
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 .

1 AN ACT Relating to clarifying the law regarding disclosing health
2 care quality improvement, quality assurance, peer review, and
3 credentialing information; amending RCW 18.20.390, 43.70.510,
4 70.41.230, 70.44.062, 70.56.050, 70.230.080, 70.230.140, and 74.42.640;
5 reenacting and amending RCW 4.24.250, 70.41.200, and 42.56.360; and
6 creating a new section.

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

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

9 (1) Coordinated quality improvement programs and committees,
10 quality assurance committees, and peer review committees, as described
11 in RCW 4.24.250, 18.20.390, 43.70.510, 70.41.200, 70.230.080, and
12 74.42.640, improve the quality of health care services and not only
13 identify and prevent malpractice, but also identify preventable errors
14 even in the absence of negligence;

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

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

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

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

13 (5) This act is intended to clarify limits on discovery and use of
14 quality improvement and peer review information and documents in civil
15 litigation and reverse the results of *Lowy v. PeaceHealth*, 174 Wn.2d
16 769, 280 P.3d 1078 (2012) and *Fellows v. Moynihan*, 285 P.3d 864 (2012).

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

19 (1) Any health care provider as defined in RCW 7.70.020 (1) and (2)
20 who, in good faith, files charges or presents evidence against another
21 member of their profession based on the claimed incompetency or gross
22 misconduct of such person before a regularly constituted review
23 committee or board of a professional society (~~(or hospital)~~) whose duty
24 it is to evaluate the competency and qualifications of members of the
25 profession, including limiting the extent of practice of such person in
26 a hospital or similar institution, (~~(or before a regularly constituted~~
27 ~~committee or board of a hospital whose duty it is to review and~~
28 ~~evaluate the quality of patient care and)) is immune from civil action
29 for damages arising out of such activities. Any person or entity who,
30 in good faith, shares any information or documents with one or more
31 other committees, boards, or programs under subsection (2) of this
32 section(~~(7)~~) shall be immune from civil action for damages arising out
33 of such activities. For the purposes of this section, filing charges,
34 presenting evidence, or sharing information or documents is presumed to
35 be in good faith. However, the presumption may be rebutted upon a
36 showing of clear, cogent, and convincing evidence that the charges
37 filed, evidence presented, or information shared was knowingly false or~~

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

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

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

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

6 (3) Any committee or board under subsection (1) of this section may
7 share information and documents~~((, including complaints and incident~~
8 ~~reports, created specifically for, and collected and maintained by, a~~
9 ~~coordinated quality improvement committee or committees or boards under~~
10 ~~subsection (1) of this section,)) protected under subsection (2) of~~
11 this section with one or more other ~~((coordinated quality improvement~~
12 ~~programs or))~~ committees or boards under subsection (1) of this
13 section, quality improvement programs or committees maintained under
14 RCW 43.70.510, 70.41.200, or 70.230.080, or quality assurance
15 committees maintained under RCW 18.20.390 or 74.42.640, for the
16 improvement of the quality of health care services rendered to patients
17 and the identification and prevention of medical malpractice, including
18 for the purposes of granting or reviewing health care providers'
19 credentials or privileges. The privacy protections of chapter 70.02
20 RCW and the federal health insurance portability and accountability act
21 of 1996 and its implementing regulations apply to the sharing of
22 individually identifiable patient information held by a coordinated
23 quality improvement program. Any rules necessary to implement this
24 section shall meet the requirements of applicable federal and state
25 privacy laws. Information and documents disclosed by ~~((one coordinated~~
26 ~~quality improvement program or))~~ a committee or board under subsection
27 (1) of this section to another committee or board, coordinated quality
28 improvement program, or a quality assurance committee ~~((or board under~~
29 ~~subsection (1) of this section))~~ and any information and documents
30 created or maintained as a result of the sharing of information and
31 documents shall ~~((not))~~ be subject to the ~~((discovery process and~~
32 ~~confidentiality shall be respected as required by))~~ provisions of
33 subsections (1) and (2) of this section ~~((and by RCW 43.70.510(4),~~
34 ~~70.41.200(3), 18.20.390 (6) and (8), and 74.42.640 (7) and (9))~~)).

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

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

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

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

5 (b) The administrator; and

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

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

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

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

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

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

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

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

17 (b) This subsection does not preclude:

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

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

27 (7) A quality assurance committee ~~((under subsection (1) of))~~
28 established pursuant to this section((, RCW 70.41.200, 74.42.640,
29 4.24.250, or 43.70.510)) may share information and documents~~((,
30 ~~including the analysis of complaints and incident reports, created~~
31 ~~specifically for, and collected and maintained by, the committee,))~~
32 protected under subsection (6) of this section with one or more other
33 quality assurance committees created under ~~((subsection (1) of))~~ this
34 section, ~~((RCW 70.41.200, 74.42.640, 4.24.250, or 43.70.510))~~ quality
35 improvement programs or committees maintained under RCW 43.70.510,
36 70.41.200, or 70.230.080, quality assurance committees maintained under
37 RCW 74.42.640, or peer review committees or boards under RCW 4.24.250
38 for the improvement of the quality of care and services rendered to~~

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

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

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

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

28 (1)(a) Health care institutions and medical facilities, other than
29 hospitals, that are licensed by the department, professional societies
30 or organizations, health care service contractors, health maintenance
31 organizations, health carriers approved pursuant to chapter 48.43 RCW,
32 and any other person or entity providing health care coverage under
33 chapter 48.42 RCW that is subject to the jurisdiction and regulation of
34 any state agency or any subdivision thereof may maintain a coordinated
35 quality improvement program for the improvement of the quality of
36 health care services rendered to patients and the identification and
37 prevention of medical malpractice as set forth in RCW 70.41.200.

1 (b) All such programs shall comply with the requirements of RCW
2 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to
3 reflect the structural organization of the institution, facility,
4 professional societies or organizations, health care service
5 contractors, health maintenance organizations, health carriers, or any
6 other person or entity providing health care coverage under chapter
7 48.42 RCW that is subject to the jurisdiction and regulation of any
8 state agency or any subdivision thereof, unless an alternative quality
9 improvement program substantially equivalent to RCW 70.41.200(1)(a) is
10 developed. All such programs, whether complying with the requirement
11 set forth in RCW 70.41.200(1)(a) or in the form of an alternative
12 program, must be approved by the department before the privilege and
13 discovery limitations provided in subsections (3) and (4) of this
14 section and the exemption under RCW 42.56.360(1)(c) and subsection
15 ~~((+5))~~ (4) of this section shall apply. In reviewing plans submitted
16 by licensed entities that are associated with physicians' offices, the
17 department shall ensure that the exemption under RCW 42.56.360(1)(c)
18 and the discovery and privilege limitations of this section are applied
19 only to information and documents ~~((related))~~ created, collected, or
20 maintained specifically ~~((to))~~ for, by, or at the direction of the
21 quality improvement ~~((activities undertaken))~~ program established by
22 the licensed entity.

23 (2) Health care provider groups of five or more providers may
24 maintain a coordinated quality improvement program for the improvement
25 of the quality of health care services rendered to patients and the
26 identification and prevention of medical malpractice as set forth in
27 RCW 70.41.200. For purposes of this section, a health care provider
28 group may be a consortium of providers consisting of five or more
29 providers in total. All such programs shall comply with the
30 requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h)
31 as modified to reflect the structural organization of the health care
32 provider group. All such programs must be approved by the department
33 before the privilege and discovery limitations provided in subsections
34 (3) and (4) of this section and the exemption under RCW 42.56.360(1)(c)
35 and subsection ~~((+5))~~ (4) of this section shall apply.

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

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

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

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

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

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

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

1 RCW and the federal health insurance portability and accountability act
2 of 1996 and its implementing regulations apply to the sharing of
3 individually identifiable patient information held by a coordinated
4 quality improvement program. Any rules necessary to implement this
5 section shall meet the requirements of applicable federal and state
6 privacy laws. Information and documents disclosed by ~~((one))~~ a
7 coordinated quality improvement program or committee established under
8 this section to another coordinated quality improvement program,
9 quality improvement committee, quality assurance committee, or ((a))
10 peer review committee ((under RCW 4.24.250)) or board and any
11 information and documents created or maintained as a result of the
12 sharing of information and documents shall ~~((not))~~ be subject to the
13 ~~((discovery process and confidentiality shall be respected as required~~
14 ~~by))~~ provisions of subsections (3) and (4) of this section ((and RCW
15 4.24.250)).

16 ~~((+7))~~ (6) The department of health shall adopt rules as are
17 necessary to implement this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 documents(~~(, including complaints and incident reports, created~~
2 ~~specifically for, and collected and maintained by, a quality~~
3 ~~improvement committee or a peer review committee under RCW 4.24.250))~~
4 protected under subsection (3) of this section with one or more other
5 coordinated quality improvement programs maintained in accordance with
6 this section (~~(or)~~), quality improvement programs or committees
7 maintained under RCW 43.70.510, ((a)) coordinated quality improvement
8 programs or committees maintained by an ambulatory surgical facility
9 under RCW (~~(70.230.070)~~) 70.230.080, ((a)) quality assurance committees
10 maintained in accordance with RCW 18.20.390 or 74.42.640, or ((a)) peer
11 review committees or boards under RCW 4.24.250(~~(7)~~) for the improvement
12 of the quality of health care services rendered to patients and the
13 identification and prevention of medical malpractice, including for the
14 purposes of granting and reviewing providers' credentials or
15 privileges. The privacy protections of chapter 70.02 RCW and the
16 federal health insurance portability and accountability act of 1996 and
17 its implementing regulations apply to the sharing of individually
18 identifiable patient information held by a coordinated quality
19 improvement program. Any rules necessary to implement this section
20 shall meet the requirements of applicable federal and state privacy
21 laws. Information and documents disclosed by one coordinated quality
22 improvement program to another coordinated quality improvement program,
23 quality improvement committee, quality assurance committee, or ((a))
24 peer review committee ((under RCW 4.24.250)) or board and any
25 information and documents created or maintained as a result of the
26 sharing of information and documents shall (~~(not)~~) be subject to the
27 (~~(discovery process and confidentiality shall be respected as required~~
28 ~~by))~~ provisions of subsections (2) and (3) of this section(~~(, RCW~~
29 ~~18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250))~~).

30 (9) A hospital that operates a nursing home as defined in RCW
31 18.51.010 may conduct quality improvement activities for both the
32 hospital and the nursing home through a quality improvement program or
33 committee under this section, and such activities shall be subject to
34 the provisions of subsections (2) through (8) of this section.

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

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

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

7 (a) The name of any hospital or facility with or at which the
8 physician had or has any association, employment, privileges, or
9 practice during the prior five years;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (2) All meetings, proceedings, and deliberations of a quality
30 improvement program or committee established under RCW ~~((4.24.250,))~~
31 43.70.510~~((,))~~ or 70.41.200 and all meetings, proceedings, and
32 deliberations of the board of commissioners, or its staff or agents, to
33 review the report or the activities of a quality improvement program or
34 committee established under RCW ~~((4.24.250,))~~ 43.70.510~~((,))~~ or
35 70.41.200 may, at the discretion of the quality improvement program or
36 committee, or the board of commissioners, be confidential and may be
37 conducted in executive session. Any review conducted by the board of

1 commissioners (~~or~~), quality improvement program or committee, or
2 their staffs or agents(~~or~~) shall be subject to the same protections,
3 limitations, and exemptions that apply to quality improvement program
4 or committee activities under RCW (~~(4.24.240, 4.24.250,)~~)
5 43.70.510(~~or~~) and 70.41.200. However, any final action of the board
6 of commissioners on the report of the quality improvement program or
7 committee shall be done in public session.

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

10 (1)(a) When notification of an adverse event under RCW
11 70.56.020(2)(a) or of an incident under RCW 70.56.040(5), or a report
12 regarding an adverse event under RCW 70.56.020(2)(b) is made by or
13 through a coordinated quality improvement program or committee under
14 RCW 43.70.510 or 70.41.200, (~~or by a peer review committee under RCW~~
15 ~~4.24.250,)~~ information and documents, including complaints and
16 incident reports, created, collected, or maintained specifically for
17 (~~and collected and maintained~~), by, or at the direction of a quality
18 improvement program or committee for the purpose of preparing a
19 notification of an adverse event or incident or a report regarding an
20 adverse event, the report itself, and the notification of an
21 incident(~~or~~) shall be subject to the confidentiality protections of
22 those laws and RCW 42.56.360(1)(c).

23 (b) The notification of an adverse event under RCW
24 70.56.020(2)(a)(~~or~~) shall be subject to public disclosure and not
25 exempt from disclosure under chapter 42.56 RCW. Any public disclosure
26 of an adverse event notification must include any contextual
27 information the medical facility chose to provide under RCW
28 70.56.020(2)(a).

29 (2)(a) When notification of an adverse event under RCW
30 70.56.020(2)(a) or of an incident under RCW 70.56.040(5), or a report
31 regarding an adverse event under RCW 70.56.020(2)(b), made by a health
32 care worker uses information and documents, including complaints and
33 incident reports, created, collected, or maintained specifically for
34 (~~and collected and maintained~~), by, or at the direction of a quality
35 improvement program or committee under RCW 43.70.510 or 70.41.200 (~~or~~
36 ~~a peer review committee under RCW 4.24.250~~), a notification of an
37 incident, the report itself, and the information or documents used for

1 the purpose of preparing notifications or the report((7)) shall be
2 subject to the confidentiality protections of those laws and RCW
3 42.56.360(1)(c).

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

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

11 (1) Every ambulatory surgical facility shall maintain a coordinated
12 quality improvement program for the improvement of the quality of
13 health care services rendered to patients and the identification and
14 prevention of medical malpractice. The program shall include at least
15 the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 maintained under RCW 43.70.510 or 70.41.200, ((a)) quality assurance
2 committees maintained in accordance with RCW 18.20.390 or 74.42.640, or
3 ((a)) peer review committees or boards under RCW 4.24.250((r)) for the
4 improvement of the quality of health care services rendered to patients
5 and the identification and prevention of medical malpractice, including
6 for the purposes of granting and reviewing providers' credentials or
7 privileges. The privacy protections of chapter 70.02 RCW and the
8 federal health insurance portability and accountability act of 1996 and
9 its implementing regulations apply to the sharing of individually
10 identifiable patient information held by a coordinated quality
11 improvement program. Any rules necessary to implement this section
12 shall meet the requirements of applicable federal and state privacy
13 laws. Information and documents disclosed by ((one)) a coordinated
14 quality improvement program to another coordinated quality improvement
15 program, quality improvement committee, quality assurance committee, or
16 ((a)) peer review committee ((under RCW 4.24.250)) or board and any
17 information and documents created or maintained as a result of the
18 sharing of information and documents are ((not)) subject to the
19 ((discovery process and confidentiality shall be respected as required
20 by)) provisions of subsections (2) and (3) of this section((, RCW
21 18.20.390 (6) and (8), 70.41.200(3), 74.42.640 (7) and (9), and
22 4.24.250)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (b) Information obtained by the board of pharmacy or the department
22 of health and its representatives as provided in RCW 69.41.044,
23 69.41.280, and 18.64.420;

24 (c) Information and documents created, collected, or maintained
25 specifically for, (~~and collected and maintained~~) by, or at the
26 direction of a quality improvement program or committee under RCW
27 43.70.510, 70.230.080, or 70.41.200, or by (~~(a)~~) peer review committees
28 or boards under RCW 4.24.250, including for the purposes of granting or
29 reviewing health care providers credentials or privileges, or by a
30 quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or
31 by a hospital, as defined in RCW 43.70.056, for reporting of health
32 care-associated infections under RCW 43.70.056, a notification of an
33 incident under RCW 70.56.040(5), and reports regarding adverse events
34 under RCW 70.56.020(2)(b), regardless of which agency is in possession
35 of the information and documents;

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

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

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

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

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

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

19 (g) Information obtained by the department of health under chapter
20 70.225 RCW;

21 (h) Information collected by the department of health under chapter
22 70.245 RCW except as provided in RCW 70.245.150;

23 (i) Cardiac and stroke system performance data submitted to
24 national, state, or local data collection systems under RCW
25 70.168.150(2)(b); and

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

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

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

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

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

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

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

- 12 (a) The director of nursing services;
- 13 (b) A physician designated by the facility; and
- 14 (c) Three other members from the staff of the facility.

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

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

- 26 (a) The records or reports are not maintained pursuant to statutory
27 or regulatory mandate; and
- 28 (b) The records or reports are created, collected, and maintained
29 for ((and collected and maintained)), by, or at the direction of the
30 committee.

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

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

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

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

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

32 (8) A quality assurance committee established under ~~((subsection~~
33 ~~(1) of))~~ this section ~~((, RCW 18.20.390, 70.41.200, 4.24.250, or~~
34 ~~43.70.510))~~ may share information and documents ~~((, including the~~
35 ~~analysis of complaints and incident reports, created specifically for,~~
36 ~~and collected and maintained by, the committee,))~~ protected under
37 subsection (7) of this section with one or more other quality assurance
38 committees created under subsection (1) of this section, quality

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

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

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

30 ~~((11))~~ (10) A facility operated as part of a hospital licensed
31 under chapter 70.41 RCW may maintain a quality assurance committee in
32 accordance with this section which shall be subject to the provisions
33 of subsections (1) through ~~((10))~~ (9) of this section or may conduct
34 quality improvement activities for the facility through a quality
35 improvement program or committee under RCW 70.41.200 which shall be
36 subject to the provisions of RCW 70.41.200(9).

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