S-0832.3

SENATE BILL 5666

State of Washington 63rd Legislature 2013 Regular Session

By Senators Dammeier and Schlicher

Read first time 02/07/13. Referred to Committee on Health Care .

AN ACT Relating to clarifying the law regarding disclosing health care quality improvement, quality assurance, peer review, and credentialing information; amending RCW 18.20.390, 43.70.510, 70.41.230, 70.44.062, 70.56.050, 70.230.080, 70.230.140, and 74.42.640; reenacting and amending RCW 4.24.250, 70.41.200, and 42.56.360; and creating a new section.

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

NEW SECTION. **Sec. 1.** The legislature finds that:

(1) Coordinated quality improvement programs and committees, quality assurance committees, and peer review committees, as described in RCW 4.24.250, 18.20.390, 43.70.510, 70.41.200, 70.230.080, and 74.42.640, improve the quality of health care services and not only identify and prevent malpractice, but also identify preventable errors even in the absence of negligence;

(2) Critical self-examination is necessary for coordinated quality improvement programs and committees, quality assurance committees, and peer review committees to be effective and is achieved by health care providers and staff feeling secure in participating in all aspects of

a quality improvement program or peer review process without fear of the information being used in civil proceedings against them or the entities with which they are affiliated;

(3) In order to encourage and facilitate an effective quality improvement process, it is necessary to ensure that so long as information and records created specifically for or generated by such programs and committees are used solely for quality improvement and peer review purposes, such information and records will not be subject to review, discovery, or use in civil litigation;

(4) Information and records that exist independent of a quality improvement, quality assurance, or peer review process will be subject to discovery and use, as appropriate, in civil litigation;

(5) This act is intended to clarify limits on discovery and use of quality improvement and peer review information and documents in civil litigation and reverse the results of *Lowy v. PeaceHealth*, 174 Wn.2d 769, 280 P.3d 1078 (2012) and *Fellows v. Moynihan*, 285 P.3d 864 (2012).

Sec. 2. RCW 4.24.250 and 2005 c 291 s 1 and 2005 c 33 s 5 are each reenacted and amended to read as follows:

(1) Any health care provider as defined in RCW 7.70.020 (1) and (2) who, in good faith, files charges or presents evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before a regularly constituted review committee or board of a professional society ((~~or hospital~~)) whose duty it is to evaluate the competency and qualifications of members of the profession, including limiting the extent of practice of such person in a hospital or similar institution, ((~~or before a regularly constituted committee or board of a hospital whose duty it is to review and evaluate the quality of patient care and~~)) is immune from civil action for damages arising out of such activities. Any person or entity who, in good faith, shares any information or documents with one or more other committees, boards, or programs under subsection (2) of this section((~~,~~)) shall be immune from civil action for damages arising out of such activities. For the purposes of this section, filing charges, presenting evidence, or sharing information or documents is presumed to be in good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the charges filed, evidence presented, or information shared was knowingly false or

deliberately misleading. ((~~The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board, are not subject to review or disclosure, or subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees or boards involving the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2).~~))

(2) ((~~A coordinated quality improvement program maintained in accordance with RCW 43.70.510 or 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or~~)) (a) Information and documents, including complaints and incident reports, created, collected, or maintained specifically for, by, or at the direction of a committee or board under subsection (1) of this section, including for purposes of granting or reviewing a health care providers' credentials or privileges, are: (i) Exempt from disclosure under chapter 42.56 RCW; and (ii) absolutely privileged and immune from subpoena, discovery, or direct or indirect use in any civil action except as provided in (b) of this subsection. No person who was in attendance at a meeting of a committee or board functioning under subsection (1) of this section or who participated in the creation, collection, or maintenance of information or documents specifically for such a committee or board may be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically by, for, or at the direction of such committee or board.

(b) This subsection does not preclude: (i) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (ii) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (iii) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by committees or boards regarding such health care provider; (iv) in any civil action, disclosure of the fact that staff privileges were

terminated or restricted, including the specific restrictions imposed, if any; or (v) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(3) Any committee or board under subsection (1) of this section may share information and documents((~~, including complaints and incident reports, created specifically for, and collected and maintained by, a coordinated quality improvement committee or committees or boards under subsection (1) of this section,~~)) protected under subsection (2) of this section with one or more other ((~~coordinated quality improvement programs or~~)) committees or boards under subsection (1) of this section, quality improvement programs or committees maintained under RCW 43.70.510, 70.41.200, or 70.230.080, or quality assurance committees maintained under RCW 18.20.390 or 74.42.640, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice, including for the purposes of granting or reviewing health care providers' credentials or privileges. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by ((~~one coordinated quality improvement program or~~)) a committee or board under subsection (1) of this section to another committee or board, coordinated quality improvement program, or a quality assurance committee ((~~or board under subsection (1) of this section~~)) and any information and documents created or maintained as a result of the sharing of information and documents shall ((~~not~~)) be subject to the ((~~discovery process and confidentiality shall be respected as required by~~)) provisions of subsections (1) and (2) of this section ((~~and by RCW 43.70.510(4), 70.41.200(3), 18.20.390 (6) and (8), and 74.42.640 (7) and (9)~~)).

Sec. 3. RCW 18.20.390 and 2012 c 10 s 28 are each amended to read as follows:

(1) To ensure the proper delivery of services and the maintenance

and improvement in quality of care through self-review, any assisted living facility licensed under this chapter may maintain a quality assurance committee that, at a minimum, includes:

(a) A licensed registered nurse under chapter 18.79 RCW;

(b) The administrator; and

(c) Three other members from the staff of the assisted living facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombudsman program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created, collected, or maintained for ((~~and collected and maintained~~)), by, or at the direction of the committee.

(4) If the assisted living facility refuses to release records or reports that would otherwise be protected under this section, the department may then request only that information that is necessary to determine whether the assisted living facility has a quality assurance committee and to determine that it is operating in compliance with this section. However, if the assisted living facility offers the department documents generated by, ((~~or~~)) for, or at the direction of the quality assurance committee as evidence of compliance with assisted living facility requirements, the documents are protected as quality assurance committee documents under subsection((~~s~~)) (6) ((~~and (8)~~)) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

(6)(a) Information and documents, including the analysis of complaints and incident reports, created, collected, or maintained specifically for, ((~~and collected and maintained~~)) by, or at the direction of a quality assurance committee are ((~~not subject to discovery or introduction into evidence in any civil action, and~~)): (i) Exempt from disclosure under chapter 42.56 RCW; and (ii) absolutely privileged and immune from subpoena, discovery, or direct or indirect use in any civil action except as provided in (b) of this subsection. No person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for, by, or at the direction of the committee shall be permitted or required to testify as to the content of such proceedings or the documents and information prepared specifically for the committee.

(b) This subsection does not preclude:

((~~(a)~~)) (i) In any civil action, the discovery of the identity of persons involved in the care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity;

((~~(b)~~)) (ii) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of their participation in the quality assurance committee activities.

(7) A quality assurance committee ((~~under subsection (1) of~~)) established pursuant to this section((~~, RCW 70.41.200, 74.42.640, 4.24.250, or 43.70.510~~)) may share information and documents((~~, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee,~~)) protected under subsection (6) of this section with one or more other quality assurance committees created under ((~~subsection (1) of~~)) this section, ((~~RCW 70.41.200, 74.42.640, 4.24.250, or 43.70.510~~)) quality improvement programs or committees maintained under RCW 43.70.510, 70.41.200, or 70.230.080, quality assurance committees maintained under RCW 74.42.640, or peer review committees or boards under RCW 4.24.250 for the improvement of the quality of care and services rendered to

assisted living facility residents. Information and documents disclosed by ((~~one~~)) a quality assurance committee to another quality assurance committee, quality improvement program or committee, or a peer review committee or board and any information and documents created or maintained as a result of the sharing of information and documents shall ((~~not~~)) be subject to ((~~the discovery process and confidentiality shall be respected as required by~~)) subsection((~~s~~)) (6) ((~~and (8)~~)) of this section((~~, RCW 43.70.510(4), 70.41.200(3), 4.24.250(1), and 74.42.640 (7) and (9)~~)). The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

(8) ((~~Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter 42.56 RCW.~~

~~(9)~~)) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

Sec. 4. RCW 43.70.510 and 2007 c 273 s 21 are each amended to read as follows:

(1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved pursuant to chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may 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 as set forth in RCW 70.41.200.

(b) All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof, unless an alternative quality improvement program substantially equivalent to RCW 70.41.200(1)(a) is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the privilege and discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.56.360(1)(c) and subsection ((~~(5)~~)) (4) of this section shall apply. In reviewing plans submitted by licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under RCW 42.56.360(1)(c) and the discovery and privilege limitations of this section are applied only to information and documents ((~~related~~)) created, collected, or maintained specifically ((~~to~~)) for, by, or at the direction of the quality improvement ((~~activities undertaken~~)) program established by the licensed entity.

(2) Health care provider groups of five or more providers may 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 as set forth in RCW 70.41.200. For purposes of this section, a health care provider group may be a consortium of providers consisting of five or more providers in total. All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the health care provider group. All such programs must be approved by the department before the privilege and discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.56.360(1)(c) and subsection ((~~(5)~~)) (4) of this section shall apply.

(3) Any person or entity who, in substantial good faith, provides information or documents to further the purposes of the quality improvement and medical malpractice prevention program or who, in

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

(4)(a) Information and documents, including complaints and incident reports, created, collected, or maintained specifically for, ((~~and collected and maintained~~)) by, or at the direction of a quality improvement ((~~committee are not subject to review or disclosure,~~)) program, including for purposes of granting or reviewing health care providers' credentials or privileges, are: (i) Exempt from disclosure under chapter 42.56 RCW; and (ii) absolutely privileged and immune from subpoena, discovery, or direct or indirect use in any civil action, except as provided in (b) of this ((~~section, or discovery or introduction into evidence in any civil action, and~~)) subsection. No person who was in attendance at a meeting of ((~~such~~)) a committee that is part of such a program or who participated in the creation, collection, or maintenance of information or documents specifically for ((~~the~~)) such a program or committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for ((~~the~~)), by, or at the direction of such program or committee.

(b) This subsection does not preclude: ((~~(a)~~)) (i) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; ((~~(b)~~)) (ii) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such

proceedings; ((~~(c)~~)) (iii) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement programs or committees regarding such health care provider; ((~~(d)~~)) (iv) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement programs or committees of the subject entity, which may be under terms of a protective order as specified by the court; ((~~(e)~~)) (v) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any ((~~and the reasons for the restrictions~~)); or ((~~(f)~~)) (vi) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

(5) ((~~Information and documents created specifically for, and collected and maintained by, a quality improvement committee are exempt from disclosure under chapter 42.56 RCW.~~

~~(6)~~)) A coordinated quality improvement program or committee established pursuant to this section may share information and documents((~~, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250~~)) protected under subsection (4) of this section with one or more other coordinated quality improvement programs or committees maintained in accordance with this section ((~~or with~~)), quality improvement programs or committees maintained under RCW 70.41.200, ((~~a~~)) coordinated quality improvement programs or committees maintained by an ambulatory surgical facility under RCW ((~~70.230.070~~)) 70.230.080, ((~~a~~)) quality assurance committees maintained in accordance with RCW 18.20.390 or 74.42.640, or ((~~a~~)) peer review committees or boards under RCW 4.24.250((~~,~~)) for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice, including for the purposes of granting or reviewing health care providers' credentials or privileges. The privacy protections of chapter 70.02

RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by ((~~one~~)) a coordinated quality improvement program or committee established under this section to another coordinated quality improvement program, quality improvement committee, quality assurance committee, or ((~~a~~)) peer review committee ((~~under RCW 4.24.250~~)) or board and any information and documents created or maintained as a result of the sharing of information and documents shall ((~~not~~)) be subject to the ((~~discovery process and confidentiality shall be respected as required by~~)) provisions of subsections (3) and (4) of this section ((~~and RCW 4.24.250~~)).

((~~(7)~~)) (6) The department of health shall adopt rules as are necessary to implement this section.

Sec. 5. RCW 70.41.200 and 2007 c 273 s 22 and 2007 c 261 s 3 are each reenacted and amended to read as follows:

(1) Every hospital shall 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. The program shall include at least the following:

(a) The establishment of ((~~a~~)) one or more quality improvement committees with the responsibility to oversee and coordinate review of the services rendered in the hospital and the qualifications of the health care providers rendering or seeking to render those services, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. ((~~The~~)) Such committees shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A process, including a medical staff privileges sanction procedure which must be conducted substantially in accordance with medical staff bylaws and applicable rules, regulations, or policies of the medical staff, through which credentials, physical and mental

capacity, professional conduct including disruptive behavior, and competence in delivering health care services are initially and periodically thereafter reviewed as part of an evaluation of medical staff privileges;

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

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

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

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians or other members of the medical staff within the ((~~physician's~~)) health care provider's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, infection control, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

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

(2) Any person or entity who, in substantial good faith, provides information or documents to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on ((~~the~~)) a quality improvement committee or as part of a quality improvement program shall not be subject to an action for civil damages or other relief as a result of

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

(3)(a) Information and documents, including complaints and incident reports, created, collected, or maintained specifically for, ((~~and collected and maintained~~)) by, or at the direction of a quality improvement ((~~committee are not subject to review or disclosure~~)) program, including for purposes of granting or reviewing health care providers' credentials or privileges, are: (i) Exempt from disclosure under chapter 42.56 RCW; and (ii) absolutely privileged and immune from subpoena, discovery, or direct or indirect use in any civil action, except as provided in (b) of this subsection((~~, or discovery or introduction into evidence in any civil action, and~~)). No person who was in attendance at a meeting of ((~~such~~)) a committee that is part of such a program or who participated in the creation, collection, or maintenance of information or documents specifically for ((~~the~~)) such a program or committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for ((~~the~~)), by, or at the direction of such program or committee.

(b) This subsection does not preclude: ((~~(a)~~)) (i) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; ((~~(b)~~)) (ii) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; ((~~(c)~~)) (iii) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement programs or committees

regarding such health care provider; ((~~(d)~~)) (iv) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any ((~~and the reasons for the restrictions~~)); or ((~~(e)~~)) (v) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

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

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

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

(7) The department, the joint commission ((~~on accreditation of health care organizations~~)), and any other accrediting organization may review and audit the records of a quality improvement ((~~committee~~)) program or peer review committee in connection with their inspection and review of hospitals. ((~~Information so obtained~~)) The records reviewed or audited, and information derived therefrom, shall not be subject to the discovery process((~~,~~)) and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program or committee established pursuant to this section may share information and

documents((~~, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250~~)) protected under subsection (3) of this section with one or more other coordinated quality improvement programs maintained in accordance with this section ((~~or~~)), quality improvement programs or committees maintained under RCW 43.70.510, ((~~a~~)) coordinated quality improvement programs or committees maintained by an ambulatory surgical facility under RCW ((~~70.230.070~~)) 70.230.080, ((~~a~~)) quality assurance committees maintained in accordance with RCW 18.20.390 or 74.42.640, or ((~~a~~)) peer review committees or boards under RCW 4.24.250((~~,~~)) for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice, including for the purposes of granting and reviewing providers' credentials or privileges. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program, quality improvement committee, quality assurance committee, or ((~~a~~)) peer review committee ((~~under RCW 4.24.250~~)) or board and any information and documents created or maintained as a result of the sharing of information and documents shall ((~~not~~)) be subject to the ((~~discovery process and confidentiality shall be respected as required by~~)) provisions of subsections (2) and (3) of this section((~~, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250~~)).

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

(10) Violation of this section shall not be considered negligence per se.

Sec. 6. RCW 70.41.230 and 1994 sp.s. c 9 s 744 are each amended to read as follows:

(1) Prior to granting or renewing clinical privileges or association of any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from the physician and the physician shall provide the following information:

(a) The name of any hospital or facility with or at which the physician had or has any association, employment, privileges, or practice <u>during the prior five years</u>;

(b) If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the physician deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the physician deems appropriate;

(e) A waiver by the physician of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subsection; and

(f) A verification by the physician that the information provided by the physician is accurate and complete.

(2) Prior to granting privileges or association to any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from any hospital with or at which the physician had or has privileges, was associated, or was employed, <u>during the preceding five years,</u> the following information concerning the physician:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals pursuant to RCW 18.71.0195.

(3) The medical quality assurance commission shall be advised within thirty days of the name of any physician denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital or facility that receives a request for information from another hospital or facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital or facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital or facility. A hospital, facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5)(a) Information and documents, including complaints and incident reports, created, collected, or maintained specifically for, ((~~and collected, and maintained~~)) by, or at the direction of a quality improvement ((~~committee are not subject to discovery or introduction into evidence in any civil action, and~~)) program, including for purposes of granting or reviewing a health care providers' credentials or privileges, are: (i) Exempt from disclosure under chapter 42.56 RCW; and (ii) absolutely privileged and immune from subpoena, discovery, or direct or indirect use in any civil action, except as provided in (b) of this subsection. No person who was in attendance at a meeting of ((~~such~~)) a committee that is part of such a program or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for ((~~the~~)), by, or at the direction of such program or committee.

(b) This subsection does not preclude: ((~~(a)~~)) (i) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; ((~~(b)~~)) (ii) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; ((~~(c)~~)) (iii) in any civil action by a health care provider regarding the restriction or revocation of that individual's

clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement programs or committees regarding such health care provider; ((~~(d)~~)) (iv) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any ((~~and the reasons for the restrictions~~)); or ((~~(e)~~)) (v) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(6) Hospitals shall be granted access to information held by the medical quality assurance commission and the board of osteopathic medicine and surgery pertinent to decisions of the hospital regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se.

Sec. 7. RCW 70.44.062 and 2005 c 169 s 1 are each amended to read as follows:

(1) All meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider as that term is defined in RCW 7.70.020, if such other providers at the discretion of the district's commissioners are considered for such privileges, shall be confidential and may be conducted in executive session: PROVIDED, That the final action of the board as to the denial, revocation, or restriction of clinical or staff privileges of a physician or other health care provider as defined in RCW 7.70.020 shall be done in public session.

(2) All meetings, proceedings, and deliberations of a quality improvement program or committee established under RCW ((~~4.24.250,~~)) 43.70.510((~~,~~)) or 70.41.200 and all meetings, proceedings, and deliberations of the board of commissioners, or its staff or agents, to review the report or the activities of a quality improvement program or committee established under RCW ((~~4.24.250,~~)) 43.70.510((~~,~~)) or 70.41.200 may, at the discretion of the quality improvement program or committee, or the board of commissioners, be confidential and may be conducted in executive session. Any review conducted by the board of

commissioners ((~~or~~)), quality improvement program or committee, or their staffs or agents((~~,~~)) shall be subject to the same protections, limitations, and exemptions that apply to quality improvement program or committee activities under RCW ((~~4.24.240, 4.24.250,~~)) 43.70.510((~~,~~)) and 70.41.200. However, any final action of the board of commissioners on the report of the quality improvement program or committee shall be done in public session.

Sec. 8. RCW 70.56.050 and 2008 c 136 s 3 are each amended to read as follows:

(1)(a) When notification of an adverse event under RCW 70.56.020(2)(a) or of an incident under RCW 70.56.040(5), or a report regarding an adverse event under RCW 70.56.020(2)(b) is made by or through a coordinated quality improvement program or committee under RCW 43.70.510 or 70.41.200, ((~~or by a peer review committee under RCW 4.24.250,~~)) information and documents, including complaints and incident reports, created, collected, or maintained specifically for ((~~and collected and maintained~~)), by, or at the direction of a quality improvement program or committee for the purpose of preparing a notification of an adverse event or incident or a report regarding an adverse event, the report itself, and the notification of an incident((~~,~~)) shall be subject to the confidentiality protections of those laws and RCW 42.56.360(1)(c).

(b) The notification of an adverse event under RCW 70.56.020(2)(a)((~~,~~)) shall be subject to public disclosure and not exempt from disclosure under chapter 42.56 RCW. Any public disclosure of an adverse event notification must include any contextual information the medical facility chose to provide under RCW 70.56.020(2)(a).

(2)(a) When notification of an adverse event under RCW 70.56.020(2)(a) or of an incident under RCW 70.56.040(5), or a report regarding an adverse event under RCW 70.56.020(2)(b), made by a health care worker uses information and documents, including complaints and incident reports, created, collected, or maintained specifically for ((~~and collected and maintained~~)), by, or at the direction of a quality improvement program or committee under RCW 43.70.510 or 70.41.200 ((~~or a peer review committee under RCW 4.24.250~~)), a notification of an incident, the report itself, and the information or documents used for

the purpose of preparing notifications or the report((,)) shall be subject to the confidentiality protections of those laws and RCW 42.56.360(1)(c).

(b) The notification of an adverse event under RCW 70.56.020(2)(a) shall be subject to public disclosure and not exempt from disclosure under chapter 42.56 RCW. Any public disclosure of an adverse event notification must include any contextual information the medical facility chose to provide under RCW 70.56.020(2)(a).

Sec. 9. RCW 70.230.080 and 2007 c 273 s 9 are each amended to read as follows:

(1) Every ambulatory surgical facility shall 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. The program shall include at least the following:

(a) The establishment of ((~~a~~)) one or more quality improvement committees with the responsibility to oversee and coordinate review of the services rendered in the ambulatory surgical facility and the qualifications of health care providers rendering or seeking to render those services, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. ((~~The~~)) Such committees shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise the policies and procedures of the ambulatory surgical facility;

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

(c) ((~~The~~)) A process for initial and periodic review of the credentials, physical and mental capacity, professional conduct

including disruptive behavior, and competence in delivering health care services of all ((~~persons~~)) other health care providers who are employed or associated with the ambulatory surgical facility;

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

(e) The maintenance and continuous collection of information concerning the ambulatory surgical facility's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the ambulatory surgical facility for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual practitioners within the practitioner's personnel or credential file maintained by the ambulatory surgical facility;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

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

(2) Any person or entity who, in substantial good faith, provides information or documents to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on ((~~the~~)) a quality improvement committee as part of a quality improvement program is not subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, providing or sharing information or documents is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence

that the information or documents provided or shared ((~~was~~)) were knowingly false or deliberately misleading.

(3)(a) Information and documents, including complaints and incident reports, created, collected, or maintained specifically for, ((~~and collected and maintained~~)) by, or at the direction of a quality improvement ((~~committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and~~)) program, including for purposes of granting or reviewing health care providers' credentials or privileges, are: (i) Exempt from disclosure under chapter 42.56 RCW; and (ii) absolutely privileged and immune from subpoena, discovery, or direct or indirect use in any civil action, except as provided in (b) of this subsection. No person who was in attendance at a meeting of ((~~such~~)) a committee that is part of such a program or who participated in the creation, collection, or maintenance of information or documents specifically for ((~~the~~)) such a program or committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for, by, or at the direction of the committee.

(b) This subsection does not preclude: ((~~(a)~~)) (i) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; ((~~(b)~~)) (ii) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; ((~~(c)~~)) (iii) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence of information collected and maintained by quality improvement programs or committees regarding such health care provider; ((~~(d)~~)) (iv) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any((~~, and the reasons for the restrictions~~)); or ((~~(e)~~)) (v) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(4) ((~~Each~~)) The quality improvement program or a committee thereof shall, on at least a semiannual basis, report to the management of the ambulatory surgical facility, as identified in the facility's application, in which the ((~~committee~~)) program is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

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

(6) The medical quality assurance commission, the board of osteopathic medicine and surgery, or the podiatric medical board, as appropriate, may review and audit the records of ((~~committee~~)) facility decisions in which a practitioner's privileges are terminated or restricted. Each ambulatory surgical facility shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. ((~~Information so gained~~)) The records reviewed or audited, and information derived therefrom, is not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of an ambulatory surgical facility to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department and any accrediting organization may review and audit the records of a quality improvement ((~~committee~~)) program or peer review committee in connection with their inspection and review of the ambulatory surgical facility. ((~~Information so obtained~~)) The records reviewed or audited, and information derived therefrom, is not subject to the discovery process((~~,~~)) and confidentiality shall be respected as required by subsection (3) of this section. Each ambulatory surgical facility shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program or committee established pursuant to this section may share information and documents((~~, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250~~)) protected under subsection (3) of this section with one or more other coordinated quality improvement programs maintained in accordance with this section ((~~or~~)), quality improvement programs or committees

maintained under RCW 43.70.510 or 70.41.200, ((~~a~~)) quality assurance committees maintained in accordance with RCW 18.20.390 or 74.42.640, or ((~~a~~)) peer review committees or boards under RCW 4.24.250((~~,~~)) for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice, including for the purposes of granting and reviewing providers' credentials or privileges. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by ((~~one~~)) a coordinated quality improvement program to another coordinated quality improvement program, quality improvement committee, quality assurance committee, or ((~~a~~)) peer review committee ((~~under RCW 4.24.250~~)) or board and any information and documents created or maintained as a result of the sharing of information and documents are ((~~not~~)) subject to the ((~~discovery process and confidentiality shall be respected as required by~~)) provisions of subsections (2) and (3) of this section((~~, RCW 18.20.390 (6) and (8), 70.41.200(3), 74.42.640 (7) and (9), and 4.24.250~~)).

(9) An ambulatory surgical facility that participates in a coordinated quality improvement program under RCW 43.70.510 shall be deemed to have met the requirements of this section.

(10) Violation of this section shall not be considered negligence per se.

Sec. 10. RCW 70.230.140 and 2007 c 273 s 15 are each amended to read as follows:

(1) Prior to granting or renewing clinical privileges or association of any practitioner or hiring a practitioner, an ambulatory surgical facility approved pursuant to this chapter shall request from the practitioner and the practitioner shall provide the following information:

(a) The name of any hospital, ambulatory surgical facility, or other facility with or at which the practitioner had or has any

association, employment, privileges, or practice during the prior five years;

(b) If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the practitioner deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the practitioner deems appropriate;

(e) A waiver by the practitioner of any confidentiality provisions concerning the information required to be provided to ambulatory surgical facilities pursuant to this subsection; and

(f) A verification by the practitioner that the information provided by the practitioner is accurate and complete.

(2) Prior to granting privileges or association to any practitioner or hiring a practitioner, an ambulatory surgical facility approved under this chapter shall request from any hospital or ambulatory surgical facility with or at which the practitioner had or has privileges, was associated, or was employed, during the preceding five years, the following information concerning the practitioner:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals or ambulatory surgical facilities pursuant to RCW 18.130.070.

(3) The medical quality assurance commission, board of osteopathic medicine and surgery, podiatric medical board, or dental quality assurance commission, as appropriate, shall be advised within thirty days of the name of any practitioner denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital, ambulatory surgical facility, or other facility that receives a request for information from another hospital,

ambulatory surgical facility, or other facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital, ambulatory surgical facility, or other facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital, ambulatory surgical facility, or facility. A hospital, ambulatory surgical facility, other facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5)(a) Information and documents, including complaints and incident reports, created, collected, or maintained specifically for, ((~~and collected and maintained~~)) by, or at the direction of a quality improvement ((~~committee are not subject to discovery or introduction into evidence in any civil action, and~~)) program, including for purposes of granting or reviewing a health care providers' credentials or privileges, are: (i) Exempt from disclosure under chapter 42.56 RCW; and (ii) absolutely privileged and immune from subpoena, discovery, or direct or indirect use in any civil action, except as provided in (b) of this subsection. No person who was in attendance at a meeting of ((~~such~~)) a committee that is part of such a program or who participated in the creation, collection, or maintenance of information or documents specifically for ((~~the~~)) such program or committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for ((~~the~~)), by, or at the direction of such program or committee.

(b) This subsection does not preclude: ((~~(a)~~)) (i) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; ((~~(b)~~)) (ii) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; ((~~(c)~~)) (iii) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement programs or committees

regarding such health care provider; ((~~(d)~~)) (iv) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any((~~, and the reasons for the restrictions~~)); or ((~~(e)~~)) (v) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(6) Ambulatory surgical facilities shall be granted access to information held by the medical quality assurance commission, board of osteopathic medicine and surgery, or podiatric medical board pertinent to decisions of the ambulatory surgical facility regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se.

Sec. 11. RCW 42.56.360 and 2010 c 128 s 3 and 2010 c 52 s 6 are each reenacted and amended to read as follows:

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created, collected, or maintained specifically for, ((~~and collected and maintained~~)) by, or at the direction of a quality improvement program or committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by ((~~a~~)) peer review committees or boards under RCW 4.24.250, including for the purposes of granting or reviewing health care providers credentials or privileges, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, a notification of an incident under RCW 70.56.040(5), and reports regarding adverse events under RCW 70.56.020(2)(b), regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health,

specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1);

(g) Information obtained by the department of health under chapter 70.225 RCW;

(h) Information collected by the department of health under chapter 70.245 RCW except as provided in RCW 70.245.150;

(i) Cardiac and stroke system performance data submitted to national, state, or local data collection systems under RCW 70.168.150(2)(b); and

(j) All documents, including completed forms, received pursuant to a wellness program under RCW 41.04.362, but not statistical reports that do not identify an individual.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

(3)(a) Documents related to infant mortality reviews conducted pursuant to RCW 70.05.170 are exempt from disclosure as provided for in RCW 70.05.170(3).

(b)(i) If an agency provides copies of public records to another agency that are exempt from public disclosure under this subsection (3), those records remain exempt to the same extent the records were exempt in the possession of the originating entity.

(ii) For notice purposes only, agencies providing exempt records under this subsection (3) to other agencies may mark any exempt records as "exempt" so that the receiving agency is aware of the exemption, however whether or not a record is marked exempt does not affect whether the record is actually exempt from disclosure.

Sec. 12. RCW 74.42.640 and 2006 c 209 s 13 are each amended to read as follows:

(1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, each facility may maintain a quality assurance committee that, at a minimum, includes:

(a) The director of nursing services;

(b) A physician designated by the facility; and

(c) Three other members from the staff of the facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombudsman program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created, collected, and maintained for ((~~and collected and maintained~~)), by, or at the direction of the committee.

(4) The department may request only information related to the quality assurance committee that may be necessary to determine whether a facility has a quality assurance committee and that it is operating in compliance with this section.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for imposing sanctions.

(6) If the facility offers the department documents generated by, ((~~or~~)) for, or at the direction of the quality assurance committee as evidence of compliance with nursing facility requirements, the documents are protected as quality assurance committee documents under subsection((~~s~~)) (7) ((~~and (9)~~)) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.

(7)(a) Information and documents, including the analysis of complaints and incident reports, created, collected, or maintained specifically for, ((~~and collected and maintained~~)) by, or at the direction of a quality assurance committee are ((~~not subject to discovery or introduction into evidence in any civil action, and~~)): (i) Exempt from disclosure under chapter 42.56 RCW; and (ii) absolutely privileged and immune from subpoena, discovery, or direct or indirect use in any civil action, except as provided in (b) of this subsection. No person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for, by, or at the direction of the committee.

(b) This subsection does not preclude: ((~~(a)~~)) (i) In any civil action, the discovery of the identity of persons involved in the care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity; and ((~~(b)~~)) (ii) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of their participation in the quality assurance committee activities.

(8) A quality assurance committee established under ((~~subsection (1) of~~)) this section((~~, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510~~)) may share information and documents((~~, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee,~~)) protected under subsection (7) of this section with one or more other quality assurance committees created under subsection (1) of this section, quality

assurance committees maintained under RCW 18.20.390, quality improvement programs or committees maintained under RCW 70.41.200, ((~~4.24.250, or~~)) 43.70.510, or 70.230.080, or peer review committees or boards under RCW 4.24.250 for the improvement of the quality of care and services rendered to nursing facility residents. Information and documents disclosed by ((~~one~~)) a quality assurance committee to another quality assurance committee, quality improvement program or committee, or peer review committee or board and any information and documents created or maintained as a result of the sharing of information and documents shall ((~~not~~)) be subject to the ((~~discovery process and confidentiality shall be respected as required by~~)) provisions of subsection((~~s~~)) (7) ((~~and (9)~~)) of this section((~~, RCW 18.20.390 (6) and (8), 43.70.510(4), 70.41.200(3), and 4.24.250(1)~~)). The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

(9) ((~~Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter 42.56 RCW.~~

~~(10)~~)) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

((~~(11)~~)) (10) A facility operated as part of a hospital licensed under chapter 70.41 RCW may maintain a quality assurance committee in accordance with this section which shall be subject to the provisions of subsections (1) through ((~~(10)~~)) (9) of this section or may conduct quality improvement activities for the facility through a quality improvement program or committee under RCW 70.41.200 which shall be subject to the provisions of RCW 70.41.200(9).

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