
HOUSE BILL 2084

State of Washington

52nd Legislature

1991 Regular Session

By Representatives Prentice, Cole, Brekke, Braddock, Anderson, Day and Leonard. Read first time February 21, 1991. Referred to Committee on Health Care.

1 AN ACT Relating to nonphysician health practitioners; amending RCW
2 70.43.020, 70.43.030, 70.170.070, and 74.09.522; adding new section to
3 chapter 70.41 RCW; adding a new section to chapter 70.58 RCW; and
4 prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.41 RCW
7 to read as follows:

8 (1) For the purpose of this section, "health practitioner" means a
9 family nurse practitioner, women's health care nurse practitioner,
10 pediatric nurse practitioner, adult nurse practitioner, nurse midwife,
11 or nurse anesthetist licensed under the authorization of the Washington
12 state board of nursing pursuant to chapter 18.88 RCW, and, effective
13 January 1, 1993, a midwife licensed pursuant to chapter 18.50 RCW.

14 (2) After December 31, 1991, it is unlawful for any hospital
15 licensed under this chapter, except a hospital that directly employs

1 its medical staff, to prohibit a health practitioner from being
2 accorded clinical privileges and appointed to all categories of staff
3 membership if the hospital offers health services that can be performed
4 by the health practitioner within the scope of her or his practice and
5 consistent with standards set forth in subsection (3) of this section.

6 If a health practitioner submits a completed application for staff
7 membership or clinical privileges to a hospital, the hospital has one
8 hundred twenty calendar days to grant or deny the application. No
9 hospital may deny such an application, terminate or reduce the rights
10 and responsibilities attending the staff membership of a health
11 practitioner, or reduce, suspend, revoke, or refuse to renew his or her
12 clinical privileges, without providing the following minimum procedural
13 protection:

14 (a) A contemporaneous written explanation containing the explicit
15 reasons for taking the action;

16 (b) Reasonable advance notice of the right to a fair hearing that
17 would afford the applicant an opportunity to adequately prepare a
18 rebuttal to the stated reasons for the action;

19 (c) A fair hearing, including the right to present evidence and
20 call witnesses in her or his behalf;

21 (d) The right to have retained counsel present at the hearing if
22 the hospital is represented by counsel at the hearing;

23 (e) A written decision containing the explicit reasons for taking
24 the action and substantially based on the evidence produced at the
25 hearing; and

26 (f) Access to a complete record documenting all preliminary and
27 final decisions and proceedings related to the decisions.

28 (3) Clinical privileges shall be determined on an individual basis
29 and commensurate with an applicant's education, training, experience,
30 demonstrated current competence, and within her or his scope of

1 practice. In implementing these criteria, each hospital shall
2 formulate and apply reasonable, nondiscriminatory standards for the
3 evaluation of an applicant's credentials as it would with other health
4 professionals. As part of its overall responsibility for the operation
5 of a hospital, the governing body, or designated persons so
6 functioning, shall ensure that decisions on clinical privileges and
7 staff membership are based on an objective evaluation of an applicant's
8 credentials, free of anticompetitive intent or purpose. Whenever
9 possible, the credentials committee and other staff who evaluate and
10 determine the qualifications of applicants for clinical privileges and
11 staff membership shall include members of the applicant's profession.

12 The following are not valid factors for consideration in the
13 determination of qualifications for staff membership or clinical
14 privileges:

15 (a) An applicant's membership or lack of membership in a
16 professional society or association;

17 (b) An applicant's decision to advertise, lower fees, or engage in
18 other competitive acts intended to solicit business;

19 (c) An applicant's participation in prepaid group health plans,
20 salaried employment, or any other manner of delivering health services
21 on other than a fee-for-service basis;

22 (d) An applicant's support for, training of, or participation in a
23 private group practice with members of a particular class of health
24 professional;

25 (e) An applicant's practices with respect to testifying in
26 malpractice suits, disciplinary actions, or any other type of
27 proceeding; and

28 (f) An applicant's willingness to send a certain number of patients
29 or clients who are in need of hospital services to a particular
30 hospital.

1 Each hospital shall formulate procedures to ensure that the
2 foregoing factors play no part when decisions regarding clinical
3 privileges and staff membership are made. In any action brought by an
4 individual against a hospital regarding a determination of clinical
5 privileges or staff membership, the hospital shall have the burden of
6 proving that none of these considerations were a factor in the
7 determination.

8 **Sec. 2.** RCW 70.43.020 and 1986 c 205 s 2 are each amended to read
9 as follows:

10 The governing body of any hospital, except any hospital which
11 employs its medical staff, in considering and acting upon applications
12 for staff membership or professional privileges within the scope of the
13 applicants' respective licenses, shall not discriminate against a
14 qualified person solely on the basis of whether such person is licensed
15 under chapter((s)) 18.71, 18.57, or 18.22 RCW, or chapter 18.88 or
16 18.50 RCW as provided in section 1 of this act.

17 **Sec. 3.** RCW 70.43.030 and 1986 c 205 s 3 are each amended to read
18 as follows:

19 Any person who is aggrieved may apply to superior court for a
20 preliminary or permanent injunction restraining a violation of RCW
21 70.43.010 ((or)), 70.43.020, or section 1 of this act. This action is
22 an additional remedy not dependent on the adequacy of the remedy at
23 law. Nothing in this chapter shall require a hospital to grant staff
24 membership or professional privileges until a final determination is
25 made upon the merits by the hospital governing body.

26 **Sec. 4.** RCW 70.170.070 and 1989 1st ex.s. c 9 s 507 are each
27 amended to read as follows:

1 (1) Every person who shall violate or knowingly aid and abet the
2 violation of RCW 70.170.060 (5) or (6), 70.170.080, (~~or~~) 70.170.100,
3 or section 1 of this act, or any valid orders or rules adopted pursuant
4 to these sections, or who fails to perform any act which it is herein
5 made his or her duty to perform, shall be guilty of a misdemeanor.
6 Following official notice to the accused by the department of the
7 existence of an alleged violation, each day of noncompliance upon which
8 a violation occurs shall constitute a separate violation. Any person
9 violating the provisions of this chapter may be enjoined from
10 continuing such violation. The department has authority to levy civil
11 penalties not exceeding one thousand dollars for violations of this
12 chapter and determined pursuant to this section.

13 (2) Every person who shall violate or knowingly aid and abet the
14 violation of RCW 70.170.060 (1) or (2) or section 1 of this act, or any
15 valid orders or rules adopted pursuant to such section, or who fails to
16 perform any act which it is herein made his or her duty to perform,
17 shall be subject to the following criminal and civil penalties:

18 (a) For any initial violations: The violating person shall be
19 guilty of a misdemeanor, and the department may impose a civil penalty
20 not to exceed one thousand dollars as determined pursuant to this
21 section.

22 (b) For a subsequent violation of RCW 70.170.060 (1) or (2) or
23 section 1 of this act within five years following a conviction: The
24 violating person shall be guilty of a misdemeanor, and the department
25 may impose a penalty not to exceed three thousand dollars as determined
26 pursuant to this section.

27 (c) For a subsequent violation with intent to violate RCW
28 70.170.060 (1) or (2) or section 1 of this act within five years
29 following a conviction: The criminal and civil penalties enumerated in
30 (a) of this subsection; plus up to a three-year prohibition against the

1 issuance of tax exempt bonds under the authority of the Washington
2 health care facilities authority; and up to a three-year prohibition
3 from applying for and receiving a certificate of need.

4 (d) For a violation of RCW 70.170.060 (1) or (2) or section 1 of
5 this act within five years of a conviction under (c) of this
6 subsection: The criminal and civil penalties and prohibition
7 enumerated in (a) and (b) of this subsection; plus up to a one-year
8 prohibition from participation in the state medical assistance or
9 medical care services authorized under chapter 74.09 RCW.

10 (3) The provisions of chapter 34.05 RCW shall apply to all
11 noncriminal actions undertaken by the department of health, the
12 department of social and health services, and the Washington health
13 care facilities authority pursuant to this act.

14 **Sec. 5.** RCW 74.09.522 and 1989 c 260 s 2 are each amended to read
15 as follows:

16 (1) For the purposes of this section, "managed health care system"
17 means any health care organization, including health care providers,
18 insurers, health care service contractors, health maintenance
19 organizations, health insuring organizations, or any combination
20 thereof, that provides directly or by contract health care services
21 covered under RCW 74.09.520 and rendered by licensed providers, on a
22 prepaid capitated case management basis and that meets the requirements
23 of section 1903(m)(1)(A) of Title XIX of the federal social security
24 act.

25 (2) No later than July 1, 1991, the department of social and health
26 services shall enter into agreements with managed health care systems
27 to provide health care services to recipients of aid to families with
28 dependent children under the following conditions:

1 (a) Agreements shall be made for at least thirty thousand
2 recipients state-wide;

3 (b) Agreements in at least one county shall include enrollment of
4 all recipients of aid to families with dependent children;

5 (c) To the extent that this provision is consistent with section
6 1903(m) of Title XIX of the federal social security act, recipients
7 shall have a choice of systems in which to enroll and shall have the
8 right to terminate their enrollment in a system(~~(: PROVIDED, That)~~).
9 The department may limit recipient termination of enrollment without
10 cause to the first month of a period of enrollment, which period shall
11 not exceed six months(~~(: AND PROVIDED FURTHER, That)~~). The department
12 shall not restrict a recipient's right to terminate enrollment in a
13 system for cause;

14 (d) To ensure that recipients enrolled in managed health care
15 systems have access to a full range of health care services, the
16 department shall explore incentives for participating managed health
17 care systems to contract with family nurse practitioners, women's
18 health care nurse practitioners, pediatric nurse practitioners, adult
19 nurse practitioners, nurse midwives, and nurse anesthetists licensed
20 under the authorization of the Washington state board of nursing
21 pursuant to chapter 18.88 RCW, and, effective January 1, 1993, midwives
22 licensed pursuant to chapter 18.50 RCW, who practice in the geographic
23 area covered by the agreement, to provide services within their scope
24 of practice as defined by chapters 18.88 and 18.50 RCW;

25 (e) To the extent that this provision is consistent with section
26 1903(m) of Title XIX of the federal social security act, participating
27 managed health care systems shall not enroll a disproportionate number
28 of medical assistance recipients within the total numbers of persons
29 served by the managed health care systems, except that this subsection

1 (d) shall not apply to entities described in subparagraph (B) of
2 section 1903(m) of Title XIX of the federal social security act;

3 ~~((e))~~ (f) Prior to negotiating with any managed health care
4 system, the department shall estimate, on an actuarially sound basis,
5 the expected cost of providing the health care services expressed in
6 terms of upper and lower limits, and recognizing variations in the cost
7 of providing the services through the various systems and in different
8 project areas. In negotiating with managed health care systems the
9 department shall adopt a uniform procedure to negotiate and enter into
10 contractual arrangements, including standards regarding the quality of
11 services to be provided; and financial integrity of the responding
12 system;

13 ~~((f))~~ (g) The department shall seek waivers from federal
14 requirements as necessary to implement this chapter;

15 ~~((g))~~ (h) The department shall, wherever possible, enter into
16 prepaid capitation contracts that include inpatient care. However, if
17 this is not possible or feasible, the department may enter into prepaid
18 capitation contracts that do not include inpatient care;

19 ~~((h))~~ (i) The department shall define those circumstances under
20 which a managed health care system is responsible for out-of-system
21 services and assure that recipients shall not be charged for such
22 services; and

23 ~~((i))~~ (j) Nothing in this section prevents the department from
24 entering into similar agreements for other groups of people eligible to
25 receive services under chapter 74.09 RCW.

26 (3) The department shall seek to obtain a large number of contracts
27 with providers of health services to medicaid recipients. The
28 department shall ensure that publicly supported community health
29 centers and providers in rural areas, who show serious intent and
30 apparent capability to participate in the project as managed health

1 care systems are seriously considered as providers in the project. The
2 department shall coordinate these projects with the plans developed
3 under chapter 70.47 RCW.

4 (4) The department shall work jointly with the state of Oregon and
5 other states in this geographical region in order to develop
6 recommendations to be presented to the appropriate federal agencies and
7 the United States congress for improving health care of the poor, while
8 controlling related costs.

9 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.58 RCW
10 to read as follows:

11 (1) The department of health shall establish and operate an
12 heirloom birth certificate program that shall offer a distinctive
13 design certificate to parents. The department shall aggressively
14 promote the sale of the heirloom birth certificate in hospitals and
15 other appropriate places. The charge to the parents shall be not less
16 than fifty dollars but not more than seventy-five dollars per
17 certificate. Funds from the sale of heirloom birth certificates shall
18 be distributed as follows:

19 (a) No more than five percent of the funds shall be expended for
20 administrative purposes;

21 (b) At least fifty percent of the amount, less administrative
22 costs, shall be provided to the Washington council for the prevention
23 of child abuse and neglect pursuant to RCW 43.121.100, but in no case
24 shall the amount be less than that received by the council for the
25 fiscal year 1991; and

26 (c) Up to fifty percent of the amount, less administrative costs,
27 shall be provided for a scholarship and loan repayment program for
28 certified nurse midwives licensed under the authorization of the
29 Washington state board of nursing pursuant to chapter 18.88 RCW and

1 midwives licensed under chapter 18.50 RCW, or for students pursuing
2 education leading to certification or licensure under chapter 18.88 or
3 18.50 RCW. The amount shall be equally divided between the two
4 categories of midwives.

5 (2) Funds collected for the purposes of subsection (1)(c) of this
6 section shall be disbursed by the higher education coordinating board
7 as follows:

8 (a) If Senate Bill No. 5514 is enacted, the funds shall be
9 deposited in the health professional loan repayment and scholarship
10 program trust fund created therein. The deposited funds shall be
11 expended for loan repayment and scholarship awards to midwives or
12 midwifery students described in subsection (1)(c) of this section. In
13 the event that midwives are not declared eligible for awards under the
14 loan repayment or scholarship program authorized by Senate Bill No.
15 5514, the funds shall be held in trust until midwives are determined
16 eligible and shall then be expended.

17 (b) If Senate Bill No. 5514 is not enacted, the higher education
18 coordinating board shall expend the funds as awards to students
19 pursuing licensure as midwives or certified nurse midwives under the
20 physician, midwife, and pharmacist scholarship program authorized under
21 chapter 70.180 RCW.