

HOUSE BILL REPORT

E2SHB 1103

As Reported by House Committee On:

Health Care & Wellness

Appropriations

Title: An act relating to health professions.

Brief Description: Increasing the authority of regulators to remove health care practitioners who pose a risk to the public.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Campbell, Green, Kenney, Hudgins, Appleton, Schual-Berke and Cody).

Brief History:

Committee Activity:

Health Care & Wellness: 1/31/08 [DP3S];

Appropriations: 2/11/08 [DP4S(w/o sub HCW)].

Brief Summary of Fourth Substitute Bill

- Authorizes the Secretary of Health to conduct all phases of disciplinary actions regarding cases involving sexual misconduct that do not include issues of clinical expertise or practice standards.
- Requires the Secretary of Health to conduct background checks on all applicants for an initial health care credential.
- Establishes additional reporting requirements for entities that have information about actions taken against health care providers that relate to unprofessional conduct.
- Requires the Department of Health to spend unappropriated funds in the Health Professions Account for unanticipated costs when revenues exceed 15 percent of spending projections at the request of a health professions board or commission.
- Establishes penalties for credentialed health care providers who fail to submit documents and records upon the request of a disciplining authority.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Establishes four pilot projects involving the Medical Commission, Nursing Commission, Chiropractic Commission, and the Dental Commission that provide independent authority to manage the Department of Health employees and carry out each commission's administrative duties.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The third substitute bill be substituted therefor and the third substitute bill do pass. Signed by 13 members: Representatives Cody, Chair; Morrell, Vice Chair; Hinkle, Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Barlow, Campbell, Condotta, DeBolt, Green, Moeller, Pedersen, Schual-Berke and Seaquist.

Staff: Chris Blake (786-7392).

Background:

Health Professions Discipline

The Uniform Disciplinary Act (UDA) governs disciplinary actions for all 62 categories of credentialed health care providers. The UDA defines acts of unprofessional conduct, establishes sanctions for such acts, and provides general procedures for addressing complaints and taking disciplinary actions against a credentialed health care provider. Responsibilities in the disciplinary process are divided between the Secretary of the Department of Health (Secretary) and 14 health profession boards and commissions (collectively known as "disciplining authorities") according to the profession that the health care provider is a member of and the relevant step in the disciplinary process.

In August 2007 the State Auditor's Office released a performance audit of the Department of Health's (DOH) health professions regulatory system. The report included several recommendations for legislative action. Among the report's recommendations were: to provide additional tools for obtaining records, documents, and other evidence; to give the DOH the authority to access Washington State Patrol (WSP) and Federal Bureau of Investigations (FBI) criminal background information; and requiring that national background checks be conducted on all credential holders.

Post-Conviction Credentialing

Individuals who have been convicted of a felony may not be disqualified from government employment or the practice of a profession or business that requires a license solely because of the prior conviction. There is an exception for situations in which the conviction is directly related to the employment or the profession or business at issue and less than 10 years have passed.

Criminal defendants who have completed their probation may have their record of convictions vacated and be released from any penalties and disabilities that arose from the conviction. In addition, the conviction is prohibited from being disseminated or disclosed by either the WSP or local law enforcement agencies.

Summary of Third Substitute Bill:

Disciplinary Procedures

The authority to conduct all phases of disciplinary actions regarding cases of unprofessional conduct relating to sexual misconduct that do not involve clinical expertise or standards of practice is shifted from the individual disciplining authorities to the sole authority of the Secretary. Within 72 hours of receiving a complaint about an individual regulated by a health professions board or commission that the Secretary determines only alleges sexual misconduct, the Secretary must send the complaint to the appropriate board or commission to review. If, upon review, the board or commission determines that the case involves clinical expertise or practice standards, then the case must be transferred to the appropriate board or commission.

Credential holders who have had their credential summarily suspended or their practice restricted may request a show cause hearing before a health law judge or panel of a board or commission. The request must be made within 21 days of the issuance of the order and the show cause hearing must be held within 14 days of the request. The disciplining authority has the burden of demonstrating that the credential holder poses an immediate threat to the public health and safety.

Application Denial or Issuance with Conditions

Disciplining authorities may deny an application for a credential or issue a credential with conditions according to a process that is distinct from the standard disciplinary process for credential holders. The new process provides notice to an applicant of any denial or issuance with conditions and a right to an adjudicative proceeding. The circumstances for which a disciplining authority may deny an application for a health care provider credential or issue the credential with conditions are specified. These circumstances are where the applicant:

- has had his or her credential suspended by another jurisdiction;
- has committed an act of unprofessional conduct;
- has been convicted of, or is subject to prosecution for, a crime involving moral turpitude, certain violent crimes, a crime relating to drugs, or a crime relating to financial exploitation;
- fails to prove that he or she meets the qualifications related to the profession; or
- cannot practice with reasonable skill and safety by reason of a mental or physical condition.

When determining the disposition of an application in which the applicant's mental or physical condition is at issue, the disciplining authority may require the applicant to submit to a mental, physical, or psychological examination at his or her expense. An applicant is deemed to have waived all objections to the admissibility of the testimony or reports of the health care provider who performs the examination.

Background Checks

The Secretary is authorized to receive and use criminal history information including nonconviction data for disciplinary and licensing purposes. Applicants for an initial credential to practice a health profession must receive a background check from the WSP prior to receiving the credential. The Secretary must specify those circumstances in which a state background check is inadequate and an electronic fingerprint-based national background check through the WSP and the FBI must be conducted. Such situations include cases in which an applicant has a criminal record in Washington or has recently lived out-of-state. The Secretary must conduct an annual review of a representative sample of health care providers who have previously received a background check.

When making license issuance determinations, the disciplining authority must consider the results of any background checks that reveal either a conviction for a crime that constitutes unprofessional conduct or a series of arrests that demonstrate a pattern of behavior that may present a risk of harm to the public. The disciplining authority shall take disciplinary action against a health care provider when information received from a review of previously checked providers reveals a failure to report required information about arrests, convictions, or other determinations to the DOH.

The list of convictions that are cross-checked with the WSP's database is expanded to include financial crimes, drug crimes, and all felonies.

Disciplinary Sanctions

Each of the disciplining authorities shall appoint a representative to collaboratively develop a schedule to define appropriate ranges of sanctions to apply to a credentialed health care provider for acts of unprofessional conduct. The schedule must identify aggravating and mitigating circumstances to reduce or enhance a sanction for each act of unprofessional conduct. The Secretary shall use the recommended schedule as the basis for the adoption of emergency rules to be implemented by January 1, 2009. Disciplining authorities must apply sanctions in accordance with the schedule, unless unique circumstances justify deviating from them.

A disciplining authority may order the permanent revocation of a license if it finds that the credential holder can never be rehabilitated or regain the ability to practice with reasonable skill and safety. A credentialed health care provider who has surrendered his or her credential or had it permanently revoked may not petition the disciplining authority for reinstatement.

Reporting Unprofessional Conduct

Credential holders, corporations, organizations, health care facilities, and government agencies that employ a credentialed health care provider are required to report when they have knowledge that a credential holder or an applicant for a credential has engaged in unprofessional conduct or have information that the individual cannot practice with reasonable skill and safety due to a physical or mental condition. Failure to report this knowledge is punishable by a maximum fine of \$500. The maximum fine of \$250 that hospitals may be charged for not submitting a mandatory report is raised to a maximum fine of \$500.

Credentialed health care providers are required to report any arrests, convictions, and other determinations by law enforcement agencies to the appropriate disciplining authority.

Post-Conviction Credentialing

Records of criminal defendants which would otherwise be vacated and non-disclosable, are subject to distribution by the WSP or local law enforcement agencies for the purposes of health profession disciplinary activities. Protections that prevent a person from being disqualified to practice a profession for no more than 10 years when he or she has a prior felony conviction do not apply to health care provider credentials.

Other Provisions

The Secretary must initiate an investigation in cases in which complaints, arrests, or other actions not resulting in a formal adjudication against a health care provider demonstrate a pattern of behavior that likely pose a risk to his or her patients.

Biennial disciplinary reports are made annual and must include data related to the DOH's background check activities and their effectiveness. The disciplinary reports must include a summary of the distribution of cases assigned to each staff attorney and investigator for each profession. Boards and commissions may publish an annual report of their disciplinary activities, rulemaking and policy activities, and receipts and expenditures for the profession.

Members of health profession boards and commissions are allowed to express their opinions regarding the work of the board or commission to elected officials even if it is different from the DOH's official position. Members of boards and commissions may not lobby for or against legislative proposals.

At the request of a board or commission, the Secretary shall spend unappropriated funds in the Health Professions Account when revenues for the requesting board or commission exceed 15 percent of estimated six-year spending projections. The money may only be used for the requesting board or commission for unanticipated costs for administering the profession's licensing activities.

Third Substitute Bill Compared to Engrossed Second Substitute Bill:

The third substitute restores summary suspension, investigation, and charging decision authority to the disciplining authority rather than the Secretary. It authorizes the Secretary to carry out all phases of the disciplinary process related to cases involving sexual misconduct, except where the case involves issues of clinical expertise or standards of practice.

A show cause hearing procedure is established to be held within 14 days of a request by a license holder who has had his or her license summarily suspended or restricted. The disciplining authority bears the burden of demonstrating that the license holder is an immediate threat to the public health and safety on the disciplining authority.

Disciplining authorities are prohibited from using a presiding officer to issue final decisions related to the disposition of a license in any case regarding standards of practice or requiring clinical expertise.

The requirement that license holders performing gynecological examinations ensure that a third party is in the room, unless the patient signs a waiver, is removed.

The Medical Quality Assurance Commission's clinical competency examination pilot project is eliminated.

Representatives of health professions boards and commissions must collaborate to review and modify sanctioning guidelines to apply to all professions. The Secretary must use the recommended guidelines as the basis for rule making.

The DOH is authorized to receive criminal history record information for investigative and licensing purposes. The DOH's authority to establish or increase fees for background check activities is removed. A unit is established within the DOH to detect, investigate, and prosecute acts of unprofessional conduct.

The mandate that boards and commissions provide an annual report to complement the DOH's annual report on disciplinary activities is changed to an option to provide such a report.

The Secretary's permissive authority to use excess funds in the health professions account for unanticipated costs is changed to a requirement that the Secretary use those funds for unanticipated costs at the request of a health profession board or commission.

The specific grounds for denying a license or issuing a license with conditions are defined and a process for an applicant who has been denied a license or had a license issued subject to conditions to have an adjudicative hearing on the DOH's determination is established.

Health care providers are required to produce documents or records requested by a disciplining authority within 21 days or a fine of up to \$100 per day may be imposed.

Disciplining authorities are authorized to order a permanent revocation of a credential if it finds that the credential holder can never be rehabilitated.

Records of criminal defendants are exempt from being vacated and declared nondisclosable with respect to their use for health profession disciplinary activities. The ability of individuals who have committed a prior felony to apply for a health profession credential after 10 years is limited.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Third Substitute Bill: The bill contains an emergency clause and takes effect immediately, except sections 2 and 18, relating to definitions and health care provider regulating entities, which takes effect July 1, 2008, and section 7, relating to conducting background checks on health care providers, which takes effect January 1, 2009.

Staff Summary of Public Testimony:

None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The fourth substitute bill be substituted therefor and the fourth substitute bill do pass and do not pass the third substitute bill by Health Care & Wellness. Signed by 32 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hinkle, Hunt, Kagi, Kenney, Kessler, Kretz, Linville, McIntire, Morrell, Pettigrew, Priest, Ross, Schmick, Schual-Berke, Seaquist, Sullivan and Walsh.

Staff: Owen Rowe (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Health Care & Wellness:

The fourth substitute bill does the following:

- Establishes four pilot projects involving the Medical Commission, Nursing Commission, Chiropractic Commission, and the Dental Commission that provide independent authority to employ their own executive directors to manage the Department of Health employees and carry out each commission's administrative duties, propose their own biennial budgets, and to develop their own performance-based expectations.
- Requires the Secretary of Health and the four commissions involved in the pilot project to report to the Governor and the Legislature by December 15, 2013. Specifies that the report must compare the commissions' effectiveness in licensing and disciplinary activities, their efficiency with respect to timeliness and personnel resources, their budgetary activity, their ability to meet performance measures, and a review of national research regarding regulatory effectiveness and patient safety.
- Changes legislative intent language regarding the purposes of health professions regulations.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Fourth Substitute Bill: The bill contains an emergency clause and takes effect immediately, except sections 2 and 18, relating to definitions and health care provider regulating entities, which takes effect July 1, 2008, and section 7, relating to conducting background checks on health care providers, which takes effect January 1, 2009.

Staff Summary of Public Testimony:

(In support) The Governor believes this legislation provides important tools for the boards and Commissions and the Department of Health to protect patient safety. This bill will provide increased discipline and regulation for health care providers, through national criminal background checks, increased standards to assess applicant qualifications, and fines if a provider is not providing timely documents to the requisite boards and commissions and/or the Department of Health.

(Opposed) None.

Persons Testifying: Christina Hulet, Office of the Governor.

Persons Signed In To Testify But Not Testifying: None.