

SENATE BILL REPORT

HB 1436

As Reported by Senate Committee On:
Law & Justice, April 2, 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: Passed House: 3/05/13, 97-0.

Committee Activity: Law & Justice: 3/22/13, 4/02/13 [DPA, w/oRec].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Padden, Chair; Kline, Ranking Member; Darneille, Kohl-Welles and Pearson.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach.

Staff: Jessica Stevenson (786-7465)

Background: The state Health Care Peer Review Act (HCPRA) incorporates provisions of the federal Health Care Quality Improvement Act of 1986 (HCQIA). HCQIA was enacted for encouraging effective professional peer review to improve the quality of medical care and to reduce the cost of medical malpractice lawsuits. HCQIA aimed to accomplish these goals by providing incentives and protection for health care providers and physicians engaging in professional peer review processes.

HCQIA provides immunity from damages, except in actions relating to civil rights, for professional peer review bodies and persons serving on or assisting professional peer review bodies for actions taken by the body if those actions meet certain standards. In order to qualify for immunity, the professional peer review body action must be taken in the reasonable belief that the action was in furtherance of quality health care; after a reasonable

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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.

HCPRA incorporates the provisions of HCQIA that provide immunity from damages. Additionally, HCPRA provides the exclusive remedy for actions taken by professional peer review bodies that are found to be based on matters not related to the competence or professional conduct of the health care provider. These actions are limited to appropriate injunctive relief and damages for lost earnings directly attributable to the professional peer review body's action.

Every hospital must maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. At a minimum, the program must include a quality-improvement committee, a medical staff privileges sanction procedure, periodic review of qualifications of other health care providers who are employed or associated with the hospital, a procedure for resolution of patient grievances, collection of information about the hospital's negative health care outcomes, maintenance of information about the entire program, education programs about quality improvement, and policies to ensure compliance with reporting requirements.

Summary of Bill (Recommended Amendments): If immunity from damages under HCQIA and HCPRA does not apply, the only remedies available in a lawsuit by a health care provider for any action taken by a professional peer review body of health care providers are appropriate injunctive relief and damages for lost earnings directly attributable to the action taken by the professional review body. It is no longer required that a lawsuit by a health care provider for any action be based on matters not related to the competence or professional conduct of a health care provider to be eligible for the available remedies.

A hospital's coordinated quality improvement program must establish processes for a medical staff privileges sanction procedure and for review of other health care providers who are employed or associated with the hospital. The medical staff privileges sanction procedure must be conducted substantially in accordance with medical staff bylaws and applicable rules, regulations, or policies of medical staff. The credentials, physical and mental capacity, professional conduct including disruptive behavior, and competence in delivering health care services are reviewed initially and periodically as part of the staff privileges evaluation.

Additionally, the credentials, physical and mental capacity, professional conduct including disruptive behavior, and competence in delivering health care services of all other health care providers who are employed or associated with the hospital must be reviewed initially and periodically.

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.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments): 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.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on House Bill: PRO: The Washington State Medical Association has historically supported limitations on remedies. Not limiting remedies could result in million of dollars of damages, which is happening in other states. Some people may not want to participate in peer review because of liability. The bill makes compliance with staff sanction procedures mandatory as a condition of licensing for hospitals. There are instances when physicians were unfairly targeted by disruptive behavior and these have resulted in sanctions. Hospitals and physicians recognize the importance in following procedures to ensure fairness and due process. The provisions in the bill are necessary to ensure adherence to bylaws, rules, and regulations. It is important to protect physicians from organic and undefined processes of review. The bill will elevate the level of care for everyone. Since volunteers conduct peer review, it is important to protect them from liability and to encourage a diverse group of physicians. Peer review is an on-going process that creates a culture of patient safety within organizations. Peer review works because it allows physicians to speak honestly and in an unbiased manner. Peer review is not always adverse, since peer review may make organizations increase training and education for providers. The goal is to ensure that the process is fair for everyone and that there is close communication

between everyone. Effective peer review is about patient safety and improving quality. Due process is very important to hospitals and the hospitals hold themselves to high standards.

CON: Although the underlying concept is supported, a concern is the lack of a definition for disruptive behavior. The striking amendment addresses some concerns, although whistleblowers should be added also. Some physicians were targeted under disruptive behavior because of medical confidentiality. Peer review exists in silence since no one outside the room knows what goes on, including patients and families. Anything that relates to disruptive behavior is already covered since it was subject to the confidentiality provision.

Persons Testifying: PRO: Katie Kolan, WA State Medical Assn.; Kathryn Beattie, WA State Hospital Assn.

CON: Larry Shannon, WA State Assn. for Justice.