

HB 1436 - S COMM AMD

By Committee on Law & Justice

NOT CONSIDERED

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

3 "Sec. 1. RCW 7.71.030 and 2012 c 165 s 1 are each amended to read
4 as follows:

5 (1) If the limitation on damages under RCW 7.71.020 and P.L. 99-660
6 Sec. 411(1) does not apply, this section shall provide the exclusive
7 ((remedy)) remedies in any lawsuit by a health care provider for any
8 action taken by a professional peer review body of health care
9 providers as defined in RCW 7.70.020(~~(, that is found to be based on~~
10 ~~matters not related to the competence or professional conduct of a~~
11 ~~health care provider))~~).

12 (2) ((~~Actions~~)) Remedies shall be limited to appropriate injunctive
13 relief, and damages shall be allowed only for lost earnings directly
14 attributable to the action taken by the professional peer review body,
15 incurred between the date of such action and the date the action is
16 functionally reversed by the professional peer review body.

17 (3) Reasonable attorneys' fees and costs shall be awarded if
18 approved by the court under RCW 7.71.035.

19 (4) The statute of limitations for actions under this section shall
20 be one year from the date of the action of the professional peer review
21 body.

22 **Sec. 2.** RCW 70.41.200 and 2007 c 273 s 22 and 2007 c 261 s 3 are
23 each reenacted and amended to read as follows:

24 (1) Every hospital shall maintain a coordinated quality improvement
25 program for the improvement of the quality of health care services
26 rendered to patients and the identification and prevention of medical
27 malpractice. The program shall include at least the following:

28 (a) The establishment of a quality improvement committee with the
29 responsibility to review the services rendered in the hospital, both

1 retrospectively and prospectively, in order to improve the quality of
2 medical care of patients and to prevent medical malpractice. The
3 committee shall oversee and coordinate the quality improvement and
4 medical malpractice prevention program and shall ensure that
5 information gathered pursuant to the program is used to review and to
6 revise hospital policies and procedures;

7 (b) A process, including a medical staff privileges sanction
8 procedure which must be conducted substantially in accordance with
9 medical staff bylaws and applicable rules, regulations, or policies of
10 the medical staff through which credentials, physical and mental
11 capacity, professional conduct including disruptive behavior, and
12 competence in delivering health care services initially and are
13 periodically thereafter reviewed as part of an evaluation of staff
14 privileges;

15 (c) ((The)) A process for the initial and periodic review of the
16 credentials, physical and mental capacity, professional conduct
17 including disruptive behavior, and competence in delivering health care
18 services of all ((persons)) other health care providers who are
19 employed or associated with the hospital;

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

23 (e) The maintenance and continuous collection of information
24 concerning the hospital's experience with negative health care outcomes
25 and incidents injurious to patients including health care-associated
26 infections as defined in RCW 43.70.056, patient grievances,
27 professional liability premiums, settlements, awards, costs incurred by
28 the hospital for patient injury prevention, and safety improvement
29 activities;

30 (f) The maintenance of relevant and appropriate information
31 gathered pursuant to (a) through (e) of this subsection concerning
32 individual physicians within the physician's personnel or credential
33 file maintained by the hospital;

34 (g) Education programs dealing with quality improvement, patient
35 safety, medication errors, injury prevention, infection control, staff
36 responsibility to report professional misconduct, the legal aspects of
37 patient care, improved communication with patients, and causes of

1 malpractice claims for staff personnel engaged in patient care
2 activities; and

3 (h) Policies to ensure compliance with the reporting requirements
4 of this section.

5 (2) Nothing in subsection (1) of this section is intended, or shall
6 be construed or applied, to change or limit in any way the protections
7 afforded in other statutes that recognize and protect health care
8 providers and facilities from participating in, or refraining from
9 participating in, actions or practices to which they object on the
10 basis of conscience or religion, including but not limited to RCW
11 9.02.150, 48.43.065, 70.122.060, and 70.245.190.

12 (3) For purposes of subsection (1)(b) and (c) of this section,
13 every hospital shall establish a written definition for disruptive
14 behavior, which must be consistent with the limitations in subsection
15 (4) of this section.

16 (3) For purposes of this section, disruptive behavior does not
17 include:

18 (a) A person exercising the rights of religion or conscience under
19 RCW 70.47.160 or 48.43.065;

20 (b) A person who in good faith provides or who is perceived as
21 providing information relating to an investigation pursuant to chapter
22 74.66 RCW; or

23 (c) A whistleblower, which means a provider or medical staff
24 member, participating in a process that is part of a quality
25 improvement committee who has in fact, or is believed to have:

26 (i) Reported in good faith to an appropriate person what he or she
27 reasonably believed to be improper treatment by another provider or
28 medical staff member; or

29 (ii) Reported in good faith to an appropriate person what he or she
30 reasonably believed to be improper care, hygiene, instruction, or other
31 patient-related activity, or billing or accounting activity, by a
32 hospital employee; or

33 (iii) In good faith identified to an appropriate person any rule,
34 bylaw, practice, policy, or standard of the hospital which he or she
35 reasonably believed to warrant review or revision.

36 (4) Any person who, in substantial good faith, provides information
37 to further the purposes of the quality improvement and medical
38 malpractice prevention program or who, in substantial good faith,

1 participates on the quality improvement committee shall not be subject
2 to an action for civil damages or other relief as a result of such
3 activity. Any person or entity participating in a coordinated quality
4 improvement program that, in substantial good faith, shares information
5 or documents with one or more other programs, committees, or boards
6 under subsection (~~(+8+)~~) (10) of this section is not subject to an
7 action for civil damages or other relief as a result of the activity.
8 For the purposes of this section, sharing information is presumed to be
9 in substantial good faith. However, the presumption may be rebutted
10 upon a showing of clear, cogent, and convincing evidence that the
11 information shared was knowingly false or deliberately misleading.

12 (~~(+3+)~~) (5) Information and documents, including complaints and
13 incident reports, created specifically for, and collected and
14 maintained by, a quality improvement committee are not subject to
15 review or disclosure, except as provided in this section, or discovery
16 or introduction into evidence in any civil action, and no person who
17 was in attendance at a meeting of such committee or who participated in
18 the creation, collection, or maintenance of information or documents
19 specifically for the committee shall be permitted or required to
20 testify in any civil action as to the content of such proceedings or
21 the documents and information prepared specifically for the committee.
22 This subsection does not preclude: (a) In any civil action, the
23 discovery of the identity of persons involved in the medical care that
24 is the basis of the civil action whose involvement was independent of
25 any quality improvement activity; (b) in any civil action, the
26 testimony of any person concerning the facts which form the basis for
27 the institution of such proceedings of which the person had personal
28 knowledge acquired independently of such proceedings; (c) in any civil
29 action by a health care provider regarding the restriction or
30 revocation of that individual's clinical or staff privileges,
31 introduction into evidence information collected and maintained by
32 quality improvement committees regarding such health care provider; (d)
33 in any civil action, disclosure of the fact that staff privileges were
34 terminated or restricted, including the specific restrictions imposed,
35 if any and the reasons for the restrictions; or (e) in any civil
36 action, discovery and introduction into evidence of the patient's
37 medical records required by regulation of the department of health to
38 be made regarding the care and treatment received.

1 ~~((4))~~ (6) Each quality improvement committee shall, on at least
2 a semiannual basis, report to the governing board of the hospital in
3 which the committee is located. The report shall review the quality
4 improvement activities conducted by the committee, and any actions
5 taken as a result of those activities.

6 ~~((5))~~ (7) The department of health shall adopt such rules as are
7 deemed appropriate to effectuate the purposes of this section.

8 ~~((6))~~ (8) The medical quality assurance commission or the board
9 of osteopathic medicine and surgery, as appropriate, may review and
10 audit the records of committee decisions in which a physician's
11 privileges are terminated or restricted. Each hospital shall produce
12 and make accessible to the commission or board the appropriate records
13 and otherwise facilitate the review and audit. Information so gained
14 shall not be subject to the discovery process and confidentiality shall
15 be respected as required by subsection ~~((3))~~ (5) of this section.
16 Failure of a hospital to comply with this subsection is punishable by
17 a civil penalty not to exceed two hundred fifty dollars.

18 ~~((7))~~ (9) The department, the joint commission on accreditation
19 of health care organizations, and any other accrediting organization
20 may review and audit the records of a quality improvement committee or
21 peer review committee in connection with their inspection and review of
22 hospitals. Information so obtained shall not be subject to the
23 discovery process, and confidentiality shall be respected as required
24 by subsection ~~((3))~~ (5) of this section. Each hospital shall produce
25 and make accessible to the department the appropriate records and
26 otherwise facilitate the review and audit.

27 ~~((8))~~ (10) A coordinated quality improvement program may share
28 information and documents, including complaints and incident reports,
29 created specifically for, and collected and maintained by, a quality
30 improvement committee or a peer review committee under RCW 4.24.250
31 with one or more other coordinated quality improvement programs
32 maintained in accordance with this section or RCW 43.70.510, a
33 coordinated quality improvement committee maintained by an ambulatory
34 surgical facility under RCW 70.230.070, a quality assurance committee
35 maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer
36 review committee under RCW 4.24.250, for the improvement of the quality
37 of health care services rendered to patients and the identification and
38 prevention of medical malpractice. The privacy protections of chapter

1 70.02 RCW and the federal health insurance portability and
2 accountability act of 1996 and its implementing regulations apply to
3 the sharing of individually identifiable patient information held by a
4 coordinated quality improvement program. Any rules necessary to
5 implement this section shall meet the requirements of applicable
6 federal and state privacy laws. Information and documents disclosed by
7 one coordinated quality improvement program to another coordinated
8 quality improvement program or a peer review committee under RCW
9 4.24.250 and any information and documents created or maintained as a
10 result of the sharing of information and documents shall not be subject
11 to the discovery process and confidentiality shall be respected as
12 required by subsection (~~(3)~~) (5) of this section, RCW 18.20.390 (6)
13 and (8), 74.42.640 (7) and (9), and 4.24.250.

14 (~~(9)~~) (11) A hospital that operates a nursing home as defined in
15 RCW 18.51.010 may conduct quality improvement activities for both the
16 hospital and the nursing home through a quality improvement committee
17 under this section, and such activities shall be subject to the
18 provisions of subsections (2) through (~~(8)~~) (10) of this section.

19 (~~(10)~~) (12) Violation of this section shall not be considered
20 negligence per se."

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By Committee on Law & Justice

NOT CONSIDERED

21 On page 1, line 2 of the title, after "bodies;" strike the
22 remainder of the title and insert "amending RCW 7.71.030; and
23 reenacting and amending RCW 70.41.200."

EFFECT: Nothing in the subsection concerning hospital quality
improvement programs or processes is intended, and should not be
construed or applied, to limit the protections pursuant to conscience

and religion clauses, which include statutes relating to abortion, health insurance, the Natural Death Act, and the Death with Dignity Act.

Every hospital must establish a written definition for disruptive behavior. The hospital's definition of disruptive behavior may not include a person who exercises rights of conscience or religion, in good faith provides or is perceived as providing information relating to Medicaid fraud, or is a whistleblower. Whistleblower is defined as a health care provider or medical staff member who has in fact or is believed to have in good faith reported a reasonable belief that: Another provider or staff member provided improper treatment; a hospital employee provided improper care, hygiene, instruction, patient-related activity, or billing or accounting activity; any hospital rule, bylaw, practice, policy, or standard warrants review or revision.

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