CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 2426**

66th Legislature

2020 Regular Session

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| Passed by the House March 9, 2020  Yeas 96 Nays 0  **Speaker of the House of Representatives**  Passed by the Senate March 6, 2020  Yeas 48 Nays 0  **President of the Senate** | CERTIFICATE  I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2426** as passed by the House of Representatives and the Senate on the dates hereon set forth.  Chief Clerk |
| Approved |  |
| **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**SUBSTITUTE HOUSE BILL 2426**

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AS AMENDED BY THE SENATE

Passed Legislature - 2020 Regular Session

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

**By** House Health Care & Wellness (originally sponsored 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 71.12.480; reenacting and amending RCW 71.12.455; adding new sections to chapter 71.12 RCW; adding new sections to chapter 43.70 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 patients seeking behavioral health care in Washington would benefit from consistent regulatory oversight and transparency about patient outcomes. Current regulatory oversight of psychiatric hospitals licensed under chapter 71.12 RCW needs to be enhanced to protect the health, safety, and well-being of patients seeking behavioral health care in these facilities. Some hospitals have not complied with state licensing requirements. 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 and that patients are not well-served by this inconsistency. 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 71.12 RCW to read as follows:

(1) Any psychiatric hospital may request from the department or the department may offer to any psychiatric hospital technical assistance. The department may not provide technical assistance during an inspection or during the time between when an investigation of a psychiatric hospital has been initiated and when such investigation is resolved.

(2) The department may offer group training to psychiatric hospitals licensed under this chapter.

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

(1) In any case in which the department finds that a licensed psychiatric hospital has failed or refused to comply with applicable state statutes or regulations, the department may take one or more of the actions identified in this section, except as otherwise limited in this section.

(a) When the department determines the psychiatric hospital has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule, or has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule, or when the psychiatric hospital failed to correct noncompliance with a statute or rule by a date established or agreed to by the department, the department may impose reasonable conditions on a license. Conditions may include correction within a specified amount of time, training, or hiring a department-approved consultant if the hospital cannot demonstrate to the department that it has access to sufficient internal expertise.

(b)(i) In accordance with the authority the department has under RCW 43.70.095, the department may assess a civil fine of up to ten thousand dollars per violation, not to exceed a total fine of one million dollars, on a hospital licensed under this chapter when the department determines the psychiatric hospital has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule, or has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule, or when the psychiatric hospital failed to correct noncompliance with a statute or rule by a date established or agreed to by the department.

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

(iii) The department shall adopt in rules under this chapter specific fine amounts in relation to the severity of the noncompliance.

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

(c) In accordance with RCW 43.70.095, the department may impose civil fines of up to ten thousand dollars for each day a person operates a psychiatric hospital without a valid license. Proceeds from these fines may only be used by the department to provide training or technical assistance to psychiatric hospitals and to offset costs associated with licensing psychiatric hospitals.

(d) The department may suspend admissions of a specific category or categories of patients as related to the violation by imposing a limited stop placement. This may only be done if the department finds that noncompliance results in immediate jeopardy.

(i) Prior to imposing a limited stop placement, the department shall provide a psychiatric hospital written notification upon identifying deficient practices or conditions that constitute an immediate jeopardy, and the psychiatric hospital shall have twenty-four hours from notification to develop and implement a department-approved plan to correct the deficient practices or conditions that constitute an immediate jeopardy. If the deficient practice or conditions that constitute immediate jeopardy are not verified by the department as having been corrected within the same twenty-four hour period, the department may issue the limited stop placement.

(ii) When the department imposes a limited stop placement, the psychiatric hospital may not admit any new patients in the category or categories subject to the limited stop placement until the limited stop placement order is terminated.

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

(iv) The limited stop placement shall be terminated when:

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

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

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

(i) Prior to imposing a stop placement, the department shall provide a psychiatric hospital written notification upon identifying deficient practices or conditions that constitute an immediate jeopardy, and the psychiatric hospital shall have twenty-four hours from notification to develop and implement a department-approved plan to correct the deficient practices or conditions that constitute an immediate jeopardy. If the deficient practice or conditions that constitute immediate jeopardy are not verified by the department as having been corrected within the same twenty-four hour period, the department may issue the stop placement.

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

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

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

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

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

(f) The department may suspend, revoke, or refuse to renew a license.

(2)(a) Except as otherwise provided, RCW 43.70.115 governs notice of the imposition of conditions on a license, a limited stop placement, stop placement, or the suspension, revocation, or refusal to renew a license and provides the right to an adjudicative proceeding. Adjudicative proceedings and hearings under this section are 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, including a copy of the department's notice, be served on and received by the department within twenty-eight days of the licensee's receipt of the adverse notice, and be served in a manner that shows proof of receipt.

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

(i) When the department makes the suspension of a license or imposition of conditions on a license effective immediately, a licensee is entitled to a show cause hearing before a presiding officer within fourteen days of making the request. The licensee must request the show cause hearing within twenty-eight days of receipt of the notice of immediate suspension or immediate imposition of conditions. At the show cause hearing the department has the burden of demonstrating that more probably than not there is an immediate jeopardy.

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

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

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

(v) If the secretary sustains the immediate suspension or immediate imposition of conditions, the licensee may request an expedited full hearing on the merits of the department's action. A full hearing must be provided within ninety days of the licensee's request.

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 statements of deficiencies, plans of correction, notice of acceptance of plans of correction, enforcement actions, and notices of resolution available to the public on the internet, starting with psychiatric hospitals and residential treatment facilities.

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 licensed by the department under chapters 18.46, 18.64, 70.41, 70.42, 70.127, 70.230, 71.12, and 71.24 RCW 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 including, but not limited to, the statewide associations of the facilities under review to create recommendations that will be shared with stakeholders and the legislature 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, psychiatric hospitals, residential treatment facilities, 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 or the grounds of a psychiatric hospital prior to the patient's scheduled discharge unsupervised, unnoticed, and without the staff's knowledge.

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

(8) "Psychiatric hospital" means an establishment 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.

(9) "Residential treatment facility" means an establishment 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.

(10) "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 71.12.480 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) During the first two years of licensure for a new psychiatric hospital or any existing psychiatric hospital that changes ownership after July 1, 2020, the department shall provide technical assistance, perform at least three unannounced inspections, and conduct additional inspections of the hospital as necessary to verify the hospital is complying with the requirements of this chapter.

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

(1) Every psychiatric hospital licensed under this chapter shall report to the department every patient elopement and every death that meets the circumstances specified in subsection (2) of this section 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.

(2) The patient or staff deaths that must be reported to the department under subsection (1) of this section include the following:

(a) Patient death associated with patient elopement;

(b) Patient suicide;

(c) Patient death associated with medication error;

(d) Patient death associated with a fall;

(e) Patient death associated with the use of physical restraints or bedrails; and

(f) Patient or staff member death resulting from a physical assault.

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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