

2SHB 1148 - S COMM AMD

By Committee on Health & Long Term Care

NOT ADOPTED 04/06/2021

1 Strike everything after the enacting clause and insert the  
2 following:

3 **"Sec. 1.** RCW 70.41.020 and 2016 c 226 s 1 are each amended to  
4 read as follows:

5 Unless the context clearly indicates otherwise, the following  
6 terms, whenever used in this chapter, shall be deemed to have the  
7 following meanings:

8 (1) "Aftercare" means the assistance provided by a lay caregiver  
9 to a patient under this chapter after the patient's discharge from a  
10 hospital. The assistance may include, but is not limited to,  
11 assistance with activities of daily living, wound care, medication  
12 assistance, and the operation of medical equipment. "Aftercare"  
13 includes assistance only for conditions that were present at the time  
14 of the patient's discharge from the hospital. "Aftercare" does not  
15 include:

16 (a) Assistance related to conditions for which the patient did  
17 not receive medical care, treatment, or observation in the hospital;  
18 or

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

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

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

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

27 (5) "Emergency care to victims of sexual assault" means medical  
28 examinations, procedures, and services provided by a hospital  
29 emergency room to a victim of sexual assault following an alleged  
30 sexual assault.

31 (6) "Emergency contraception" means any health care treatment  
32 approved by the food and drug administration that prevents pregnancy,

1 including but not limited to administering two increased doses of  
2 certain oral contraceptive pills within seventy-two hours of sexual  
3 contact.

4 (7) "Hospital" means any institution, place, building, or agency  
5 which provides accommodations, facilities and services over a  
6 continuous period of twenty-four hours or more, for observation,  
7 diagnosis, or care, of two or more individuals not related to the  
8 operator who are suffering from illness, injury, deformity, or  
9 abnormality, or from any other condition for which obstetrical,  
10 medical, or surgical services would be appropriate for care or  
11 diagnosis. "Hospital" as used in this chapter does not include  
12 hotels, or similar places furnishing only food and lodging, or simply  
13 domiciliary care; nor does it include clinics, or physician's offices  
14 where patients are not regularly kept as bed patients for twenty-four  
15 hours or more; nor does it include nursing homes, as defined and  
16 which come within the scope of chapter 18.51 RCW; nor does it include  
17 birthing centers, which come within the scope of chapter 18.46 RCW;  
18 nor does it include psychiatric hospitals, which come within the  
19 scope of chapter 71.12 RCW; nor any other hospital, or institution  
20 specifically intended for use in the diagnosis and care of those  
21 suffering from mental illness, intellectual disability, convulsive  
22 disorders, or other abnormal mental condition. Furthermore, nothing  
23 in this chapter or the rules adopted pursuant thereto shall be  
24 construed as authorizing the supervision, regulation, or control of  
25 the remedial care or treatment of residents or patients in any  
26 hospital conducted for those who rely primarily upon treatment by  
27 prayer or spiritual means in accordance with the creed or tenets of  
28 any well recognized church or religious denominations.

29 (8) "Immediate jeopardy" means a situation in which the  
30 hospital's noncompliance with one or more statutory or regulatory  
31 requirements has placed the health and safety of patients in its care  
32 at risk for serious injury, serious harm, serious impairment, or  
33 death.

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

38 ((+9)) (10) "Originating site" means the physical location of a  
39 patient receiving health care services through telemedicine.

1        ~~((10))~~ (11) "Person" means any individual, firm, partnership,  
2 corporation, company, association, or joint stock association, and  
3 the legal successor thereof.

4        ~~((11))~~ (12) "Secretary" means the secretary of health.

5        ~~((12))~~ (13) "Sexual assault" has the same meaning as in RCW  
6 70.125.030.

7        ~~((13))~~ (14) "Telemedicine" means the delivery of health care  
8 services through the use of interactive audio and video technology,  
9 permitting real-time communication between the patient at the  
10 originating site and the provider, for the purpose of diagnosis,  
11 consultation, or treatment. "Telemedicine" does not include the use  
12 of audio-only telephone, facsimile, or email.

13        ~~((14))~~ (15) "Victim of sexual assault" means a person who  
14 alleges or is alleged to have been sexually assaulted and who  
15 presents as a patient.

16        **Sec. 2.** RCW 70.41.130 and 2011 c 302 s 3 are each amended to  
17 read as follows:

18        (1) The department is authorized to ~~((deny, suspend, revoke, or~~  
19 modify a)) take any of the actions identified in this section against  
20 a hospital's license or provisional license in any case in which it  
21 finds that there has been a failure or refusal to comply with the  
22 requirements of this chapter or the standards or rules adopted under  
23 this chapter or the requirements of RCW 71.34.375.

24        (a) When the department determines the hospital has previously  
25 been subject to an enforcement action for the same or similar type of  
26 violation of the same statute or rule, or has been given any previous  
27 statement of deficiency that included the same or similar type of  
28 violation of the same or similar statute or rule, or when the  
29 hospital failed to correct noncompliance with a statute or rule by a  
30 date established or agreed to by the department, the department may  
31 impose reasonable conditions on a license. Conditions may include  
32 correction within a specified amount of time, training, or hiring a  
33 department-approved consultant if the hospital cannot demonstrate to  
34 the department that it has access to sufficient internal expertise.  
35 If the department determines that the violations constitute immediate  
36 jeopardy, the conditions may be imposed immediately in accordance  
37 with subsection (3) of this section.

38        (b) (i) In accordance with the authority the department has under  
39 RCW 43.70.095, the department may assess a civil fine of up to

1 \$10,000 per violation, not to exceed a total fine of \$1,000,000, on a  
2 hospital licensed under this chapter when the department determines  
3 the hospital has previously been subject to an enforcement action for  
4 the same or similar type of violation of the same statute or rule, or  
5 has been given any previous statement of deficiency that included the  
6 same or similar type of violation of the same or similar statute or  
7 rule, or when the hospital failed to correct noncompliance with a  
8 statute or rule by a date established or agreed to by the department.

9 (ii) Proceeds from these fines may only be used by the department  
10 to offset costs associated with licensing hospitals.

11 (iii) The department shall adopt in rules under this chapter  
12 specific fine amounts in relation to:

13 (A) The severity of the noncompliance and at an adequate level to  
14 be a deterrent to future noncompliance; and

15 (B) The number of licensed beds and the operation size of the  
16 hospital. The licensed hospital beds will be categorized as:

17 (I) Up to 25 beds;

18 (II) 26 to 99 beds;

19 (III) 100 to 299 beds; and

20 (IV) 300 beds or greater.

21 (iv) If a licensee is aggrieved by the department's action of  
22 assessing civil fines, the licensee has the right to appeal under RCW  
23 43.70.095.

24 (c) The department may suspend a specific category or categories  
25 of services or care or recovery units within the hospital as related  
26 to the violation by imposing a limited stop service. This may only be  
27 done if the department finds that noncompliance results in immediate  
28 jeopardy.

29 (i) Prior to imposing a limited stop service, the department  
30 shall provide a hospital written notification upon identifying  
31 deficient practices or conditions that constitute an immediate  
32 jeopardy, and upon the review and approval of the notification by the  
33 secretary or the secretary's designee. The hospital shall have 24  
34 hours from notification to develop and implement a department-  
35 approved plan to correct the deficient practices or conditions that  
36 constitute an immediate jeopardy. If the deficient practice or  
37 conditions that constitute immediate jeopardy are not verified by the  
38 department as having been corrected within the same 24 hour period,  
39 the department may issue the limited stop service.

1 (ii) When the department imposes a limited stop service, the  
2 hospital may not admit any new patients to the units in the category  
3 or categories subject to the limited stop service until the limited  
4 stop service order is terminated.

5 (iii) The department shall conduct a follow-up inspection within  
6 five business days or within the time period requested by the  
7 hospital if more than five business days is needed to verify the  
8 violation necessitating the limited stop service has been corrected.

9 (iv) The limited stop service shall be terminated when:

10 (A) The department verifies the violation necessitating the  
11 limited stop service has been corrected or the department determines  
12 that the hospital has taken intermediate action to address the  
13 immediate jeopardy; and

14 (B) The hospital establishes the ability to maintain correction  
15 of the violation previously found deficient.

16 (d) The department may suspend new admissions to the hospital by  
17 imposing a stop placement. This may only be done if the department  
18 finds that noncompliance results in immediate jeopardy and is not  
19 confined to a specific category or categories of patients or a  
20 specific area of the hospital.

21 (i) Prior to imposing a stop placement, the department shall  
22 provide a hospital written notification upon identifying deficient  
23 practices or conditions that constitute an immediate jeopardy, and  
24 upon the review and approval of the notification by the secretary or  
25 the secretary's designee. The hospital shall have 24 hours from  
26 notification to develop and implement a department-approved plan to  
27 correct the deficient practices or conditions that constitute an  
28 immediate jeopardy. If the deficient practice or conditions that  
29 constitute immediate jeopardy are not verified by the department as  
30 having been corrected within the same 24 hour period, the department  
31 may issue the stop placement.

32 (ii) When the department imposes a stop placement, the hospital  
33 may not admit any new patients until the stop placement order is  
34 terminated.

35 (iii) The department shall conduct a follow-up inspection within  
36 five business days or within the time period requested by the  
37 hospital if more than five business days is needed to verify the  
38 violation necessitating the stop placement has been corrected.

39 (iv) The stop placement order shall be terminated when:

1 (A) The department verifies the violation necessitating the stop  
2 placement has been corrected or the department determines that the  
3 hospital has taken intermediate action to address the immediate  
4 jeopardy; and

5 (B) The hospital establishes the ability to maintain correction  
6 of the violation previously found deficient.

7 (e) The department may deny an application for a license or  
8 suspend, revoke, or refuse to renew a license.

9 (2) The department shall adopt in rules under this chapter a fee  
10 methodology that includes funding expenditures to implement  
11 subsection (1) of this section. The fee methodology must consider:

12 (a) The operational size of the hospital; and

13 (b) The number of licensed beds of the hospital.

14 (3) (a) Except as otherwise provided, RCW 43.70.115 governs notice  
15 of ((a license denial, revocation, suspension, or modification))  
16 actions taken by the department under subsection (1) of this section  
17 and provides the right to an adjudicative proceeding. Adjudicative  
18 proceedings and hearings under this section are governed by the  
19 administrative procedure act, chapter 34.05 RCW. The application for  
20 an adjudicative proceeding must be in writing, state the basis for  
21 contesting the adverse action, including a copy of the department's  
22 notice, be served on and received by the department within 28 days of  
23 the licensee's receipt of the adverse notice, and be served in a  
24 manner that shows proof of receipt. A hospital that prevails in an  
25 adjudicative proceeding, hearing, or appeal under this section is  
26 entitled to recover costs of litigation and reasonable attorneys'  
27 fees.

28 (b) When the department determines a licensee's noncompliance  
29 results in immediate jeopardy, the department may make the imposition  
30 of conditions on a licensee, a limited stop placement, stop  
31 placement, or the suspension of a license effective immediately upon  
32 receipt of the notice by the licensee, pending any adjudicative  
33 proceeding.

34 (i) When the department makes the suspension of a license or  
35 imposition of conditions on a license effective immediately, a  
36 licensee is entitled to a show cause hearing before a presiding  
37 officer within 14 days of making the request. The licensee must  
38 request the show cause hearing within 28 days of receipt of the  
39 notice of immediate suspension or immediate imposition of conditions.  
40 At the show cause hearing the department has the burden of

1 demonstrating that more probably than not there is an immediate  
2 jeopardy.

3 (ii) At the show cause hearing, the presiding officer may  
4 consider the notice and documents supporting the immediate suspension  
5 or immediate imposition of conditions and the licensee's response and  
6 must provide the parties with an opportunity to provide documentary  
7 evidence and written testimony, and to be represented by counsel.  
8 Prior to the show cause hearing, the department must provide the  
9 licensee with all documentation that supports the department's  
10 immediate suspension or imposition of conditions.

11 (iii) If the presiding officer determines there is no immediate  
12 jeopardy, the presiding officer may overturn the immediate suspension  
13 or immediate imposition of conditions.

14 (iv) If the presiding officer determines there is immediate  
15 jeopardy, the immediate suspension or immediate imposition of  
16 conditions shall remain in effect pending a full hearing.

17 (v) If the presiding officer sustains the immediate suspension or  
18 immediate imposition of conditions, the licensee may request an  
19 expedited full hearing on the merits of the department's action. A  
20 full hearing must be provided within 90 days of the licensee's  
21 request."

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22 On page 1, line 2 of the title, after "enforcement;" strike the  
23 remainder of the title and insert "and amending RCW 70.41.020 and  
24 70.41.130."

EFFECT: Entitles a hospital that prevails in an adjudicative proceeding, hearing or appeal contesting DOH's sanctions to recover costs of litigation and reasonable attorneys' fees.

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