S-4625.1

SUBSTITUTE SENATE BILL 6210

State of Washington 58th Legislature 2004 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Keiser, Winsley, Thibaudeau and Deccio)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to peer review committees and coordinated quality
2 improvement programs; and amending RCW 4.24.250, 43.70.510, and
3 70.41.200.

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

5 **Sec. 1.** RCW 4.24.250 and 1981 c 181 s 1 are each amended to read
6 as follows:
7 (1) Any health care provider as defined in RCW 7.70.020 (1) and (2)
8 as now existing or hereafter amended who, in good faith, files charges
9 or presents evidence against another member of their profession based
10 on the claimed incompetency or gross misconduct of such person before
11 a regularly constituted review committee or board of a professional
12 society or hospital whose duty it is to evaluate the competency and
13 qualifications of members of the profession, including limiting the
14 extent of practice of such person in a hospital or similar institution,
15 or before a regularly constituted committee or board of a hospital
16 whose duty it is to review and evaluate the quality of patient care and
17 any person or entity who, in good faith, shares any information or
18 documents with one or more other committees, boards, or programs under
19 subsection (2) of this section, shall be immune from civil action for

damages arising out of such activities. For the purposes of this section, sharing information is presumed to be in good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading. The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board, shall not be subject to subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees or boards involving the restriction or revocation of the clinical or staff privileges of a health care provider as defined above.

(2) A coordinated quality improvement program maintained in accordance with RCW 43.70.510 or 70.41.200 and any committees or boards under subsection (1) of this section may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a coordinated quality improvement committee or committees or boards under subsection (1) of this section, with one or more other coordinated quality improvement programs or committees or boards under subsection (1) of this section for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. Information and documents disclosed by one coordinated quality improvement program or committee or board under subsection (1) of this section to another coordinated quality improvement program or committee or board under subsection (1) of this section and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (1) of this section and by RCW 43.70.510(4) and 70.41.200(3).

Sec. 2. RCW 43.70.510 and 1995 c 267 s 7 are each amended to read as follows:

(1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved pursuant to chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of

any state agency or any subdivision thereof may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

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

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

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith,

participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (6) of this section is not subject to an action for civil damages or other relief as a result of the activity or its consequences. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement committees of the subject entity, which may be under terms

of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

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

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

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

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

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

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The

committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

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

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

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

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

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

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

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

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards

1 under subsection (8) of this section is not subject to an action for
2 civil damages or other relief as a result of the activity. For the
3 purposes of this section, sharing information is presumed to be in
4 substantial good faith. However, the presumption may be rebutted upon
5 a showing of clear, cogent, and convincing evidence that the
6 information shared was knowingly false or deliberately misleading.
7 (3) Information and documents, including complaints and incident
8 reports, created specifically for, and collected, and maintained by a
9 quality improvement committee are not subject to discovery or
10 introduction into evidence in any civil action, and no person who was
11 in attendance at a meeting of such committee or who participated in the
12 creation, collection, or maintenance of information or documents
13 specifically for the committee shall be permitted or required to
14 testify in any civil action as to the content of such proceedings or
15 the documents and information prepared specifically for the committee.
16 This subsection does not preclude: (a) In any civil action, the
17 discovery of the identity of persons involved in the medical care that
18 is the basis of the civil action whose involvement was independent of
19 any quality improvement activity; (b) in any civil action, the
20 testimony of any person concerning the facts which form the basis for
21 the institution of such proceedings of which the person had personal
22 knowledge acquired independently of such proceedings; (c) in any civil
23 action by a health care provider regarding the restriction or
24 revocation of that individual's clinical or staff privileges,
25 introduction into evidence information collected and maintained by
26 quality improvement committees regarding such health care provider; (d)
27 in any civil action, disclosure of the fact that staff privileges were
28 terminated or restricted, including the specific restrictions imposed,
29 if any and the reasons for the restrictions; or (e) in any civil
30 action, discovery and introduction into evidence of the patient's
31 medical records required by regulation of the department of health to
32 be made regarding the care and treatment received.
33 (4) Each quality improvement committee shall, on at least a
34 semiannual basis, report to the governing board of the hospital in
35 which the committee is located. The report shall review the quality
36 improvement activities conducted by the committee, and any actions
37 taken as a result of those activities.

1 (5) The department of health shall adopt such rules as are deemed
2 appropriate to effectuate the purposes of this section.
3 (6) The medical quality assurance commission or the board of
4 osteopathic medicine and surgery, as appropriate, may review and audit
5 the records of committee decisions in which a physician's privileges
6 are terminated or restricted. Each hospital shall produce and make
7 accessible to the commission or board the appropriate records and
8 otherwise facilitate the review and audit. Information so gained shall
9 not be subject to the discovery process and confidentiality shall be
10 respected as required by subsection (3) of this section. Failure of a
11 hospital to comply with this subsection is punishable by a civil
12 penalty not to exceed two hundred fifty dollars.
13 (7) The department, the joint commission on accreditation of health
14 care organizations, and any other accrediting organization may review
15 and audit the records of a quality improvement committee or peer review
16 committee in connection with their inspection and review of hospitals.
17 Information so obtained shall not be subject to the discovery process,
18 and confidentiality shall be respected as required by subsection (3) of
19 this section. Each hospital shall produce and make accessible to the
20 department the appropriate records and otherwise facilitate the review
21 and audit.
22 (8) <u>A coordinated quality improvement program may share information</u>
23 <u>and documents, including complaints and incident reports, created</u>
24 <u>specifically for, and collected and maintained by a quality improvement</u>
25 <u>committee or a peer review committee under RCW 4.24.250 with one or</u>
26 <u>more other coordinated quality improvement programs maintained in</u>
27 <u>accordance with this section or with RCW 43.70.510 or a peer review</u>
28 <u>committee under RCW 4.24.250, for the improvement of the quality of</u>
29 <u>health care services rendered to patients and the identification and</u>
30 <u>prevention of medical malpractice. Information and documents disclosed</u>
31 <u>by one coordinated quality improvement program to another coordinated</u>
32 <u>quality improvement program or a peer review committee under RCW</u>
33 <u>4.24.250 and any information and documents created or maintained as a</u>
34 <u>result of the sharing of information and documents shall not be subject</u>
35 <u>to the discovery process and confidentiality shall be respected as</u>
36 <u>required by subsection (3) of this section and RCW 4.24.250.</u>

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

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