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SENATE BILL 5512

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State of Washington

65th Legislature

2017 Regular Session

By Senators Becker, Cleveland, and Rivers

Read first time 01/26/17. Referred to Committee on Human Services,  
Mental Health & Housing.

1 AN ACT Relating to placing state hospitals under the licensing  
2 authority of the department of health; amending RCW 70.56.010,  
3 70.41.020, 70.41.320, 70.41.330, 70.41.380, and 70.41.120; adding a  
4 new section to chapter 72.23 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 70.56.010 and 2007 c 273 s 20 are each amended to  
7 read as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Adverse health event" or "adverse event" means the list of  
11 serious reportable events adopted by the national quality forum in  
12 2002, in its consensus report on serious reportable events in health  
13 care. The department shall update the list, through adoption of  
14 rules, as subsequent changes are made by the national quality forum.  
15 The term does not include an incident.

16 (2) "Ambulatory surgical facility" means a facility licensed  
17 under chapter 70.230 RCW.

18 (3) "Childbirth center" means a facility licensed under chapter  
19 18.46 RCW.

20 (4) "Correctional medical facility" means a part or unit of a  
21 correctional facility operated by the department of corrections under

1 chapter 72.10 RCW that provides medical services for lengths of stay  
2 in excess of twenty-four hours to offenders.

3 (5) "Department" means the department of health.

4 (6) "Health care worker" means an employee, independent  
5 contractor, licensee, or other individual who is directly involved in  
6 the delivery of health services in a medical facility.

7 (7) "Hospital" means a facility licensed under chapter 70.41 RCW,  
8 or a state hospital as defined in RCW 72.23.010.

9 (8) "Incident" means an event, occurrence, or situation involving  
10 the clinical care of a patient in a medical facility that:

11 (a) Results in unanticipated injury to a patient that is not  
12 related to the natural course of the patient's illness or underlying  
13 condition and does not constitute an adverse event; or

14 (b) Could have injured the patient but did not either cause an  
15 unanticipated injury or require the delivery of additional health  
16 care services to the patient.

17 "Incident" does not include an adverse event.

18 (9) "Independent entity" means that entity that the department of  
19 health contracts with under RCW 70.56.040 to receive notifications  
20 and reports of adverse events and incidents, and carry out the  
21 activities specified in RCW 70.56.040.

22 (10) "Medical facility" means a childbirth center, hospital,  
23 psychiatric hospital, or correctional medical facility. An ambulatory  
24 surgical facility shall be considered a medical facility for purposes  
25 of this chapter upon the effective date of any requirement for state  
26 registration or licensure of ambulatory surgical facilities.

27 (11) "Psychiatric hospital" means a hospital facility licensed as  
28 a psychiatric hospital under chapter 71.12 RCW.

29 **Sec. 2.** RCW 70.41.020 and 2016 c 226 s 1 are each amended to  
30 read as follows:

31 Unless the context clearly indicates otherwise, the following  
32 terms, whenever used in this chapter, shall be deemed to have the  
33 following meanings:

34 (1) "Aftercare" means the assistance provided by a lay caregiver  
35 to a patient under this chapter after the patient's discharge from a  
36 hospital. The assistance may include, but is not limited to,  
37 assistance with activities of daily living, wound care, medication  
38 assistance, and the operation of medical equipment. "Aftercare"  
39 includes assistance only for conditions that were present at the time

1 of the patient's discharge from the hospital. "Aftercare" does not  
2 include:

3 (a) Assistance related to conditions for which the patient did  
4 not receive medical care, treatment, or observation in the hospital;  
5 or

6 (b) Tasks the performance of which requires licensure as a health  
7 care provider.

8 (2) "Department" means the Washington state department of health.

9 (3) "Discharge" means a patient's release from a hospital  
10 following the patient's admission to the hospital.

11 (4) "Distant site" means the site at which a physician or other  
12 licensed provider, delivering a professional service, is physically  
13 located at the time the service is provided through telemedicine.

14 (5) "Emergency care to victims of sexual assault" means medical  
15 examinations, procedures, and services provided by a hospital  
16 emergency room to a victim of sexual assault following an alleged  
17 sexual assault.

18 (6) "Emergency contraception" means any health care treatment  
19 approved by the food and drug administration that prevents pregnancy,  
20 including but not limited to administering two increased doses of  
21 certain oral contraceptive pills within seventy-two hours of sexual  
22 contact.

23 (7) "Hospital" means any institution, place, building, or agency  
24 which provides accommodations, facilities and services over a  
25 continuous period of twenty-four hours or more, for observation,  
26 diagnosis, or care, of two or more individuals not related to the  
27 operator who are suffering from illness, injury, deformity, or  
28 abnormality, or from any other condition for which obstetrical,  
29 medical, or surgical services would be appropriate for care or  
30 diagnosis. "Hospital" as used in this chapter does not include  
31 hotels, or similar places furnishing only food and lodging, or simply  
32 domiciliary care; nor does it include clinics, or physician's offices  
33 where patients are not regularly kept as bed patients for twenty-four  
34 hours or more; nor does it include nursing homes, as defined and  
35 which come within the scope of chapter 18.51 RCW; nor does it include  
36 birthing centers, which come within the scope of chapter 18.46 RCW;  
37 nor does it include psychiatric hospitals, which come within the  
38 scope of chapter 71.12 RCW; nor any other hospital, or institution  
39 specifically intended for use in the diagnosis and care of those  
40 suffering from mental illness, intellectual disability, convulsive

1 disorders, or other abnormal mental condition. Furthermore, nothing  
2 in this chapter or the rules adopted pursuant thereto shall be  
3 construed as authorizing the supervision, regulation, or control of  
4 the remedial care or treatment of residents or patients in any  
5 hospital conducted for those who rely primarily upon treatment by  
6 prayer or spiritual means in accordance with the creed or tenets of  
7 any well recognized church or religious denominations.

8 (8) "Lay caregiver" means any individual designated as such by a  
9 patient under this chapter who provides aftercare assistance to a  
10 patient in the patient's residence. "Lay caregiver" does not include  
11 a long-term care worker as defined in RCW 74.39A.009.

12 (9) "Originating site" means the physical location of a patient  
13 receiving health care services through telemedicine.

14 (10) "Person" means any individual, firm, partnership,  
15 corporation, company, association, or joint stock association, and  
16 the legal successor thereof.

17 (11) "Secretary" means the secretary of health.

18 (12) "Sexual assault" has the same meaning as in RCW 70.125.030.

19 (13) "State hospital" has the meaning provided in RCW 72.23.010.

20 (14) "Telemedicine" means the delivery of health care services  
21 through the use of interactive audio and video technology, permitting  
22 real-time communication between the patient at the originating site  
23 and the provider, for the purpose of diagnosis, consultation, or  
24 treatment. "Telemedicine" does not include the use of audio-only  
25 telephone, facsimile, or email.

26 ~~((14))~~ (15) "Victim of sexual assault" means a person who  
27 alleges or is alleged to have been sexually assaulted and who  
28 presents as a patient.

29 **Sec. 3.** RCW 70.41.320 and 2016 c 226 s 5 are each amended to  
30 read as follows:

31 (1) Hospitals, state hospitals, and acute care facilities shall:

32 (a) Work cooperatively with the department of social and health  
33 services, area agencies on aging, and local long-term care  
34 information and assistance organizations in the planning and  
35 implementation of patient discharges to long-term care services.

36 (b) Establish and maintain a system for discharge planning and  
37 designate a person responsible for system management and  
38 implementation.

39 (c) Establish written policies and procedures to:

1 (i) Identify patients needing further nursing, therapy, or  
2 supportive care following discharge from the hospital;

3 (ii) Subject to RCW 70.41.322, develop a documented discharge  
4 plan for each identified patient, including relevant patient history,  
5 specific care requirements, and date such follow-up care is to be  
6 initiated;

7 (iii) Coordinate with patient, family, caregiver, lay caregiver  
8 as provided in RCW 70.41.322, and appropriate members of the health  
9 care team which may include a long-term care worker or a home and  
10 community-based service provider. For the purposes of this subsection  
11 (1)(c)(iii), long-term care worker has the meaning provided in RCW  
12 74.39A.009 and home and community-based service provider includes an  
13 adult family home as defined in RCW 70.128.010, an assisted living  
14 facility as defined in RCW 18.20.020, or a home care agency as  
15 defined in RCW 70.127.010;

16 (iv) Provide any patient, regardless of income status, written  
17 information and verbal consultation regarding the array of long-term  
18 care options available in the community, including the relative cost,  
19 eligibility criteria, location, and contact persons;

20 (v) Promote an informed choice of long-term care services on the  
21 part of patients, family members, and legal representatives;

22 (vi) Coordinate with the department and specialized case  
23 management agencies, including area agencies on aging and other  
24 appropriate long-term care providers, as necessary, to ensure timely  
25 transition to appropriate home, community residential, or nursing  
26 facility care; and

27 (vii) Inform the patient or his or her surrogate decision maker  
28 designated under RCW 7.70.065 if it is necessary to complete a valid  
29 disclosure authorization as required by state and federal laws  
30 governing health information privacy and security, including chapter  
31 70.02 RCW and the federal health insurance portability and  
32 accountability act of 1996 and related regulations, in order to allow  
33 disclosure of health care information, including the discharge plan,  
34 to an individual or entity that will be involved in the patient's  
35 care upon discharge, including a lay caregiver as defined in RCW  
36 70.41.020, a long-term care worker as defined in RCW 74.39A.009, a  
37 home and community-based service provider such as an adult family  
38 home as defined in RCW 70.128.010, an assisted living facility as  
39 defined in RCW 18.20.020, or a home care agency as defined in RCW  
40 70.127.010. If a valid disclosure authorization is obtained, the

1 hospital may release information as designated by the patient for  
2 care coordination or other specified purposes.

3 (d) Work in cooperation with the department which is responsible  
4 for ensuring that patients eligible for medicaid long-term care  
5 receive prompt assessment and appropriate service authorization.

6 (2) In partnership with selected hospitals, the department of  
7 social and health services shall develop and implement pilot projects  
8 in up to three areas of the state with the goal of providing  
9 information about appropriate in-home and community services to  
10 individuals and their families early during the individual's hospital  
11 stay.

12 The department shall not delay hospital discharges but shall  
13 assist and support the activities of hospital discharge planners. The  
14 department also shall coordinate with home health and hospice  
15 agencies whenever appropriate. The role of the department is to  
16 assist the hospital and to assist patients and their families in  
17 making informed choices by providing information regarding home and  
18 community options.

19 In conducting the pilot projects, the department shall:

20 (a) Assess and offer information regarding appropriate in-home  
21 and community services to individuals who are medicaid clients or  
22 applicants; and

23 (b) Offer assessment and information regarding appropriate in-  
24 home and community services to individuals who are reasonably  
25 expected to become medicaid recipients within one hundred eighty days  
26 of admission to a nursing facility.

27 **Sec. 4.** RCW 70.41.330 and 2000 c 6 s 4 are each amended to read  
28 as follows:

29 Every hospital and state hospital shall post in conspicuous  
30 locations a notice of the department's hospital complaint toll-free  
31 telephone number. The form of the notice shall be approved by the  
32 department.

33 **Sec. 5.** RCW 70.41.380 and 2005 c 118 s 1 are each amended to  
34 read as follows:

35 Hospitals and state hospitals shall have in place policies to  
36 assure that, when appropriate, information about unanticipated  
37 outcomes is provided to patients or their families or any surrogate  
38 decision makers identified pursuant to RCW 7.70.065. Notifications of

1 unanticipated outcomes under this section do not constitute an  
2 acknowledgment or admission of liability, nor can the fact of  
3 notification, the content disclosed, or any and all statements,  
4 affirmations, gestures, or conduct expressing apology be introduced  
5 as evidence in a civil action.

6 **Sec. 6.** RCW 70.41.120 and 2009 c 242 s 1 are each amended to  
7 read as follows:

8 (1) The department shall make or cause to be made an unannounced  
9 inspection of all hospitals and state hospitals on average at least  
10 every eighteen months. Every inspection of a hospital or state  
11 hospital may include an inspection of every part of the premises. The  
12 department may make an examination of all phases of the hospital or  
13 state hospital operation necessary to determine compliance with the  
14 law and the standards, rules and regulations adopted thereunder.

15 (2) The department shall not issue its final report regarding an  
16 unannounced inspection by the department until: (a) The hospital or  
17 state hospital is given at least two weeks following the inspection  
18 to provide any information or documentation requested by the  
19 department during the unannounced inspection that was not available  
20 at the time of the request; and (b) at least one person from the  
21 department conducting the inspection meets personally with the chief  
22 administrator or executive officer of the hospital or state hospital  
23 following the inspection or the chief administrator or executive  
24 officer declines such a meeting.

25 (3) Any licensee or applicant desiring to make alterations or  
26 additions to its facilities or to construct new facilities shall,  
27 before commencing such alteration, addition or new construction,  
28 comply with the regulations prescribed by the department.

29 (4) No hospital licensed pursuant to the provisions of this  
30 chapter or state hospital shall be required to be inspected or  
31 licensed under other state laws or rules and regulations promulgated  
32 thereunder, or local ordinances, relative to hotels, restaurants,  
33 lodging houses, boarding houses, places of refreshment, nursing  
34 homes, maternity homes, or psychiatric hospitals.

35 (5) To avoid unnecessary duplication in inspections, the  
36 department shall coordinate with the department of social and health  
37 services, the office of the state fire marshal, and local agencies  
38 when inspecting facilities over which each agency has jurisdiction,  
39 the facilities including but not necessarily being limited to

1 hospitals with both acute care and skilled nursing or psychiatric  
2 nursing functions. The department shall notify the office of the  
3 state fire marshal and the relevant local agency at least four weeks  
4 prior to any inspection conducted under this section and invite their  
5 attendance at the inspection, and shall provide a copy of its  
6 inspection report to each agency upon completion.

7 NEW SECTION. **Sec. 7.** A new section is added to chapter 72.23  
8 RCW to read as follows:

9 (1) Each state hospital must maintain a coordinated quality  
10 improvement program for the improvement of the quality of health care  
11 services rendered to patients and the identification and prevention  
12 of medical malpractice. The program must include at least the  
13 following:

14 (a) The establishment of one or more quality improvement  
15 committees with the responsibility to review the services rendered in  
16 the state hospital, both retrospectively and prospectively, in order  
17 to improve the quality of medical care of patients and to prevent  
18 medical malpractice. Different quality improvement committees may be  
19 established as a part of a quality improvement program to review  
20 different health care services. Such committees shall oversee and  
21 coordinate the quality improvement and medical malpractice prevention  
22 program and shall ensure that information gathered pursuant to the  
23 program is used to review and to revise state hospital policies and  
24 procedures;

25 (b) A process, including a medical staff privileges sanction  
26 procedure which must be conducted substantially in accordance with  
27 medical staff bylaws and applicable rules, regulations, or policies  
28 of the medical staff through which credentials, physical and mental  
29 capacity, professional conduct, and competence in delivering health  
30 care services are periodically reviewed as part of an evaluation of  
31 staff privileges;

32 (c) A process for the periodic review of the credentials,  
33 physical and mental capacity, professional conduct, and competence in  
34 delivering health care services of all other health care providers  
35 who are employed or associated with the state hospital;

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



1 (e) The maintenance and continuous collection of information  
2 concerning the state hospital's experience with negative health care  
3 outcomes and incidents injurious to patients, including health care-  
4 associated infections as defined in RCW 43.70.056, patient  
5 grievances, professional liability premiums, settlements, awards,  
6 costs incurred by the hospital for patient injury prevention, and  
7 safety improvement activities;

8 (f) The maintenance of relevant and appropriate information  
9 gathered pursuant to (a) through (e) of this subsection concerning  
10 individual physicians within the physician's personnel or credential  
11 file maintained by the state hospital;

12 (g) Education programs dealing with quality improvement, patient  
13 safety, medication errors, injury prevention, infection control,  
14 staff responsibility to report professional misconduct, the legal  
15 aspects of patient care, improved communication with patients, and  
16 causes of malpractice claims for staff personnel engaged in patient  
17 care activities; and

18 (h) Policies to ensure compliance with the reporting requirements  
19 of this section.

20 (2) Any person who, in substantial good faith, provides  
21 information to further the purposes of the quality improvement and  
22 medical malpractice prevention program or who, in substantial good  
23 faith, participates on the quality improvement committee is not  
24 subject to an action for civil damages or other relief as a result of  
25 such activity. For the purposes of this section, sharing information  
26 is presumed to be in substantial good faith. However, the presumption  
27 may be rebutted upon a showing of clear, cogent, and convincing  
28 evidence that the information shared was knowingly false or  
29 deliberately misleading.

30 (3) Information and documents, including complaints and incident  
31 reports, created specifically for, and collected and maintained by, a  
32 quality improvement committee are not subject to review or  
33 disclosure, except as provided in this section, or discovery or  
34 introduction into evidence in any civil action, and no person who was  
35 in attendance at a meeting of such committee or who participated in  
36 the creation, collection, or maintenance of information or documents  
37 specifically for the committee is permitted or required to testify in  
38 any civil action as to the content of such proceedings or the  
39 documents and information prepared specifically for the committee.  
40 This subsection does not preclude: (a) In any civil action, the

1 discovery of the identity of persons involved in the medical care  
2 that is the basis of the civil action whose involvement was  
3 independent of any quality improvement activity; (b) in any civil  
4 action, the testimony of any person concerning the facts which form  
5 the basis for the institution of such proceedings of which the person  
6 had personal knowledge acquired independently of such proceedings;  
7 (c) in any civil action by a health care provider regarding the  
8 restriction or revocation of that individual's clinical or staff  
9 privileges, introduction into evidence information collected and  
10 maintained by quality improvement committees regarding such health  
11 care provider; (d) in any civil action, disclosure of the fact that  
12 staff privileges were terminated or restricted, including the  
13 specific restrictions imposed, if any, and the reasons for the  
14 restrictions; or (e) in any civil action, discovery and introduction  
15 into evidence of the patient's medical records required by regulation  
16 of the department of health to be made regarding the care and  
17 treatment received.

18 (4) Each quality improvement committee must, on at least a  
19 semiannual basis, report to the superintendent of the state hospital  
20 in which the committee is located. The report must review the quality  
21 improvement activities conducted by the committee, and any actions  
22 taken as a result of those activities.

23 (5) Each quality improvement committee must annually provide  
24 their quality improvement plans to the department of health for  
25 review. If the plans are insufficient, the department of health must  
26 report the deficiency to the centers for medicare and medicaid  
27 services.

28 (6) The medical quality assurance commission or the board of  
29 osteopathic medicine and surgery, as appropriate, may review and  
30 audit the records of committee decisions in which a physician's  
31 privileges are terminated or restricted. Each state hospital shall  
32 produce and make accessible to the commission or board the  
33 appropriate records and otherwise facilitate the review and audit.  
34 Information so gained is not subject to the discovery process and  
35 confidentiality must be respected as required by subsection (3) of  
36 this section. Failure of a state hospital to comply with this  
37 subsection is punishable by a civil penalty not to exceed two hundred  
38 fifty dollars.

1           (7) The department of health may adopt rules to implement this  
2 section.

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