S-2229.1

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**SUBSTITUTE SENATE BILL 5593**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Dammeier, Padden, Cleveland, O'Ban, Pedersen, Becker, and Kohl-Welles)

AN ACT Relating to the safe delivery of and reasonable payment for health care services by hospitals for inmates and persons detained by law enforcement; amending RCW 70.02.200 and 70.48.130; and adding a new chapter to Title 10 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  Any individual in the custody of a law enforcement officer, corrections officer, or guard supplied by a law enforcement or corrections agency for a violent offense as defined in RCW 9.94A.030 or a sex offense as defined in RCW 9.94A.030 who is brought by, or accompanied by, a law enforcement officer to a hospital must continue to be accompanied or otherwise secured by a law enforcement or corrections officer or guard supplied by the law enforcement or corrections agency. However, this section does not apply to an individual being supervised by the department of corrections if the individual's custody is the result solely of a sanction imposed by the department of corrections, the indeterminate sentence review board, or the court, in response to a violation of conditions.

NEW SECTION. **Sec.**  (1) An individual receiving medical care under this section need not continue to be accompanied or otherwise secured if:

(a) The individual's medical care provider so indicates; or

(b) The law enforcement officer determines, using his or her best judgment, that:

(i) The individual does not present an imminent and significant risk of causing physical harm to themselves or another person;

(ii) There is no longer sufficient evidentiary basis to maintain the individual in custody; or

(iii) In the interest of public safety, the presence of the law enforcement officer is urgently required at another location and the officer determines, using his or her best judgment and in consultation with his or her supervisor, if available on duty, that the public safety interest outweighs the need to accompany or secure the individual in the hospital.

(2)(a) In the event that a medical care provider determines the individual need not be accompanied or otherwise secured pursuant to subsection (1)(a) of this section, the law enforcement officer, corrections officer, or guard supplied by a law enforcement or corrections agency has no ongoing duty to accompany or otherwise secure the individual for the duration of their treatment by the hospital. When a medical care provider indicates that a person need not be accompanied or otherwise secured, the hospital must notify the law enforcement officer, corrections officer, or guard supplied by a law enforcement or corrections agency or their designee when the individual is expected to be released by the hospital.

(b) If, after a medical provider indicates that the individual need not be accompanied or otherwise secured pursuant to subsection (1)(a) of this section, the individual demonstrates behavior that presents an imminent and significant risk of causing physical harm to themselves or others and the physical condition of the individual renders the individual capable of causing physical harm to themselves or others, the hospital may request the presence of a law enforcement officer, corrections officer, or guard supplied by a law enforcement or corrections agency to guard or otherwise accompany the individual, in which case subsection (1)(a) and (b) of this section still apply.

(3) In the event the law enforcement officer, corrections officer, or guard supplied by a law enforcement or corrections agency determines the individual need not be accompanied or otherwise secured pursuant to subsection (1)(b)(i) or (ii) of this section, the officer or guard must notify the medical care provider that the officer or guard is leaving the individual unattended or unsecured, in which case the hospital has no duty to notify the officer or guard when the individual is, or expected to be, released from the hospital.

(4) In the event that the law enforcement officer, corrections officer, or guard supplied by a law enforcement or corrections agency determines the individual need not be accompanied or secured pursuant to subsection (1)(b)(iii) of this section, the officer or guard must notify the medical care provider or, if an immediate departure is required, other hospital staff member that the officer or guard is leaving the individual unattended or unsecured and make a reasonable effort to ensure a replacement officer or guard or other means of accompanying or securing the individual as soon as reasonably possible under the circumstances. The hospital must notify the officer or the officer's designee if the individual is, or is expected to be, released from the hospital prior to the officer or guard or a replacement officer or guard returning to resume accompanying or otherwise securing the individual.

(5) Except for actions or omissions constituting gross negligence or willful misconduct, the hospital and health care providers as defined in chapter 18.130 RCW are immune from liability, including civil liability, professional conduct sanctions, and administrative actions resulting from the individual not being accompanied or secured.

NEW SECTION. **Sec.**  In a case where an individual accompanied or otherwise secured by a law enforcement or corrections officer or a guard supplied by a law enforcement or corrections agency pursuant to this act is waiting for treatment in a hospital emergency department, the hospital shall see the patient in as expeditious a manner as possible, while taking into consideration best triage practices and federal and state legal obligations regarding appropriate screening and treatment of patients.

NEW SECTION. **Sec.**  The provisions of this act do not constitute a special relationship exception to the public duty doctrine. Law enforcement officers, corrections officers, guards supplied by a law enforcement or corrections agency, and their employing departments and agencies and representatives are immune from civil liability arising out of the failure to comply with this act, unless it is shown that, in the totality of the circumstances, the officer or agency acted with gross negligence or bad faith.

NEW SECTION. **Sec.**  Nothing in this chapter changes the standards of care with regard to the use of restraints on pregnant women or youth in custody as codified in chapters 70.48 and 72.09 RCW.

**Sec.**  RCW 70.02.200 and 2014 c 220 s 7 are each amended to read as follows:

(1) In addition to the disclosures authorized by RCW 70.02.050 and 70.02.210, a health care provider or health care facility may disclose health care information, except for information and records related to sexually transmitted diseases and information related to mental health services which are addressed by RCW 70.02.220 through 70.02.260, about a patient without the patient's authorization, to:

(a) Any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(b) Immediate family members of the patient, including a patient's state registered domestic partner, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(c) A health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(d) A person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(e) Provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(f) Fire, police, sheriff, or other public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(g) Federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor;

(h) Another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(17) (a) and (b); ((~~and~~))

(i) An official of a penal or other custodial institution in which the patient is detained; and

(j) Any law enforcement officer, corrections officer, or guard supplied by a law enforcement or corrections agency who is accompanying a patient pursuant to section 1 of this act, only to the extent the disclosure is incidental to the fulfillment of the role of the law enforcement officer, corrections officer, or guard under section 1 of this act.

(2) In addition to the disclosures required by RCW 70.02.050 and 70.02.210, a health care provider shall disclose health care information, except for information related to sexually transmitted diseases and information related to mental health services which are addressed by RCW 70.02.220 through 70.02.260, about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(b) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

(i) The name of the patient;

(ii) The patient's residence;

(iii) The patient's sex;

(iv) The patient's age;

(v) The patient's condition;

(vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;

(vii) Whether the patient was conscious when admitted;

(viii) The name of the health care provider making the determination in (b)(v), (vi), and (vii) of this subsection;

(ix) Whether the patient has been transferred to another facility; and

(x) The patient's discharge time and date;

(c) Pursuant to compulsory process in accordance with RCW 70.02.060.

**Sec.**  RCW 70.48.130 and 2011 1st sp.s. c 15 s 85 are each amended to read as follows:

(1) It is the intent of the legislature that all jail inmates receive appropriate and cost-effective emergency and necessary medical care. Governing units, the health care authority, and medical care providers shall cooperate to achieve the best rates consistent with adequate care.

(2) Payment for emergency or necessary health care shall be by the governing unit, except that the health care authority shall directly reimburse the provider pursuant to chapter 74.09 RCW, in accordance with the rates and benefits established by the authority, if the confined person is eligible under the authority's medical care programs as authorized under chapter 74.09 RCW. After payment by the authority, the financial responsibility for any remaining balance, including unpaid client liabilities that are a condition of eligibility or participation under chapter 74.09 RCW, shall be borne by the medical care provider and the governing unit as may be mutually agreed upon between the medical care provider and the governing unit. In the absence of mutual agreement between the medical care provider and the governing unit, the financial responsibility for any remaining balance shall be borne equally between the medical care provider and the governing unit. Total payments from all sources to providers for care rendered to confined persons eligible under chapter 74.09 RCW shall not exceed the amounts that would be paid by the authority for similar services provided under Title XIX medicaid, unless additional resources are obtained from the confined person.

(3) For inpatient, outpatient, and ancillary services for confined persons that are not paid by the medicaid program pursuant to subsection (2) of this section, unless other rates are agreed to by the governing unit and the hospital, providers of hospital services that are hospitals licensed under chapter 70.41 RCW must accept as payment in full by the governing units the applicable facility's percent of allowed charges rate or fee schedule as determined, maintained, and posted by the Washington state department of labor and industries pursuant to chapter 51.04 RCW.

(4) As part of the screening process upon booking or preparation of an inmate into jail, general information concerning the inmate's ability to pay for medical care may be identified, including insurance or other medical benefits or resources to which an inmate is entitled. The inmate may also be evaluated for medicaid eligibility and, if deemed potentially eligible, enrolled in medicaid. To the extent that federal law allows, a correctional facility, or the correctional facility's designee, is authorized to act on behalf of a confined person for purposes of applying for medicaid. This information may be made available to the authority, the governing unit, and any provider of health care services.

(5) As part of the screening process upon booking or preparation of an inmate into jail, general information concerning the inmate's ability to pay for medical care shall be identified, including insurance or other medical benefits or resources to which an inmate is entitled. This information shall be made available to the authority, the governing unit, and any provider of health care services.

((~~(4)~~)) (6) The governing unit or provider may obtain reimbursement from the confined person for the cost of health care services not provided under chapter 74.09 RCW, including reimbursement from any insurance program or from other medical benefit programs available to the confined person. Nothing in this chapter precludes civil or criminal remedies to recover the costs of medical care provided jail inmates or paid for on behalf of inmates by the governing unit. As part of a judgment and sentence, the courts are authorized to order defendants to repay all or part of the medical costs incurred by the governing unit or provider during confinement.

((~~(5)~~)) (7) To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for the authority's medical care programs under chapter 74.09 RCW, or for coverage from private sources, and in the absence of an interlocal agreement or other contracts to the contrary, the governing unit may obtain reimbursement for the cost of such medical services from the unit of government whose law enforcement officers initiated the charges on which the person is being held in the jail: PROVIDED, That reimbursement for the cost of such services shall be by the state for state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.

((~~(6)~~)) (8) There shall be no right of reimbursement to the governing unit from units of government whose law enforcement officers initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW.

((~~(7)~~)) (9) Under no circumstance shall necessary medical services be denied or delayed because of disputes over the cost of medical care or a determination of financial responsibility for payment of the costs of medical care provided to confined persons.

((~~(8)~~)) (10) Nothing in this section shall limit any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided.

NEW SECTION. **Sec.**  Sections 1 through 5 of this act constitute a new chapter in Title 10 RCW.

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