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**SUBSTITUTE HOUSE BILL 1148**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Cody, Macri, Stonier, Lekanoff, and Pollet)

READ FIRST TIME 01/29/21.

1 AN ACT Relating to protecting patient safety in acute care  
2 hospitals through improvements in licensing and enforcement; and  
3 amending RCW 70.41.020 and 70.41.130.

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

5 **Sec. 1.** RCW 70.41.020 and 2016 c 226 s 1 are each amended to  
6 read as follows:

7 Unless the context clearly indicates otherwise, the following  
8 terms, whenever used in this chapter, shall be deemed to have the  
9 following meanings:

10 (1) "Aftercare" means the assistance provided by a lay caregiver  
11 to a patient under this chapter after the patient's discharge from a  
12 hospital. The assistance may include, but is not limited to,  
13 assistance with activities of daily living, wound care, medication  
14 assistance, and the operation of medical equipment. "Aftercare"  
15 includes assistance only for conditions that were present at the time  
16 of the patient's discharge from the hospital. "Aftercare" does not  
17 include:

18 (a) Assistance related to conditions for which the patient did  
19 not receive medical care, treatment, or observation in the hospital;  
20 or

1 (b) Tasks the performance of which requires licensure as a health  
2 care provider.

3 (2) "Department" means the Washington state department of health.

4 (3) "Discharge" means a patient's release from a hospital  
5 following the patient's admission to the hospital.

6 (4) "Distant site" means the site at which a physician or other  
7 licensed provider, delivering a professional service, is physically  
8 located at the time the service is provided through telemedicine.

9 (5) "Emergency care to victims of sexual assault" means medical  
10 examinations, procedures, and services provided by a hospital  
11 emergency room to a victim of sexual assault following an alleged  
12 sexual assault.

13 (6) "Emergency contraception" means any health care treatment  
14 approved by the food and drug administration that prevents pregnancy,  
15 including but not limited to administering two increased doses of  
16 certain oral contraceptive pills within seventy-two hours of sexual  
17 contact.

18 (7) "Hospital" means any institution, place, building, or agency  
19 which provides accommodations, facilities and services over a  
20 continuous period of twenty-four hours or more, for observation,  
21 diagnosis, or care, of two or more individuals not related to the  
22 operator who are suffering from illness, injury, deformity, or  
23 abnormality, or from any other condition for which obstetrical,  
24 medical, or surgical services would be appropriate for care or  
25 diagnosis. "Hospital" as used in this chapter does not include  
26 hotels, or similar places furnishing only food and lodging, or simply  
27 domiciliary care; nor does it include clinics, or physician's offices  
28 where patients are not regularly kept as bed patients for twenty-four  
29 hours or more; nor does it include nursing homes, as defined and  
30 which come within the scope of chapter 18.51 RCW; nor does it include  
31 birthing centers, which come within the scope of chapter 18.46 RCW;  
32 nor does it include psychiatric hospitals, which come within the  
33 scope of chapter 71.12 RCW; nor any other hospital, or institution  
34 specifically intended for use in the diagnosis and care of those  
35 suffering from mental illness, intellectual disability, convulsive  
36 disorders, or other abnormal mental condition. Furthermore, nothing  
37 in this chapter or the rules adopted pursuant thereto shall be  
38 construed as authorizing the supervision, regulation, or control of  
39 the remedial care or treatment of residents or patients in any  
40 hospital conducted for those who rely primarily upon treatment by

1 prayer or spiritual means in accordance with the creed or tenets of  
2 any well recognized church or religious denominations.

3 (8) "Immediate jeopardy" means a situation in which the  
4 hospital's noncompliance with one or more statutory or regulatory  
5 requirements has placed the health and safety of patients in its care  
6 at risk for serious injury, serious harm, serious impairment, or  
7 death.

8 (9) "Lay caregiver" means any individual designated as such by a  
9 patient under this chapter who provides aftercare assistance to a  
10 patient in the patient's residence. "Lay caregiver" does not include  
11 a long-term care worker as defined in RCW 74.39A.009.

12 ((+9)) (10) "Originating site" means the physical location of a  
13 patient receiving health care services through telemedicine.

14 ((+10)) (11) "Person" means any individual, firm, partnership,  
15 corporation, company, association, or joint stock association, and  
16 the legal successor thereof.

17 ((+11)) (12) "Secretary" means the secretary of health.

18 ((+12)) (13) "Sexual assault" has the same meaning as in RCW  
19 70.125.030.

20 ((+13)) (14) "Telemedicine" means the delivery of health care  
21 services through the use of interactive audio and video technology,  
22 permitting real-time communication between the patient at the  
23 originating site and the provider, for the purpose of diagnosis,  
24 consultation, or treatment. "Telemedicine" does not include the use  
25 of audio-only telephone, facsimile, or email.

26 ((+14)) (15) "Victim of sexual assault" means a person who  
27 alleges or is alleged to have been sexually assaulted and who  
28 presents as a patient.

29 **Sec. 2.** RCW 70.41.130 and 2011 c 302 s 3 are each amended to  
30 read as follows:

31 (1) The department is authorized to ~~((deny, suspend, revoke, or~~  
32 ~~modify a)) take any of the actions identified in this section against~~  
33 ~~a hospital's~~ license or provisional license in any case in which it  
34 finds that there has been a failure or refusal to comply with the  
35 requirements of this chapter or the standards or rules adopted under  
36 this chapter or the requirements of RCW 71.34.375.

37 (a) When the department determines the hospital has previously  
38 been subject to an enforcement action for the same or similar type of  
39 violation of the same statute or rule, or has been given any previous

1 statement of deficiency that included the same or similar type of  
2 violation of the same or similar statute or rule, or when the  
3 hospital failed to correct noncompliance with a statute or rule by a  
4 date established or agreed to by the department, the department may  
5 impose reasonable conditions on a license. Conditions may include  
6 correction within a specified amount of time, training, or hiring a  
7 department-approved consultant if the hospital cannot demonstrate to  
8 the department that it has access to sufficient internal expertise.  
9 If the department determines that the violations constitute immediate  
10 jeopardy, the conditions may be imposed immediately in accordance  
11 with subsection (3) of this section.

12 (b) (i) In accordance with the authority the department has under  
13 RCW 43.70.095, the department may assess a civil fine of up to  
14 \$10,000 per violation, not to exceed a total fine of \$1,000,000, on a  
15 hospital licensed under this chapter when the department determines  
16 the hospital has previously been subject to an enforcement action for  
17 the same or similar type of violation of the same statute or rule, or  
18 has been given any previous statement of deficiency that included the  
19 same or similar type of violation of the same or similar statute or  
20 rule, or when the hospital failed to correct noncompliance with a  
21 statute or rule by a date established or agreed to by the department.

22 (ii) Proceeds from these fines may only be used by the department  
23 to provide training or technical assistance to hospitals and to  
24 offset costs associated with licensing hospitals.

25 (iii) The department shall adopt in rules under this chapter  
26 specific fine amounts in relation to:

27 (A) The severity of the noncompliance and at an adequate level to  
28 be a deterrent to future noncompliance; and

29 (B) The number of licensed beds and the operation size of the  
30 hospital. The licensed hospital beds will be categorized as:

31 (I) Up to 25 beds;

32 (II) 26 to 99 beds;

33 (III) 100 to 299 beds; and

34 (IV) 300 beds or greater.

35 (iv) If a licensee is aggrieved by the department's action of  
36 assessing civil fines, the licensee has the right to appeal under RCW  
37 43.70.095.

38 (c) The department may suspend a specific category or categories  
39 of services or care or recovery units within the hospital as related  
40 to the violation by imposing a limited stop service. This may only be

1 done if the department finds that noncompliance results in immediate  
2 jeopardy.

3 (i) Prior to imposing a limited stop service, the department  
4 shall provide a hospital written notification upon identifying  
5 deficient practices or conditions that constitute an immediate  
6 jeopardy, and upon the review and approval of the notification by the  
7 secretary or the secretary's designee. The hospital shall have 24  
8 hours from notification to develop and implement a department-  
9 approved plan to correct the deficient practices or conditions that  
10 constitute an immediate jeopardy. If the deficient practice or  
11 conditions that constitute immediate jeopardy are not verified by the  
12 department as having been corrected within the same 24 hour period,  
13 the department may issue the limited stop service.

14 (ii) When the department imposes a limited stop service, the  
15 hospital may not admit any new patients to the units in the category  
16 or categories subject to the limited stop service until the limited  
17 stop service order is terminated.

18 (iii) The department shall conduct a follow-up inspection within  
19 five business days or within the time period requested by the  
20 hospital if more than five business days is needed to verify the  
21 violation necessitating the limited stop service has been corrected.

22 (iv) The limited stop service shall be terminated when:

23 (A) The department verifies the violation necessitating the  
24 limited stop service has been corrected or the department determines  
25 that the hospital has taken intermediate action to address the  
26 immediate jeopardy; and

27 (B) The hospital establishes the ability to maintain correction  
28 of the violation previously found deficient.

29 (d) The department may suspend new admissions to the hospital by  
30 imposing a stop placement. This may only be done if the department  
31 finds that noncompliance results in immediate jeopardy and is not  
32 confined to a specific category or categories of patients or a  
33 specific area of the hospital.

34 (i) Prior to imposing a stop placement, the department shall  
35 provide a hospital written notification upon identifying deficient  
36 practices or conditions that constitute an immediate jeopardy, and  
37 upon the review and approval of the notification by the secretary or  
38 the secretary's designee. The hospital shall have 24 hours from  
39 notification to develop and implement a department-approved plan to  
40 correct the deficient practices or conditions that constitute an

1 immediate jeopardy. If the deficient practice or conditions that  
2 constitute immediate jeopardy are not verified by the department as  
3 having been corrected within the same 24 hour period, the department  
4 may issue the stop placement.

5 (ii) When the department imposes a stop placement, the hospital  
6 may not admit any new patients until the stop placement order is  
7 terminated.

8 (iii) The department shall conduct a follow-up inspection within  
9 five business days or within the time period requested by the  
10 hospital if more than five business days is needed to verify the  
11 violation necessitating the stop placement has been corrected.

12 (iv) The stop placement order shall be terminated when:

13 (A) The department verifies the violation necessitating the stop  
14 placement has been corrected or the department determines that the  
15 hospital has taken intermediate action to address the immediate  
16 jeopardy; and

17 (B) The hospital establishes the ability to maintain correction  
18 of the violation previously found deficient.

19 (e) The department may deny an application for a license or  
20 suspend, revoke, or refuse to renew a license.

21 (2) (a) The department shall adopt in rules under this chapter a  
22 methodology to fund expenditures to implement subsection (1) of this  
23 section.

24 (b) Any fees imposed on hospitals under this methodology must  
25 consider the number of licensed beds and the operation size of the  
26 hospitals. The licensed hospital beds will be categorized as:

27 (i) Up to 25 beds;

28 (ii) 26 to 99 beds;

29 (iii) 100 to 299 beds; and

30 (iv) 300 beds or greater.

31 (3) (a) Except as otherwise provided, RCW 43.70.115 governs notice  
32 of ((a license denial, revocation, suspension, or modification))  
33 actions taken by the department under subsection (1) of this section  
34 and provides the right to an adjudicative proceeding. Adjudicative  
35 proceedings and hearings under this section are governed by the  
36 administrative procedure act, chapter 34.05 RCW. The application for  
37 an adjudicative proceeding must be in writing, state the basis for  
38 contesting the adverse action, including a copy of the department's  
39 notice, be served on and received by the department within 28 days of

1 the licensee's receipt of the adverse notice, and be served in a  
2 manner that shows proof of receipt.

3 (b) When the department determines a licensee's noncompliance  
4 results in immediate jeopardy, the department may make the imposition  
5 of conditions on a licensee, a limited stop placement, stop  
6 placement, or the suspension of a license effective immediately upon  
7 receipt of the notice by the licensee, pending any adjudicative  
8 proceeding.

9 (i) When the department makes the suspension of a license or  
10 imposition of conditions on a license effective immediately, a  
11 licensee is entitled to a show cause hearing before a presiding  
12 officer within 14 days of making the request. The licensee must  
13 request the show cause hearing within 28 days of receipt of the  
14 notice of immediate suspension or immediate imposition of conditions.  
15 At the show cause hearing the department has the burden of  
16 demonstrating that more probably than not there is an immediate  
17 jeopardy.

18 (ii) At the show cause hearing, the presiding officer may  
19 consider the notice and documents supporting the immediate suspension  
20 or immediate imposition of conditions and the licensee's response and  
21 must provide the parties with an opportunity to provide documentary  
22 evidence and written testimony, and to be represented by counsel.  
23 Prior to the show cause hearing, the department must provide the  
24 licensee with all documentation that supports the department's  
25 immediate suspension or imposition of conditions.

26 (iii) If the presiding officer determines there is no immediate  
27 jeopardy, the presiding officer may overturn the immediate suspension  
28 or immediate imposition of conditions.

29 (iv) If the presiding officer determines there is immediate  
30 jeopardy, the immediate suspension or immediate imposition of  
31 conditions shall remain in effect pending a full hearing.

32 (v) If the presiding officer sustains the immediate suspension or  
33 immediate imposition of conditions, the licensee may request an  
34 expedited full hearing on the merits of the department's action. A  
35 full hearing must be provided within 90 days of the licensee's  
36 request.

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