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ENGROSSED HOUSE BILL 2254

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State of Washington

59th Legislature

2005 Regular Session

By Representative Cody

Read first time 02/28/2005. Referred to Committee on Health Care.

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

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

5 **Sec. 1.** RCW 4.24.250 and 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  
9 charges or presents evidence against another member of their profession  
10 based on the claimed incompetency or gross misconduct of such person  
11 before a regularly constituted review committee or board of a  
12 professional society or hospital whose duty it is to evaluate the  
13 competency and qualifications of members of the profession, including  
14 limiting the extent of practice of such person in a hospital or similar  
15 institution, or before a regularly constituted committee or board of a  
16 hospital whose duty it is to review and evaluate the quality of patient  
17 care and any person or entity who, in good faith, shares any  
18 information or documents with one or more other committees, boards, or  
19 programs under subsection (2) of this section, shall be immune from

1 civil action for damages arising out of such activities. For the  
2 purposes of this section, sharing information is presumed to be in good  
3 faith. However, the presumption may be rebutted upon a showing of  
4 clear, cogent, and convincing evidence that the information shared was  
5 knowingly false or deliberately misleading. The proceedings, reports,  
6 and written records of such committees or boards, or of a member,  
7 employee, staff person, or investigator of such a committee or board,  
8 (~~shall not be~~) are not subject to review or disclosure, or subpoena  
9 or discovery proceedings in any civil action, except actions arising  
10 out of the recommendations of such committees or boards involving the  
11 restriction or revocation of the clinical or staff privileges of a  
12 health care provider as defined (~~above~~) in RCW 7.70.020 (1) and (2).

13 (2) A coordinated quality improvement program maintained in  
14 accordance with RCW 43.70.510 or 70.41.200 and any committees or boards  
15 under subsection (1) of this section may share information and  
16 documents, including complaints and incident reports, created  
17 specifically for, and collected and maintained by a coordinated quality  
18 improvement committee or committees or boards under subsection (1) of  
19 this section, with one or more other coordinated quality improvement  
20 programs or committees or boards under subsection (1) of this section  
21 for the improvement of the quality of health care services rendered to  
22 patients and the identification and prevention of medical malpractice.  
23 The privacy protections of chapter 70.02 RCW and the federal health  
24 insurance portability and accountability act of 1996 and its  
25 implementing regulations apply to the sharing of individually  
26 identifiable patient information held by a coordinated quality  
27 improvement program. Any rules necessary to implement this section  
28 shall meet the requirements of applicable federal and state privacy  
29 laws. Information and documents disclosed by one coordinated quality  
30 improvement program or committee or board under subsection (1) of this  
31 section to another coordinated quality improvement program or committee  
32 or board under subsection (1) of this section and any information and  
33 documents created or maintained as a result of the sharing of  
34 information and documents shall not be subject to the discovery process  
35 and confidentiality shall be respected as required by subsection (1) of  
36 this section and by RCW 43.70.510(4) and 70.41.200(3).

1       **Sec. 2.** RCW 43.70.510 and 2004 c 145 s 2 are each amended to read  
2 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. All such programs shall comply with the requirements of  
38 RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to

1 reflect the structural organization of the health care provider group.  
2 All such programs must be approved by the department before the  
3 discovery limitations provided in subsections (3) and (4) of this  
4 section and the exemption under RCW 42.17.310(1)(hh) and subsection (5)  
5 of this section shall apply.

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

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

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

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

19 (6) A coordinated quality improvement program may share information  
20 and documents, including complaints and incident reports, created  
21 specifically for, and collected and maintained by a quality improvement  
22 committee or a peer review committee under RCW 4.24.250 with one or  
23 more other coordinated quality improvement programs maintained in  
24 accordance with this section or with RCW 70.41.200 or a peer review  
25 committee under RCW 4.24.250, for the improvement of the quality of  
26 health care services rendered to patients and the identification and  
27 prevention of medical malpractice. The privacy protections of chapter  
28 70.02 RCW and the federal health insurance portability and  
29 accountability act of 1996 and its implementing regulations apply to  
30 the sharing of individually identifiable patient information held by a  
31 coordinated quality improvement program. Any rules necessary to  
32 implement this section shall meet the requirements of applicable  
33 federal and state privacy laws. Information and documents disclosed by  
34 one coordinated quality improvement program to another coordinated  
35 quality improvement program or a peer review committee under RCW  
36 4.24.250 and any information and documents created or maintained as a  
37 result of the sharing of information and documents shall not be subject

1 to the discovery process and confidentiality shall be respected as  
2 required by subsection (4) of this section and RCW 4.24.250.

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

5 **Sec. 3.** RCW 70.41.200 and 2004 c 145 s 3 are each amended to read  
6 as follows:

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

11 (a) The establishment of a quality improvement committee with the  
12 responsibility to review the services rendered in the hospital, both  
13 retrospectively and prospectively, in order to improve the quality of  
14 medical care of patients and to prevent medical malpractice. The  
15 committee shall oversee and coordinate the quality improvement and  
16 medical malpractice prevention program and shall ensure that  
17 information gathered pursuant to the program is used to review and to  
18 revise hospital policies and procedures;

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

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

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

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

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

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

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

8 (2) 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 (8) of this section is not subject to an action for  
17 civil damages or other relief as a result of the activity. For the  
18 purposes of this section, sharing information is presumed to be in  
19 substantial good faith. However, the presumption may be rebutted upon  
20 a showing of clear, cogent, and convincing evidence that the  
21 information shared was knowingly false or deliberately misleading.

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

1 care provider regarding the restriction or revocation of that  
2 individual's clinical or staff privileges, introduction into evidence  
3 information collected and maintained by quality improvement committees  
4 regarding such health care provider; (d) in any civil action,  
5 disclosure of the fact that staff privileges were terminated or  
6 restricted, including the specific restrictions imposed, if any and the  
7 reasons for the restrictions; or (e) in any civil action, discovery and  
8 introduction into evidence of the patient's medical records required by  
9 regulation of the department of health to be made regarding the care  
10 and treatment received.

11 (4) Each quality improvement committee shall, on at least a  
12 semiannual basis, report to the governing board of the hospital in  
13 which the committee is located. The report shall review the quality  
14 improvement activities conducted by the committee, and any actions  
15 taken as a result of those activities.

16 (5) The department of health shall adopt such rules as are deemed  
17 appropriate to effectuate the purposes of this section.

18 (6) The medical quality assurance commission or the board of  
19 osteopathic medicine and surgery, as appropriate, may review and audit  
20 the records of committee decisions in which a physician's privileges  
21 are terminated or restricted. Each hospital shall produce and make  
22 accessible to the commission or board the appropriate records and  
23 otherwise facilitate the review and audit. Information so gained shall  
24 not be subject to the discovery process and confidentiality shall be  
25 respected as required by subsection (3) of this section. Failure of a  
26 hospital to comply with this subsection is punishable by a civil  
27 penalty not to exceed two hundred fifty dollars.

28 (7) The department, the joint commission on accreditation of health  
29 care organizations, and any other accrediting organization may review  
30 and audit the records of a quality improvement committee or peer review  
31 committee in connection with their inspection and review of hospitals.  
32 Information so obtained shall not be subject to the discovery process,  
33 and confidentiality shall be respected as required by subsection (3) of  
34 this section. Each hospital shall produce and make accessible to the  
35 department the appropriate records and otherwise facilitate the review  
36 and audit.

37 (8) A coordinated quality improvement program may share information  
38 and documents, including complaints and incident reports, created

1 specifically for, and collected and maintained by a quality improvement  
2 committee or a peer review committee under RCW 4.24.250 with one or  
3 more other coordinated quality improvement programs maintained in  
4 accordance with this section or with RCW 43.70.510 or a peer review  
5 committee under RCW 4.24.250, for the improvement of the quality of  
6 health care services rendered to patients and the identification and  
7 prevention of medical malpractice. The privacy protections of chapter  
8 70.02 RCW and the federal health insurance portability and  
9 accountability act of 1996 and its implementing regulations apply to  
10 the sharing of individually identifiable patient information held by a  
11 coordinated quality improvement program. Any rules necessary to  
12 implement this section shall meet the requirements of applicable  
13 federal and state privacy laws. Information and documents disclosed by  
14 one coordinated quality improvement program to another coordinated  
15 quality improvement program or a peer review committee under RCW  
16 4.24.250 and any information and documents created or maintained as a  
17 result of the sharing of information and documents shall not be subject  
18 to the discovery process and confidentiality shall be respected as  
19 required by subsection (3) of this section and RCW 4.24.250.

20 (9) Violation of this section shall not be considered negligence  
21 per se.

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