

HOUSE BILL REPORT

2SHB 1148

As Passed Legislature

Title: An act relating to protecting patient safety in acute care hospitals through improvements in licensing and enforcement.

Brief Description: Protecting patients in acute care hospitals.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Cody, Macri, Stonier, Lekanoff and Pollet).

Brief History:

Committee Activity:

Health Care & Wellness: 1/21/21, 1/27/21 [DPS];
Appropriations: 2/9/21, 2/11/21 [DP2S(w/o sub HCW)].

Floor Activity:

Passed House: 2/25/21, 60-37.
Passed Senate: 4/6/21, 32-16.
Passed Legislature.

Brief Summary of Second Substitute Bill

- Establishes penalties for hospitals that fail or refuse to comply with state licensing standards, including civil fines and stop placements.
- Allows the Department of Health to adopt a fee methodology to fund expenditures associated with enforcement activities.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Cody, Chair; Bateman, Vice Chair; Caldier, Assistant Ranking Minority Member; Bronoske, Davis, Macri, Maycumber, Riccelli, Rude, Simmons, Stonier, Tharinger and Ybarra.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Without recommendation. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Harris.

Staff: Christopher Blake (786-7392).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 25 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Caldier, Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Harris, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Minority Report: Without recommendation. Signed by 8 members: Representatives Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Chandler, Dye, Hoff, Jacobsen and Schmick.

Staff: Linda Merelle (786-7092).

Background:

Hospitals are facilities licensed by the Department of Health (Department) to provide accommodations and services over a continuous period of 24 hours or more for observation, diagnosis, or care. Prior to operation, a hospital must obtain a certificate of need to allow for the opening of a hospital and to determine the hospital's bed capacity. To obtain and maintain a license, a hospital must meet Department standards related to patient care, medical staff, infection control, and mandatory reporting related to patient care and financial information. Specific regulatory standards apply to the particular care units and services offered at the hospital.

The Department conducts an on-site survey of each hospital at least every 18 months to assess its compliance with health and safety standards. In addition, the Department conducts complaint investigations for each complaint against a hospital concerning patient well-being. The Department posts information on its website regarding the most frequent problems identified during hospital surveys and complaint investigations. In the event that an investigation or survey identifies noncompliance with hospital standards, the Department may require the hospital to submit a plan of correction to address each of the deficiencies. In addition, the Department is authorized to deny, suspend, revoke, or modify a license or provisional license.

Summary of Second Substitute Bill:

In addition to denying, suspending, or revoking a hospital license, the Department of Health (Department) may take one or more of several actions when a hospital: (1) has previously been subject to an enforcement action for the same or similar type of violation; (2) has been given a statement of deficiency for the same or similar type of violation; or (3) has failed to correct noncompliance with a licensing standard by an established date. In these circumstances, the Department may either impose conditions on a hospital or assess a civil fine. Conditions may include correction within a specified time, training, or the hiring of a consultant. Civil fines may be imposed of up to \$10,000 per violation, for a total of no more than \$1 million. The Department must adopt specific fine amounts in rule that consider the severity of the noncompliance, the level of the fine amount needed to be a deterrent to future noncompliance, the number of licensed beds at the hospital, and the operation size of the hospital. Consideration of the number of licensed beds at a hospital includes the following four categories: hospitals with up to 25 beds, hospitals with between 26 and 99 beds, hospitals with between 100 and 299 beds, and hospitals with 300 beds or more. Civil fines collected by the Department may only be used to offset the cost of hospital licensing activities.

The Department may suspend one or more categories of services or care or recovery units within a hospital by imposing a limited stop service that prohibits the admission of any new patients to the units. In addition, the Department may suspend new admissions to a hospital by imposing a stop placement on the entire facility. A limited stop service or stop placement may only be imposed if the Department finds practices or conditions that constitute an immediate jeopardy. The term "immediate jeopardy" means a situation in which a hospital's noncompliance has placed the health and safety of patients at risk for death or serious injury, harm, or impairment. Before imposing a limited stop service or stop placement, the Department must give the hospital notice of the practices or conditions that constitute an immediate jeopardy and the Secretary of Health must review and approve the notice. A hospital is allowed 24 hours to develop and implement a plan to correct the violation before the limited stop service or stop placement occurs. If the Department does not verify within 24 hours that the violation has been corrected, then the limited stop service or stop placement may be issued. If the Department issues a limited stop service or stop placement, it must conduct a follow-up inspection within five business days or a longer period if the hospital requests more time. The stop placement order or limited stop service order must be terminated if the violations have been corrected or addressed through an intermediate action and the hospital is able to maintain the corrections.

Before imposing immediate conditions or an immediate license suspension, the Department must find that noncompliance will result in immediate jeopardy. When the Department takes such immediate actions, the hospital is entitled to a show cause hearing within 14 days of making a request. At a show cause hearing the Department has the burden of demonstrating that an immediate jeopardy exists. Standards for the consideration of evidence are established. If the show cause hearing sustains the Department's immediate action, the hospital may request an expedited full hearing to occur within 90 days.

The Department must adopt a fee methodology in rule to fund expenditures to implement enforcement activities. The fee methodology must consider the number of licensed beds and the operational size of the hospital when establishing fees.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

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

(In support) This is follow-up legislation to last year's bill regarding psychiatric hospitals and a next step before there is a more complete review of this topic. Hospital noncompliance was a problem before the COVID-19 pandemic and without adequate tools, this will continue to be a risk that patients are exposed to in Washington. In many hospitals, medical staff report facing intimidation and retribution for raising concerns. When workplace safety protections for health care workers go unaddressed, it is both the health care workers and patients who suffer.

The COVID-19 pandemic has shown that the state lacks enforcement mechanisms to incentivize hospital compliance with safety standards. Worker safety complaints have been filed with the Department of Labor and Industries and a number of serious violations have been found with hospitals. While the Department of Labor and Industries has the authority to issue monetary penalties for noncompliance with state laws and regulations, the Department of Health lacks similar enforcement tools when hospitals remain in noncompliance. There need to be stronger enforcement mechanisms when hospitals continue with a pattern of noncompliance and the Department of Health should have additional enforcement mechanisms.

(Opposed) None.

(Other) The bill should consider the fact that acute care hospitals vary in size. There should be language that the size of a civil fine should consider the number of beds at a hospital. Language regarding cost recovery should vary based on the size of the hospital. There should be checks on the inspectors so that issues that are so severe as to warrant a limited stop placement or stop placement have the involvement of the Secretary of Health to approve the final decision of the inspector. There needs to be clarification that under a stop placement or limited stop placement, a hospital may to continue offer services to the patients already in the hospital. There is no need for the emergency clause.

Staff Summary of Public Testimony (Appropriations):

(In support) Similar legislation was passed for psychiatric hospitals. Under this bill, the Department has more tools in its toolbox, and it gives the Department the ability to impose fines if conditions are not addressed.

(Opposed) None.

Persons Testifying (Health Care & Wellness): (In support) Representative Cody, prime sponsor; Jennifer Muhm, Washington State Nurses Association; Samantha Grad, United Food and Commercial Workers 21; and Lindsey Grad, Service Employees International Union Healthcare 1199 Northwest.

(Other) Lisa Thatcher, Washington State Hospital Association; and Christie Spice, Department of Health.

Persons Testifying (Appropriations): Representative Cody, prime sponsor.

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

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