physician assistants licensed under chapter 18.71A RCW;
2 (xiii) Podiatrists licensed under chapter 18.22 RCW; and
3 (xiv) Psychologists licensed under chapter 18.83 RCW; and
4 (b) Hospitals licensed under chapter 70.41 RCW and psychiatric
5 hospitals licensed under chapter 71.12 RCW.

6 NEW SECTION. **Sec. 204.** A new section is added to chapter 7.70 RCW
7 to read as follows:

8 (1) One percent of the present value of the settlement or verdict
9 in any action for damages based upon injuries resulting from health
10 care under this chapter and one percent of the present value of any
11 claim paid based upon injuries resulting from health care in the
12 absence of filing an action under this chapter shall be deducted from
13 the settlement or verdict as a patient safety set aside. Proceeds of
14 the patient safety set aside will be distributed by the department of
15 health in the form of grants, loans, or other appropriate arrangements
16 to support strategies that have been proven to reduce medical errors
17 and enhance patient safety, or have a substantial likelihood of
18 reducing medical errors and enhancing patient safety, as provided in
19 section 203 of this act.

20 (2) A patient safety set aside shall be transmitted to the
21 secretary of the department of health by the person or entity paying
22 the claim, settlement, or verdict for deposit into the patient safety
23 account established in section 207 of this act.

24 (3) The supreme court shall by rule adopt procedures to implement
25 this section.

26 NEW SECTION. **Sec. 205.** A new section is added to chapter 43.70
27 RCW to read as follows:

28 (1)(a) Patient safety fee and set aside proceeds shall be
29 administered by the department, after seeking input from health care
30 providers engaged in direct patient care activities, health care
31 facilities, and other interested parties. In developing criteria for
32 the award of grants, loans, or other appropriate arrangements under
33 this section, the department shall rely primarily upon evidence-based
34 practices to improve patient safety that have been identified and
35 recommended by governmental and private organizations, including, but
36 not limited to:

- 1 (i) The federal agency for health care quality and research;
2 (ii) The institute of medicine of the national academy of sciences;
3 (iii) The joint commission on accreditation of health care
4 organizations; and
5 (iv) The national quality forum.

6 (b) The department shall award grants, loans, or other appropriate
7 arrangements for at least two strategies that are designed to meet the
8 goals and recommendations of the federal institute of medicine's
9 report, "Keeping Patients Safe: Transforming the Work Environment of
10 Nurses."

11 (2) Projects that have been proven to reduce medical errors and
12 enhance patient safety shall receive priority for funding over those
13 that are not proven, but have a substantial likelihood of reducing
14 medical errors and enhancing patient safety. All project proposals
15 must include specific performance and outcome measures by which to
16 evaluate the effectiveness of the project. Project proposals that do
17 not propose to use a proven patient safety strategy must include, in
18 addition to performance and outcome measures, a detailed description of
19 the anticipated outcomes of the project based upon any available
20 related research and the steps for achieving those outcomes.

21 (3) The department may use a portion of the patient safety fee
22 proceeds for the costs of administering the program.

23 NEW SECTION. **Sec. 206.** A new section is added to chapter 43.70
24 RCW to read as follows:

25 The secretary may solicit and accept grants or other funds from
26 public and private sources to support patient safety and medical error
27 reduction efforts under this act. Any grants or funds received may be
28 used to enhance these activities as long as program standards
29 established by the secretary are followed.

30 NEW SECTION. **Sec. 207.** A new section is added to chapter 43.70
31 RCW to read as follows:

32 The patient safety account is created in the custody of the state
33 treasurer. All receipts from the fees and set asides created in
34 sections 203 and 204 of this act must be deposited into the account.
35 Expenditures from the account may be used only for the purposes of this
36 act. Only the secretary or the secretary's designee may authorize

1 expenditures from the account. The account is subject to allotment
2 procedures under chapter 43.88 RCW, but an appropriation is not
3 required for expenditures.

4 NEW SECTION. **Sec. 208.** A new section is added to chapter 43.70
5 RCW to read as follows:

6 By December 1, 2007, the department shall report the following
7 information to the governor and the health policy and fiscal committees
8 of the legislature:

9 (1) The amount of patient safety fees and set asides deposited to
10 date in the patient safety account;

11 (2) The criteria for distribution of grants, loans, or other
12 appropriate arrangements under this act; and

13 (3) A description of the medical error reduction and patient safety
14 grants and loans distributed to date, including the stated performance
15 measures, activities, timelines, and detailed information regarding
16 outcomes for each project.

17 **PART III: MISCELLANEOUS PROVISIONS**

18 NEW SECTION. **Sec. 301.** Part headings used in this act are not any
19 part of the law.

20 NEW SECTION. **Sec. 302.** Sections 201 through 208 of this act
21 expire December 31, 2010.

22 NEW SECTION. **Sec. 303.** Section 203 of this act takes effect July
23 1, 2004.

--- END ---