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HOUSE BILL 1436

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State of Washington                      63rd Legislature                      2013 Regular Session

By Representatives Rodne, Pedersen, Shea, and Jinkins

Read first time 01/28/13. Referred to Committee on Judiciary.

1            AN ACT Relating to privileging and professional conduct reviews by  
2 health care professional review bodies; amending RCW 7.71.030; and  
3 reenacting and amending RCW 70.41.200.

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

5            **Sec. 1.** RCW 7.71.030 and 2012 c 165 s 1 are each amended to read  
6 as follows:

7            (1) If the limitation on damages under RCW 7.71.020 and P.L. 99-660  
8 Sec. 411(1) does not apply, this section shall provide the exclusive  
9 ((remedy)) remedies in any lawsuit by a health care provider for any  
10 action taken by a professional peer review body of health care  
11 providers as defined in RCW 7.70.020(~~(, that is found to be based on~~  
12 ~~matters not related to the competence or professional conduct of a~~  
13 ~~health care provider))~~).

14            (2) ~~((Actions))~~ Remedies shall be limited to appropriate injunctive  
15 relief, and damages shall be allowed only for lost earnings directly  
16 attributable to the action taken by the professional peer review body,  
17 incurred between the date of such action and the date the action is  
18 functionally reversed by the professional peer review body.

1 (3) Reasonable attorneys' fees and costs shall be awarded if  
2 approved by the court under RCW 7.71.035.

3 (4) The statute of limitations for actions under this section shall  
4 be one year from the date of the action of the professional peer review  
5 body.

6 **Sec. 2.** RCW 70.41.200 and 2007 c 273 s 22 and 2007 c 261 s 3 are  
7 each reenacted and amended to read as follows:

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

12 (a) The establishment of a quality improvement committee with the  
13 responsibility to review the services rendered in the hospital, both  
14 retrospectively and prospectively, in order to improve the quality of  
15 medical care of patients and to prevent medical malpractice. The  
16 committee shall oversee and coordinate the quality improvement and  
17 medical malpractice prevention program and shall ensure that  
18 information gathered pursuant to the program is used to review and to  
19 revise hospital policies and procedures;

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

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

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

36 (e) The maintenance and continuous collection of information  
37 concerning the hospital's experience with negative health care outcomes

1 and incidents injurious to patients including health care-associated  
2 infections as defined in RCW 43.70.056, patient grievances,  
3 professional liability premiums, settlements, awards, costs incurred by  
4 the hospital for patient injury prevention, and safety improvement  
5 activities;

6 (f) The maintenance of relevant and appropriate information  
7 gathered pursuant to (a) through (e) of this subsection concerning  
8 individual physicians within the physician's personnel or credential  
9 file maintained by the hospital;

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

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

18 (2) Any person who, in substantial good faith, provides information  
19 to further the purposes of the quality improvement and medical  
20 malpractice prevention program or who, in substantial good faith,  
21 participates on the quality improvement committee shall not be subject  
22 to an action for civil damages or other relief as a result of such  
23 activity. Any person or entity participating in a coordinated quality  
24 improvement program that, in substantial good faith, shares information  
25 or documents with one or more other programs, committees, or boards  
26 under subsection (8) of this section is not subject to an action for  
27 civil damages or other relief as a result of the activity. For the  
28 purposes of this section, sharing information is presumed to be in  
29 substantial good faith. However, the presumption may be rebutted upon  
30 a showing of clear, cogent, and convincing evidence that the  
31 information shared was knowingly false or deliberately misleading.

32 (3) Information and documents, including complaints and incident  
33 reports, created specifically for, and collected and maintained by, a  
34 quality improvement committee are not subject to review or disclosure,  
35 except as provided in this section, or discovery or introduction into  
36 evidence in any civil action, and no person who was in attendance at a  
37 meeting of such committee or who participated in the creation,  
38 collection, or maintenance of information or documents specifically for

1 the committee shall be permitted or required to testify in any civil  
2 action as to the content of such proceedings or the documents and  
3 information prepared specifically for the committee. This subsection  
4 does not preclude: (a) In any civil action, the discovery of the  
5 identity of persons involved in the medical care that is the basis of  
6 the civil action whose involvement was independent of any quality  
7 improvement activity; (b) in any civil action, the testimony of any  
8 person concerning the facts which form the basis for the institution of  
9 such proceedings of which the person had personal knowledge acquired  
10 independently of such proceedings; (c) in any civil action by a health  
11 care provider regarding the restriction or revocation of that  
12 individual's clinical or staff privileges, introduction into evidence  
13 information collected and maintained by quality improvement committees  
14 regarding such health care provider; (d) in any civil action,  
15 disclosure of the fact that staff privileges were terminated or  
16 restricted, including the specific restrictions imposed, if any and the  
17 reasons for the restrictions; or (e) in any civil action, discovery and  
18 introduction into evidence of the patient's medical records required by  
19 regulation of the department of health to be made regarding the care  
20 and treatment received.

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

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

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

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

10 (8) A coordinated quality improvement program may share information  
11 and documents, including complaints and incident reports, created  
12 specifically for, and collected and maintained by, a quality  
13 improvement committee or a peer review committee under RCW 4.24.250  
14 with one or more other coordinated quality improvement programs  
15 maintained in accordance with this section or RCW 43.70.510, a  
16 coordinated quality improvement committee maintained by an ambulatory  
17 surgical facility under RCW 70.230.070, a quality assurance committee  
18 maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer  
19 review committee under RCW 4.24.250, for the improvement of the quality  
20 of health care services rendered to patients and the identification and  
21 prevention of medical malpractice. The privacy protections of chapter  
22 70.02 RCW and the federal health insurance portability and  
23 accountability act of 1996 and its implementing regulations apply to  
24 the sharing of individually identifiable patient information held by a  
25 coordinated quality improvement program. Any rules necessary to  
26 implement this section shall meet the requirements of applicable  
27 federal and state privacy laws. Information and documents disclosed by  
28 one coordinated quality improvement program to another coordinated  
29 quality improvement program or a peer review committee under RCW  
30 4.24.250 and any information and documents created or maintained as a  
31 result of the sharing of information and documents shall not be subject  
32 to the discovery process and confidentiality shall be respected as  
33 required by subsection (3) of this section, RCW 18.20.390 (6) and (8),  
34 74.42.640 (7) and (9), and 4.24.250.

35 (9) A hospital that operates a nursing home as defined in RCW  
36 18.51.010 may conduct quality improvement activities for both the  
37 hospital and the nursing home through a quality improvement committee

1 under this section, and such activities shall be subject to the  
2 provisions of subsections (2) through (8) of this section.  
3 (10) Violation of this section shall not be considered negligence  
4 per se.

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