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**SUBSTITUTE SENATE BILL 5698**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Franklin, Benson, Keiser, Parlette, Deccio and Rasmussen)

READ FIRST TIME 03/02/05.

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. The department  
35 is not liable for an inadvertent disclosure, a disclosure related to a  
36 required federal or state audit, or disclosure of documents incorrectly  
37 marked as quality assurance committee documents by the facility.

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

3 ~~(6) ((Any records that are created for and collected and maintained  
4 by the quality assurance committee shall not be discoverable or  
5 admitted into evidence in a civil action brought against a boarding  
6 home.~~

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

17 (a) In any civil action, the discovery of the identity of persons  
18 involved in the care that is the basis of the civil action whose  
19 involvement was independent of any quality improvement committee  
20 activity;

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

25 (7) A quality assurance committee under subsection (1) of this  
26 section, RCW 70.41.200, section 3 of this act, RCW 4.24.250, or  
27 43.70.510 may share information and documents, including the analysis  
28 of complaints and incident reports, created specifically for, and  
29 collected and maintained by, the committee, with one or more other  
30 quality assurance committees created under subsection (1) of this  
31 section, RCW 70.41.200, section 3 of this act, RCW 4.24.250, or  
32 43.70.510 for the improvement of the quality of care and services  
33 rendered to boarding home residents. Information and documents  
34 disclosed by one quality assurance committee to another quality  
35 assurance committee and any information and documents created or  
36 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 (6) and (8) of this section,  
2 RCW 43.70.510(4), 70.41.200(3), 4.24.250(1), and section 3 (7) and (9)  
3 of this act.

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

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

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

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

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

23 (2) When established, the quality assurance committee shall meet at  
24 least quarterly to identify issues that may adversely affect quality of  
25 care and services to residents and to develop and implement plans of  
26 action to correct identified quality concerns or deficiencies in the  
27 quality of care provided to residents.

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

- 34 (a) The records or reports are not maintained pursuant to statutory  
35 or regulatory mandate; and
- 36 (b) The records or reports are created for and collected and  
37 maintained by the committee.

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

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

8 (6) If the facility offers the department documents generated by,  
9 or for, the quality assurance committee as evidence of compliance with  
10 nursing facility requirements, the documents are protected as quality  
11 assurance committee documents under subsections (7) and (9) of this  
12 section when in the possession of the department. The department is  
13 not liable for an inadvertent disclosure, a disclosure related to a  
14 required federal or state audit, or disclosure of documents incorrectly  
15 marked as quality assurance committee documents by the facility.

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

33 (8) A quality assurance committee under subsection (1) of this  
34 section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 may share  
35 information and documents, including the analysis of complaints and  
36 incident reports, created specifically for, and collected and  
37 maintained by, the committee, with one or more other quality assurance  
38 committees created under subsection (1) of this section, RCW 18.20.390,

1 70.41.200, 4.24.250, or 43.70.510 for the improvement of the quality of  
2 care and services rendered to nursing facility residents. Information  
3 and documents disclosed by one quality assurance committee to another  
4 quality assurance committee and any information and documents created  
5 or maintained as a result of the sharing of information and documents  
6 shall not be subject to the discovery process and confidentiality shall  
7 be respected as required by subsections (7) and (9) of this section,  
8 RCW 18.20.390 (6) and (8), 43.70.510(4), 70.41.200(3), and 4.24.250(1).

9 (9) Information and documents, including the analysis of complaints  
10 and incident reports, created specifically for, and collected and  
11 maintained by, a quality assurance committee are exempt from disclosure  
12 under chapter 42.17 RCW.

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

19 (11) A facility operated as part of a hospital licensed under  
20 chapter 70.41 RCW may maintain a quality assurance committee in  
21 accordance with this section which shall be subject to the provisions  
22 of subsections (1) through (10) of this section or may conduct quality  
23 improvement activities for the facility through a quality improvement  
24 committee under RCW 70.41.200 which shall be subject to the provisions  
25 of RCW 70.41.200(9).

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

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

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

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

35 (c) Information required of any taxpayer in connection with the  
36 assessment or collection of any tax if the disclosure of the  
37 information to other persons would (i) be prohibited to such persons by

1 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the  
2 taxpayer's right to privacy or result in unfair competitive  
3 disadvantage to the taxpayer.

4 (d) Specific intelligence information and specific investigative  
5 records compiled by investigative, law enforcement, and penology  
6 agencies, and state agencies vested with the responsibility to  
7 discipline members of any profession, the nondisclosure of which is  
8 essential to effective law enforcement or for the protection of any  
9 person's right to privacy.

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

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

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

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

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

37 (j) Records which are relevant to a controversy to which an agency

1 is a party but which records would not be available to another party  
2 under the rules of pretrial discovery for causes pending in the  
3 superior courts.

4 (k) Records, maps, or other information identifying the location of  
5 archaeological sites in order to avoid the looting or depredation of  
6 such sites.

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

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

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

19 (o) Financial and commercial information and records supplied by  
20 private persons pertaining to export services provided pursuant to  
21 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to  
22 export projects pursuant to RCW 43.23.035.

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

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

28 (r) Financial and commercial information and records supplied by  
29 businesses or individuals during application for loans or program  
30 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
31 or during application for economic development loans or program  
32 services provided by any local agency.

33 (s) Membership lists or lists of members or owners of interests of  
34 units in timeshare projects, subdivisions, camping resorts,  
35 condominiums, land developments, or common-interest communities  
36 affiliated with such projects, regulated by the department of  
37 licensing, in the files or possession of the department.



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

4 (u) The residential addresses or residential telephone numbers of  
5 employees or volunteers of a public agency which are held by any public  
6 agency in personnel records, public employment related records, or  
7 volunteer rosters, or are included in any mailing list of employees or  
8 volunteers of any public agency.

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

16 (w)(i) The federal social security number of individuals governed  
17 under chapter 18.130 RCW maintained in the files of the department of  
18 health, except this exemption does not apply to requests made directly  
19 to the department from federal, state, and local agencies of  
20 government, and national and state licensing, credentialing,  
21 investigatory, disciplinary, and examination organizations; (ii) the  
22 current residential address and current residential telephone number of  
23 a health care provider governed under chapter 18.130 RCW maintained in  
24 the files of the department, if the provider requests that this  
25 information be withheld from public inspection and copying, and  
26 provides to the department an accurate alternate or business address  
27 and business telephone number. On or after January 1, 1995, the  
28 current residential address and residential telephone number of a  
29 health care provider governed under RCW 18.130.040 maintained in the  
30 files of the department shall automatically be withheld from public  
31 inspection and copying unless the provider specifically requests the  
32 information be released, and except as provided for under RCW  
33 42.17.260(9).

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

36 (y) Information obtained by the board of pharmacy or the department  
37 of health and its representatives as provided in RCW 69.41.044,  
38 69.41.280, and 18.64.420.

1 (z) Financial information, business plans, examination reports, and  
2 any information produced or obtained in evaluating or examining a  
3 business and industrial development corporation organized or seeking  
4 certification under chapter 31.24 RCW.

5 (aa) Financial and commercial information supplied to the state  
6 investment board by any person when the information relates to the  
7 investment of public trust or retirement funds and when disclosure  
8 would result in loss to such funds or in private loss to the providers  
9 of this information.

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

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

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

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

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

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

30 (hh) Information and documents created specifically for, and  
31 collected and maintained by, a quality improvement committee pursuant  
32 to RCW 43.70.510 or 70.41.200, ~~((or))~~ by a peer review committee under  
33 RCW 4.24.250, or by a quality assurance committee pursuant to section  
34 3 of this act or RCW 18.20.390, regardless of which agency is in  
35 possession of the information and documents.

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

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

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

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

14 (mm) The personally identifying information of current or former  
15 participants or applicants in a paratransit or other transit service  
16 operated for the benefit of persons with disabilities or elderly  
17 persons.

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

28 (oo) Proprietary financial and commercial information that the  
29 submitting entity, with review by the department of health,  
30 specifically identifies at the time it is submitted and that is  
31 provided to or obtained by the department of health in connection with  
32 an application for, or the supervision of, an antitrust exemption  
33 sought by the submitting entity under RCW 43.72.310. If a request for  
34 such information is received, the submitting entity must be notified of  
35 the request. Within ten business days of receipt of the notice, the  
36 submitting entity shall provide a written statement of the continuing  
37 need for confidentiality, which shall be provided to the requester.  
38 Upon receipt of such notice, the department of health shall continue to

1 treat information designated under this section as exempt from  
2 disclosure. If the requester initiates an action to compel disclosure  
3 under this chapter, the submitting entity must be joined as a party to  
4 demonstrate the continuing need for confidentiality.

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

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

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

18 (ss) Credit card numbers, debit card numbers, electronic check  
19 numbers, card expiration dates, or bank or other financial account  
20 numbers, except when disclosure is expressly required by or governed by  
21 other law.

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

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

30 (vv) Individually identifiable information received by the work  
31 force training and education coordinating board for research or  
32 evaluation purposes.

33 (ww) Those portions of records assembled, prepared, or maintained  
34 to prevent, mitigate, or respond to criminal terrorist acts, which are  
35 acts that significantly disrupt the conduct of government or of the  
36 general civilian population of the state or the United States and that  
37 manifest an extreme indifference to human life, the public disclosure

1 of which would have a substantial likelihood of threatening public  
2 safety, consisting of:

3 (i) Specific and unique vulnerability assessments or specific and  
4 unique response or deployment plans, including compiled underlying data  
5 collected in preparation of or essential to the assessments, or to the  
6 response or deployment plans; and

7 (ii) Records not subject to public disclosure under federal law  
8 that are shared by federal or international agencies, and information  
9 prepared from national security briefings provided to state or local  
10 government officials related to domestic preparedness for acts of  
11 terrorism.

12 (xx) Commercial fishing catch data from logbooks required to be  
13 provided to the department of fish and wildlife under RCW 77.12.047,  
14 when the data identifies specific catch location, timing, or  
15 methodology and the release of which would result in unfair competitive  
16 disadvantage to the commercial fisher providing the catch data.  
17 However, this information may be released to government agencies  
18 concerned with the management of fish and wildlife resources.

19 (yy) Sensitive wildlife data obtained by the department of fish and  
20 wildlife. However, sensitive wildlife data may be released to  
21 government agencies concerned with the management of fish and wildlife  
22 resources. Sensitive wildlife data includes:

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

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

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

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

36 (zz) The personally identifying information of persons who acquire  
37 recreational licenses under RCW 77.32.010 or commercial licenses under  
38 chapter 77.65 or 77.70 RCW, except name, address of contact used by the

1 department, and type of license, endorsement, or tag. However, the  
2 department of fish and wildlife may disclose personally identifying  
3 information to:

4 (i) Government agencies concerned with the management of fish and  
5 wildlife resources;

6 (ii) The department of social and health services, child support  
7 division, and to the department of licensing in order to implement RCW  
8 77.32.014 and 46.20.291; and

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

11 (aaa)(i) 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 not been commingled with other recorded documents.  
14 These records will be available only to the veteran, the veteran's next  
15 of kin, a deceased veteran's properly appointed personal representative  
16 or executor, a person holding that veteran's general power of attorney,  
17 or to anyone else designated in writing by that veteran to receive the  
18 records.

19 (ii) Discharge papers of a veteran of the armed forces of the  
20 United States filed at the office of the county auditor before July 1,  
21 2002, that have been commingled with other records, if the veteran has  
22 recorded a "request for exemption from public disclosure of discharge  
23 papers" with the county auditor. If such a request has been recorded,  
24 these records may be released only to the veteran filing the papers,  
25 the veteran's next of kin, a deceased veteran's properly appointed  
26 personal representative or executor, a person holding the veteran's  
27 general power of attorney, or anyone else designated in writing by the  
28 veteran to receive the records.

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

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

1 (bbb) Those portions of records containing specific and unique  
2 vulnerability assessments or specific and unique emergency and escape  
3 response plans at a city, county, or state adult or juvenile  
4 correctional facility, the public disclosure of which would have a  
5 substantial likelihood of threatening the security of a city, county,  
6 or state adult or juvenile correctional facility or any individual's  
7 safety.

8 (ccc) Information compiled by school districts or schools in the  
9 development of their comprehensive safe school plans pursuant to RCW  
10 28A.320.125, to the extent that they identify specific vulnerabilities  
11 of school districts and each individual school.

12 (ddd) Information regarding the infrastructure and security of  
13 computer and telecommunications networks, consisting of security  
14 passwords, security access codes and programs, access codes for secure  
15 software applications, security and service recovery plans, security  
16 risk assessments, and security test results to the extent that they  
17 identify specific system vulnerabilities.

18 (eee) Information obtained and exempted or withheld from public  
19 inspection by the health care authority under RCW 41.05.026, whether  
20 retained by the authority, transferred to another state purchased  
21 health care program by the authority, or transferred by the authority  
22 to a technical review committee created to facilitate the development,  
23 acquisition, or implementation of state purchased health care under  
24 chapter 41.05 RCW.

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

32 (2) Except for information described in subsection (1)(c)(i) of  
33 this section and confidential income data exempted from public  
34 inspection pursuant to RCW 84.40.020, the exemptions of this section  
35 are inapplicable to the extent that information, the disclosure of  
36 which would violate personal privacy or vital governmental interests,  
37 can be deleted from the specific records sought. No exemption may be

1 construed to permit the nondisclosure of statistical information not  
2 descriptive of any readily identifiable person or persons.

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

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

13 **Sec. 5.** RCW 4.24.250 and 2004 c 145 s 1 are each amended to read  
14 as follows:

15 (1) Any health care provider as defined in RCW 7.70.020 (1) and (2)  
16 as now existing or hereafter amended who, in good faith, files charges  
17 or presents evidence against another member of their profession based  
18 on the claimed incompetency or gross misconduct of such person before  
19 a regularly constituted review committee or board of a professional  
20 society or hospital whose duty it is to evaluate the competency and  
21 qualifications of members of the profession, including limiting the  
22 extent of practice of such person in a hospital or similar institution,  
23 or before a regularly constituted committee or board of a hospital  
24 whose duty it is to review and evaluate the quality of patient care and  
25 any person or entity who, in good faith, shares any information or  
26 documents with one or more other committees, boards, or programs under  
27 subsection (2) of this section, shall be immune from civil action for  
28 damages arising out of such activities. For the purposes of this  
29 section, sharing information is presumed to be in good faith. However,  
30 the presumption may be rebutted upon a showing of clear, cogent, and  
31 convincing evidence that the information shared was knowingly false or  
32 deliberately misleading. The proceedings, reports, and written records  
33 of such committees or boards, or of a member, employee, staff person,  
34 or investigator of such a committee or board, shall not be subject to  
35 subpoena or discovery proceedings in any civil action, except actions  
36 arising out of the recommendations of such committees or boards



1 involving the restriction or revocation of the clinical or staff  
2 privileges of a health care provider as defined above.

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

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

32 (1)(a) Health care institutions and medical facilities, other than  
33 hospitals, that are licensed by the department, professional societies  
34 or organizations, health care service contractors, health maintenance  
35 organizations, health carriers approved pursuant to chapter 48.43 RCW,  
36 and any other person or entity providing health care coverage under  
37 chapter 48.42 RCW that is subject to the jurisdiction and regulation of

1 any state agency or any subdivision thereof may maintain a coordinated  
2 quality improvement program for the improvement of the quality of  
3 health care services rendered to patients and the identification and  
4 prevention of medical malpractice as set forth in RCW 70.41.200.

5 (b) All such programs shall comply with the requirements of RCW  
6 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to  
7 reflect the structural organization of the institution, facility,  
8 professional societies or organizations, health care service  
9 contractors, health maintenance organizations, health carriers, or any  
10 other person or entity providing health care coverage under chapter  
11 48.42 RCW that is subject to the jurisdiction and regulation of any  
12 state agency or any subdivision thereof, unless an alternative quality  
13 improvement program substantially equivalent to RCW 70.41.200(1)(a) is  
14 developed. All such programs, whether complying with the requirement  
15 set forth in RCW 70.41.200(1)(a) or in the form of an alternative  
16 program, must be approved by the department before the discovery  
17 limitations provided in subsections (3) and (4) of this section and the  
18 exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section  
19 shall apply. In reviewing plans submitted by licensed entities that  
20 are associated with physicians' offices, the department shall ensure  
21 that the exemption under RCW 42.17.310(1)(hh) and the discovery  
22 limitations of this section are applied only to information and  
23 documents related specifically to quality improvement activities  
24 undertaken by the licensed entity.

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

36 (3) Any person who, in substantial good faith, provides information  
37 to further the purposes of the quality improvement and medical  
38 malpractice prevention program or who, in substantial good faith,

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

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

1 of a protective order as specified by the court; (e) in any civil  
2 action, disclosure of the fact that staff privileges were terminated or  
3 restricted, including the specific restrictions imposed, if any and the  
4 reasons for the restrictions; or (f) in any civil action, discovery and  
5 introduction into evidence of the patient's medical records required by  
6 rule of the department of health to be made regarding the care and  
7 treatment received.

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

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

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

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

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

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

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

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

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

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

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

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

37 (h) Policies to ensure compliance with the reporting requirements  
38 of this section.

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

15 (3) Information and documents, including complaints and incident  
16 reports, created specifically for, and collected((~~7~~)) and maintained  
17 by a quality improvement committee are not subject to discovery or  
18 introduction into evidence in any civil action, and no person who was  
19 in attendance at a meeting of such committee or who participated in the  
20 creation, collection, or maintenance of information or documents  
21 specifically for the committee shall be permitted or required to  
22 testify in any civil action as to the content of such proceedings or  
23 the documents and information prepared specifically for the committee.  
24 This subsection does not preclude: (a) In any civil action, the  
25 discovery of the identity of persons involved in the medical care that  
26 is the basis of the civil action whose involvement was independent of  
27 any quality improvement activity; (b) in any civil action, the  
28 testimony of any person concerning the facts which form the basis for  
29 the institution of such proceedings of which the person had personal  
30 knowledge acquired independently of such proceedings; (c) in any civil  
31 action by a health care provider regarding the restriction or  
32 revocation of that individual's clinical or staff privileges,  
33 introduction into evidence information collected and maintained by  
34 quality improvement committees regarding such health care provider; (d)  
35 in any civil action, disclosure of the fact that staff privileges were  
36 terminated or restricted, including the specific restrictions imposed,  
37 if any and the reasons for the restrictions; or (e) in any civil

1 action, discovery and introduction into evidence of the patient's  
2 medical records required by regulation of the department of health to  
3 be made regarding the care and treatment received.

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

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

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

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

30 (8) A coordinated quality improvement program may share information  
31 and documents, including complaints and incident reports, created  
32 specifically for, and collected and maintained by, a quality  
33 improvement committee or a peer review committee under RCW 4.24.250  
34 with one or more other coordinated quality improvement programs  
35 maintained in accordance with this section or (~~with~~) RCW 43.70.510,  
36 a quality assurance committee maintained in accordance with RCW  
37 18.20.390 or section 3 of this act, or a peer review committee under  
38 RCW 4.24.250, for the improvement of the quality of health care

1 services rendered to patients and the identification and prevention of  
2 medical malpractice. The privacy protections of chapter 70.02 RCW and  
3 the federal health insurance portability and accountability act of 1996  
4 and its implementing regulations apply to the sharing of individually  
5 identifiable patient information held by a coordinated quality  
6 improvement program. Any rules necessary to implement this section  
7 shall meet the requirements of applicable federal and state privacy  
8 laws. Information and documents disclosed by one coordinated quality  
9 improvement program to another coordinated quality improvement program  
10 or a peer review committee under RCW 4.24.250 and any information and  
11 documents created or maintained as a result of the sharing of  
12 information and documents shall not be subject to the discovery process  
13 and confidentiality shall be respected as required by subsection (3) of  
14 this section, RCW 18.20.390 (6) and (8), section 3 (7) and (9) of this  
15 act, and RCW 4.24.250.

16 (9) A hospital that operates a nursing home as defined in RCW  
17 18.51.010 may conduct quality improvement activities for both the  
18 hospital and the nursing home through a quality improvement committee  
19 under this section, and such activities shall be subject to the  
20 provisions of subsections (2) through (8) of this section.

21 (10) Violation of this section shall not be considered negligence  
22 per se.

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