
SUBSTITUTE HOUSE BILL 1243

State of Washington

59th Legislature

2005 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Green, Cody, Morrell, Appleton, Moeller, Darneille, Lovick, Kessler, Dickerson, Campbell, Linville, Chase, Ormsby, Haigh and Santos)

READ FIRST TIME 02/15/05.

1 AN ACT Relating to increasing patient safety through disclosure and
2 analysis of adverse events; amending RCW 5.64.010; adding a new chapter
3 to Title 70 RCW; providing effective dates; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the advances
6 in medical technology, diagnosis, and treatment have resulted in great
7 strides in maintaining and improving the health of Washingtonians. Yet
8 those advances substantially increase the complexity of our health care
9 delivery system and increase the risk that medical errors will occur.
10 The legislature further finds that our health care and medical
11 liability systems are not structured to promote disclosure and analysis
12 of medical errors, whether they result in patient harm or not. Each
13 medical error provides an opportunity to learn how to avoid future
14 errors.

15 (2) The legislature intends to promote full disclosure of medical
16 errors and adverse health events, and to use the experience and
17 knowledge gained from analysis of those events to advance patient
18 safety in a nonpunitive manner. The legislature further intends to

1 promote full disclosure of medical errors to patients by substantially
2 reducing the risk of liability exposure associated with such
3 disclosure.

4 NEW SECTION. **Sec. 2.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Adverse event" means any of the following events or
7 occurrences:

8 (a) An unanticipated death or major permanent loss of function, not
9 related to the natural course of a patient's illness or underlying
10 condition;

11 (b) A patient suicide while the patient was under care in the
12 hospital;

13 (c) An infant abduction or discharge to the wrong family;

14 (d) Sexual assault or rape of a patient or staff member while in
15 the hospital;

16 (e) A hemolytic transfusion reaction involving administration of
17 blood or blood products having major blood group incompatibilities;

18 (f) Surgery performed on the wrong patient or wrong body part;

19 (g) A failure or major malfunction of a facility system such as the
20 heating, ventilation, fire alarm, fire sprinkler, electrical,
21 electronic information management, or water supply which affects any
22 patient diagnosis, treatment, or care service within the facility; or

23 (h) A fire which affects any patient diagnosis, treatment, or care
24 area of the facility.

25 The term does not include an incident.

26 (2) "Ambulatory surgical facility" means any distinct entity that
27 operates exclusively for the purpose of providing surgical services to
28 patients not requiring hospitalization, whether or not the facility is
29 certified under Title XVIII of the federal social security act.

30 (3) "Childbirth center" means a facility licensed under chapter
31 18.46 RCW.

32 (4) "Correctional medical facility" means a part or unit of a
33 correctional facility operated by the department of corrections under
34 chapter 72.10 RCW that provides medical services for lengths of stay in
35 excess of twenty-four hours to offenders.

36 (5) "Department" means the department of health.

1 (6) "Health care worker" means an employee, independent contractor,
2 licensee, or other individual who is directly involved in the delivery
3 of health services in a medical facility.

4 (7) "Hospital" means a facility licensed under chapter 70.41 RCW.

5 (8) "Incident" means an event, occurrence, or situation involving
6 the clinical care of a patient in a medical facility which:

7 (a) Results in unanticipated injury to a patient that is less
8 severe than death or major permanent loss of function and is not
9 related to the natural course of the patient's illness or underlying
10 condition; or

11 (b) Could have injured the patient but did not either cause an
12 unanticipated injury or require the delivery of additional health care
13 services to the patient.

14 The term does not include an adverse event.

15 (9) "Medical facility" means an ambulatory surgical facility,
16 childbirth center, hospital, psychiatric hospital, or correctional
17 medical facility.

18 (10) "Psychiatric hospital" means a hospital facility licensed as
19 a psychiatric hospital under chapter 71.12 RCW.

20 NEW SECTION. **Sec. 3.** (1) Each medical facility shall report to
21 the department the occurrence of any adverse event. The report must be
22 submitted to the department within forty-five days after occurrence of
23 the event has been confirmed.

24 (2) The report shall be filed in a format specified by the
25 department after consultation with medical facilities. It shall
26 identify the facility but shall not include any identifying information
27 for any of the health care professionals, facility employees, or
28 patients involved. This provision does not modify the duty of a
29 hospital to make a report to the department of health or a disciplinary
30 authority if a licensed practitioner has committed unprofessional
31 conduct as defined in RCW 18.130.180.

32 (3) Any medical facility or health care worker may report an
33 incident to the department. The report shall be filed in a format
34 specified by the department after consultation with medical facilities
35 and shall identify the facility but shall not include any identifying
36 information for any of the health care professionals, facility
37 employees, or patients involved. This provision does not modify the

1 duty of a hospital to make a report to the department of health or a
2 disciplinary authority if a licensed practitioner has committed
3 unprofessional conduct as defined in RCW 18.130.180.

4 (4) If, in the course of investigating a complaint received from an
5 employee of a licensed medical facility, the department determines that
6 the facility has not undertaken efforts to investigate the occurrence
7 of an adverse event, the department shall direct the facility to
8 undertake an investigation of the event. If a complaint related to a
9 potential adverse event involves care provided in an ambulatory
10 surgical facility, the department shall notify the facility and request
11 that they undertake an investigation of the event. The protections of
12 RCW 43.70.075 apply to complaints related to adverse events or
13 incidents that are submitted in good faith by employees of medical
14 facilities.

15 NEW SECTION. **Sec. 4.** The department shall:

16 (1) Receive reports of adverse events and incidents under section
17 3 of this act;

18 (2) Investigate adverse events;

19 (3) Establish a system for medical facilities and the health care
20 workers of a medical facility to report adverse events and incidents,
21 which shall be accessible twenty-four hours a day, seven days a week;

22 (4) Adopt rules as necessary to implement this act;

23 (5) Directly or by contract:

24 (a) Collect, analyze, and evaluate data regarding reports of
25 adverse events and incidents, including the identification of
26 performance indicators and patterns in frequency or severity at certain
27 medical facilities or in certain regions of the state;

28 (b) Develop recommendations for changes in health care practices
29 and procedures, which may be instituted for the purpose of reducing the
30 number and severity of adverse events and incidents;

31 (c) Directly advise reporting medical facilities of immediate
32 changes that can be instituted to reduce adverse events and incidents;

33 (d) Issue recommendations to medical facilities on a facility-
34 specific or on a statewide basis regarding changes, trends, and
35 improvements in health care practices and procedures for the purpose of
36 reducing the number and severity of adverse events and incidents.
37 Prior to issuing recommendations, consideration shall be given to the

1 following factors: Expectation of improved quality care,
2 implementation feasibility, other relevant implementation practices,
3 and the cost impact to patients, payers, and medical facilities.
4 Statewide recommendations shall be issued to medical facilities on a
5 continuing basis and shall be published and posted on the department's
6 publicly accessible web site. The recommendations made to medical
7 facilities under this section shall not be considered mandatory for
8 licensure purposes unless they are adopted by the department as rules
9 pursuant to chapter 34.05 RCW; and

10 (e) Monitor implementation of reporting systems addressing adverse
11 events or their equivalent in other states and make recommendations to
12 the governor and the legislature as necessary for modifications to this
13 chapter to keep the system as nearly consistent as possible with
14 similar systems in other states;

15 (6) Report no later than January 1, 2007, and annually thereafter
16 to the governor and the legislature on the department's activities
17 under this act in the preceding year. The report shall include:

18 (a) The number of adverse events and incidents reported by medical
19 facilities on a geographical basis and their outcomes;

20 (b) The information derived from the data collected including any
21 recognized trends concerning patient safety; and

22 (c) Recommendations for statutory or regulatory changes that may
23 help improve patient safety in the state.

24 The annual report shall be made available for public inspection and
25 shall be posted on the department's web site;

26 (7) Conduct all activities under this section in a manner that
27 preserves the confidentiality of documents, materials, or information
28 made confidential by section 7 of this act.

29 NEW SECTION. **Sec. 5.** (1) Medical facilities licensed by the
30 department shall have in place policies to assure that, when
31 appropriate, information about unanticipated outcomes is provided to
32 patients or their families or any surrogate decision makers identified
33 pursuant to RCW 7.70.065. Notifications of unanticipated outcomes
34 under this section do not constitute an acknowledgment or admission of
35 liability, nor can the fact of notification or the content disclosed be
36 introduced as evidence in a civil action.

1 (2) Beginning January 1, 2006, the department shall, during the
2 annual survey of a licensed medical facility, ensure that the policy
3 required in subsection (1) of this section is in place.

4 **Sec. 6.** RCW 5.64.010 and 1975-'76 2nd ex.s. c 56 s 3 are each
5 amended to read as follows:

6 (1) In any civil action against a health care provider for personal
7 injuries which is based upon alleged professional negligence ((and
8 which is against:

9 ~~(1) A person licensed by this state to provide health care or~~
10 ~~related services, including, but not limited to, a physician,~~
11 ~~osteopathic physician, dentist, nurse, optometrist, podiatrist,~~
12 ~~chiropractor, physical therapist, psychologist, pharmacist, optician,~~
13 ~~physician's assistant, osteopathic physician's assistant, nurse~~
14 ~~practitioner, or physician's trained mobile intensive care paramedic,~~
15 ~~including, in the event such person is deceased, his estate or personal~~
16 ~~representative;~~

17 ~~(2) An employee or agent of a person described in subsection (1) of~~
18 ~~this section, acting in the course and scope of his employment,~~
19 ~~including, in the event such employee or agent is deceased, his estate~~
20 ~~or personal representative; or~~

21 ~~(3) An entity, whether or not incorporated, facility, or~~
22 ~~institution employing one or more persons described in subsection (1)~~
23 ~~of this section, including, but not limited to, a hospital, clinic,~~
24 ~~health maintenance organization, or nursing home; or an officer,~~
25 ~~director, employee, or agent thereof acting in the course and scope of~~
26 ~~his employment, including, in the event such officer, director,~~
27 ~~employee, or agent is deceased, his estate or personal~~
28 ~~representative;)), or in any arbitration or mediation proceeding~~
29 related to such civil action, evidence of furnishing or offering or
30 promising to pay medical, hospital, or similar expenses occasioned by
31 an injury is not admissible ((~~to prove liability for the injury~~)).

32 (2) In a civil action against a health care provider for personal
33 injuries which is based upon alleged professional negligence, or in any
34 arbitration or mediation proceeding related to such civil action:

35 (a) Any and all statements, affirmations, gestures, or conduct
36 expressing apology, fault, sympathy, commiseration, condolence,
37 compassion, or a general sense of benevolence; or

1 (b) Any and all statements or affirmations regarding remedial
2 actions that may be taken to address the act or omission that is the
3 basis for the allegation of negligence;
4 which were in the past or are made by a health care provider to the
5 injured person, a relative of the injured person, or a representative
6 of the injured person and which relate to the discomfort, pain,
7 suffering, injury, or death of the injured person as the result of the
8 alleged professional negligence are not admissible as evidence.

9 (3) For the purposes of this section:

10 (a) "Health care provider" has the same meaning provided in RCW
11 7.70.020.

12 (b) "Relative" means:

13 (i) An injured person's spouse, parent, grandparent, stepfather,
14 stepmother, child, grandchild, brother, sister, half brother, half
15 sister, or spouse's parents;

16 (ii) Relationships in (b)(i) of this subsection that are
17 established with an injured person as a result of adoption; and

18 (iii) Any person who has a family-type relationship with an injured
19 person.

20 (c) "Representative" means a legal guardian, attorney, person
21 designated to make decisions on behalf of a patient under a medical
22 power of attorney, or any person recognized in law or custom as a
23 patient's agent.

24 NEW SECTION. Sec. 7. When a report of an adverse event or
25 incident under section 3 of this act is made by or through a
26 coordinated quality improvement program under RCW 43.70.510 or
27 70.41.200, or by a peer review committee under RCW 4.24.250,
28 information and documents, including complaints and incident reports,
29 created specifically for and collected and maintained by a quality
30 improvement committee for the purpose of preparing a report of an
31 adverse event or incident shall be subject to the confidentiality
32 protections of those laws and RCW 42.17.310(1)(hh).

33 NEW SECTION. Sec. 8. Sections 1 through 5 and 7 of this act
34 constitute a new chapter in Title 70 RCW.

1 NEW SECTION. **Sec. 9.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 July 1, 2005, except section 3 of this act which takes effect April 1,
9 2006.

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