

HOUSE BILL REPORT

HB 1436

As Passed House:
March 5, 2013

Title: An act relating to privileging and professional conduct reviews by health care professional review bodies.

Brief Description: Concerning privileging and professional conduct reviews by health care professional review bodies.

Sponsors: Representatives Rodne, Pedersen, Shea and Jinkins.

Brief History:

Committee Activity:

Judiciary: 2/5/13, 2/12/13 [DP].

Floor Activity:

Passed House: 3/5/13, 97-0.

Brief Summary of Bill

- Removes language in an immunity/exclusive remedy provision of the Health Care Review Act that limits its application to actions taken by a peer review body that are not related to competence or conduct.
- Revises statutory requirements imposed on hospital quality improvement programs with respect to medical staff privileges sanction procedure and periodic reviews of credentials and competency.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Cece Clynch (786-7195).

Background:

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

The federal Health Care Quality Improvement Act of 1986 (HCQIA) was enacted with the stated purpose of encouraging effective professional peer review to improve the quality of medical care and reduce the cost of medical malpractice lawsuits. The HCQIA provides immunity from damages for actions taken by a professional peer review body related to the competence and conduct of a health care provider. This immunity extends to the professional peer review body, any person acting as a member or staff to the body, any person under contract with the body, and any person who participates with or assists the body with respect to the action. In order to qualify for such immunity, the actions must relate to competence or conduct and have been taken:

- in the reasonable belief that the action was in the furtherance of quality health care;
- after a reasonable effort to obtain the facts of the matter;
- after adequate notice and hearing procedures; and
- in the reasonable belief that the action was warranted by the known facts.

The state Health Care Peer Review Act (HCPRA) includes two separate provisions which provide immunity/limit remedies with respect to actions taken by a professional peer review body:

1. The first incorporates, by reference to the federal law, the provisions of the federal HCQIA that provide immunity from damages for actions taken by a professional peer review body related to the competence and conduct of a health care provider.
2. The second provides an exclusive remedy for any action taken by a professional peer review body that is found to be based on matters *not* related to the competence or professional conduct of a health care provider. The remedies available in these actions are limited to injunctive relief and damages are allowed only for lost earnings directly attributable to the action taken by the peer review body and incurred between the date of such action and the date such action is functionally reversed by the peer review body.

Hospitals must maintain quality improvement programs to improve the quality of health care services and prevent medical malpractice. A hospital's program must include:

- a medical staff privileges sanction procedure through which credentials, physical and mental capacity and competence are periodically reviewed as part of an evaluation of staff privileges;
- periodic review of employee credentials and competency in the delivery of health care services;
- a procedure for prompt resolution of patient grievances;
- collection of information relating to negative outcomes, patient grievances, settlements, awards, and safety improvement activities;
- maintenance of relevant and appropriate information concerning individual physicians with the physician's personnel or credential file;
- quality improvement education programs; and
- policies to ensure compliance with reporting requirements.

Summary of Bill:

The HCPRA is amended to provide that if the limitation on damages incorporated by reference to the federal law, and found in the first section referenced above, does not apply, then the second provision provides the exclusive remedies in any lawsuit by a health care

provider for action taken by a peer review body. Language that limited operation of the second section to only those peer review actions that were not related to the competence or professional conduct of a health care provider is stricken.

Statutory requirements imposed on hospital quality improvement programs with respect to medical staff privileges sanction procedures and periodic reviews of credentials and competency are revised to specify that such programs:

- must employ a process for initial and periodic review;
- must be conducted in accordance with medical staff bylaws and applicable rules, regulations or policies; and
- are to review professional conduct, specifically including disruptive behavior.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The peer review process is integral to quality medical care, and the immunity provision is critical to incenting participation in the peer review process. This legislation represents a compromise between the hospitals and the Washington State Medical Association (WSMA), both of which have worked on this for a long time. A recent case identified a situation in which there was no immunity. This legislation protects the peer review process. Other provisions included in this legislation require the development and adherence to bylaws during the peer review process. Peer review protects patients and elevates care. There is a need to follow the process and adhere to the bylaws. Physicians who participate on a peer review body do so voluntarily. There is a need for the participation of a variety of different specialists given that every case is different. Physicians just won't participate if they are not immune or think that they might lose their home as a result of a suit. This allows physicians to be honest and unbiased during the process. The aim of peer review processes is not to revoke privileges but to identify issues and provide necessary training.

(Opposed) Good peer review is good but bad peer review is bad. For a physician, the tarnished reputation that can result is devastating. This legislation has come about because of the Smigaj case that arose in Yakima. Dr. Smigaj is the first physician to overcome the immunity provisions. This physician lost hospital privileges for 11 days following a peer review process. She sued the hospital and two hospital administrators. The superior court initially granted summary judgment to the defendants and awarded \$530,000 in attorney fees and costs. The physician appealed, and ultimately won, but in the meantime ended up having to file for bankruptcy. The Court of Appeals reversed because the process had not been fair. Physicians and the public need fair, professional standards for the peer review process. This bill does not provide that fairness. The WSMA represents physicians who sit on peer review bodies as well as physicians that are the subjects of peer review processes. This bill only addresses the interests of physicians sitting in judgment. Physicians who sit on peer review

bodies will not be personally liable because they will be insured by the hospital, as they should be.

Persons Testifying: (In support) Representative Rodne, prime sponsor; and Katie Kolan and Kathryn Beattie, Washington State Hospital Association.

(Opposed) Kay Funk, Private Practicing Physicians.

Persons Signed In To Testify But Not Testifying: None.