

# HOUSE BILL REPORT

## 4SHB 1103

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### As Amended by the Senate

**Title:** An act relating to health professions.

**Brief Description:** Increasing the authority of regulators to remove health care practitioners who pose a risk to the public.

**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: 1/31/08 [DP3S];

Appropriations: 2/11/08 [DP4S(w/o sub HCW)].

**Floor Activity:**

Passed House: 2/13/08, 97-0.

Senate Amended.

Passed Senate: 3/7/08, 48-1.

#### Brief Summary of Bill

- Authorizes the Secretary of Health to conduct all phases of disciplinary actions regarding cases involving sexual misconduct that do not include issues of clinical expertise or practice standards.
- Requires the Secretary of Health to conduct background checks on all applicants for an initial health care credential.
- 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 to spend unappropriated funds in the Health Professions Account for unanticipated costs when revenues exceed 15 percent of spending projections at the request of a health professions board or commission.

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*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.*

- Establishes penalties for credentialed health care providers who fail to submit documents and records upon the request of a disciplining authority.
- Establishes four pilot projects involving health professions commissions that provide independent authority to manage the Department of Health employees and carry out each commission's administrative and budgetary duties.

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## HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** The third substitute bill be substituted therefor and the third substitute bill do pass. Signed by 13 members: Representatives Cody, Chair; Morrell, Vice Chair; Hinkle, Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Barlow, Campbell, Condotta, DeBolt, Green, Moeller, Pedersen, Schual-Berke and Seaquist.

**Staff:** Chris Blake (786-7392).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The fourth substitute bill be substituted therefor and the fourth substitute bill do pass and do not pass the third substitute bill by Health Care & Wellness. Signed by 32 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hinkle, Hunt, Kagi, Kenney, Kessler, Kretz, Linville, McIntire, Morrell, Pettigrew, Priest, Ross, Schmick, Schual-Berke, Seaquist, Sullivan and Walsh.

**Staff:** Owen Rowe (786-7391).

### **Background:**

#### Health Professions Discipline

The Uniform Disciplinary Act (UDA) governs disciplinary actions for all 62 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 the Department of Health (Secretary) and 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.

In August 2007 the State Auditor's Office released a performance audit of the Department of Health's (DOH) health professions regulatory system. The report included several recommendations for legislative action. Among the report's recommendations were: to provide additional tools for obtaining records, documents, and other evidence; to give the DOH

the authority to access Washington State Patrol (WSP) and Federal Bureau of Investigations (FBI) criminal background information; and requiring that national background checks be conducted on all credential holders.

#### Post-Conviction Credentialing

Individuals who have been convicted of a felony may not be disqualified from government employment or the practice of a profession or business that requires a license solely because of the prior conviction. There is an exception for situations in which the conviction is directly related to the employment or the profession or business at issue and less than 10 years have passed.

Criminal defendants who have completed their probation may have their record of convictions vacated and be released from any penalties and disabilities that arose from the conviction. In addition, the conviction is prohibited from being disseminated or disclosed by either the WSP or local law enforcement agencies.

#### **Summary of Bill:**

#### Disciplinary Procedures

The authority to conduct all phases of disciplinary actions regarding cases of unprofessional conduct relating to sexual misconduct that do not involve clinical expertise or standards of practice is shifted from the individual disciplining authorities to the sole authority of the Secretary. Within 72 hours of receiving a complaint about an individual regulated by a health professions board or commission that the Secretary determines only alleges sexual misconduct, the Secretary must send the complaint to the appropriate board or commission to review. If, upon review, the board or commission determines that the case involves clinical expertise or practice standards, then the case must be transferred to the appropriate board or commission.

Credential holders who have had their credential summarily suspended or their practice restricted may request a show cause hearing before a health law judge or panel of a board or commission. The request must be made within 21 days of the issuance of the order and the show cause hearing must be held within 14 days of the request. The disciplining authority has the burden of demonstrating that the credential holder poses an immediate threat to the public health and safety.

#### Application Denial or Issuance with Conditions

Disciplining authorities may deny an application for a credential or issue a credential with conditions according to a process that is distinct from the standard disciplinary process for credential holders. The new process provides notice to an applicant of any denial or issuance with conditions and a right to an adjudicative proceeding. The circumstances for which a disciplining authority may deny an application for a health care provider credential or issue the credential with conditions are specified. These circumstances are where the applicant:

- has had his or her credential suspended by another jurisdiction;
- has committed an act of unprofessional conduct;

- has been convicted of, or is subject to prosecution for, a crime involving moral turpitude, certain violent crimes, a crime relating to drugs, or a crime relating to financial exploitation;
- fails to prove that he or she meets the qualifications related to the profession; or
- cannot practice with reasonable skill and safety by reason of a mental or physical condition.

When determining the disposition of an application in which the applicant's mental or physical condition is at issue, the disciplining authority may require the applicant to submit to a mental, physical, or psychological examination at his or her expense. An applicant is deemed to have waived all objections to the admissibility of the testimony or reports of the health care provider who performs the examination.

#### Background Checks

The Secretary is authorized to receive and use criminal history information including nonconviction data for disciplinary and licensing purposes. Applicants for an initial credential to practice a health profession must receive a background check from the WSP prior to receiving the credential. The Secretary 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 FBI 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 Secretary 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 likely 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 DOH.

The list of convictions that are cross-checked with the WSP's database is expanded to include financial crimes, drug crimes, and all felonies.

#### Disciplinary Sanctions

Each of the disciplining authorities shall appoint a representative to collaboratively develop 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 shall use the recommended schedule as the basis for the adoption of emergency rules to be implemented by January 1, 2009. Disciplining authorities must apply sanctions in accordance with the schedule, unless unique circumstances justify deviating from them.

A disciplining authority may order the permanent revocation of a license if it finds that the credential holder can never be rehabilitated or regain the ability to practice with reasonable skill and safety. A credentialed health care provider who has surrendered his or her credential or had it permanently revoked may not petition the disciplining authority for reinstatement.

#### Reporting Unprofessional Conduct

Credential holders, corporations, organizations, health care facilities, and government agencies that employ a credentialed health care provider 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 the individual cannot practice with reasonable skill and safety due to a physical or mental condition. Failure to report this knowledge 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.

#### Post-Conviction Credentialing

Records of criminal defendants which would otherwise be vacated and non-disclosable, are subject to distribution by the WSP or local law enforcement agencies for the purposes of health profession disciplinary activities. Protections that prevent a person from being disqualified to practice a profession for no more than 10 years when he or she has a prior felony conviction do not apply to health care provider credentials.

#### Health Profession Commission Authority

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 DOH's official position. Members of boards and commissions may not lobby for or against legislative proposals.

At the request of a board or commission, the Secretary shall spend unappropriated funds in the Health Professions Account when revenues for the requesting board or commission exceed 15 percent of estimated six-year spending projections. The money may only be used for the requesting board or commission for unanticipated costs for administering the profession's licensing activities.

Four pilot projects are established involving the Chiropractic Quality Assurance Commission, Dental Quality Assurance Commission, Medical Quality Assurance Commission, and Nursing Care Quality Assurance Commission. The pilot projects authorize each participating commission to employ its own executive director and permit the executive director to carry out the administrative duties of the commission and, in consultation with the Secretary, to manage the DOH staff that are assigned to the commission. Under the pilot projects the commissions are authorized to establish their own biennial budgets and develop their own performance-based expectations.

The Secretary and the participating commissions must submit a report to the Governor and the Legislature by December 15, 2013. The report must compare the commissions' effectiveness

in licensing and disciplinary activities, efficiency with respect to timeliness and personnel resources, their budgetary activity, their ability to meet performance measures, and a review of national research regarding regulatory effectiveness and patient safety.

#### Other Provisions

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 likely pose a risk to his or her patients.

Biennial disciplinary reports are made annual and must include data related to the DOH's background check activities and their effectiveness. The disciplinary reports must include a summary of the distribution of cases assigned to each staff attorney and investigator for each profession. Boards and commissions may publish an annual report of their disciplinary activities, rulemaking and policy activities, and receipts and expenditures for the profession.

#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment makes participation in the pilot projects permissive for the Chiropractic Quality Assurance Commission and the Dental Quality Assurance Commission. The pilot project's evaluation of the commissions' performance measures is replaced with an evaluation of the commissions' regulatory activities, including timelines, consistency of decision making, and performance levels. It is specified that the staff that are hired and managed by the executive director are employed by the Secretary of Health (Secretary) and that existing collective bargaining units and agreements may not be altered.

The authority to make determinations regarding whether or not a complaint that alleges sexual misconduct also involves standards of care or clinical expertise is shifted from the Secretary to the health professions boards and commissions.

It is specified that the burden of proof at a show cause hearing related to a summary suspension is that the license holder more probably than not poses an immediate threat to public health and safety. The disciplining authority may only consider materials supporting the request for summary action, the statement of charges, and the respondent's answer to the statement of charges.

The authority of disciplining authorities to use presiding officers to conduct disciplinary proceedings in cases involving standards of practice or where clinical expertise is necessary is restored. Presiding officers may not vote on or make final decisions in board or commission cases involving standards of practice or clinical expertise.

The Department of Health (Department) must notify an applicant when a background check reveals a criminal record, rather than send a copy of the background check to the applicant who is the subject of the record. Upon receiving a request for a copy of background check results, the Department must provide a copy of the record to the extent authorized by the Criminal Records Privacy Act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately, except sections 2 and 18, relating to definitions and health care provider regulating entities, which takes effect July 1, 2008, and section 7, relating to conducting background checks on health care providers, which takes effect January 1, 2009.

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

None.

**Staff Summary of Public Testimony:** (Appropriations)

(In support) The Governor believes this legislation provides important tools for the boards and Commissions and the Department of Health to protect patient safety. This bill will provide increased discipline and regulation for health care providers, through national criminal background checks, increased standards to assess applicant qualifications, and fines if a provider is not providing timely documents to the requisite boards and commissions and/or the Department of Health.

(Opposed) None.

**Persons Testifying:** (Health Care & Wellness) None.

**Persons Testifying:** (Appropriations) Christina Hulet, Office of the Governor.

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

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