SENATE BILL REPORT
ESB 5666

As Amended by House, April 16, 2013

Title: An act relating to clarifying the law regarding disclosing health care quality improvement, quality assurance, peer review, and credentialing information.

Brief Description: Concerning disclosure of information by health care quality improvement programs, quality assurance programs, and peer review committees.

Sponsors: Senator Dammeier.

Brief History:
Committee Activity: Health Care: 2/18/13, 2/21/13 [DP, DNP, w/oRec].
Passed Senate: 3/13/13, 49-0.
Passed House: 4/16/13, 96-0.

SENATE COMMITTEE ON HEALTH CARE

Majority Report: Do pass.
Signed by Senators Becker, Chair; Dammeier, Vice Chair; Bailey, Ericksen and Parlette.

Minority Report: Do not pass.
Signed by Senators Keiser, Ranking Member; Cleveland and Frockt.

Minority Report: That it be referred without recommendation.
Signed by Senator Schlicher.

Staff: Kathleen Buchli (786-7488)

Background: Hospitals must maintain a coordinated Quality Improvement Program (Program) that includes the establishment of a Quality Improvement Committee to oversee the services rendered in the hospital; a medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed; the periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all other persons employed by the hospital; a procedure for the prompt resolution of grievances by patients related to accidents, injuries, and other events related to medical malpractice claims; and the maintenance and collection of information concerning the hospital's experience with negative health care outcomes. Information created specifically for a Program is not subject to disclosure or discovery or introduction into evidence in a civil action.

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.

However, in a civil action, the following may be disclosed: the identity of persons involved in the medical care that is the basis of the civil action whose involvement is independent of the Program; testimony of any person on the facts forming the basis for the civil action of which the person has personal knowledge, independent of the Program; and the fact that staff privileges were terminated or restricted, including the specific restrictions imposed and the reasons for the restrictions. Further, the Supreme Court in *Lowy v. PeaceHealth*, 280 P.3d 1078 – 2012, stated that a hospital is not precluded from internally reviewing its own Quality Improvement Committee records to locate records relating to a discovery request.

Before granting or renewing clinical privileges, a hospital or ambulatory surgical facility must request physicians provide information on any hospital at which the physician had any association, and if discontinued, the reason for its discontinuation. Information on any medical malpractice action must also be provided. Hospitals or ambulatory surgical facilities supplying this information are not liable in a civil action for the release of this information.

Other health care facilities have quality assurance committees similar to those required for hospitals. These include assisted living facilities, ambulatory surgical facilities, and nursing homes.

Summary of Engrossed Bill: If immunity from damages under the Health Care Quality Improvement Act does not apply, the only remedies available in a lawsuit by a health care provider for any action taken by a professional peer review body of health care providers, are appropriate injunctive relief and damages for lost earnings directly attributable to the action taken by the professional review body. The requirement that a lawsuit by a health care provider for any action be based on matters not related to the competence or professional conduct of a health care provider is removed.

Health care professional review bodies may establish one or more quality improvement committees. Different committees may be established as a part of a Program to review different health care services. The Program must also include a process conducted in accordance with medical staff bylaws and rules through which professional conduct will be reviewed as part of an evaluation of staff privileges of health care providers. Before granting or renewing clinical privileges, a hospital or ambulatory surgical facility must request a physician to provide the names of health care facilities the physician has been associated with for the last five years. The facility may request information older than five years and the physician must use the physician's best efforts to comply with the request. The physician must also disclose if there has been adverse action relating to membership in a professional organization.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This will improve quality of care in our health care system and improve clinical outcomes. Health care facilities must be able to critically self-examine their actions and their health care providers to be able to identify areas where they can improve. Disclosure of this information would chill efforts at candid self-examination. Two supreme court decisions have called into question the confidentiality of peer review commissions. This is not a black hole and is not a major change; it is an attempt to address court decisions that have created new interpretations of current statute and caused them to be less efficient. Information that is privileged and confidential at one hospital needs to be kept privileged at another hospital. The privilege of the peer review information should not be lost because it is being used in the initial credentialing process. Reporting the reasons for termination or restriction on privileges will have a chilling effect on the willingness for physicians to participate in the peer review process. The key to improved health care is honest discussion and these discussion must remain confidential. Staff must feel safe to participate in peer review. Failure to protect the quality improvement activities will have a chilling effect on candid discussion.

CON: Current law provides protections against disclosure by quality improvement committees. This would provide a black hole of secrecy where documents may be deposited and hidden from discovery efforts. This would impair disciplinary authorities by preventing access to documents related to providers. No other state in the union would have an approach that is as broad. If this passes, every defense attorney will push information into these privileged categories. Other professions do not have these types of privileges. Documents collected and maintained by a quality improvement committee are not subject to review or disclosure under current law. This proposal would change that to prevent disclosure of documents collected and maintained specifically for a quality improvement committee. It allows information and documents to be laundered and placed in these committees to prevent their disclosure. Hiding some of these documents could infringe on patient care.

Persons Testifying: PRO: Senator Dammeier, prime sponsor; Katie Kolan, WA State Medical Assn.; Barbara Schickich, WA State Hospital Assn.; Sarah Patterson, Virginia Mason; Mark Del Beccaro, Seattle Children's Hospital; Mel Sorensen, WA Defense Trial Lawyers.

CON: Larry Shannon, WA State Assn. of Justice; John Budlong, The Budlong Law Firm; Reed Schifferman, Law Offices of Reed Schifferman.

House Amendment(s): Removes the requirement that the coordinated quality improvement program initially review professional conduct including disruptive behavior. Instead, the coordinated quality improvement program is to review professional conduct. Before granting clinical privileges, hospitals and ambulatory surgical facilities must request from physicians whether the physician has been denied, sanctioned, or otherwise been subject to an adverse action relating to professional competence or conduct relating to licensing, registration, specialty board certification; membership on hospital staff, clinical privileges, public programs, professional society membership, membership in a health maintenance organization or other entity, academic appointment, or authority to prescribe controlled substances.