CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1569

Chapter 33, Laws of 2005

59th Legislature
2005 Regular Session

QUALITY ASSURANCE COMMITTEES

EFFECTIVE DATE: 7/24/05

Passed by the House March 9, 2005
Yeas 96 Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 4, 2005
Yeas 41 Nays 0

BRAD OWEN
President of the Senate

Approved April 13, 2005.

I, Richard Nafziger, Chief Clerk
of the House of Representatives of
the State of Washington, do hereby
 certify that the attached is
SUBSTITUTE HOUSE BILL 1569 as
passed by the House of
Representatives and the Senate on
the dates hereon set forth.

RICHARD NAFZIGER
Chief Clerk

FILED

April 13, 2005 - 3:23 p.m.

CHRISTINE GREGOIRE
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to quality assurance in boarding homes, nursing homes, hospitals, peer review organizations, and coordinated quality improvement plans; amending RCW 18.20.390, 4.24.250, 43.70.510, and 70.41.200; reenacting and amending RCW 42.17.310; adding a new section to chapter 74.42 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that facilitation of the quality assurance process in licensed boarding homes and nursing homes will promote safe patient care. The legislature also finds that communication and quality assurance efforts by boarding homes and nursing homes will achieve the goal of providing high quality of care to citizens residing in licensed boarding homes and nursing homes, and may reduce property and liability insurance premium costs for such facilities. The legislature further finds that sharing of quality assurance information between boarding homes, nursing homes, coordinated quality improvement plans, peer review organizations, and hospitals will promote safe patient care and ensure consistency of care across organizations and practices.
Sec. 2. RCW 18.20.390 and 2004 c 144 s 2 are each amended to read as follows:

(1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any boarding home licensed under this chapter may maintain a quality assurance committee that, at a minimum, includes:

(a) A licensed registered nurse under chapter 18.79 RCW;
(b) The administrator; and
(c) Three other members from the staff of the boarding home.

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

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

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and
(b) The records or reports are created for and collected and maintained by the committee.

(4) If the boarding home refuses to release records or reports that would otherwise be protected under this section, the department may then request only that information that is necessary to determine whether the boarding home has a quality assurance committee and to determine that it is operating in compliance with this section. However, if the boarding home offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with boarding home requirements, the documents are ((not protected)) quality assurance committee documents under subsections (6) and (8) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.
(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

(6) Any records that are created for and collected and maintained by the quality assurance committee shall not be discoverable or admitted into evidence in a civil action brought against a boarding home.

(7) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude:

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

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

(7) A quality assurance committee under subsection (1) of this section, RCW 70.41.200, section 3 of this act, RCW 4.24.250, or 43.70.510 may share information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee, with one or more other quality assurance committees created under subsection (1) of this section, RCW 70.41.200, section 3 of this act, RCW 4.24.250, or 43.70.510 for the improvement of the quality of care and services rendered to boarding home residents. Information and documents disclosed by one quality assurance committee to another quality assurance committee and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsections (6) and (8) of this section,
RCW 43.70.510(4), 70.41.200(3), 4.24.250(1), and section 3 (7) and (9) of this act. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

(8) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter 42.17 RCW.

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

NEW SECTION. Sec. 3. A new section is added to chapter 74.42 RCW to read as follows:

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

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

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

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

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

(b) The records or reports are created for and collected and maintained by the committee.

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

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

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

(7) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity; and (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of their participation in the quality assurance committee activities.
A quality assurance committee under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 may share information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee, with one or more other quality assurance committees created under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 for the improvement of the quality of care and services rendered to nursing facility residents. Information and documents disclosed by one quality assurance committee to another quality assurance committee and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsections (7) and (9) of this section, RCW 18.20.390 (6) and (8), 43.70.510(4), 70.41.200(3), and 4.24.250(1). The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter 42.17 RCW.

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

A facility operated as part of a hospital licensed under chapter 70.41 RCW may maintain a quality assurance committee in accordance with this section which shall be subject to the provisions of subsections (1) through (10) of this section or may conduct quality improvement activities for the facility through a quality improvement committee under RCW 70.41.200 which shall be subject to the provisions of RCW 70.41.200(9).
Sec. 4.  RCW 42.17.310 and 2003 c 277 s 3 and 2003 c 124 s 1 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:
    (a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.
    (b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.
    (c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.
    (d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.
    (e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.
    (f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.
    (g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been
acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

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

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

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

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

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

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

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

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

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

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

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

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

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

(u) The residential addresses or residential telephone numbers of employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

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

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address.
and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

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

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

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

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

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

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

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

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

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.
(gg) Financial, commercial, operations, and technical and research
information and data submitted to or obtained by the clean Washington
center in applications for, or delivery of, program services under
chapter 70.95H RCW.

(hh) Information and documents created specifically for, and
collected and maintained by a quality improvement committee pursuant
to RCW 43.70.510 or 70.41.200, ((or)) by a peer review committee under
RCW 4.24.250, or by a quality assurance committee pursuant to section
3 of this act or RCW 18.20.390, regardless of which agency is in
possession of the information and documents.

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

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

(kk) Names of individuals residing in emergency or transitional
housing that are furnished to the department of revenue or a county
assessor in order to substantiate a claim for property tax exemption
under RCW 84.36.043.

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

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

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

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

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

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

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

(ss) Credit card numbers, debit card numbers, electronic check
numbers, card expiration dates, or bank or other financial account
numbers, except when disclosure is expressly required by or governed by
other law.

(tt) Financial information, including but not limited to account
numbers and values, and other identification numbers supplied by or on
behalf of a person, firm, corporation, limited liability company,
partnership, or other entity related to an application for a liquor
license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and
subject to chapter 50.13 RCW if provided to another individual or
organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work
force training and education coordinating board for research or
evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained
to prevent, mitigate, or respond to criminal terrorist acts, which are
acts that significantly disrupt the conduct of government or of the
general civilian population of the state or the United States and that
manifest an extreme indifference to human life, the public disclosure
of which would have a substantial likelihood of threatening public
safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and
unique response or deployment plans, including compiled underlying data
collected in preparation of or essential to the assessments, or to the
response or deployment plans; and

(ii) Records not subject to public disclosure under federal law
that are shared by federal or international agencies, and information
prepared from national security briefings provided to state or local
government officials related to domestic preparedness for acts of
terrorism.

(xx) Commercial fishing catch data from logbooks required to be
provided to the department of fish and wildlife under RCW 77.12.047,
when the data identifies specific catch location, timing, or
methodology and the release of which would result in unfair competitive
disadvantage to the commercial fisher providing the catch data.
However, this information may be released to government agencies
concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and
wildlife. However, sensitive wildlife data may be released to
government agencies concerned with the management of fish and wildlife
resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species
designated under RCW 77.12.020, or threatened or sensitive species
classified by rule of the department of fish and wildlife;
(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;
(B) There is a history of malicious take of that species; or
(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;
(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and
(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed
personal representative or executor, a person holding the veteran's
general power of attorney, or anyone else designated in writing by the
veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the
county auditor after June 30, 2002, are not public records, but will be
available only to the veteran, the veteran's next of kin, a deceased
veteran's properly appointed personal representative or executor, a
person holding the veteran's general power of attorney, or anyone else
designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of
deceased veterans have the same rights to full access to the record.
Next of kin are the veteran's widow or widower who has not remarried,
son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique
vulnerability assessments or specific and unique emergency and escape
response plans at a city, county, or state adult or juvenile
correctional facility, the public disclosure of which would have a
substantial likelihood of threatening the security of a city, county,
or state adult or juvenile correctional facility or any individual's
safety.

(ccc) Information compiled by school districts or schools in the
development of their comprehensive safe school plans pursuant to RCW
28A.320.125, to the extent that they identify specific vulnerabilities
of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of
computer and telecommunications networks, consisting of security
passwords, security access codes and programs, access codes for secure
software applications, security and service recovery plans, security
risk assessments, and security test results to the extent that they
identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public
inspection by the health care authority under RCW 41.05.026, whether
retained by the authority, transferred to another state purchased
health care program by the authority, or transferred by the authority
to a technical review committee created to facilitate the development,
acquisition, or implementation of state purchased health care under
chapter 41.05 RCW.
(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011.

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

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

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

Sec. 5. RCW 4.24.250 and 2004 c 145 s 1 are each amended to read as follows:

(1) Any health care provider as defined in RCW 7.70.020 (1) and (2) as now existing or hereafter amended who, in good faith, files charges or presents evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before a regularly constituted review committee or board of a professional society or hospital whose duty it is to evaluate the competency and qualifications of members of the profession, including limiting the extent of practice of such person in a hospital or similar institution, or before a regularly constituted committee or board of a hospital whose duty it is to review and evaluate the quality of patient care and
any person or entity who, in good faith, shares any information or
documents with one or more other committees, boards, or programs under
subsection (2) of this section, shall be immune from civil action for
damages arising out of such activities. For the purposes of this
section, sharing information is presumed to be in good faith. However,
the presumption may be rebutted upon a showing of clear, cogent, and
convincing evidence that the information shared was knowingly false or
deliberately misleading. The proceedings, reports, and written records
of such committees or boards, or of a member, employee, staff person,
or investigator of such a committee or board, shall not be subject to
subpoena or discovery proceedings in any civil action, except actions
arising out of the recommendations of such committees or boards
involving the restriction or revocation of the clinical or staff
privileges of a health care provider as defined above.

(2) A coordinated quality improvement program maintained in
accordance with RCW 43.70.510 or 70.41.200 ((and)), a quality assurance
committee maintained in accordance with RCW 18.20.390 or section 3 of
this act, or any committee((s)) or board((s)) under subsection (1) of
this section may share information and documents, including complaints
and incident reports, created specifically for, and collected and
maintained by, a coordinated quality improvement committee or
committees or boards under subsection (1) of this section, with one or
more other coordinated quality improvement programs or committees or
boards under subsection (1) of this section for the improvement of the
quality of health care services rendered to patients and the
identification and prevention of medical malpractice. The privacy
protections of chapter 70.02 RCW and the federal health insurance
portability and accountability act of 1996 and its implementing
regulations apply to the sharing of individually identifiable patient
information held by a coordinated quality improvement program. Any
rules necessary to implement this section shall meet the requirements
of applicable federal and state privacy laws. Information and
documents disclosed by one coordinated quality improvement program or
committee or board under subsection (1) of this section to another
coordinated quality improvement program or committee or board under
subsection (1) of this section and any information and documents
created or maintained as a result of the sharing of information and
documents shall not be subject to the discovery process and
Sec. 6. RCW 43.70.510 and 2004 c 145 s 2 are each amended to read as follows:

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

(b) All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof, unless an alternative quality improvement program substantially equivalent to RCW 70.41.200(1)(a) is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply. In reviewing plans submitted by licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under RCW 42.17.310(1)(hh) and the discovery limitations of this section are applied only to information and documents related specifically to quality improvement activities undertaken by the licensed entity.

(2) Health care provider groups of five or more providers may maintain a coordinated quality improvement program for the improvement
of the quality of health care services rendered to patients and the
identification and prevention of medical malpractice as set forth in
RCW 70.41.200. All such programs shall comply with the requirements of
RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to
reflect the structural organization of the health care provider group.
All such programs must be approved by the department before the
discovery limitations provided in subsections (3) and (4) of this
section and the exemption under RCW 42.17.310(1)(hh) and subsection (5)
of this section shall apply.

(3) Any person who, in substantial good faith, provides information
to further the purposes of the quality improvement and medical
malpractice prevention program or who, in substantial good faith,
participates on the quality improvement committee shall not be subject
to an action for civil damages or other relief as a result of such
activity. Any person or entity participating in a coordinated quality
improvement program that, in substantial good faith, shares information
or documents with one or more other programs, committees, or boards
under subsection (6) of this section is not subject to an action for
civil damages or other relief as a result of the activity or its
consequences. For the purposes of this section, sharing information is
presumed to be in substantial good faith. However, the presumption may
be rebutted upon a showing of clear, cogent, and convincing evidence
that the information shared was knowingly false or deliberately
misleading.

(4) Information and documents, including complaints and incident
reports, created specifically for, and collected((,)) and maintained
by a quality improvement committee are not subject to discovery or
introduction into evidence in any civil action, and no person who was
in attendance at a meeting of such committee or who participated in the
creation, collection, or maintenance of information or documents
specifically for the committee shall be permitted or required to
testify in any civil action as to the content of such proceedings or
the documents and information prepared specifically for the committee.
This subsection does not preclude: (a) In any civil action, the
discovery of the identity of persons involved in the medical care that
is the basis of the civil action whose involvement was independent of
any quality improvement activity; (b) in any civil action, the
testimony of any person concerning the facts that form the basis for
the institution of such proceedings of which the person had personal
knowledge acquired independently of such proceedings; (c) in any civil
action by a health care provider regarding the restriction or
revocation of that individual's clinical or staff privileges,
introduction into evidence information collected and maintained by
quality improvement committees regarding such health care provider; (d)
in any civil action challenging the termination of a contract by a
state agency with any entity maintaining a coordinated quality
improvement program under this section if the termination was on the
basis of quality of care concerns, introduction into evidence of
information created, collected, or maintained by the quality
improvement committees of the subject entity, which may be under terms
of a protective order as specified by the court; (e) in any civil
action, disclosure of the fact that staff privileges were terminated or
restricted, including the specific restrictions imposed, if any and the
reasons for the restrictions; or (f) in any civil action, discovery and
introduction into evidence of the patient's medical records required by
rule of the department of health to be made regarding the care and
treatment received.

(5) Information and documents created specifically for, and
collected and maintained by a quality improvement committee are exempt
from disclosure under chapter 42.17 RCW.

(6) A coordinated quality improvement program may share information
and documents, including complaints and incident reports, created
specifically for, and collected and maintained by a quality
improvement committee or a peer review committee under RCW 4.24.250
with one or more other coordinated quality improvement programs
maintained in accordance with this section or with RCW 70.41.200, a
quality assurance committee maintained in accordance with RCW 18.20.390
or section 3 of this act, or a peer review committee under RCW
4.24.250, for the improvement of the quality of health care services
rendered to patients and the identification and prevention of medical
malpractice. The privacy protections of chapter 70.02 RCW and the
federal health insurance portability and accountability act of 1996 and
its implementing regulations apply to the sharing of individually
identifiable patient information held by a coordinated quality
improvement program. Any rules necessary to implement this section
shall meet the requirements of applicable federal and state privacy
laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (4) of this section and RCW 4.24.250.

(7) The department of health shall adopt rules as are necessary to implement this section.

Sec. 7. RCW 70.41.200 and 2004 c 145 s 3 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) A coordinated quality improvement program may share information
and documents, including complaints and incident reports, created
specifically for, and collected and maintained by a quality
improvement committee or a peer review committee under RCW 4.24.250
with one or more other coordinated quality improvement programs
maintained in accordance with this section or (with) RCW 43.70.510,
a quality assurance committee maintained in accordance with RCW
18.20.390 or section 3 of this act, or a peer review committee under
RCW 4.24.250, for the improvement of the quality of health care
services rendered to patients and the identification and prevention of
medical malpractice. The privacy protections of chapter 70.02 RCW and
the federal health insurance portability and accountability act of 1996
and its implementing regulations apply to the sharing of individually
identifiable patient information held by a coordinated quality
improvement program. Any rules necessary to implement this section
shall meet the requirements of applicable federal and state privacy
laws. Information and documents disclosed by one coordinated quality
improvement program to another coordinated quality improvement program
or a peer review committee under RCW 4.24.250 and any information and
documents created or maintained as a result of the sharing of
information and documents shall not be subject to the discovery process
and confidentiality shall be respected as required by subsection (3) of
this section, RCW 18.20.390 (6) and (8), section 3 (7) and (9) of this
act, and RCW 4.24.250.

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

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

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