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SENATE BILL 6471

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State of Washington

53rd Legislature

1994 Regular Session

By Senator Bauer

Read first time 01/24/94. Referred to Committee on Health & Human Services.

1 AN ACT Relating to nurse-patient confidentiality; and amending RCW  
2 5.62.020, 18.51.060, and 70.41.130.

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

4 **Sec. 1.** RCW 5.62.020 and 1989 c 271 s 302 are each amended to read  
5 as follows:

6 (1) No registered nurse providing primary care or practicing under  
7 protocols, whether or not the physical presence or direct supervision  
8 of a physician is required, may be examined in a civil or criminal  
9 action as to any information acquired in attending a patient in the  
10 registered nurse's professional capacity, if the information was  
11 necessary to enable the registered nurse to act in that capacity for  
12 the patient, unless:

13 ~~((1))~~ (a) The patient consents to disclosure or, in the event of  
14 death or disability of the patient, his or her personal representative,  
15 heir, beneficiary, or devisee consents to disclosure; or

16 ~~((2))~~ (b) The information relates to the contemplation or  
17 execution of a crime in the future, or relates to the neglect or the  
18 sexual or physical abuse of a child, or of a vulnerable adult as

1 defined in RCW 74.34.020, or to a person subject to proceedings under  
2 chapter 70.96A, 71.05, or 71.34 RCW.

3 (2) A registered nurse who reports violations of licensing laws or  
4 rules, patient rights, third-party reimbursement policies, or  
5 practicing protocols shall not be deemed to have violated patient  
6 confidentiality under the following circumstances:

7 (a) The patient's name is revealed pursuant to a written request by  
8 the appropriate regulatory authority; and

9 (b) A written statement releasing the nurse from responsibility is  
10 provided by the appropriate regulatory authority.

11 **Sec. 2.** RCW 18.51.060 and 1989 c 372 s 8 are each amended to read  
12 as follows:

13 (1) In any case in which the department finds that a licensee, or  
14 any partner, officer, director, owner of five percent or more of the  
15 assets of the nursing home, or managing employee failed or refused to  
16 comply with the requirements of this chapter or of chapter 74.42 RCW,  
17 or the standards, rules and regulations established under them or, in  
18 the case of a Medicaid contractor, failed or refused to comply with the  
19 Medicaid requirements of Title XIX of the social security act, as  
20 amended, and regulations promulgated thereunder, the department may  
21 take any or all of the following actions:

22 (a) Suspend, revoke, or refuse to renew a license;

23 (b) Order stop placement;

24 (c) Assess monetary penalties of a civil nature;

25 (d) Deny payment to a nursing home for any Medicaid resident  
26 admitted after notice to deny payment. Residents who are Medicaid  
27 recipients shall not be responsible for payment when the department  
28 takes action under this subsection;

29 (e) Appoint temporary management as provided in subsection ~~((7))~~  
30 (9) of this section.

31 (2) The department may suspend, revoke, or refuse to renew a  
32 license, assess monetary penalties of a civil nature, or both, in any  
33 case in which it finds that the licensee, or any partner, officer,  
34 director, owner of five percent or more of the assets of the nursing  
35 home, or managing employee:

36 (a) Operated a nursing home without a license or under a revoked or  
37 suspended license; or

1 (b) Knowingly or with reason to know made a false statement of a  
2 material fact in his application for license or any data attached  
3 thereto, or in any matter under investigation by the department; or

4 (c) Refused to allow representatives or agents of the department to  
5 inspect all books, records, and files required to be maintained or any  
6 portion of the premises of the nursing home; or

7 (d) Willfully prevented, interfered with, or attempted to impede in  
8 any way the work of any duly authorized representative of the  
9 department and the lawful enforcement of any provision of this chapter  
10 or of chapter 74.42 RCW; or

11 (e) Willfully prevented or interfered with any representative of  
12 the department in the preservation of evidence of any violation of any  
13 of the provisions of this chapter or of chapter 74.42 RCW or the  
14 standards, rules, and regulations adopted under them; or

15 (f) Failed to report patient abuse or neglect in violation of  
16 chapter 70.124 RCW; or

17 (g) Fails to pay any civil monetary penalty assessed by the  
18 department pursuant to this chapter within ten days after such  
19 assessment becomes final.

20 (3) The department may suspend, revoke, or refuse to renew a  
21 license, assess monetary penalties of a civil nature, or both, in a  
22 case where the department finds that the licensee has failed to do the  
23 following:

24 (a) Establish written policies prohibiting retaliation against  
25 licensed health professionals who register complaints with the licensee  
26 regarding the quality of patient care or violations of an applicable  
27 statute or rule;

28 (b) Establish a written grievance procedure for employees that  
29 includes a formal hearing by an objective hearing panel. The hearing  
30 shall be conducted as a "trial de novo" with a qualified hearing  
31 officer. Complainants shall have the right to call witnesses who will  
32 be sworn, and to examine and cross-examine witnesses. Permanent  
33 records of the proceeding and the decision of the panel will be made by  
34 the facility. All records of the proceedings shall be made available  
35 to all licensing authorities with a direct interest in the issues  
36 aggrieved.

37 (4) The department may suspend, revoke, or refuse to renew a  
38 license, assess monetary penalties of a civil nature, or both, for any  
39 action, policy, procedure, or delegation of tasks that conflict with

1 the responsibilities established by professional licensing laws or  
2 rules.

3 (5) The department shall deny payment to a nursing home having a  
4 Medicaid contract with respect to any Medicaid-eligible individual  
5 admitted to the nursing home when:

6 (a) The department finds the nursing home not in compliance with  
7 the requirements of Title XIX of the social security act, as amended,  
8 and regulations promulgated thereunder, and the facility has not  
9 complied with such requirements within three months; in such case, the  
10 department shall deny payment until correction has been achieved; or

11 (b) The department finds on three consecutive standard surveys that  
12 the nursing home provided substandard quality of care; in such case,  
13 the department shall deny payment for new admissions until the facility  
14 has demonstrated to the satisfaction of the department that it is in  
15 compliance with Medicaid requirements and that it will remain in  
16 compliance with such requirements.

17 ~~((4))~~ (6)(a) Civil penalties collected under this section or  
18 under chapter 74.42 RCW shall be deposited into a special fund  
19 administered by the department to be applied to the protection of the  
20 health or property of residents of nursing homes found to be deficient,  
21 including payment for the costs of relocation of residents to other  
22 facilities, maintenance of operation of a facility pending correction  
23 of deficiencies or closure, and reimbursement of residents for personal  
24 funds lost.

25 (b) Civil monetary penalties, if imposed, may be assessed and  
26 collected, with interest, for each day a nursing home is or was out of  
27 compliance. Civil monetary penalties shall not exceed three thousand  
28 dollars per violation. Each day upon which the same or a substantially  
29 similar action occurs is a separate violation subject to the assessment  
30 of a separate penalty.

31 (c) Any civil penalty assessed under this section or chapter 74.46  
32 RCW shall be a nonreimbursable item under chapter 74.46 RCW.

33 ~~((5))~~ (7)(a) The department shall order stop placement on a  
34 nursing home, effective upon oral or written notice, when the  
35 department determines:

36 (i) The nursing home no longer substantially meets the requirements  
37 of chapter 18.51 or 74.42 RCW, or in the case of Medicaid contractors,  
38 the requirements of Title XIX of the social security act, as amended,  
39 and any regulations promulgated under such statutes; and

1 (ii) The deficiency or deficiencies in the nursing home:  
2 (A) Jeopardize the health and safety of the residents, or  
3 (B) Seriously limit the nursing home's capacity to provide adequate  
4 care.

5 (b) When the department has ordered a stop placement, the  
6 department may approve a readmission to the nursing home from a  
7 hospital when the department determines the readmission would be in the  
8 best interest of the individual seeking readmission.

9 (c) The department shall terminate the stop placement when:

10 (i) The provider states in writing that the deficiencies  
11 necessitating the stop placement action have been corrected; and

12 (ii) The department staff confirms in a timely fashion not to  
13 exceed fifteen working days that:

14 (A) The deficiencies necessitating stop placement action have been  
15 corrected, and

16 (B) The provider exhibits the capacity to maintain adequate care  
17 and service.

18 (d) A nursing home provider shall have the right to an informal  
19 review to present written evidence to refute the deficiencies cited as  
20 the basis for the stop placement. A request for an informal review  
21 must be made in writing within ten days of the effective date of the  
22 stop placement.

23 (e) A stop placement shall not be delayed or suspended because the  
24 nursing home requests a hearing pursuant to chapter 34.05 RCW or an  
25 informal review. The stop placement shall remain in effect until:

26 (i) The department terminates the stop placement; or

27 (ii) The stop placement is terminated by a final agency order,  
28 after a hearing, pursuant to chapter 34.05 RCW.

29 ~~((+6+))~~ (8) If the department determines that an emergency exists  
30 as a result of a nursing home's failure or refusal to comply with  
31 requirements of this chapter or, in the case of a Medicaid contractor,  
32 its failure or refusal to comply with Medicaid requirements of Title  
33 XIX of the social security act, as amended, and rules adopted  
34 thereunder, the department may suspend the nursing home's license and  
35 order the immediate closure of the nursing home, the immediate transfer  
36 of residents, or both.

37 ~~((+7+))~~ (9) If the department determines that the health or safety  
38 of residents is immediately jeopardized as a result of a nursing home's  
39 failure or refusal to comply with requirements of this chapter or, in

1 the case of a medicaid contractor, its failure or refusal to comply  
2 with medicaid requirements of Title XIX of the social security act, as  
3 amended, and rules adopted thereunder, the department may appoint  
4 temporary management to:

5 (a) Oversee the operation of the facility; and

6 (b) Ensure the health and safety of the facilities residents while:

7 (i) Orderly closure of the facility occurs; or

8 (ii) The deficiencies necessitating temporary management are  
9 corrected.

10 ~~((+8))~~ (10) The department shall by rule specify criteria as to  
11 when and how the sanctions specified in this section shall be applied.  
12 Such criteria shall provide for the imposition of incrementally more  
13 severe penalties for deficiencies that are repeated, uncorrected,  
14 pervasive, or present a threat to the health, safety, or welfare of the  
15 residents.

16 **Sec. 3.** RCW 70.41.130 and 1991 c 3 s 335 are each amended to read  
17 as follows:

18 (1) The department is authorized to deny, suspend, revoke, or  
19 modify a license or provisional license in any case in which it finds  
20 that there has been a failure or refusal to comply with the  
21 requirements of this chapter or the standards or rules adopted under  
22 this chapter. RCW 43.70.115 governs notice of a license denial,  
23 revocation, suspension, or modification and provides the right to an  
24 adjudicative proceeding.

25 (2) The department may suspend, revoke, or refuse to renew a  
26 license, assess monetary penalties of a civil nature, or both, in a  
27 case where the department finds that the licensee has failed to do the  
28 following:

29 (a) Establish written policies prohibiting retaliation against  
30 licensed health professionals who register complaints with the licensee  
31 regarding the quality of patient care or violations of an applicable  
32 statute or rule;

33 (b) Establish a written grievance procedure for employees that  
34 includes a formal hearing by an objective hearing panel. The hearing  
35 shall be conducted as a "trial de novo" with a qualified hearing  
36 officer. Complainants shall have the right to call witnesses who will  
37 be sworn, and to examine and cross-examine witnesses. Permanent  
38 records of the proceeding and the decision of the panel will be made by

1 the facility. All records of the proceedings shall be made available  
2 to all licensing authorities with a direct interest in the issues  
3 aggrieved.

4 (3) The department may suspend, revoke, or refuse to renew a  
5 license, assess monetary penalties of a civil nature, or both, for any  
6 action, policy, procedure, or delegation of tasks that conflict with  
7 the responsibilities established by professional licensing laws or  
8 rules.

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