H-0085.1

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**HOUSE BILL 1035**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Walen, Ryu, Simmons, Goodman, Bateman, Reed, Ramel, Duerr, Street, Callan, Doglio, Macri, Tharinger, Wylie, Gregerson, Bergquist, Thai, Kloba, Santos, Ormsby, and Fosse

AN ACT Relating to prohibiting health care entities from restricting the provision of certain health care services by health care providers; and amending RCW 70.400.010, 70.400.020, and 70.245.190.

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

**Sec.**  RCW 70.400.010 and 2021 c 235 s 1 are each 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) "Health care entity" means an entity that supervises, controls, grants privileges to, directs the practice of, or directly or indirectly restricts the practice of, a health care provider.

(3) "Health care provider" has the same meaning as in RCW 70.02.010.

(4) "Medically accurate" means information that is verified or supported by research in compliance with scientific methods, is published in peer-reviewed journals, where appropriate, and is recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field.

**Sec.**  RCW 70.400.020 and 2021 c 235 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, if a health care provider is acting in good faith, within the provider's scope of practice, education, training, and experience and within the accepted standard of care, a health care entity may not ((~~prohibit~~)):

(a) Prohibit the health care provider from providing health care services related to complications of pregnancy, including but not limited to health services related to miscarriage management and treatment for ectopic pregnancies, in cases in which failure to provide the service would violate the accepted standard of care or when the patient presents a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of medical attention could reasonably be expected to pose a risk:

((~~(a)~~)) (i) To the patient's life; or

((~~(b)~~)) (ii) Of irreversible complications or impairment to the patient's bodily functions or any bodily organ or part;

(b) Limit the health care provider's provision of medically accurate and comprehensive information to a patient regarding the patient's health status including, but not limited to, diagnosis, prognosis, recommended treatment, treatment alternatives, and any potential risks to the patient's health or life;

(c) Limit the health care provider's provision of information regarding Washington's death with dignity act, chapter 70.245 RCW;

(d) Limit the health care provider's referrals, or the timing of referrals; or

(e) Prohibit the health care provider from providing health services in cases in which failure to provide the services would pose a serious risk to an individual's life or health or would violate the standard of care.

(2) Nothing in this section prohibits a health care entity from limiting a health care provider's practice for purposes of:

(a) Complying with the network or utilization review requirements of any program or entity authorized by state or federal law to provide insurance coverage for health care services to enrollees; or

(b) Quality control and patient safety, including when quality control or patient safety issues are identified pursuant to peer review.

(3) A health care entity may not discharge, demote, suspend, discipline, or otherwise discriminate against a health care provider for providing services in compliance with this section.

**Sec.**  RCW 70.245.190 and 2009 c 1 s 19 are each amended to read as follows:

(1) Except as provided in RCW 70.245.200 and subsection (2) of this section:

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this chapter. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner;

(b) A professional organization or association, or health care provider, may not subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with this chapter;

(c) A patient's request for or provision by an attending physician of medication in good faith compliance with this chapter does not constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator; and

(d) Only willing health care providers shall participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under this chapter, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(2)(a) ((~~A~~)) Except for the provision of information as permitted under RCW 70.400.020(1)(c), a health care provider may prohibit another health care provider from participating under chapter 1, Laws of 2009 on the premises of the prohibiting provider if the prohibiting provider has given notice to all health care providers with privileges to practice on the premises and to the general public of the prohibiting provider's policy regarding participating under chapter 1, Laws of 2009. A health care provider may not, by contract or other form of agreement, prohibit another health care provider from participating under chapter 1, Laws of 2009, while acting outside the course and scope of the provider's capacity as an employee or independent contractor of the prohibiting health care provider and while at a location that is not on the prohibiting health care provider's premises. This subsection does not prevent a health care provider from providing health care services to a patient that do not constitute participation under chapter 1, Laws of 2009.

(b)(i) A health care provider may subject another health care provider to the sanctions stated in this subsection if the sanctioning health care provider has notified the sanctioned provider before participation in chapter 1, Laws of 2009 that it prohibits participation in chapter 1, Laws of 2009:

((~~(i)~~)) (A) Loss of privileges, loss of membership, or other sanctions provided under the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in chapter 1, Laws of 2009 while on the health care facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

((~~(ii)~~)) (B) Termination of a lease or other property contract or other nonmonetary remedies provided by a lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in chapter 1, Laws of 2009 while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

((~~(iii)~~)) (C) Termination of a contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in chapter 1, Laws of 2009 while acting in the course and scope of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(ii) Nothing in this subsection (2)(b)((~~(iii)~~)) prevents:

(A) A health care provider from participating in chapter 1, Laws of 2009 while acting outside the course and scope of the provider's capacity as an employee or independent contractor and while at a location that is not on the sanctioning health care provider's facility premises; or

(B) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider and while at a location that is not on the sanctioning health care provider's facility premises.

(c) A health care provider that imposes sanctions under (b) of this subsection shall follow all due process and other procedures the sanctioning health care provider may have that are related to the imposition of sanctions on another health care provider.

(d) For the purposes of this subsection:

(i) "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider before the provider's participation in chapter 1, Laws of 2009 of the sanctioning health care provider's policy about participation in activities covered by this chapter.

(ii) "Participate in chapter 1, Laws of 2009" means to perform the duties of an attending physician under RCW 70.245.040, the consulting physician function under RCW 70.245.050, or the counseling function under RCW 70.245.060. "Participate in chapter 1, Laws of 2009" does not include:

(A) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;

(B) Providing information about the Washington death with dignity act to a patient upon the request of the patient;

(C) Providing a patient, upon the request of the patient, with a referral to another physician; or

(D) A patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(3) Suspension or termination of staff membership or privileges under subsection (2) of this section is not reportable under RCW 18.130.070. Action taken under RCW 70.245.030, 70.245.040, 70.245.050, or 70.245.060 may not be the sole basis for a report of unprofessional conduct under RCW 18.130.180.

(4) References to "good faith" in subsection (1)(a), (b), and (c) of this section do not allow a lower standard of care for health care providers in the state of Washington.

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