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**HOUSE BILL 2426**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Cody, Robinson, Kilduff, Tharinger, Davis, Macri, Riccelli, and Pollet; by request of Department of Health

AN ACT Relating to protecting patient safety in psychiatric hospitals and other health care facilities regulated by the department of health through improvements to licensing and enforcement; amending RCW 71.12.460, 71.12.470, 71.12.480, and 71.12.500; reenacting and amending RCW 71.12.455; adding new sections to chapter 43.70 RCW; adding new sections to chapter 71.12 RCW; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec.**  The legislature finds that current regulatory oversight of psychiatric hospitals licensed under chapter 71.12 RCW is insufficient to protect the health, safety, and well-being of patients seeking behavioral health care in these facilities. Several hospitals have failed to comply with state licensing requirements for extended periods of time leaving patients at risk. Additional enforcement tools are needed to address noncompliance and protect patients from risk of harm.

The legislature also finds that licensing and enforcement requirements for all health care facility types regulated by the department of health are inconsistent. Review of the regulatory requirements for all health care facility types, including acute care hospitals, is needed to identify gaps and opportunities to consolidate and standardize requirements. Legislation will be necessary to implement uniform requirements that assure provision of safe, quality care and create consistency and predictability for facilities.

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

(1) In any case in which the department finds that a psychiatric hospital licensed or provisionally licensed under chapter 71.12 RCW has failed or refused to comply with applicable state statutes or regulations, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Impose reasonable conditions on a license, including but not limited to correction within a specified time, training, or requiring the facility to hire a department-approved consultant;

(c) In accordance with RCW 43.70.095, impose civil fines of at least ten thousand dollars per violation, not to exceed a total fine of one million dollars. Fines may only be used by the department for provision of technical assistance to psychiatric hospitals and to offset the cost of psychiatric hospital licensing activities;

(d) In accordance with RCW 43.70.095, impose civil fines of up to ten thousand dollars for each day a person operates a psychiatric hospital without a valid license. Fines may only be used by the department for provision of technical assistance, as defined in RCW 71.12.455, to psychiatric hospitals and to offset the cost of psychiatric hospital licensing activities;

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

(f) Suspend new admissions to the facility by immediately imposing a stop placement; or

(g) Suspend admission of a specific category or categories of patients as related to the violation by imposing a limited stop placement.

(2) When the department orders a stop placement, the facility may not admit any new patients until the stop placement order is terminated. When the department orders a limited stop placement, the facility may not admit any new patients in the category subject to the limited stop placement until the limited stop placement order is terminated.

(a) Within fifteen business days of receiving written notice from the licensee that describes how the violations necessitating the stop placement or limited stop placement were corrected, the department shall conduct a follow-up inspection to verify the corrections have been made and implemented.

(b) The department shall terminate the stop placement or limited stop placement when:

(i) The department verifies the violations necessitating the stop placement or limited stop placement have been corrected; and

(ii) The facility establishes the ability to maintain correction of the violations previously found deficient.

(c) This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection interferes with or diminishes the department's authority and duty to enforce compliance with this section, chapter 71.12 RCW, or the rules adopted under chapter 71.12 RCW or this section.

(3) RCW 43.70.115 governs notice of a license denial, revocation, suspension, stop placement, limited stop placement, imposition of conditions on a license, or modification, but the department may make license suspension, stop placement, limited stop placement, or conditions for continuation of a license effective immediately upon receipt by the licensee or provisional licensee, pending any hearing.

(4) A license applicant or licensee who is aggrieved by department action under this section may request an adjudicative proceeding. The proceeding is governed by the administrative procedure act, chapter 34.05 RCW. The application for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the license applicant's or licensee's receiving the adverse notice, and be served in a manner that shows proof of receipt.

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

As resources allow, the department shall make health care facility inspection and investigation reports available to the public on the internet, starting with psychiatric hospitals.

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

The department must conduct a review of statutes for all health care facility types regulated by the department to evaluate appropriate levels of oversight and identify opportunities to consolidate and standardize licensing and enforcement requirements across facility types. The department must work with stakeholders to create recommendations for a uniform health care facility enforcement act for consideration in the 2021 legislative session.

**Sec.**  RCW 71.12.455 and 2017 c 263 s 2 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of health.

(2) "Establishment" and "institution" mean:

(a) Every private or county or municipal hospital, including public hospital districts, sanitariums, homes, or other places receiving or caring for any person with mental illness, mentally incompetent person, or chemically dependent person; and

(b) Beginning January 1, 2019, facilities providing pediatric transitional care services.

(3) "Pediatric transitional care services" means short-term, temporary, health and comfort services for drug exposed infants according to the requirements of this chapter and provided in an establishment licensed by the department of health.

(4) "Secretary" means the secretary of the department of health.

(5) "Trained caregiver" means a noncredentialed, unlicensed person trained by the establishment providing pediatric transitional care services to provide hands-on care to drug exposed infants. Caregivers may not provide medical care to infants and may only work under the supervision of an appropriate health care professional.

(6) "Elopement" means any situation in which an admitted patient of a psychiatric hospital who is cognitively, physically, mentally, emotionally, and/or chemically impaired wanders, walks, runs away, escapes, or otherwise leaves a psychiatric hospital prior to their scheduled discharge unsupervised, unnoticed, and without the staff's knowledge.

(7) "Psychiatric hospital" means a hospital caring for any person with mental illness or substance use disorder excluding acute care hospitals licensed under chapter 70.41 RCW, state psychiatric hospitals established under chapter 72.23 RCW, and residential treatment facilities as defined in this section.

(8) "Residential treatment facility" means a facility in which twenty-four hour on-site care is provided for the evaluation, stabilization, or treatment of residents for substance use, mental health, co-occurring disorders, or for drug exposed infants.

(9) "Technical assistance" means the provision of information on the state laws and rules applicable to the regulation of psychiatric hospitals, the process to apply for a license, and methods and resources to avoid or address compliance problems. Technical assistance does not include assistance provided under chapter 43.05 RCW.

**Sec.**  RCW 71.12.460 and 2001 c 254 s 2 are each amended to read as follows:

(1) No person, association, county, municipality, public hospital district, or corporation, shall establish or keep, for compensation or hire, an establishment as defined in this chapter without first having obtained a license therefor from the department of health, complied with rules adopted under this chapter, and paid the license fee provided in this chapter. Any person who carries on, conducts, or attempts to carry on or conduct an establishment as defined in this chapter without first having obtained a license from the department of health, as in this chapter provided, is guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. The managing and executive officers of any corporation violating the provisions of this chapter shall be liable under the provisions of this chapter in the same manner and to the same effect as a private individual violating the same.

(2) New psychiatric hospitals meeting the minimum licensing requirements and any existing psychiatric hospital that changes ownership after July 1, 2020, shall be issued a provisional license. During the period of provisional licensing, the department must provide enhanced oversight through inspections and technical assistance. The provisional license is effective for a period of twenty-four months and is not subject to renewal. The psychiatric hospital is eligible to apply for a license sixty days before the end of the provisional license period if the hospital has established that it is substantially compliant with this chapter and the rules adopted under this chapter for at least three inspections. The department shall verify the hospital's substantial compliance with this chapter and the rules adopted under this chapter by conducting at least three inspections of the hospital during the provisional license period separated by at least one hundred twenty days.

(3) A provisional licensee that submits a license application thirty to sixty days prior to expiration of the provisional license in accordance with this section and the applicable rules and fee schedule shall be deemed to possess a valid license for the year following the expiration date of the provisional license, or until the department denies the license application pursuant to this section and chapter 71.12 RCW.

(4) The department shall issue a license to operate a psychiatric hospital after the psychiatric hospital has established that it has substantially complied with the licensing requirements and rules adopted under this chapter, and submits an application to the department in such form and manner as the department requires. The department may deny an application for a license to any applicant that fails to meet the requirements in this section.

**Sec.**  RCW 71.12.470 and 2000 c 93 s 23 are each amended to read as follows:

(1) Every application for a license or provisional license shall be accompanied by a plan of the premises proposed to be occupied, describing the capacities of the buildings for the uses intended, the extent and location of grounds appurtenant thereto, and the number of patients proposed to be received therein, with such other information, and in such form, as the department of health requires. The application shall be accompanied by the proper license fee. The amount of the license and provisional license fees shall be established by the department of health under RCW 43.70.110.

(2) Until the department of health establishes a separate provisional license fee in rule, psychiatric hospitals seeking or operating under a provisional license shall pay the annual psychiatric hospital licensing fee.

**Sec.**  RCW 71.12.480 and 2000 c 93 s 24 are each amended to read as follows:

(1) The department of health shall not grant any such license until it has made an examination of all phases of the operation of the establishment necessary to determine compliance with rules adopted under this chapter including the premises proposed to be licensed and is satisfied that the premises are substantially as described, and are otherwise fit and suitable for the purposes for which they are designed to be used, and that such license should be granted.

(2) The department shall perform at least three unannounced inspections of a psychiatric hospital operating under a provisional license during the provisional license period and conduct additional inspections of the hospital as necessary to determine whether the hospital has met the requirements in RCW 71.12.460 for licensure.

NEW SECTION. **Sec.**  A new section is added to chapter 71.12 RCW to read as follows:

Every psychiatric hospital licensed or provisionally licensed under this chapter shall report to the department every patient elopement and every death that occurs on the hospital grounds within three days of the elopement or death to the department's complaint intake system or another reporting mechanism specified by the department in rule.

NEW SECTION. **Sec.**  A new section is added to chapter 71.12 RCW to read as follows:

Upon request, the department shall make available technical assistance to psychiatric hospitals in compliance with all categories of regulation, except during the time between when an investigation of a psychiatric hospital has been initiated and when such investigation is resolved.

**Sec.**  RCW 71.12.500 and 2000 c 93 s 25 are each amended to read as follows:

The department of health may at any time examine and ascertain how far a licensed establishment is conducted in compliance with this chapter, the rules adopted under this chapter, and the requirements of the license therefor. If the interests of the patients of the establishment so demand, the department may, for just and reasonable cause, suspend, modify, or revoke any such license or provisional license. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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