
HOUSE BILL 1243

State of Washington

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2005 Regular Session

By Representatives Green, Cody, Morrell, Appleton, Moeller, Darneille, Lovick, Kessler, Dickerson, Campbell, Linville, Chase, Ormsby, Haigh and Santos

Read first time 01/19/2005. Referred to Committee on Health Care.

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 an effective date; and declaring an
4 emergency.

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

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

16 (2) The legislature intends to promote full disclosure of medical
17 errors and adverse health events, and to use the experience and
18 knowledge gained from analysis of those events to advance patient
19 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) "Ambulatory surgical facility" means any distinct entity that
7 operates exclusively for the purpose of providing surgical services to
8 patients not requiring hospitalization, whether or not the facility is
9 certified under Title XVIII of the federal social security act.

10 (2) "Childbirth center" means a facility licensed under chapter
11 18.46 RCW.

12 (3) "Department" means the department of health.

13 (4) "Health care worker" means an employee, independent contractor,
14 licensee, or other individual who is directly involved in the delivery
15 of health services in a medical facility.

16 (5) "Hospital" means a facility licensed under chapter 70.41 RCW.

17 (6) "Incident" means an event, occurrence, or situation involving
18 the clinical care of a patient in a medical facility which could have
19 injured the patient but did not either cause an unanticipated injury or
20 require the delivery of additional health care services to the patient.
21 The term does not include a serious event.

22 (7) "Medical facility" means an ambulatory surgical facility,
23 childbirth center, hospital, or psychiatric hospital.

24 (8) "Psychiatric hospital" means a hospital facility licensed as a
25 psychiatric hospital under chapter 71.12 RCW.

26 (9) "Serious event" means any of the following events or
27 occurrences:

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

31 (b) A patient suicide while the patient was under care in the
32 hospital;

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

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

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

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

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

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

8 The term does not include an incident.

9 NEW SECTION. **Sec. 3.** (1) Each medical facility shall report to
10 the department the occurrence of any serious event as soon as is
11 reasonably and practically possible, but no later than seven working
12 days after discovery of the event. If seven working days is not a
13 sufficient amount of time in which to confirm that a particular
14 occurrence constitutes a serious event, then the hospital must file an
15 interim report of the occurrence as a suspected serious event within
16 the seven-day period. Once an interim report has been submitted, a
17 final report must be filed with the department within forty-five days
18 of discovery of the event. The final report shall either rescind the
19 interim report if no serious event is determined to have occurred, or
20 provide all required information to the department.

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

28 (3) Any medical facility or health care worker may report an
29 incident to the department. The report shall be filed in a format
30 specified by the department and shall identify the facility but shall
31 not include any identifying information for any of the health care
32 professionals, facility employees, or patients involved. This
33 provision does not modify the duty of a hospital to make a report to
34 the department of health or a disciplinary authority if a licensed
35 practitioner has committed unprofessional conduct as defined in RCW
36 18.130.180.

1 (4) The department may consult with experts and organizations
2 familiar with patient safety when developing the format for reporting
3 and in further defining events in order to be consistent with industry
4 standards.

5 (5) A health care worker may file an anonymous report in good faith
6 regarding a serious event with the department. Upon receipt of a
7 report of a serious event from a health care worker, the department
8 shall give notice to the affected medical facility that a report has
9 been filed. If the medical facility has not already started an
10 investigation of the serious event, the department shall direct the
11 facility to start an investigation of the incident that was the basis
12 for the report. The medical facility shall provide the department with
13 the results of its investigation no later than thirty days after
14 receiving notice pursuant to this subsection. If the department is
15 dissatisfied with the adequacy of the investigation conducted by the
16 medical facility or the adequacy of corrective actions taken, the
17 department shall perform its own review of the serious event.

18 (6) A health care worker who makes a report in good faith of the
19 occurrence of a serious event or incident in accordance with this
20 section shall not be subject to any retaliatory action for reporting
21 the serious event or incident and has the protections and remedies set
22 forth in RCW 43.70.075.

23 (7) Nothing in this section limits a medical facility's ability to
24 take appropriate disciplinary action against a health care worker for
25 failure to meet defined performance expectations or to take corrective
26 action against a health care worker for unprofessional conduct,
27 including making false reports or failure to report to the medical
28 facility serious events as defined in this chapter.

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

30 (1) Receive reports of serious events and incidents under section
31 3 of this act;

32 (2) Investigate serious events;

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

36 (4) Prohibit any retaliatory action against a health care worker

1 for making a good faith report of a serious event in accordance with
2 RCW 43.70.075;

3 (5) Adopt rules as necessary to implement this act;

4 (6) Directly or by contract:

5 (a) Collect, analyze, and evaluate data regarding reports of
6 serious events and incidents, including the identification of
7 performance indicators and patterns in frequency or severity at certain
8 medical facilities or in certain regions of the state;

9 (b) Develop recommendations for changes in health care practices
10 and procedures, which may be instituted for the purpose of reducing the
11 number and severity of serious events and incidents;

12 (c) Directly advise reporting medical facilities of immediate
13 changes that can be instituted to reduce serious events and incidents;

14 (d) Issue recommendations to medical facilities on a facility-
15 specific or on a statewide basis regarding changes, trends, and
16 improvements in health care practices and procedures for the purpose of
17 reducing the number and severity of serious events and incidents.
18 Prior to issuing recommendations, consideration shall be given to the
19 following factors: Expectation of improved quality care,
20 implementation feasibility, other relevant implementation practices,
21 and the cost impact to patients, payers, and medical facilities.
22 Statewide recommendations shall be issued to medical facilities on a
23 continuing basis and shall be published and posted on the department's
24 publicly accessible web site. The recommendations made to medical
25 facilities under this section may be considered by the department for
26 licensure purposes, but shall not be considered mandatory unless
27 adopted by the department as rules pursuant to chapter 34.05 RCW; and

28 (e) Monitor implementation of reporting systems addressing serious
29 events or their equivalent in other states and make recommendations to
30 the governor and the legislature as necessary for modifications to this
31 chapter to keep the system as nearly consistent as possible with
32 similar systems in other states;

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

36 (a) The number of serious events and incidents reported by medical
37 facilities on a geographical basis and their outcomes;

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

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

5 The annual report shall be made available for public inspection and
6 shall be posted on the department's web site.

7 NEW SECTION. **Sec. 5.** (1) A medical facility through an
8 appropriate designee shall provide written notification to a patient
9 affected by a serious event or, with the consent of the patient, to an
10 available family member or designee, within seven days of the
11 occurrence or discovery of a serious event. If the patient is unable
12 to give consent, the notification shall be given as provided in RCW
13 7.70.065.

14 (2) Notification under this section does not constitute an
15 acknowledgment or admission of liability.

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

18 (1) In any civil action against a health care provider for personal
19 injuries which is based upon alleged professional negligence ((and
20 ~~which is against:~~

21 ~~(1) A person licensed by this state to provide health care or~~
22 ~~related services, including, but not limited to, a physician,~~
23 ~~osteopathic physician, dentist, nurse, optometrist, podiatrist,~~
24 ~~chiropractor, physical therapist, psychologist, pharmacist, optician,~~
25 ~~physician's assistant, osteopathic physician's assistant, nurse~~
26 ~~practitioner, or physician's trained mobile intensive care paramedic,~~
27 ~~including, in the event such person is deceased, his estate or personal~~
28 ~~representative;~~

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

33 ~~(3) An entity, whether or not incorporated, facility, or~~
34 ~~institution employing one or more persons described in subsection (1)~~
35 ~~of this section, including, but not limited to, a hospital, clinic,~~
36 ~~health maintenance organization, or nursing home; or an officer,~~

1 ~~director, employee, or agent thereof acting in the course and scope of~~
2 ~~his employment, including, in the event such officer, director,~~
3 ~~employee, or agent is deceased, his estate or personal~~
4 ~~representative;)), or in any arbitration or mediation proceeding~~
5 related to such civil action, evidence of furnishing or offering or
6 promising to pay medical, hospital, or similar expenses occasioned by
7 an injury is not admissible to prove liability for the injury.

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

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

14 (b) Any and all statements or affirmations regarding remedial
15 actions that may be taken to address the act or omission that is the
16 basis for the allegation of negligence;

17 which were in the past or are made by a health care provider to the
18 injured person, a relative of the injured person, or a representative
19 of the injured person and which relate to the discomfort, pain,
20 suffering, injury, or death of the injured person as the result of the
21 alleged professional negligence shall be inadmissible as evidence of an
22 admission of liability or as evidence of an admission against interest.

23 (3) For the purposes of this section:

24 (a) "Health care provider" has the same meaning provided in RCW
25 7.70.020.

26 (b) "Relative" means:

27 (i) An injured person's spouse, parent, grandparent, stepfather,
28 stepmother, child, grandchild, brother, sister, half brother, half
29 sister, or spouse's parents;

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

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

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

1 NEW SECTION. **Sec. 7.** (1) When a report of a serious event or
2 incident under section 3 of this act is made by or through a
3 coordinated quality improvement program under RCW 43.70.510 or
4 70.41.200, or by a peer review committee under RCW 4.24.250, the
5 confidentiality protections of those laws and RCW 42.17.310(1)(hh)
6 apply fully to any documents, materials, or information prepared or
7 created for the purpose of complying with section 3 of this act.

8 (2) When a report of a serious event or incident under section 3 of
9 this act is not made by or through a coordinated quality improvement
10 program under RCW 43.70.510 or 70.41.200, or by a peer review committee
11 under RCW 4.24.250, any information, documents, and materials created
12 specifically for the purpose of submitting a report of a serious event
13 or incident are not subject to discovery or introduction into evidence
14 in any civil action, and no person who participated in the creation,
15 collection, or maintenance of information or documents specifically for
16 the purpose of submitting a report of a serious event or incident shall
17 be permitted or required to testify in any civil action as to the
18 content of such documents. This subsection does not preclude: (a) In
19 any civil action, the discovery of the identity of persons involved in
20 the medical care that is the basis of the civil action whose
21 involvement was independent of any reporting activity; (b) in any civil
22 action, the testimony of any person concerning the facts that form the
23 basis for the report of which the person had personal knowledge
24 acquired independently of such reporting; (c) in any civil action by a
25 health care provider regarding the restriction or revocation of that
26 individual's clinical or staff privileges, introduction into evidence
27 of information collected and maintained by a medical facility for
28 purposes of reporting a serious event or incident that involved such
29 health care provider; (d) in any civil action challenging the
30 termination of a contract by a state agency with any medical facility
31 if the termination was on the basis of quality of care concerns,
32 introduction into evidence of information created, collected, or
33 maintained for the purposes of reporting a serious event or incident,
34 which may be under terms of a protective order as specified by the
35 court; (e) in any civil action, disclosure of the fact that staff
36 privileges were terminated or restricted, including the specific
37 restrictions imposed, if any, and the reasons for the restrictions; or

1 (f) in any civil action, discovery and introduction into evidence of
2 the patient's medical records required by rule of the department to be
3 made regarding the care and treatment received.

4 (3) Any documents, materials, or information made confidential by
5 subsections (1) and (2) of this section are not subject to requests
6 under chapter 42.17 RCW.

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

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

13 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and takes effect
16 July 1, 2005.

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