

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2254

59th Legislature
2005 Regular Session

Passed by the House March 15, 2005
Yeas 96 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 12, 2005
Yeas 44 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2254** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 2254

Passed Legislature - 2005 Regular Session

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.

--- END ---