

SENATE BILL REPORT

2SHB 1148

As Reported by Senate Committee On:
Health & Long Term Care, March 24, 2021

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: Passed House: 2/25/21, 60-37.

Committee Activity: Health & Long Term Care: 3/19/21, 3/24/21 [DPA, DNP, w/oRec].

Brief Summary of Amended Bill

- Establishes civil fines, conditions on the license, and stop placements as penalties for hospitals that fail or refuse to comply with state licensing requirements.
- Directs the Department of Health to adopt a fee methodology to fund hospital enforcement activities.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: Do pass as amended.

Signed by Senators Cleveland, Chair; Frockt, Vice Chair; Conway, Keiser, Randall, Robinson and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Muzzall, Ranking Member; Rivers.

Minority Report: That it be referred without recommendation.

Signed by Senators Holy and Padden.

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.

Staff: LeighBeth Merrick (786-7445)

Background: Hospitals are facilities licensed by the Department of Health (DOH) 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 DOH's 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.

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

In 2020, the Legislature passed SHB 2426 which established penalties for psychiatric hospitals that fail or refuse to comply with state licensing standards, including civil fines and stop placements.

Summary of Amended Bill: In addition to denying, suspending, or revoking a hospital license, DOH may impose conditions on a hospital license and assess civil fines when a hospital:

- has previously been subject to an enforcement action for the same or similar type of violation;
- has been given a statement of deficiency for the same or similar type of violation; or
- has failed to correct noncompliance with a licensing standard by an established date.

Conditions may include correction within a specified time, training, or hiring a consultant. Civil fines may be imposed up to \$10,000 per violation, for no more than \$1 million. DOH 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 DOH may only be used to offset the cost of hospital licensing activities.

DOH 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. DOH 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 when DOH 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, DOH 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 DOH does not verify within 24 hours the violation has been corrected, then the limited stop service or stop placement may be issued. If DOH 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 when 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, DOH must find that noncompliance will result in immediate jeopardy. When DOH 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 DOH has the burden of demonstrating an immediate jeopardy exists. Standards for the consideration of evidence are established. If the show cause hearing sustains DOH's immediate action, the hospital may request an expedited full hearing to occur within 90 days. A hospital that prevails in their actions contesting DOH's enforcement is entitled to recover costs of litigation and reasonable attorney fees.

DOH must adopt a fee methodology in rule to fund these enforcement activities. The fee methodology must consider the hospital's number of licensed beds and the operational size.

EFFECT OF HEALTH & LONG TERM CARE COMMITTEE AMENDMENT(S):

- Entitles a hospital to recover the costs of litigation and reasonable attorney fees if the hospital prevails in contesting DOH's enforcement actions through an adjudicative proceeding, hearing, or appeal under the Administrative Procedures Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Second Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill is a

follow-up to last year's psychiatric hospital bill. When we passed the psychiatric hospital bill, we had agreed enforcement for acute care hospitals and other health care facilities should be treated similarly to psychiatric hospitals. Due to COVID-19, DOH was not able to complete the work to look at the enforcement for all facilities which is why this bill only address hospitals. With COVID-19, we have repeatedly seen the need for increased enforcement mechanisms for hospitals. Several patient safety concerns have been filed. DOH has directed hospitals to establish corrective action plans. Some of these hospitals are failing to follow their correcting action plans which has resulted in more complaints. DOH needs a civil penalties to allow for additional enforcement in cases like these. This bill creates a civil fine structure similar to the Department of Labor and Industries (L&I). We have seen when hospitals are faced with L&I civil fines they are more motivated to correct the issue.

Persons Testifying: PRO: Representative Eileen Cody, Prime Sponsor; Justin Gill, DNP, ARNP, Washington State Nurses Association.

Persons Signed In To Testify But Not Testifying: No one.