

HOUSE BILL REPORT

E2SHB 1103

As Passed House:

March 9, 2007

Title: An act relating to health professions.

Brief Description: Concerning health professions.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Campbell, Green, Kenney, Hudgins, Appleton, Schual-Berke and Cody).

Brief History:

Committee Activity:

Health Care & Wellness: 1/22/07, 1/29/07 [DPS];

Appropriations: 2/14/07, 2/21/07 [DP2S(w/o sub HCW)].

Floor Activity:

Passed House: 3/9/07, 70-27.

Brief Summary of Engrossed Second Substitute Bill

- Transfers primary responsibilities of the health profession boards and commissions for investigations, summary suspensions, and charging decisions to the Secretary of Health.
- Establishes additional reporting requirements for entities that have information about actions taken against health care providers that relate to unprofessional conduct.
- Requires the Department of Health (DOH) to conduct background checks on all applicants for an initial credential to practice a health profession and to review a representative sample of those individuals previously checked.
- Authorizes the DOH to spend unappropriated funds in the Health Professions Account for unanticipated costs when revenues exceed 15 percent of spending projections.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cody, Chair; Morrell, Vice Chair; Barlow, Campbell, Green, Moeller, Pedersen, Schual-Berke and Seaquist.

Minority Report: Do not pass. Signed by 4 members: Representatives Hinkle, Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Condotta and Curtis.

Staff: Chris Blake (786-7392).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 23 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Grant, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Morrell, Pettigrew, Schual-Berke, Seaquist, P. Sullivan and Walsh.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Buri, Chandler, Dunn, Hinkle, Kretz, McDonald and Priest.

Staff: Bernard Dean (786-7130).

Background:

The Uniform Disciplinary Act (UDA) governs disciplinary actions for all 57 categories of credentialed health care providers. The UDA defines acts of unprofessional conduct, establishes sanctions for such acts, and provides general procedures for addressing complaints and taking disciplinary actions against a credentialed health care provider. Responsibilities in the disciplinary process are divided between the Secretary of Health (Secretary) and the 14 health profession boards and commissions (collectively known as "disciplining authorities") according to the profession that the health care provider is a member of and the relevant step in the disciplinary process.

Health care providers are subject to several complaint and reporting requirements. Any person or organization may submit a complaint to a disciplining authority which charges a credentialed health care provider or applicant with unprofessional conduct. Complaints may also provide information related to the health care provider's or applicant's inability to practice safely as a result of a physical or mental condition. Credentialed health care providers must report any conviction, determination, or other finding that another credentialed health care provider has committed an act of unprofessional conduct or information about his or her inability to practice safely as a result of a physical or mental condition.

Other entities have specific obligations to report information related to acts of unprofessional conduct by a credentialed health care provider. Hospitals must report any restriction, suspension, limitation, or termination of certain health care providers that are based on a

conviction, determination, or finding by the hospital that the health care provider engaged in unprofessional conduct. Professional liability insurance institutions must report any final malpractice claims against a physician that resulted in the payment of more than \$20,000 or three or more final claims resulting in payments of any amount within a five year period.

Summary of Engrossed Second Substitute Bill:

Disciplinary Responsibilities

The authority of health profession boards and commissions to investigate allegations of unprofessional conduct, appoint members to direct investigations, and conduct practice reviews is reduced to a consultative and assisting role. The Secretary of Health (Secretary) is authorized to conduct investigations and practice reviews for all health professions. The Secretary must assure the active involvement of the appropriate boards and commissions when an investigation involves standards of practice or where clinical expertise are necessary. Complaints and reports of unprofessional conduct are to be sent to the Secretary rather than the boards and commissions. After the completion of an investigation, the Secretary is authorized to determine the appropriate disposition of the case. The authority of the boards and commissions to order a summary suspension of a health care provider's credential is transferred to the Secretary.

Background Checks

Applicants for an initial credential to practice a health profession must receive a background check from the Washington State Patrol (WSP) prior to receiving the credential. The Department of Health (Department) must specify those circumstances in which a state background check is inadequate and an electronic fingerprint-based national background check through the WSP and the Federal Bureau of Investigations must be conducted. Such situations include cases in which an applicant has a criminal record in Washington or has recently lived out-of-state. The Department must conduct an annual review of a representative sample of health care providers who have previously received a background check. When making license issuance determinations, the disciplining authority must consider the results of any background checks that reveal either a conviction for a crime that constitutes unprofessional conduct or a series of arrests that demonstrate a pattern of behavior that may present a risk of harm to the public. The disciplining authority shall take disciplinary action against a health care provider when information received from a review of previously checked providers reveals a failure to report required information about arrests, convictions, or other determinations to the Department.

Sanctioning Schedule

The disciplining authorities shall establish a schedule to define appropriate ranges of sanctions to apply to a credentialed health care provider for acts of unprofessional conduct. The schedule must identify aggravating and mitigating circumstances to reduce or enhance a sanction for each act of unprofessional conduct. The Secretary must adopt emergency rules to implement the schedule by January 1, 2008. Disciplining authorities must apply sanctions in accordance with the schedule, unless unique circumstances justify deviating from them.

Reporting Unprofessional Conduct

Credential holders, corporations, organizations, health care facilities, and government agencies are required to report when they have knowledge that a credential holder or an applicant for a credential has engaged in unprofessional conduct or have information that they cannot practice with reasonable skill and safety due to a physical or mental condition. Failure to report is punishable by a maximum fine of \$500. The maximum fine of \$250 that hospitals may be charged for not submitting a mandatory report is raised to a maximum fine of \$500.

Credentialed health care providers are required to report any arrests, convictions, and other determinations by law enforcement agencies to the appropriate disciplining authority.

Other Provisions

The Medical Quality Assurance Commission, the Podiatric Medical Board, and the Board of Osteopathic Medicine and Surgery are authorized to adopt rules to govern office-based sedation and anesthesia.

The Secretary must initiate an investigation in cases in which complaints, arrests, or other actions not resulting in a formal adjudication against a health care provider demonstrate a pattern of behavior that may present a risk to his or her patients.

Each disciplining authority must develop a clinical competency examination program in consultation with the higher education institutions that train the members of that profession. The programs must establish the skills to be examined and criteria for determining when an examination is required. The disciplining authorities must report to the Legislature by December 1, 2007, with recommendations for implementing the programs.

Biennial disciplinary reports are made annual and must include data related to the Department's background check activities and their effectiveness. Each board and profession must publish an annual report of its disciplinary activities, rulemaking and policy activities, and receipts and expenditures for the profession.

When performing a gynecological examination or procedure, a credentialed health care provider must ensure that a second individual is present unless the patient signs a written waiver.

Members of health profession boards and commissions are allowed to express their opinions regarding the work of the board or commission to elected officials even if it is different from the Department's official position. Members of boards and commissions may not lobby for or against legislative proposals.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for section 4, relating to background checks, which takes effect January 1, 2008.

Staff Summary of Public Testimony: (Health Care & Wellness)

(In support, including testimony on related bills HB 1100 and HB 1101) Shifting responsibilities from boards and commissions to the Secretary can bring more consistency and timeliness to the disciplinary process. The Secretary of Health can handle investigations and charging decisions more quickly than the health profession boards and commissions. Patients must come first when disciplining health care providers. Conducting background checks will help prevent harmful providers from holding a health professions license. Having a sanctioning grid will add consistency and predictability to the sanctions issued by disciplining authorities. Sanctioning guidelines have worked well for the Secretary-regulated professions.

(Concerns, including testimony on related bills HB 1100 and 1101) Applicants should be given copies of their reports. There must be an allowance for deviations from the sanctioning schedule.

(Opposed, including testimony on related bills HB 1100 and 1101) Health care professions should be able to discipline their own health care providers. Discipline requires a deep understanding of medicine, and this will not occur if the Secretary were in charge of discipline. There are no serious problems with the health professions boards and commissions that would warrant changing disciplinary responsibilities. There should not be mandatory reporting of health care providers by impaired provider programs. Health professions boards and commissions should be the organization conducting background checks. The health professions boards and commissions should have flexibility in determining appropriate sanctions. Sanctioning guidelines should be created by each board and commission. Commission members are not covering the mistakes of other members of professions. The focus on discipline does not address the need for continuing competency evaluations before there is a disaster. Many bad outcomes are the result of the failure of the system, not an individual. Lack of appropriate funding for the boards and commissions is one reason for the inability to properly carry out disciplinary functions. The reporting requirements conflict with hospital reporting requirements. Requiring hospitals to report allegations that may be ultimately be baseless would subject the health care provider to a Department investigation.

Staff Summary of Public Testimony: (Appropriations)

(In support) None.

(Concerns) This is a combination of several bills from the Health Care Committee. There is only one problem with the mandatory reporting, which can be changed with an amendment to the bill. We need to ensure due process for providers.

The State Nurses Association has concerns with this bill. We need to wait for the performance audit to come forward to narrow the focus and fix what is broken.

(Opposed) The Washington State Psychological Association is opposed to this bill for three reasons. First, there is already a performance audit underway by the State Auditor's Office. Second, the remedies in the bill do not address the problems. Staffing levels at the Department of Health and Attorney General's Office are not adequate. Third, while we pay

licensing fees, these fees have been reduced. It has taken up to six years to finalize rules on custody exams. The appropriate use of Health Professions Account funds should be considered first.

The fiscal note assumes no fiscal impact for shifting investments from boards and commissions to the Department of Health. Currently, commission members are involved in this process. The way in which funds are spent in the fiscal note is not wise. In order for boards to properly function, the boards should be able to spend more funds on staffing. Boards should be able to develop their own budget.

Persons Testifying: (Health Care & Wellness) (In support, including testimony on related bills HB 1100 and 1101) Representative Campbell, prime sponsor; and Laurie Jenkins, Department of Health.

(Concerns, including testimony on related bills HB 1100 and 1101) Cabell Tennis; and Lucy Homans, Washington State Psychological Association.

(Opposed, including testimony on related bills HB 1100 and 1101) Tim Sears and Anne Tan Piazza, Washington State Nurses Association; Len Eddinger and Tim Layton, Washington State Medical Association; Lisa Thatcher, Washington State Hospital Association; and Melanie Stewart, Washington Chapter of America Massage Therapy and Washington Podiatric Medical Association.

Persons Testifying: (Appropriations) (In support) None.

(Concerns) Lisa Thatcher, Washington State Hospital Association; and Tamara Warnke, Washington State Nurses' Association.

(Opposed) Tim Layton, Washington State Medical Association; and Lucy Homans, Washington State Psychological Association.

Persons Signed In To Testify But Not Testifying: (Health Care & Wellness) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.