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HOUSE BILL 1569

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State of Washington

59th Legislature

2005 Regular Session

By Representatives Morrell, Clibborn, Skinner, Schual-Berke, Green, Moeller, Cody, Curtis, Condotta, Chase, O'Brien and Kenney

Read first time 01/28/2005. Referred to Committee on Health Care.

1 AN ACT Relating to quality assurance in boarding homes, nursing  
2 homes, hospitals, peer review organizations, and coordinated quality  
3 improvement plans; amending RCW 18.20.390, 4.24.250, 43.70.510, and  
4 70.41.200; reenacting and amending RCW 42.17.310; adding a new section  
5 to chapter 74.42 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that facilitation of  
8 the quality assurance process in licensed boarding homes and nursing  
9 homes will promote safe patient care. The legislature also finds that  
10 communication and quality assurance efforts by boarding homes and  
11 nursing homes will achieve the goal of providing high quality of care  
12 to citizens residing in licensed boarding homes and nursing homes, and  
13 may reduce property and liability insurance premium costs for such  
14 facilities. The legislature further finds that sharing of quality  
15 assurance information between boarding homes, nursing homes,  
16 coordinated quality improvement plans, peer review organizations, and  
17 hospitals will promote safe patient care and ensure consistency of care  
18 across organizations and practices.

1       **Sec. 2.** RCW 18.20.390 and 2004 c 144 s 2 are each amended to read  
2 as follows:

3       (1) To ensure the proper delivery of services and the maintenance  
4 and improvement in quality of care through self-review, any boarding  
5 home licensed under this chapter may maintain a quality assurance  
6 committee that, at a minimum, includes:

7       (a) A licensed registered nurse under chapter 18.79 RCW;

8       (b) The administrator; and

9       (c) Three other members from the staff of the boarding home.

10       (2) When established, the quality assurance committee shall meet at  
11 least quarterly to identify issues that may adversely affect quality of  
12 care and services to residents and to develop and implement plans of  
13 action to correct identified quality concerns or deficiencies in the  
14 quality of care provided to residents.

15       (3) To promote quality of care through self-review without the fear  
16 of reprisal, and to enhance the objectivity of the review process, the  
17 department shall not require, and the long-term care ombudsman program  
18 shall not request, disclosure of any quality assurance committee  
19 records or reports, unless the disclosure is related to the committee's  
20 compliance with this section, if:

21       (a) The records or reports are not maintained pursuant to statutory  
22 or regulatory mandate; and

23       (b) The records or reports are created for and collected and  
24 maintained by the committee.

25       (4) If the boarding home refuses to release records or reports that  
26 would otherwise be protected under this section, the department may  
27 then request only that information that is necessary to determine  
28 whether the boarding home has a quality assurance committee and to  
29 determine that it is operating in compliance with this section.  
30 However, if the boarding home offers the department documents generated  
31 by, or for, the quality assurance committee as evidence of compliance  
32 with boarding home requirements, the documents are ~~((not))~~ protected as  
33 quality assurance committee documents under subsections (6) and (8) of  
34 this section when in the possession of the department.

35       (5) Good faith attempts by the committee to identify and correct  
36 quality deficiencies shall not be used as a basis for sanctions.

37       (6) ~~((Any records that are created for and collected and maintained~~

1 ~~by the quality assurance committee shall not be discoverable or~~  
2 ~~admitted into evidence in a civil action brought against a boarding~~  
3 ~~home.~~

4 (7)) Information and documents, including complaints and incident  
5 reports, created specifically for, and collected and maintained by, a  
6 quality assurance committee are not subject to discovery or  
7 introduction into evidence in any civil action, and no person who was  
8 in attendance at a meeting of such committee or who participated in the  
9 creation, collection, or maintenance of information or documents  
10 specifically for the committee shall be permitted or required to  
11 testify as to the content of such proceedings or the documents and  
12 information prepared specifically for the committee. This subsection  
13 does not preclude:

14 (a) In any civil action, the discovery of the identity of persons  
15 involved in the care that is the basis of the civil action whose  
16 involvement was independent of any quality improvement activity;

17 (b) In any civil action, the testimony of any person concerning the  
18 facts which form the basis for the institution of such proceedings of  
19 which the person had personal knowledge acquired independently of their  
20 participation in the quality assurance committee activities.

21 (7) A quality assurance committee under subsection (1) of this  
22 section, RCW 70.41.200, section 3 of this act, RCW 4.24.250, or  
23 43.70.510 may share information and documents, including complaints and  
24 incident reports, created specifically for, and collected and  
25 maintained by, the committee, with one or more other quality assurance  
26 committees created under subsection (1) of this section, RCW 70.41.200,  
27 section 3 of this act, RCW 4.24.250, or 43.70.510 for the improvement  
28 of the quality of care and services rendered to boarding home  
29 residents. Information and documents disclosed by one quality  
30 assurance committee to another quality assurance committee and any  
31 information and documents created or maintained as a result of the  
32 sharing of information and documents shall not be subject to the  
33 discovery process and confidentiality shall be respected as required by  
34 subsections (6) and (8) of this section, RCW 43.70.510(4),  
35 70.41.200(3), 4.24.250(1), and section 3 (7) and (9) of this act.

36 (8) Information and documents, including complaints and incident  
37 reports, created specifically for, and collected and maintained by, a

1 quality assurance committee are exempt from disclosure under chapter  
2 42.17 RCW.

3 (9) Notwithstanding any records created for the quality assurance  
4 committee, the facility shall fully set forth in the resident's  
5 records, available to the resident, the department, and others as  
6 permitted by law, the facts concerning any incident of injury or loss  
7 to the resident, the steps taken by the facility to address the  
8 resident's needs, and the resident outcome.

9 NEW SECTION. Sec. 3. A new section is added to chapter 74.42 RCW  
10 to read as follows:

11 (1) To ensure the proper delivery of services and the maintenance  
12 and improvement in quality of care through self-review, each facility  
13 may maintain a quality assurance committee that, at a minimum,  
14 includes:

- 15 (a) The director of nursing services;
- 16 (b) A physician designated by the facility; and
- 17 (c) Three other members from the staff of the facility.

18 (2) When established, the quality assurance committee shall meet at  
19 least quarterly to identify issues that may adversely affect quality of  
20 care and services to residents and to develop and implement plans of  
21 action to correct identified quality concerns or deficiencies in the  
22 quality of care provided to residents.

23 (3) To promote quality of care through self-review without the fear  
24 of reprisal, and to enhance the objectivity of the review process, the  
25 department shall not require, and the long-term care ombudsman program  
26 shall not request, disclosure of any quality assurance committee  
27 records or reports, unless the disclosure is related to the committee's  
28 compliance with this section, if:

- 29 (a) The records or reports are not maintained pursuant to statutory  
30 or regulatory mandate; and
- 31 (b) The records or reports are created for and collected and  
32 maintained by the committee.

33 (4) The department may request only information related to the  
34 quality assurance committee that may be necessary to determine whether  
35 a facility has a quality assurance committee and that it is operating  
36 in compliance with this section.

1 (5) Good faith attempts by the committee to identify and correct  
2 quality deficiencies shall not be used as a basis for imposing  
3 sanctions.

4 (6) If the facility offers the department documents generated by,  
5 or for, the quality assurance committee as evidence of compliance with  
6 nursing facility requirements, the documents are protected as quality  
7 assurance committee documents under subsections (7) and (9) of this  
8 section when in the possession of the department.

9 (7) Information and documents, including complaints and incident  
10 reports, created specifically for, and collected and maintained by, a  
11 quality assurance committee are not subject to discovery or  
12 introduction into evidence in any civil action, and no person who was  
13 in attendance at a meeting of such committee or who participated in the  
14 creation, collection, or maintenance of information or documents  
15 specifically for the committee shall be permitted or required to  
16 testify in any civil action as to the content of such proceedings or  
17 the documents and information prepared specifically for the committee.  
18 This subsection does not preclude: (a) In any civil action, the  
19 discovery of the identity of persons involved in the care that is the  
20 basis of the civil action whose involvement was independent of any  
21 quality improvement activity; and (b) in any civil action, the  
22 testimony of any person concerning the facts which form the basis for  
23 the institution of such proceedings of which the person had personal  
24 knowledge acquired independently of their participation in the quality  
25 assurance committee activities.

26 (8) A quality assurance committee under subsection (1) of this  
27 section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 may share  
28 information and documents, including complaints and incident reports,  
29 created specifically for, and collected and maintained by, the  
30 committee, with one or more other quality assurance committees created  
31 under subsection (1) of this section, RCW 18.20.390, 70.41.200,  
32 4.24.250, or 43.70.510 for the improvement of the quality of care and  
33 services rendered to nursing facility residents. Information and  
34 documents disclosed by one quality assurance committee to another  
35 quality assurance committee and any information and documents created  
36 or maintained as a result of the sharing of information and documents  
37 shall not be subject to the discovery process and confidentiality shall

1 be respected as required by subsections (7) and (9) of this section,  
2 RCW 18.20.390 (6) and (8), 43.70.510(4), 70.41.200(3), and 4.24.250(1).

3 (9) Information and documents, including complaints and incident  
4 reports, created specifically for, and collected and maintained by, a  
5 quality assurance committee are exempt from disclosure under chapter  
6 42.17 RCW.

7 (10) Notwithstanding any records created for the quality assurance  
8 committee, the facility shall fully set forth in the resident's  
9 records, available to the resident, the department, and others as  
10 permitted by law, the facts concerning any incident of injury or loss  
11 to the resident, the steps taken by the facility to address the  
12 resident's needs, and the resident outcome.

13 (11) A facility operated as part of a hospital licensed under  
14 chapter 70.41 RCW may maintain a quality assurance committee in  
15 accordance with this section which shall be subject to the provisions  
16 of subsections (1) through (10) of this section or may conduct quality  
17 improvement activities for the facility through a quality improvement  
18 committee under RCW 70.41.200 which shall be subject to the provisions  
19 of RCW 70.41.200(9).

20 **Sec. 4.** RCW 42.17.310 and 2003 c 277 s 3 and 2003 c 124 s 1 are  
21 each reenacted and amended to read as follows:

22 (1) The following are exempt from public inspection and copying:

23 (a) Personal information in any files maintained for students in  
24 public schools, patients or clients of public institutions or public  
25 health agencies, or welfare recipients.

26 (b) Personal information in files maintained for employees,  
27 appointees, or elected officials of any public agency to the extent  
28 that disclosure would violate their right to privacy.

29 (c) Information required of any taxpayer in connection with the  
30 assessment or collection of any tax if the disclosure of the  
31 information to other persons would (i) be prohibited to such persons by  
32 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the  
33 taxpayer's right to privacy or result in unfair competitive  
34 disadvantage to the taxpayer.

35 (d) Specific intelligence information and specific investigative  
36 records compiled by investigative, law enforcement, and penology  
37 agencies, and state agencies vested with the responsibility to

1 discipline members of any profession, the nondisclosure of which is  
2 essential to effective law enforcement or for the protection of any  
3 person's right to privacy.

4 (e) Information revealing the identity of persons who are witnesses  
5 to or victims of crime or who file complaints with investigative, law  
6 enforcement, or penology agencies, other than the public disclosure  
7 commission, if disclosure would endanger any person's life, physical  
8 safety, or property. If at the time a complaint is filed the  
9 complainant, victim or witness indicates a desire for disclosure or  
10 nondisclosure, such desire shall govern. However, all complaints filed  
11 with the public disclosure commission about any elected official or  
12 candidate for public office must be made in writing and signed by the  
13 complainant under oath.

14 (f) Test questions, scoring keys, and other examination data used  
15 to administer a license, employment, or academic examination.

16 (g) Except as provided by chapter 8.26 RCW, the contents of real  
17 estate appraisals, made for or by any agency relative to the  
18 acquisition or sale of property, until the project or prospective sale  
19 is abandoned or until such time as all of the property has been  
20 acquired or the property to which the sale appraisal relates is sold,  
21 but in no event shall disclosure be denied for more than three years  
22 after the appraisal.

23 (h) Valuable formulae, designs, drawings, computer source code or  
24 object code, and research data obtained by any agency within five years  
25 of the request for disclosure when disclosure would produce private  
26 gain and public loss.

27 (i) Preliminary drafts, notes, recommendations, and intra-agency  
28 memorandums in which opinions are expressed or policies formulated or  
29 recommended except that a specific record shall not be exempt when  
30 publicly cited by an agency in connection with any agency action.

31 (j) Records which are relevant to a controversy to which an agency  
32 is a party but which records would not be available to another party  
33 under the rules of pretrial discovery for causes pending in the  
34 superior courts.

35 (k) Records, maps, or other information identifying the location of  
36 archaeological sites in order to avoid the looting or depredation of  
37 such sites.

1 (l) Any library record, the primary purpose of which is to maintain  
2 control of library materials, or to gain access to information, which  
3 discloses or could be used to disclose the identity of a library user.

4 (m) Financial information supplied by or on behalf of a person,  
5 firm, or corporation for the purpose of qualifying to submit a bid or  
6 proposal for (i) a ferry system construction or repair contract as  
7 required by RCW 47.60.680 through 47.60.750 or (ii) highway  
8 construction or improvement as required by RCW 47.28.070.

9 (n) Railroad company contracts filed prior to July 28, 1991, with  
10 the utilities and transportation commission under RCW 81.34.070, except  
11 that the summaries of the contracts are open to public inspection and  
12 copying as otherwise provided by this chapter.

13 (o) Financial and commercial information and records supplied by  
14 private persons pertaining to export services provided pursuant to  
15 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to  
16 export projects pursuant to RCW 43.23.035.

17 (p) Financial disclosures filed by private vocational schools under  
18 chapters 28B.85 and 28C.10 RCW.

19 (q) Records filed with the utilities and transportation commission  
20 or attorney general under RCW 80.04.095 that a court has determined are  
21 confidential under RCW 80.04.095.

22 (r) Financial and commercial information and records supplied by  
23 businesses or individuals during application for loans or program  
24 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
25 or during application for economic development loans or program  
26 services provided by any local agency.

27 (s) Membership lists or lists of members or owners of interests of  
28 units in timeshare projects, subdivisions, camping resorts,  
29 condominiums, land developments, or common-interest communities  
30 affiliated with such projects, regulated by the department of  
31 licensing, in the files or possession of the department.

32 (t) All applications for public employment, including the names of  
33 applicants, resumes, and other related materials submitted with respect  
34 to an applicant.

35 (u) The residential addresses or residential telephone numbers of  
36 employees or volunteers of a public agency which are held by any public  
37 agency in personnel records, public employment related records, or

1 volunteer rosters, or are included in any mailing list of employees or  
2 volunteers of any public agency.

3 (v) The residential addresses and residential telephone numbers of  
4 the customers of a public utility contained in the records or lists  
5 held by the public utility of which they are customers, except that  
6 this information may be released to the division of child support or  
7 the agency or firm providing child support enforcement for another  
8 state under Title IV-D of the federal social security act, for the  
9 establishment, enforcement, or modification of a support order.

10 (w)(i) The federal social security number of individuals governed  
11 under chapter 18.130 RCW maintained in the files of the department of  
12 health, except this exemption does not apply to requests made directly  
13 to the department from federal, state, and local agencies of  
14 government, and national and state licensing, credentialing,  
15 investigatory, disciplinary, and examination organizations; (ii) the  
16 current residential address and current residential telephone number of  
17 a health care provider governed under chapter 18.130 RCW maintained in  
18 the files of the department, if the provider requests that this  
19 information be withheld from public inspection and copying, and  
20 provides to the department an accurate alternate or business address  
21 and business telephone number. On or after January 1, 1995, the  
22 current residential address and residential telephone number of a  
23 health care provider governed under RCW 18.130.040 maintained in the  
24 files of the department shall automatically be withheld from public  
25 inspection and copying unless the provider specifically requests the  
26 information be released, and except as provided for under RCW  
27 42.17.260(9).

28 (x) Information obtained by the board of pharmacy as provided in  
29 RCW 69.45.090.

30 (y) Information obtained by the board of pharmacy or the department  
31 of health and its representatives as provided in RCW 69.41.044,  
32 69.41.280, and 18.64.420.

33 (z) Financial information, business plans, examination reports, and  
34 any information produced or obtained in evaluating or examining a  
35 business and industrial development corporation organized or seeking  
36 certification under chapter 31.24 RCW.

37 (aa) Financial and commercial information supplied to the state  
38 investment board by any person when the information relates to the

1 investment of public trust or retirement funds and when disclosure  
2 would result in loss to such funds or in private loss to the providers  
3 of this information.

4 (bb) Financial and valuable trade information under RCW 51.36.120.

5 (cc) Client records maintained by an agency that is a domestic  
6 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape  
7 crisis center as defined in RCW 70.125.030.

8 (dd) Information that identifies a person who, while an agency  
9 employee: (i) Seeks advice, under an informal process established by  
10 the employing agency, in order to ascertain his or her rights in  
11 connection with a possible unfair practice under chapter 49.60 RCW  
12 against the person; and (ii) requests his or her identity or any  
13 identifying information not be disclosed.

14 (ee) Investigative records compiled by an employing agency  
15 conducting a current investigation of a possible unfair practice under  
16 chapter 49.60 RCW or of a possible violation of other federal, state,  
17 or local laws prohibiting discrimination in employment.

18 (ff) Business related information protected from public inspection  
19 and copying under RCW 15.86.110.

20 (gg) Financial, commercial, operations, and technical and research  
21 information and data submitted to or obtained by the clean Washington  
22 center in applications for, or delivery of, program services under  
23 chapter 70.95H RCW.

24 (hh) Information and documents created specifically for, and  
25 collected and maintained by, a quality improvement committee pursuant  
26 to RCW 43.70.510 or 70.41.200, (~~(or)~~) by a peer review committee under  
27 RCW 4.24.250, or by a quality assurance committee pursuant to section  
28 3 of this act or RCW 18.20.390, regardless of which agency is in  
29 possession of the information and documents.

30 (ii) Personal information in files maintained in a data base  
31 created under RCW 43.07.360.

32 (jj) Financial and commercial information requested by the public  
33 stadium authority from any person or organization that leases or uses  
34 the stadium and exhibition center as defined in RCW 36.102.010.

35 (kk) Names of individuals residing in emergency or transitional  
36 housing that are furnished to the department of revenue or a county  
37 assessor in order to substantiate a claim for property tax exemption  
38 under RCW 84.36.043.

1 (ll) The names, residential addresses, residential telephone  
2 numbers, and other individually identifiable records held by an agency  
3 in relation to a vanpool, carpool, or other ride-sharing program or  
4 service. However, these records may be disclosed to other persons who  
5 apply for ride-matching services and who need that information in order  
6 to identify potential riders or drivers with whom to share rides.

7 (mm) The personally identifying information of current or former  
8 participants or applicants in a paratransit or other transit service  
9 operated for the benefit of persons with disabilities or elderly  
10 persons.

11 (nn) The personally identifying information of persons who acquire  
12 and use transit passes and other fare payment media including, but not  
13 limited to, stored value smart cards and magnetic strip cards, except  
14 that an agency may disclose this information to a person, employer,  
15 educational institution, or other entity that is responsible, in whole  
16 or in part, for payment of the cost of acquiring or using a transit  
17 pass or other fare payment media, or to the news media when reporting  
18 on public transportation or public safety. This information may also  
19 be disclosed at the agency's discretion to governmental agencies or  
20 groups concerned with public transportation or public safety.

21 (oo) Proprietary financial and commercial information that the  
22 submitting entity, with review by the department of health,  
23 specifically identifies at the time it is submitted and that is  
24 provided to or obtained by the department of health in connection with  
25 an application for, or the supervision of, an antitrust exemption  
26 sought by the submitting entity under RCW 43.72.310. If a request for  
27 such information is received, the submitting entity must be notified of  
28 the request. Within ten business days of receipt of the notice, the  
29 submitting entity shall provide a written statement of the continuing  
30 need for confidentiality, which shall be provided to the requester.  
31 Upon receipt of such notice, the department of health shall continue to  
32 treat information designated under this section as exempt from  
33 disclosure. If the requester initiates an action to compel disclosure  
34 under this chapter, the submitting entity must be joined as a party to  
35 demonstrate the continuing need for confidentiality.

36 (pp) Records maintained by the board of industrial insurance  
37 appeals that are related to appeals of crime victims' compensation  
38 claims filed with the board under RCW 7.68.110.

1 (qq) Financial and commercial information supplied by or on behalf  
2 of a person, firm, corporation, or entity under chapter 28B.95 RCW  
3 relating to the purchase or sale of tuition units and contracts for the  
4 purchase of multiple tuition units.

5 (rr) Any records of investigative reports prepared by any state,  
6 county, municipal, or other law enforcement agency pertaining to sex  
7 offenses contained in chapter 9A.44 RCW or sexually violent offenses as  
8 defined in RCW 71.09.020, which have been transferred to the Washington  
9 association of sheriffs and police chiefs for permanent electronic  
10 retention and retrieval pursuant to RCW 40.14.070(2)(b).

11 (ss) Credit card numbers, debit card numbers, electronic check  
12 numbers, card expiration dates, or bank or other financial account  
13 numbers, except when disclosure is expressly required by or governed by  
14 other law.

15 (tt) Financial information, including but not limited to account  
16 numbers and values, and other identification numbers supplied by or on  
17 behalf of a person, firm, corporation, limited liability company,  
18 partnership, or other entity related to an application for a liquor  
19 license, gambling license, or lottery retail license.

20 (uu) Records maintained by the employment security department and  
21 subject to chapter 50.13 RCW if provided to another individual or  
22 organization for operational, research, or evaluation purposes.

23 (vv) Individually identifiable information received by the work  
24 force training and education coordinating board for research or  
25 evaluation purposes.

26 (ww) Those portions of records assembled, prepared, or maintained  
27 to prevent, mitigate, or respond to criminal terrorist acts, which are  
28 acts that significantly disrupt the conduct of government or of the  
29 general civilian population of the state or the United States and that  
30 manifest an extreme indifference to human life, the public disclosure  
31 of which would have a substantial likelihood of threatening public  
32 safety, consisting of:

33 (i) Specific and unique vulnerability assessments or specific and  
34 unique response or deployment plans, including compiled underlying data  
35 collected in preparation of or essential to the assessments, or to the  
36 response or deployment plans; and

37 (ii) Records not subject to public disclosure under federal law  
38 that are shared by federal or international agencies, and information

1 prepared from national security briefings provided to state or local  
2 government officials related to domestic preparedness for acts of  
3 terrorism.

4 (xx) Commercial fishing catch data from logbooks required to be  
5 provided to the department of fish and wildlife under RCW 77.12.047,  
6 when the data identifies specific catch location, timing, or  
7 methodology and the release of which would result in unfair competitive  
8 disadvantage to the commercial fisher providing the catch data.  
9 However, this information may be released to government agencies  
10 concerned with the management of fish and wildlife resources.

11 (yy) Sensitive wildlife data obtained by the department of fish and  
12 wildlife. However, sensitive wildlife data may be released to  
13 government agencies concerned with the management of fish and wildlife  
14 resources. Sensitive wildlife data includes:

15 (i) The nesting sites or specific locations of endangered species  
16 designated under RCW 77.12.020, or threatened or sensitive species  
17 classified by rule of the department of fish and wildlife;

18 (ii) Radio frequencies used in, or locational data generated by,  
19 telemetry studies; or

20 (iii) Other location data that could compromise the viability of a  
21 specific fish or wildlife population, and where at least one of the  
22 following criteria are met:

- 23 (A) The species has a known commercial or black market value;
- 24 (B) There is a history of malicious take of that species; or
- 25 (C) There is a known demand to visit, take, or disturb, and the  
26 species behavior or ecology renders it especially vulnerable or the  
27 species has an extremely limited distribution and concentration.

28 (zz) The personally identifying information of persons who acquire  
29 recreational licenses under RCW 77.32.010 or commercial licenses under  
30 chapter 77.65 or 77.70 RCW, except name, address of contact used by the  
31 department, and type of license, endorsement, or tag. However, the  
32 department of fish and wildlife may disclose personally identifying  
33 information to:

34 (i) Government agencies concerned with the management of fish and  
35 wildlife resources;

36 (ii) The department of social and health services, child support  
37 division, and to the department of licensing in order to implement RCW  
38 77.32.014 and 46.20.291; and

1 (iii) Law enforcement agencies for the purpose of firearm  
2 possession enforcement under RCW 9.41.040.

3 (aaa)(i) Discharge papers of a veteran of the armed forces of the  
4 United States filed at the office of the county auditor before July 1,  
5 2002, that have not been commingled with other recorded documents.  
6 These records will be available only to the veteran, the veteran's next  
7 of kin, a deceased veteran's properly appointed personal representative  
8 or executor, a person holding that veteran's general power of attorney,  
9 or to anyone else designated in writing by that veteran to receive the  
10 records.

11 (ii) Discharge papers of a veteran of the armed forces of the  
12 United States filed at the office of the county auditor before July 1,  
13 2002, that have been commingled with other records, if the veteran has  
14 recorded a "request for exemption from public disclosure of discharge  
15 papers" with the county auditor. If such a request has been recorded,  
16 these records may be released only to the veteran filing the papers,  
17 the veteran's next of kin, a deceased veteran's properly appointed  
18 personal representative or executor, a person holding the veteran's  
19 general power of attorney, or anyone else designated in writing by the  
20 veteran to receive the records.

21 (iii) Discharge papers of a veteran filed at the office of the  
22 county auditor after June 30, 2002, are not public records, but will be  
23 available only to the veteran, the veteran's next of kin, a deceased  
24 veteran's properly appointed personal representative or executor, a  
25 person holding the veteran's general power of attorney, or anyone else  
26 designated in writing by the veteran to receive the records.

27 (iv) For the purposes of this subsection (1)(aaa), next of kin of  
28 deceased veterans have the same rights to full access to the record.  
29 Next of kin are the veteran's widow or widower who has not remarried,  
30 son, daughter, father, mother, brother, and sister.

31 (bbb) Those portions of records containing specific and unique  
32 vulnerability assessments or specific and unique emergency and escape  
33 response plans at a city, county, or state adult or juvenile  
34 correctional facility, the public disclosure of which would have a  
35 substantial likelihood of threatening the security of a city, county,  
36 or state adult or juvenile correctional facility or any individual's  
37 safety.

1 (ccc) Information compiled by school districts or schools in the  
2 development of their comprehensive safe school plans pursuant to RCW  
3 28A.320.125, to the extent that they identify specific vulnerabilities  
4 of school districts and each individual school.

5 (ddd) Information regarding the infrastructure and security of  
6 computer and telecommunications networks, consisting of security  
7 passwords, security access codes and programs, access codes for secure  
8 software applications, security and service recovery plans, security  
9 risk assessments, and security test results to the extent that they  
10 identify specific system vulnerabilities.

11 (eee) Information obtained and exempted or withheld from public  
12 inspection by the health care authority under RCW 41.05.026, whether  
13 retained by the authority, transferred to another state purchased  
14 health care program by the authority, or transferred by the authority  
15 to a technical review committee created to facilitate the development,  
16 acquisition, or implementation of state purchased health care under  
17 chapter 41.05 RCW.

18 (fff) Proprietary data, trade secrets, or other information that  
19 relates to: (i) A vendor's unique methods of conducting business; (ii)  
20 data unique to the product or services of the vendor; or (iii)  
21 determining prices or rates to be charged for services, submitted by  
22 any vendor to the department of social and health services for purposes  
23 of the development, acquisition, or implementation of state purchased  
24 health care as defined in RCW 41.05.011.

25 (2) Except for information described in subsection (1)(c)(i) of  
26 this section and confidential income data exempted from public  
27 inspection pursuant to RCW 84.40.020, the exemptions of this section  
28 are inapplicable to the extent that information, the disclosure of  
29 which would violate personal privacy or vital governmental interests,  
30 can be deleted from the specific records sought. No exemption may be  
31 construed to permit the nondisclosure of statistical information not  
32 descriptive of any readily identifiable person or persons.

33 (3) Inspection or copying of any specific records exempt under the  
34 provisions of this section may be permitted if the superior court in  
35 the county in which the record is maintained finds, after a hearing  
36 with notice thereof to every person in interest and the agency, that  
37 the exemption of such records is clearly unnecessary to protect any  
38 individual's right of privacy or any vital governmental function.

1 (4) Agency responses refusing, in whole or in part, inspection of  
2 any public record shall include a statement of the specific exemption  
3 authorizing the withholding of the record (or part) and a brief  
4 explanation of how the exemption applies to the record withheld.

5 **Sec. 5.** RCW 4.24.250 and 2004 c 145 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  
20 damages arising out of such activities. For the purposes of this  
21 section, sharing information is presumed to be in good faith. However,  
22 the presumption may be rebutted upon a showing of clear, cogent, and  
23 convincing evidence that the information shared was knowingly false or  
24 deliberately misleading. The proceedings, reports, and written records  
25 of such committees or boards, or of a member, employee, staff person,  
26 or investigator of such a committee or board, shall not be subject to  
27 subpoena or discovery proceedings in any civil action, except actions  
28 arising out of the recommendations of such committees or boards  
29 involving the restriction or revocation of the clinical or staff  
30 privileges of a health care provider as defined above.

31 (2) A coordinated quality improvement program maintained in  
32 accordance with RCW 43.70.510 or 70.41.200 (~~and~~), a quality assurance  
33 committee maintained in accordance with RCW 18.20.390 or section 3 of  
34 this act, or any committee((s)) or board((s)) under subsection (1) of  
35 this section may share information and documents, including complaints  
36 and incident reports, created specifically for, and collected and  
37 maintained by, a coordinated quality improvement committee or

1 committees or boards under subsection (1) of this section, with one or  
2 more other coordinated quality improvement programs or committees or  
3 boards under subsection (1) of this section for the improvement of the  
4 quality of health care services rendered to patients and the  
5 identification and prevention of medical malpractice. The privacy  
6 protections of chapter 70.02 RCW and the federal health insurance  
7 portability and accountability act of 1996 and its implementing  
8 regulations apply to the sharing of individually identifiable patient  
9 information held by a coordinated quality improvement program. Any  
10 rules necessary to implement this section shall meet the requirements  
11 of applicable federal and state privacy laws. Information and  
12 documents disclosed by one coordinated quality improvement program or  
13 committee or board under subsection (1) of this section to another  
14 coordinated quality improvement program or committee or board under  
15 subsection (1) of this section and any information and documents  
16 created or maintained as a result of the sharing of information and  
17 documents shall not be subject to the discovery process and  
18 confidentiality shall be respected as required by subsection (1) of  
19 this section and by RCW 43.70.510(4) (~~and~~), 70.41.200(3), 18.20.390  
20 (6) and (8), and section 3 (7) and (9) of this act.

21 **Sec. 6.** RCW 43.70.510 and 2004 c 145 s 2 are each amended to read  
22 as follows:

23 (1)(a) Health care institutions and medical facilities, other than  
24 hospitals, that are licensed by the department, professional societies  
25 or organizations, health care service contractors, health maintenance  
26 organizations, health carriers approved pursuant to chapter 48.43 RCW,  
27 and any other person or entity providing health care coverage under  
28 chapter 48.42 RCW that is subject to the jurisdiction and regulation of  
29 any state agency or any subdivision thereof may maintain a coordinated  
30 quality improvement program for the improvement of the quality of  
31 health care services rendered to patients and the identification and  
32 prevention of medical malpractice as set forth in RCW 70.41.200.

33 (b) All such programs shall comply with the requirements of RCW  
34 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to  
35 reflect the structural organization of the institution, facility,  
36 professional societies or organizations, health care service  
37 contractors, health maintenance organizations, health carriers, or any

1 other person or entity providing health care coverage under chapter  
2 48.42 RCW that is subject to the jurisdiction and regulation of any  
3 state agency or any subdivision thereof, unless an alternative quality  
4 improvement program substantially equivalent to RCW 70.41.200(1)(a) is  
5 developed. All such programs, whether complying with the requirement  
6 set forth in RCW 70.41.200(1)(a) or in the form of an alternative  
7 program, must be approved by the department before the discovery  
8 limitations provided in subsections (3) and (4) of this section and the  
9 exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section  
10 shall apply. In reviewing plans submitted by licensed entities that  
11 are associated with physicians' offices, the department shall ensure  
12 that the exemption under RCW 42.17.310(1)(hh) and the discovery  
13 limitations of this section are applied only to information and  
14 documents related specifically to quality improvement activities  
15 undertaken by the licensed entity.

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

27 (3) Any person who, in substantial good faith, provides information  
28 to further the purposes of the quality improvement and medical  
29 malpractice prevention program or who, in substantial good faith,  
30 participates on the quality improvement committee shall not be subject  
31 to an action for civil damages or other relief as a result of such  
32 activity. Any person or entity participating in a coordinated quality  
33 improvement program that, in substantial good faith, shares information  
34 or documents with one or more other programs, committees, or boards  
35 under subsection (6) of this section is not subject to an action for  
36 civil damages or other relief as a result of the activity or its  
37 consequences. For the purposes of this section, sharing information is  
38 presumed to be in substantial good faith. However, the presumption may

1 be rebutted upon a showing of clear, cogent, and convincing evidence  
2 that the information shared was knowingly false or deliberately  
3 misleading.

4 (4) Information and documents, including complaints and incident  
5 reports, created specifically for, and collected((~~7~~)) and maintained  
6 by, a quality improvement committee are not subject to discovery or  
7 introduction into evidence in any civil action, and no person who was  
8 in attendance at a meeting of such committee or who participated in the  
9 creation, collection, or maintenance of information or documents  
10 specifically for the committee shall be permitted or required to  
11 testify in any civil action as to the content of such proceedings or  
12 the documents and information prepared specifically for the committee.  
13 This subsection does not preclude: (a) In any civil action, the  
14 discovery of the identity of persons involved in the medical care that  
15 is the basis of the civil action whose involvement was independent of  
16 any quality improvement activity; (b) in any civil action, the  
17 testimony of any person concerning the facts that form the basis for  
18 the institution of such proceedings of which the person had personal  
19 knowledge acquired independently of such proceedings; (c) in any civil  
20 action by a health care provider regarding the restriction or  
21 revocation of that individual's clinical or staff privileges,  
22 introduction into evidence information collected and maintained by  
23 quality improvement committees regarding such health care provider; (d)  
24 in any civil action challenging the termination of a contract by a  
25 state agency with any entity maintaining a coordinated quality  
26 improvement program under this section if the termination was on the  
27 basis of quality of care concerns, introduction into evidence of  
28 information created, collected, or maintained by the quality  
29 improvement committees of the subject entity, which may be under terms  
30 of a protective order as specified by the court; (e) in any civil  
31 action, disclosure of the fact that staff privileges were terminated or  
32 restricted, including the specific restrictions imposed, if any and the  
33 reasons for the restrictions; or (f) in any civil action, discovery and  
34 introduction into evidence of the patient's medical records required by  
35 rule of the department of health to be made regarding the care and  
36 treatment received.

37 (5) Information and documents created specifically for, and

1 collected and maintained by, a quality improvement committee are exempt  
2 from disclosure under chapter 42.17 RCW.

3 (6) A coordinated quality improvement program may share information  
4 and documents, including complaints and incident reports, created  
5 specifically for, and collected and maintained by, a quality  
6 improvement committee or a peer review committee under RCW 4.24.250  
7 with one or more other coordinated quality improvement programs  
8 maintained in accordance with this section or with RCW 70.41.200, a  
9 quality assurance committee maintained in accordance with RCW 18.20.390  
10 or section 3 of this act, or a peer review committee under RCW  
11 4.24.250, for the improvement of the quality of health care services  
12 rendered to patients and the identification and prevention of medical  
13 malpractice. The privacy protections of chapter 70.02 RCW and the  
14 federal health insurance portability and accountability act of 1996 and  
15 its implementing regulations apply to the sharing of individually  
16 identifiable patient information held by a coordinated quality  
17 improvement program. Any rules necessary to implement this section  
18 shall meet the requirements of applicable federal and state privacy  
19 laws. Information and documents disclosed by one coordinated quality  
20 improvement program to another coordinated quality improvement program  
21 or a peer review committee under RCW 4.24.250 and any information and  
22 documents created or maintained as a result of the sharing of  
23 information and documents shall not be subject to the discovery process  
24 and confidentiality shall be respected as required by subsection (4) of  
25 this section and RCW 4.24.250.

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

28 **Sec. 7.** RCW 70.41.200 and 2004 c 145 s 3 are each amended to read  
29 as follows:

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

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

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

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

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

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

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

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

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

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

31 (2) Any person who, in substantial good faith, provides information  
32 to further the purposes of the quality improvement and medical  
33 malpractice prevention program or who, in substantial good faith,  
34 participates on the quality improvement committee shall not be subject  
35 to an action for civil damages or other relief as a result of such  
36 activity. Any person or entity participating in a coordinated quality  
37 improvement program that, in substantial good faith, shares information  
38 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((7)) and maintained  
9 by, a 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) A coordinated quality improvement program may share information  
23 and documents, including complaints and incident reports, created  
24 specifically for, and collected and maintained by, a quality  
25 improvement committee or a peer review committee under RCW 4.24.250  
26 with one or more other coordinated quality improvement programs  
27 maintained in accordance with this section or ~~((with))~~ RCW 43.70.510,  
28 a quality assurance committee maintained in accordance with RCW  
29 18.20.390 or section 3 of this act, or a peer review committee under  
30 RCW 4.24.250, for the improvement of the quality of health care  
31 services rendered to patients and the identification and prevention of  
32 medical malpractice. The privacy protections of chapter 70.02 RCW and  
33 the federal health insurance portability and accountability act of 1996  
34 and its implementing regulations apply to the sharing of individually  
35 identifiable patient information held by a coordinated quality  
36 improvement program. Any rules necessary to implement this section  
37 shall meet the requirements of applicable federal and state privacy  
38 laws. Information and documents disclosed by one coordinated quality

1 improvement program to another coordinated quality improvement program  
2 or a peer review committee under RCW 4.24.250 and any information and  
3 documents created or maintained as a result of the sharing of  
4 information and documents shall not be subject to the discovery process  
5 and confidentiality shall be respected as required by subsection (3) of  
6 this section, RCW 18.20.390 (6) and (8), section 3 (7) and (9) of this  
7 act, and RCW 4.24.250.

8 (9) A hospital that operates a nursing home as defined in RCW  
9 18.51.010 may conduct quality improvement activities for both the  
10 hospital and the nursing home through a quality improvement committee  
11 under this section, and such activities shall be subject to the  
12 provisions of subsections (2) through (8) of this section.

13 (10) Violation of this section shall not be considered negligence  
14 per se.

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