

2 **2SSB 5540** - S AMD - 074

3 By Senators Thibaudeau and Deccio

4 ADOPTED 2/11/00

5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 70.41.150 and 1985 c 213 s 24 are each amended to
8 read as follows:

9 Information received by the department through filed reports,
10 inspection, or as otherwise authorized under this chapter, (~~shall~~
11 ~~not~~) may be disclosed publicly ((in such manner as to identify
12 individuals or hospitals, except in a proceeding involving the question
13 of licensure. Such records of the department shall at all times be
14 available to the council and the members thereof)), as permitted under
15 chapter 42.17 RCW, subject to the following provisions:

16 (1) Licensing inspections, or complaint investigations regardless
17 of findings, shall, as requested, be disclosed no sooner than three
18 business days after the hospital has received the resulting assessment
19 report;

20 (2) Information regarding administrative action against the license
21 shall, as requested, be disclosed after the hospital has received the
22 documents initiating the administrative action;

23 (3) Information about complaints that did not warrant an
24 investigation shall not be disclosed except to notify the hospital and
25 the complainant that the complaint did not warrant an investigation.
26 If requested, the individual complainant shall receive information on
27 other like complaints that have been reported against the hospital; and

28 (4) Information disclosed pursuant to this section shall not
29 disclose individual names.

30 NEW SECTION. Sec. 2. A new section is added to chapter 70.41 RCW
31 to read as follows:

32 Any complaint against a hospital and event notification required by
33 the department that concerns patient well-being shall be investigated.

1 **Sec. 3.** RCW 70.41.200 and 1994 sp.s. c 9 s 742 are each amended to
2 read as follows:

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

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

15 (b) A medical staff privileges sanction procedure through which
16 credentials, physical and mental capacity, and competence in delivering
17 health care services are periodically reviewed as part of an evaluation
18 of staff privileges;

19 (c) The periodic review of the credentials, physical and mental
20 capacity, and competence in delivering health care services of all
21 persons who are employed or associated with the hospital;

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

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

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

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

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

3 (2) Any person who, in substantial good faith, provides information
4 to further the purposes of the quality improvement and medical
5 malpractice prevention program or who, in substantial good faith,
6 participates on the quality improvement committee shall not be subject
7 to an action for civil damages or other relief as a result of such
8 activity.

9 (3) Information and documents, including complaints and incident
10 reports, created specifically for, and collected, and maintained by a
11 quality improvement committee are not subject to discovery or
12 introduction into evidence in any civil action, and no person who was
13 in attendance at a meeting of such committee or who participated in the
14 creation, collection, or maintenance of information or documents
15 specifically for the committee shall be permitted or required to
16 testify in any civil action as to the content of such proceedings or
17 the documents and information prepared specifically for the committee.
18 This subsection does not preclude: (a) In any civil action, the
19 discovery of the identity of persons involved in the medical care that
20 is the basis of the civil action whose involvement was independent of
21 any quality improvement activity; (b) in any civil action, the
22 testimony of any person concerning the facts which form the basis for
23 the institution of such proceedings of which the person had personal
24 knowledge acquired independently of such proceedings; (c) in any civil
25 action by a health care provider regarding the restriction or
26 revocation of that individual's clinical or staff privileges,
27 introduction into evidence information collected and maintained by
28 quality improvement committees regarding such health care provider; (d)
29 in any civil action, disclosure of the fact that staff privileges were
30 terminated or restricted, including the specific restrictions imposed,
31 if any and the reasons for the restrictions; or (e) in any civil
32 action, discovery and introduction into evidence of the patient's
33 medical records required by regulation of the department of health to
34 be made regarding the care and treatment received.

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

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

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

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

22 (8) Violation of this section shall not be considered negligence
23 per se.

24 NEW SECTION. Sec. 4. A new section is added to chapter 70.41 RCW
25 to read as follows:

26 Every hospital shall post in conspicuous locations a notice of the
27 department's hospital complaint toll-free telephone number. The form
28 of the notice shall be approved by the department.

29 **Sec. 5.** RCW 42.17.310 and 1999 c 326 s 3, 1999 c 290 s 1, and 1999
30 c 215 s 1 are each reenacted and amended to read as follows:

31 (1) The following are exempt from public inspection and copying:

32 (a) Personal information in any files maintained for students in
33 public schools, patients or clients of public institutions or public
34 health agencies, or welfare recipients.

35 (b) Personal information in files maintained for employees,
36 appointees, or elected officials of any public agency to the extent
37 that disclosure would violate their right to privacy.

1 (c) Information required of any taxpayer in connection with the
2 assessment or collection of any tax if the disclosure of the
3 information to other persons would (i) be prohibited to such persons by
4 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
5 taxpayer's right to privacy or result in unfair competitive
6 disadvantage to the taxpayer.

7 (d) Specific intelligence information and specific investigative
8 records compiled by investigative, law enforcement, and penology
9 agencies, and state agencies vested with the responsibility to
10 discipline members of any profession, the nondisclosure of which is
11 essential to effective law enforcement or for the protection of any
12 person's right to privacy.

13 (e) Information revealing the identity of persons who are witnesses
14 to or victims of crime or who file complaints with investigative, law
15 enforcement, or penology agencies, other than the public disclosure
16 commission, if disclosure would endanger any person's life, physical
17 safety, or property. If at the time a complaint is filed the
18 complainant, victim or witness indicates a desire for disclosure or
19 nondisclosure, such desire shall govern. However, all complaints filed
20 with the public disclosure commission about any elected official or
21 candidate for public office must be made in writing and signed by the
22 complainant under oath.

23 (f) Test questions, scoring keys, and other examination data used
24 to administer a license, employment, or academic examination.

25 (g) Except as provided by chapter 8.26 RCW, the contents of real
26 estate appraisals, made for or by any agency relative to the
27 acquisition or sale of property, until the project or prospective sale
28 is abandoned or until such time as all of the property has been
29 acquired or the property to which the sale appraisal relates is sold,
30 but in no event shall disclosure be denied for more than three years
31 after the appraisal.

32 (h) Valuable formulae, designs, drawings, computer source code or
33 object code, and research data obtained by any agency within five years
34 of the request for disclosure when disclosure would produce private
35 gain and public loss.

36 (i) Preliminary drafts, notes, recommendations, and intra-agency
37 memorandums in which opinions are expressed or policies formulated or
38 recommended except that a specific record shall not be exempt when
39 publicly cited by an agency in connection with any agency action.

1 (j) Records which are relevant to a controversy to which an agency
2 is a party but which records would not be available to another party
3 under the rules of pretrial discovery for causes pending in the
4 superior courts.

5 (k) Records, maps, or other information identifying the location of
6 archaeological sites in order to avoid the looting or depredation of
7 such sites.

8 (l) Any library record, the primary purpose of which is to maintain
9 control of library materials, or to gain access to information, which
10 discloses or could be used to disclose the identity of a library user.

11 (m) Financial information supplied by or on behalf of a person,
12 firm, or corporation for the purpose of qualifying to submit a bid or
13 proposal for (i) a ferry system construction or repair contract as
14 required by RCW 47.60.680 through 47.60.750 or (ii) highway
15 construction or improvement as required by RCW 47.28.070.

16 (n) Railroad company contracts filed prior to July 28, 1991, with
17 the utilities and transportation commission under RCW 81.34.070, except
18 that the summaries of the contracts are open to public inspection and
19 copying as otherwise provided by this chapter.

20 (o) Financial and commercial information and records supplied by
21 private persons pertaining to export services provided pursuant to
22 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
23 export projects pursuant to RCW 43.23.035.

24 (p) Financial disclosures filed by private vocational schools under
25 chapters 28B.85 and 28C.10 RCW.

26 (q) Records filed with the utilities and transportation commission
27 or attorney general under RCW 80.04.095 that a court has determined are
28 confidential under RCW 80.04.095.

29 (r) Financial and commercial information and records supplied by
30 businesses or individuals during application for loans or program
31 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
32 or during application for economic development loans or program
33 services provided by any local agency.

34 (s) Membership lists or lists of members or owners of interests of
35 units in timeshare projects, subdivisions, camping resorts,
36 condominiums, land developments, or common-interest communities
37 affiliated with such projects, regulated by the department of
38 licensing, in the files or possession of the department.

1 (t) All applications for public employment, including the names of
2 applicants, resumes, and other related materials submitted with respect
3 to an applicant.

4 (u) The residential addresses and residential telephone numbers of
5 employees or volunteers of a public agency which are held by the agency
6 in personnel records, employment or volunteer rosters, or mailing lists
7 of employees or volunteers.

8 (v) The residential addresses and residential telephone numbers of
9 the customers of a public utility contained in the records or lists
10 held by the public utility of which they are customers, except that
11 this information may be released to the division of child support or
12 the agency or firm providing child support enforcement for another
13 state under Title IV-D of the federal social security act, for the
14 establishment, enforcement, or modification of a support order.

15 (w)(i) The federal social security number of individuals governed
16 under chapter 18.130 RCW maintained in the files of the department of
17 health, except this exemption does not apply to requests made directly
18 to the department from federal, state, and local agencies of
19 government, and national and state licensing, credentialing,
20 investigatory, disciplinary, and examination organizations; (ii) the
21 current residential address and current residential telephone number of
22 a health care provider governed under chapter 18.130 RCW maintained in
23 the files of the department, if the provider requests that this
24 information be withheld from public inspection and copying, and
25 provides to the department an accurate alternate or business address
26 and business telephone number. On or after January 1, 1995, the
27 current residential address and residential telephone number of a
28 health care provider governed under RCW 18.130.140 maintained in the
29 files of the department shall automatically be withheld from public
30 inspection and copying unless the provider specifically requests the
31 information be released, and except as provided for under RCW
32 42.17.260(9).

33 (x) Information obtained by the board of pharmacy as provided in
34 RCW 69.45.090.

35 (y) Information obtained by the board of pharmacy or the department
36 of health and its representatives as provided in RCW 69.41.044,
37 69.41.280, and 18.64.420.

38 (z) Financial information, business plans, examination reports, and
39 any information produced or obtained in evaluating or examining a

1 business and industrial development corporation organized or seeking
2 certification under chapter 31.24 RCW.

3 (aa) Financial and commercial information supplied to the state
4 investment board by any person when the information relates to the
5 investment of public trust or retirement funds and when disclosure
6 would result in loss to such funds or in private loss to the providers
7 of this information.

8 (bb) Financial and valuable trade information under RCW 51.36.120.

9 (cc) Client records maintained by an agency that is a domestic
10 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
11 crisis center as defined in RCW 70.125.030.

12 (dd) Information that identifies a person who, while an agency
13 employee: (i) Seeks advice, under an informal process established by
14 the employing agency, in order to ascertain his or her rights in
15 connection with a possible unfair practice under chapter 49.60 RCW
16 against the person; and (ii) requests his or her identity or any
17 identifying information not be disclosed.

18 (ee) Investigative records compiled by an employing agency
19 conducting a current investigation of a possible unfair practice under
20 chapter 49.60 RCW or of a possible violation of other federal, state,
21 or local laws prohibiting discrimination in employment.

22 (ff) Business related information protected from public inspection
23 and copying under RCW 15.86.110.

24 (gg) Financial, commercial, operations, and technical and research
25 information and data submitted to or obtained by the clean Washington
26 center in applications for, or delivery of, program services under
27 chapter 70.95H RCW.

28 (hh) Information and documents created specifically for, and
29 collected and maintained by a quality improvement committee pursuant to
30 RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW
31 4.24.250, regardless of which agency is in possession of the
32 information and documents.

33 (ii) Personal information in files maintained in a data base
34 created under RCW 43.07.360.

35 (jj) Financial and commercial information requested by the public
36 stadium authority from any person or organization that leases or uses
37 the stadium and exhibition center as defined in RCW 36.102.010.

38 (kk) Names of individuals residing in emergency or transitional
39 housing that are furnished to the department of revenue or a county

1 assessor in order to substantiate a claim for property tax exemption
2 under RCW 84.36.043.

3 (ll) The names, residential addresses, residential telephone
4 numbers, and other individually identifiable records held by an agency
5 in relation to a vanpool, carpool, or other ride-sharing program or
6 service. However, these records may be disclosed to other persons who
7 apply for ride-matching services and who need that information in order
8 to identify potential riders or drivers with whom to share rides.

9 (mm) The personally identifying information of current or former
10 participants or applicants in a paratransit or other transit service
11 operated for the benefit of persons with disabilities or elderly
12 persons.

13 (nn) The personally identifying information of persons who acquire
14 and use transit passes and other fare payment media including, but not
15 limited to, stored value smart cards and magnetic strip cards, except
16 that an agency may disclose this information to a person, employer,
17 educational institution, or other entity that is responsible, in whole
18 or in part, for payment of the cost of acquiring or using a transit
19 pass or other fare payment media, or to the news media when reporting
20 on public transportation or public safety. This information may also
21 be disclosed at the agency's discretion to governmental agencies or
22 groups concerned with public transportation or public safety.

23 (oo) Proprietary financial and commercial information that the
24 submitting entity, with review by the department of health,
25 specifically identifies at the time it is submitted and that is
26 provided to or obtained by the department of health in connection with
27 an application for, or the supervision of, an antitrust exemption
28 sought by the submitting entity under RCW 43.72.310. If a request for
29 such information is received, the submitting entity must be notified of
30 the request. Within ten business days of receipt of the notice, the
31 submitting entity shall provide a written statement of the continuing
32 need for confidentiality, which shall be provided to the requester.
33 Upon receipt of such notice, the department of health shall continue to
34 treat information designated under this section as exempt from
35 disclosure. If the requester initiates an action to compel disclosure
36 under this chapter, the submitting entity must be joined as a party to
37 demonstrate the continuing need for confidentiality.

1 (pp) Records maintained by the board of industrial insurance
2 appeals that are related to appeals of crime victims' compensation
3 claims filed with the board under RCW 7.68.110.

4 (qq) Financial and commercial information supplied by or on behalf
5 of a person, firm, corporation, or entity under chapter 28B.95 RCW
6 relating to the purchase or sale of tuition units and contracts for the
7 purchase of multiple tuition units.

8 (rr) Any records of investigative reports prepared by any state,
9 county, municipal, or other law enforcement agency pertaining to sex
10 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
11 defined in RCW 71.09.020, which have been transferred to the Washington
12 association of sheriffs and police chiefs for permanent electronic
13 retention and retrieval pursuant to RCW 40.14.070(2)(b).

14 (2) Except for information described in subsection (1)(c)(i) of
15 this section and confidential income data exempted from public
16 inspection pursuant to RCW 84.40.020, the exemptions of this section
17 are inapplicable to the extent that information, the disclosure of
18 which would violate personal privacy or vital governmental interests,
19 can be deleted from the specific records sought. No exemption may be
20 construed to permit the nondisclosure of statistical information not
21 descriptive of any readily identifiable person or persons.

22 (3) Inspection or copying of any specific records exempt under the
23 provisions of this section may be permitted if the superior court in
24 the county in which the record is maintained finds, after a hearing
25 with notice thereof to every person in interest and the agency, that
26 the exemption of such records is clearly unnecessary to protect any
27 individual's right of privacy or any vital governmental function.

28 (4) Agency responses refusing, in whole or in part, inspection of
29 any public record shall include a statement of the specific exemption
30 authorizing the withholding of the record (or part) and a brief
31 explanation of how the exemption applies to the record withheld.

32 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.41 RCW
33 to read as follows:

34 The department is authorized to adopt rules necessary to implement
35 sections 1, 2, and 4 of this act."

1 **2SSB 5540** - S AMD - 074
2 By Senators Thibaudeau and Deccio

ADOPTED 2/11/00

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4 On page 1, line 1 of the title, after "information;" strike the
5 remainder of the title and insert "amending RCW 70.41.150 and
6 70.41.200; reenacting and amending RCW 42.17.310; and adding new
7 sections to chapter 70.41 RCW."

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