
SECOND SUBSTITUTE HOUSE BILL 1291

State of Washington 59th Legislature 2005 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Cody, Bailey, Morrell, Hinkle, Green, Moeller, Kessler, Haigh, Linville, Kagi, Santos and Ormsby)

READ FIRST TIME 03/07/05.

1 AN ACT Relating to improving health care professional and health
2 care facility patient safety practices; amending RCW 43.70.110,
3 43.70.250, 5.64.010, and 43.70.510; reenacting and amending RCW
4 69.41.010; adding new sections to chapter 43.70 RCW; adding a new
5 section to chapter 7.70 RCW; creating new sections; providing an
6 effective date; and declaring an emergency.

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 encouraging health care

1 facilities and providers to communicate openly with patients regarding
2 medical errors that have occurred and steps that can be taken to
3 prevent errors from occurring in the future, encouraging health care
4 facilities and providers to work cooperatively in their patient safety
5 efforts, and increasing funding available to implement proven patient
6 safety strategies.

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

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

11 **Sec. 101.** 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 103 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. 102.** 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 103 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. 103.** 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 for the health care professionals
13 designated in subsection (2) of this section and by two dollars per
14 licensed bed for the health care facilities designated in subsection
15 (2) of this section. Proceeds of the patient safety fee must be
16 deposited into the patient safety account in section 107 of this act
17 and dedicated to patient safety and medical error reduction efforts
18 that have been proven to improve, or have a substantial likelihood of
19 improving the quality of care provided by health care professionals and
20 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) Registered nurses and licensed practical nurses licensed under
26 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) Optometrists licensed under chapter 18.53 RCW;

32 (vii) Osteopathic physicians licensed under chapter 18.57 RCW;

33 (viii) Osteopathic physicians' assistants licensed under chapter
34 18.57A RCW;

35 (ix) Pharmacists and pharmacies licensed under chapter 18.64 RCW;

36 (x) Physicians licensed under chapter 18.71 RCW;

37 (xi) Physician assistants licensed under chapter 18.71A RCW;

- 1 (xii) Podiatrists licensed under chapter 18.22 RCW; and
- 2 (xiii) Psychologists licensed under chapter 18.83 RCW; and
- 3 (b) Hospitals licensed under chapter 70.41 RCW and psychiatric
- 4 hospitals licensed under chapter 71.12 RCW.

5 NEW SECTION. **Sec. 104.** A new section is added to chapter 7.70 RCW
6 to read as follows:

7 (1) One percent of all attorneys' fees received for representation
8 of claimants or defendants in actions brought under this chapter that
9 result in payment to a claimant shall be paid as a patient safety set
10 aside. Proceeds of the patient safety set aside will be distributed by
11 the department of health in the form of grants, loans, or other
12 appropriate arrangements to support strategies that have been proven to
13 reduce medical errors and enhance patient safety, or have a substantial
14 likelihood of reducing medical errors and enhancing patient safety, as
15 provided in section 103 of this act.

16 (2) A patient safety set aside shall be transmitted to the
17 secretary of the department of health by the attorney who receives fees
18 under subsection (1) of this section for deposit into the patient
19 safety account established in section 107 of this act.

20 (3) The Washington state supreme court shall by rule adopt
21 procedures to implement this section.

22 NEW SECTION. **Sec. 105.** A new section is added to chapter 43.70
23 RCW to read as follows:

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

- 33 (i) The federal agency for health care quality and research;
- 34 (ii) The institute of medicine of the national academy of sciences;
- 35 (iii) The joint commission on accreditation of health care
- 36 organizations; and

1 (iv) The national quality forum.

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

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

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

19 NEW SECTION. **Sec. 106.** A new section is added to chapter 43.70
20 RCW to read as follows:

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

26 NEW SECTION. **Sec. 107.** A new section is added to chapter 43.70
27 RCW to read as follows:

28 The patient safety account is created in the state treasury. All
29 receipts from the fees and set asides created in sections 103 and 104
30 of this act must be deposited into the account. Expenditures from the
31 account may be used only for the purposes of this act. Moneys in the
32 account may be spent only after appropriation.

33 NEW SECTION. **Sec. 108.** A new section is added to chapter 43.70
34 RCW to read as follows:

1 By December 1, 2008, the department shall report the following
2 information to the governor and the health policy and fiscal committees
3 of the legislature:

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

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

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

12 **PART II: ENCOURAGING PATIENT SAFETY THROUGH**
13 **COMMUNICATIONS WITH PATIENTS**

14 **Sec. 201.** RCW 5.64.010 and 1975-'76 2nd ex.s. c 56 s 3 are each
15 amended to read as follows:

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

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

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

31 ~~(3) An entity, whether or not incorporated, facility, or~~
32 ~~institution employing one or more persons described in subsection (1)~~
33 ~~of this section, including, but not limited to, a hospital, clinic,~~
34 ~~health maintenance organization, or nursing home; or an officer,~~
35 ~~director, employee, or agent thereof acting in the course and scope of~~
36 ~~his employment, including, in the event such officer, director,~~

1 ~~employee, or agent is deceased, his estate or personal~~
2 ~~representative;)), or in any arbitration or mediation proceeding~~
3 ~~related to such civil action, evidence of furnishing or offering or~~
4 ~~promising to pay medical, hospital, or similar expenses occasioned by~~
5 ~~an injury is not admissible ((to prove liability for the injury)).~~

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

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

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

15 which were in the past or are made by a health care provider to the
16 injured person, a relative of the injured person, or a representative
17 of the injured person and which relate to the discomfort, pain,
18 suffering, injury, or death of the injured person as the result of the
19 alleged professional negligence are not admissible as evidence.

20 (3) For the purposes of this section:

21 (a) "Health care provider" has the same meaning provided in RCW
22 7.70.020.

23 (b) "Relative" means:

24 (i) An injured person's spouse, parent, grandparent, stepfather,
25 stepmother, child, grandchild, brother, sister, half brother, half
26 sister, or spouse's parents;

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

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

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

35 **PART III: COORDINATED QUALITY IMPROVEMENT PROGRAMS**

1 **Sec. 301.** RCW 43.70.510 and 2004 c 145 s 2 are each amended to
2 read as follows:

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

13 (b) All such programs shall comply with the requirements of RCW
14 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to
15 reflect the structural organization of the institution, facility,
16 professional societies or organizations, health care service
17 contractors, health maintenance organizations, health carriers, or any
18 other person or entity providing health care coverage under chapter
19 48.42 RCW that is subject to the jurisdiction and regulation of any
20 state agency or any subdivision thereof, unless an alternative quality
21 improvement program substantially equivalent to RCW 70.41.200(1)(a) is
22 developed. All such programs, whether complying with the requirement
23 set forth in RCW 70.41.200(1)(a) or in the form of an alternative
24 program, must be approved by the department before the discovery
25 limitations provided in subsections (3) and (4) of this section and the
26 exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section
27 shall apply. In reviewing plans submitted by licensed entities that
28 are associated with physicians' offices, the department shall ensure
29 that the exemption under RCW 42.17.310(1)(hh) and the discovery
30 limitations of this section are applied only to information and
31 documents related specifically to quality improvement activities
32 undertaken by the licensed entity.

33 (2) Health care provider groups of five or more providers may
34 maintain a coordinated quality improvement program for the improvement
35 of the quality of health care services rendered to patients and the
36 identification and prevention of medical malpractice as set forth in
37 RCW 70.41.200. For purposes of this section, a health care provider
38 group may be a consortium of providers consisting of five or more

1 providers in total. All such programs shall comply with the
2 requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h)
3 as modified to reflect the structural organization of the health care
4 provider group. All such programs must be approved by the department
5 before the discovery limitations provided in subsections (3) and (4) of
6 this section and the exemption under RCW 42.17.310(1)(hh) and
7 subsection (5) of this section shall apply.

8 (3) Any person who, in substantial good faith, provides information
9 to further the purposes of the quality improvement and medical
10 malpractice prevention program or who, in substantial good faith,
11 participates on the quality improvement committee shall not be subject
12 to an action for civil damages or other relief as a result of such
13 activity. Any person or entity participating in a coordinated quality
14 improvement program that, in substantial good faith, shares information
15 or documents with one or more other programs, committees, or boards
16 under subsection (6) of this section is not subject to an action for
17 civil damages or other relief as a result of the activity or its
18 consequences. For the purposes of this section, sharing information is
19 presumed to be in substantial good faith. However, the presumption may
20 be rebutted upon a showing of clear, cogent, and convincing evidence
21 that the information shared was knowingly false or deliberately
22 misleading.

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

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

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

21 (6) A coordinated quality improvement program may share information
22 and documents, including complaints and incident reports, created
23 specifically for, and collected and maintained by a quality improvement
24 committee or a peer review committee under RCW 4.24.250 with one or
25 more other coordinated quality improvement programs maintained in
26 accordance with this section or with RCW 70.41.200 or a peer review
27 committee under RCW 4.24.250, for the improvement of the quality of
28 health care services rendered to patients and the identification and
29 prevention of medical malpractice. The privacy protections of chapter
30 70.02 RCW and the federal health insurance portability and
31 accountability act of 1996 and its implementing regulations apply to
32 the sharing of individually identifiable patient information held by a
33 coordinated quality improvement program. Any rules necessary to
34 implement this section shall meet the requirements of applicable
35 federal and state privacy laws. Information and documents disclosed by
36 one coordinated quality improvement program to another coordinated
37 quality improvement program or a peer review committee under RCW
38 4.24.250 and any information and documents created or maintained as a

1 result of the sharing of information and documents shall not be subject
2 to the discovery process and confidentiality shall be respected as
3 required by subsection (4) of this section and RCW 4.24.250.

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

6 **PART IV: PRESCRIPTION LEGIBILITY**

7 NEW SECTION. **Sec. 401.** The legislature finds that prescription
8 drug errors occur because the pharmacist or nurse cannot read the
9 prescription from the physician or other provider with prescriptive
10 authority. The legislature further finds that legible prescriptions
11 can prevent these errors.

12 **Sec. 402.** RCW 69.41.010 and 2003 c 257 s 2 and 2003 c 140 s 11 are
13 each reenacted and amended to read as follows:

14 As used in this chapter, the following terms have the meanings
15 indicated unless the context clearly requires otherwise:

16 (1) "Administer" means the direct application of a legend drug
17 whether by injection, inhalation, ingestion, or any other means, to the
18 body of a patient or research subject by:

- 19 (a) A practitioner; or
- 20 (b) The patient or research subject at the direction of the
21 practitioner.

22 (2) "Community-based care settings" include: Community residential
23 programs for the developmentally disabled, certified by the department
24 of social and health services under chapter 71A.12 RCW; adult family
25 homes licensed under chapter 70.128 RCW; and boarding homes licensed
26 under chapter 18.20 RCW. Community-based care settings do not include
27 acute care or skilled nursing facilities.

28 (3) "Deliver" or "delivery" means the actual, constructive, or
29 attempted transfer from one person to another of a legend drug, whether
30 or not there is an agency relationship.

31 (4) "Department" means the department of health.

32 (5) "Dispense" means the interpretation of a prescription or order
33 for a legend drug and, pursuant to that prescription or order, the
34 proper selection, measuring, compounding, labeling, or packaging
35 necessary to prepare that prescription or order for delivery.

1 (6) "Dispenser" means a practitioner who dispenses.

2 (7) "Distribute" means to deliver other than by administering or
3 dispensing a legend drug.

4 (8) "Distributor" means a person who distributes.

5 (9) "Drug" means:

6 (a) Substances recognized as drugs in the official United States
7 pharmacopoeia, official homeopathic pharmacopoeia of the United States,
8 or official national formulary, or any supplement to any of them;

9 (b) Substances intended for use in the diagnosis, cure, mitigation,
10 treatment, or prevention of disease in man or animals;

11 (c) Substances (other than food, minerals or vitamins) intended to
12 affect the structure or any function of the body of man or animals; and

13 (d) Substances intended for use as a component of any article
14 specified in (a), (b), or (c) of this subsection. It does not include
15 devices or their components, parts, or accessories.

16 (10) "Electronic communication of prescription information" means
17 the communication of prescription information by computer, or the
18 transmission of an exact visual image of a prescription by facsimile,
19 or other electronic means for original prescription information or
20 prescription refill information for a legend drug between an authorized
21 practitioner and a pharmacy or the transfer of prescription information
22 for a legend drug from one pharmacy to another pharmacy.

23 (11) "In-home care settings" include an individual's place of
24 temporary and permanent residence, but does not include acute care or
25 skilled nursing facilities, and does not include community-based care
26 settings.

27 (12) "Legend drugs" means any drugs which are required by state law
28 or regulation of the state board of pharmacy to be dispensed on
29 prescription only or are restricted to use by practitioners only. A
30 prescription must be hand printed, typewritten, or electronically
31 generated.

32 (13) "Legible prescription" means a prescription or medication
33 order issued by a practitioner that is capable of being read and
34 understood by the pharmacist filling the prescription or the nurse or
35 other practitioner implementing the medication order.

36 (14) "Medication assistance" means assistance rendered by a
37 nonpractitioner to an individual residing in a community-based care
38 setting or in-home care setting to facilitate the individual's self-

1 administration of a legend drug or controlled substance. It includes
2 reminding or coaching the individual, handing the medication container
3 to the individual, opening the individual's medication container, using
4 an enabler, or placing the medication in the individual's hand, and
5 such other means of medication assistance as defined by rule adopted by
6 the department. A nonpractitioner may help in the preparation of
7 legend drugs or controlled substances for self-administration where a
8 practitioner has determined and communicated orally or by written
9 direction that such medication preparation assistance is necessary and
10 appropriate. Medication assistance shall not include assistance with
11 intravenous medications or injectable medications, except prefilled
12 insulin syringes.

13 (15) "Person" means individual, corporation, government or
14 governmental subdivision or agency, business trust, estate, trust,
15 partnership or association, or any other legal entity.

16 (16) "Practitioner" means:

17 (a) A physician under chapter 18.71 RCW, an osteopathic physician
18 or an osteopathic physician and surgeon under chapter 18.57 RCW, a
19 dentist under chapter 18.32 RCW, a podiatric physician and surgeon
20 under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a
21 registered nurse, advanced registered nurse practitioner, or licensed
22 practical nurse under chapter 18.79 RCW, an optometrist under chapter
23 18.53 RCW who is certified by the optometry board under RCW 18.53.010,
24 an osteopathic physician assistant under chapter 18.57A RCW, a
25 physician assistant under chapter 18.71A RCW, a naturopath licensed
26 under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or,
27 when acting under the required supervision of a dentist licensed under
28 chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

29 (b) A pharmacy, hospital, or other institution licensed,
30 registered, or otherwise permitted to distribute, dispense, conduct
31 research with respect to, or to administer a legend drug in the course
32 of professional practice or research in this state; and

33 (c) A physician licensed to practice medicine and surgery or a
34 physician licensed to practice osteopathic medicine and surgery in any
35 state, or province of Canada, which shares a common border with the
36 state of Washington.

37 (17) "Secretary" means the secretary of health or the secretary's
38 designee.

