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**SUBSTITUTE SENATE BILL 5386**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Health & Human Services (originally sponsored by Senators Wojahn, Moyer, Gaspard, Deccio, Hochstatter and Winsley)

Read first time 02/09/93.

1 AN ACT Relating to the licensure of home health, hospice, and home  
2 care agencies under chapter 70.127 RCW; amending RCW 70.127.010,  
3 70.127.040, 70.127.050, 70.127.080, 70.127.090, 70.127.100, 70.127.120,  
4 70.127.130, and 70.127.250; adding new sections to chapter 70.127 RCW;  
5 creating a new section; repealing RCW 70.127.160, 70.127.900, and  
6 70.127.901; providing effective dates; and declaring an emergency.

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

8 **Sec. 1.** RCW 70.127.010 and 1991 c 3 s 373 are each amended to read  
9 as follows:

10 Unless the context clearly requires otherwise, the definitions in  
11 this section apply throughout this chapter.

12 (1) "Branch office" means a location or site from which a home  
13 health, hospice, or home care agency provides services within a portion  
14 of the total geographic area served by the parent agency. The branch  
15 office is part of the agency and is located sufficiently close to share  
16 administration, supervision, and services.

17 (2) "Department" means the department of health.

18 (3) "Home care agency" means a private or public agency or  
19 organization that administers or provides home care services directly

1 or through a contract arrangement to ill, disabled, or infirm persons  
2 in places of temporary or permanent residence.

3 (4) "Home care services" means personal care services, homemaker  
4 services, respite care services, or any other nonmedical services  
5 provided to ill, disabled, or infirm persons which services enable  
6 these persons to remain in their own residences consistent with their  
7 desires, abilities, and safety.

8 (5) "Home health agency" means a private or public agency or  
9 organization that administers or provides home health aide services or  
10 two or more home health services directly or through a contract  
11 arrangement to ill, disabled, or infirm persons in places of temporary  
12 or permanent residence. A private or public agency or organization  
13 that administers or provides nursing services only may elect to be  
14 designated a home health agency for purposes of licensure.

15 (6) "Home health services" means health or medical services  
16 provided to ill, disabled, or infirm persons. These services may be of  
17 an acute or maintenance care nature, and include but are not limited to  
18 nursing services, home health aide services, physical therapy services,  
19 occupational therapy services, speech therapy services, respiratory  
20 therapy services, nutritional services, medical social services, and  
21 medical supplies or equipment services.

22 (7) "Home health aide services" means services provided by a home  
23 health agency or a hospice agency under the supervision of a registered  
24 nurse, physical therapist, occupational therapist, or speech therapist.  
25 Such care includes ambulation and exercise, assistance with self-  
26 administered medications, reporting changes in patients' conditions and  
27 needs, completing appropriate records, and personal care or homemaker  
28 services (~~((needed to achieve medically desired results))~~).

29 (8) "Homemaker services" means services that assist ill, disabled,  
30 or infirm persons with household tasks essential to achieving adequate  
31 household and family management.

32 (9) "Hospice agency" means a private or public agency or  
33 organization administering or providing hospice care directly or  
34 through a contract arrangement to terminally ill persons in places of  
35 temporary or permanent residence by using an interdisciplinary team  
36 composed of at least nursing, social work, physician, and pastoral or  
37 spiritual counseling.

38 (10) "Hospice care" means: (a) Palliative care provided to a  
39 terminally ill person in a place of temporary or permanent residence

1 that alleviates physical symptoms, including pain, as well as  
2 alleviates the emotional and spiritual discomfort associated with  
3 dying; and (b) bereavement care provided to the family of a terminally  
4 ill person that alleviates the emotional and spiritual discomfort  
5 associated with the death of a family member. Hospice care may include  
6 health and medical services and personal care, respite, or homemaker  
7 services. Family means individuals who are important to and designated  
8 by the patient, and who need not be relatives.

9 (11) "Ill, disabled, or infirm persons" means persons who need home  
10 health, hospice, or home care services in order to maintain themselves  
11 in their places of temporary or permanent residence.

12 (12) "Personal care services" means services that assist ill,  
13 disabled, or infirm persons with dressing, feeding, and personal  
14 hygiene to facilitate self-care.

15 (13) "Public or private agency or organization" means an entity  
16 that employs or contracts with two or more persons who provide care in  
17 the home.

18 (14) "Respite care services" means services that assist or support  
19 the primary care giver on a scheduled basis.

20 **Sec. 2.** RCW 70.127.040 and 1988 c 245 s 5 are each amended to read  
21 as follows:

22 The following are not subject to regulation for the purposes of  
23 this chapter:

24 (1) A family member;

25 (2) An organization that provides only meal services in a person's  
26 residence;

27 (3) Entities furnishing durable medical equipment that does not  
28 involve the delivery of professional services beyond those necessary to  
29 set up and monitor the proper functioning of the equipment and educate  
30 the user on its proper use;

31 (4) A person who provides services through a contract with a  
32 licensed agency;

33 (5) An employee or volunteer of a licensed agency who provides  
34 services only as an employee or volunteer;

35 (6) Facilities and institutions, including but not limited to  
36 nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41  
37 RCW, boarding homes under chapter 18.20 RCW, developmental disability  
38 residential programs under chapter 71.12 RCW, or other facilities and

1 institutions, only when providing services to persons residing within  
2 the facility or institution if the delivery of the services is  
3 regulated by the state;

4 (7) Persons providing care to disabled persons through a contract  
5 with the department of social and health services;

6 (8) Nursing homes, hospitals, or other institutions, agencies,  
7 organizations, or persons that contract with licensed home health,  
8 hospice, or home care agencies for the delivery of services;

9 (9) In-home assessments of an ill, disabled, or infirm person's  
10 ability to adapt to the home environment that does not result in  
11 regular ongoing care at home;

12 (10) Services conducted by and for the adherents of a church or  
13 religious denomination that rely upon spiritual means alone through  
14 prayer for healing in accordance with the tenets and practices of such  
15 church or religious denomination and the bona fide religious beliefs  
16 genuinely held by such adherents;

17 (11) A medicare-approved dialysis center operating a medicare-  
18 approved home dialysis program;

19 (12) Case management services which do not include the direct  
20 delivery of home health, hospice, or home care services;

21 (13) Pharmacies licensed under RCW 18.64.043 that deliver  
22 prescription drugs and durable medical equipment that does not involve  
23 the use of professional services beyond those authorized to be  
24 performed by licensed pharmacists pursuant to chapter 18.64 RCW and  
25 those necessary to set up and monitor the proper functioning of the  
26 equipment and educate the person on its proper use.

27 **Sec. 3.** RCW 70.127.050 and 1988 c 245 s 6 are each amended to read  
28 as follows:

29 ~~((Notwithstanding RCW 70.127.020(2) and 70.127.030(2), a volunteer  
30 organization that provides hospice care without receiving compensation  
31 for delivery of services that does not meet the licensure requirements  
32 of this chapter for a hospice agency may use the phrase "volunteer  
33 hospice" if the volunteer organization was formed prior to January 1,  
34 1988, and the organization notifies the department prior to July 1,  
35 1989. This section shall not be considered an exemption from the home  
36 health agency or home care agency license provisions of this chapter.))~~

37 (1) An entity that provides hospice care without receiving compensation  
38 for delivery of any of its services is exempt from licensure pursuant

1 to RCW 70.127.020(2) if it notifies the department, on forms provided  
2 by the department, of its name, address, name of owner, and a statement  
3 affirming that it provides hospice care without receiving compensation  
4 for delivery of any of its services. This form must be filed with the  
5 department within sixty days after the effective date of this section,  
6 or within sixty days after being informed in writing by the department  
7 of this requirement for obtaining exemption from licensure under this  
8 chapter.

9 (2) For the purposes of this section, it is not relevant if the  
10 entity compensates its staff. For the purposes of this section, the  
11 word "compensation" does not include donations.

12 (3) Notwithstanding the provisions of RCW 70.127.030(2), an entity  
13 that provides hospice care without receiving compensation for delivery  
14 of any of its services is allowed to use the phrase "volunteer  
15 hospice."

16 (4) Nothing in this chapter precludes an entity providing hospice  
17 care without receiving compensation for delivery of any of its services  
18 from obtaining a hospice license if it so chooses, but that entity  
19 would be exempt from the requirements set forth in RCW 70.127.080(1)(d)  
20 and (e).

21 **Sec. 4.** RCW 70.127.080 and 1988 c 245 s 9 are each amended to read  
22 as follows:

23 (1) An applicant for a home health, hospice, or home care agency  
24 license shall:

25 (a) File a written application on a form provided by the  
26 department;

27 (b) Demonstrate ability to comply with this chapter and the rules  
28 adopted under this chapter;

29 (c) Cooperate with on-site review conducted by the department prior  
30 to licensure or renewal except as provided in section 11 of this act;

31 (d) Provide evidence of and maintain professional liability  
32 insurance in the amount of one hundred thousand dollars per occurrence  
33 or adequate self-insurance as approved by the department. This  
34 subsection shall not apply to hospice agency applicants that provide  
35 hospice care without receiving compensation for delivery of services;

36 (e) Provide evidence of and maintain public liability and property  
37 damage insurance coverage in the sum of fifty thousand dollars for  
38 injury or damage to property per occurrence and fifty thousand dollars

1 for injury or damage, including death, to any one person and one  
2 hundred thousand dollars for injury or damage, including death, to more  
3 than one person, or evidence of adequate self-insurance for public  
4 liability and property damage as approved by the department. This  
5 subsection shall not apply to hospice agency applicants that provide  
6 hospice care without receiving compensation for delivery of services;

7 (f) Provide such proof as the department may require concerning  
8 organizational ((and governance)) structure, and the identity of the  
9 applicant, officers, directors, partners, managing employees, or owners  
10 of ten percent or more of the applicant's assets;

11 (g) File with the department a list of the counties in which the  
12 applicant will operate;

13 (h) File with the department a list of the services offered;

14 (i) Pay to the department a license fee as provided in RCW  
15 70.127.090; and

16 (j) Provide any other information that the department may  
17 reasonably require.

18 (2) A certificate of need under chapter 70.38 RCW is not required  
19 for licensure.

20 (3) A license or renewal shall not be granted pursuant to this  
21 chapter if the applicant, officers, directors, partners, managing  
22 employees, or owners of ten percent or more of the applicant's assets,  
23 within the last five years have been found in a civil or criminal  
24 proceeding to have committed any act which reasonably relates to the  
25 person's fitness to establish, maintain, or administer an agency or to  
26 provide care in the home of another.

27 (4) A separate license is not required for a branch office.

28 **Sec. 5.** RCW 70.127.090 and 1988 c 245 s 10 are each amended to  
29 read as follows:

30 An application for a license or any renewal shall be accompanied  
31 by a fee as established by the department under RCW ((43.20B.110))  
32 43.70.250. ((A surcharge no greater than fifty dollars per year may be  
33 assessed for the period of time necessary to repay the cost of  
34 implementing this chapter.)) Licensure fees shall be based on a sliding  
35 scale using the number of agency full-time equivalents, with agencies  
36 with the highest number of full-time equivalents paying the highest  
37 fee. Full-time equivalent is a measurement based on a forty-hour work  
38 week and is applicable to paid agency employees or contractors. For

1 agencies receiving a licensure survey that requires more than one on-  
2 site review by the department per licensure period, an additional fee  
3 of fifty percent of the base licensure fee shall be charged for each  
4 additional on-site review. The department shall charge a reasonable  
5 fee for processing changes in ownership. The department may set  
6 different licensure fees for each licensure category.

7 **Sec. 6.** RCW 70.127.100 and 1988 c 245 s 11 are each amended to  
8 read as follows:

9 Upon receipt of an application under RCW 70.127.080 for a license  
10 and the license fee, the department shall issue a license if the  
11 applicant meets the requirements established under this chapter. (~~All~~  
12 ~~persons operating as home health, hospice, or home care agencies before~~  
13 ~~July 1, 1989, shall submit their applications and application fees by~~  
14 ~~July 1, 1989. In addition, issuance of a license is conditioned on the~~  
15 ~~department conducting an on-site review.)) A license issued under this  
16 chapter shall not be transferred or assigned without thirty days prior  
17 notice to the department and the department's approval. A license,  
18 unless suspended or revoked, (~~may be effective for a period of up to~~  
19 ~~two years, at the discretion of the department~~) is effective for a  
20 period of two years, however an initial license is only effective for  
21 twelve months. The department shall conduct an on-site review within  
22 each licensure period. The department may conduct a licensure survey  
23 after ownership transfer. The fee for this survey may not exceed fifty  
24 percent of the base licensure fee. The department may establish  
25 penalty fees for failure to apply for licensure or renewal as required  
26 by this chapter.~~

27 NEW SECTION. **Sec. 7.** The department is directed to continue to  
28 develop, with opportunity for comment from licensees, interpretive  
29 guidelines that are specific to each type of license and consistent  
30 with legislative intent.

31 **Sec. 8.** RCW 70.127.120 and 1988 c 245 s 13 are each amended to  
32 read as follows:

33 The department shall adopt rules consistent with RCW 70.127.005  
34 necessary to implement this chapter under chapter 34.05 RCW. In order  
35 to ensure safe and adequate care, the rules shall address at a minimum  
36 the following:

- 1 (1) Maintenance and preservation of all records relating directly  
2 to the care and treatment of persons by licensees;
- 3 (2) Establishment of a procedure for the receipt, investigation,  
4 and disposition of complaints by the department regarding services  
5 provided by licensees;
- 6 (3) Establishment and implementation of a plan for on-going care of  
7 persons and preservation of records if the licensee ceases operations;
- 8 (4) Supervision of services;
- 9 (5) Maintenance of written policies regarding response to referrals  
10 and access to services at all times;
- 11 (6) Maintenance of written personnel policies and procedures and  
12 personnel records for paid staff that provide for prehire screening,  
13 minimum qualifications, regular performance evaluations, including  
14 observation in the home, participation in orientation and in-service  
15 training, and involvement in quality assurance activities. The  
16 department may not establish (~~qualifications for licensed~~  
17 ~~professionals other than those required for licensure~~) experience or  
18 other qualifications for agency personnel or contractors beyond that  
19 required by state law; ((and))
- 20 (7) Maintenance of written policies and procedures for volunteers  
21 that have direct patient contact and that provide for background and  
22 health screening, orientation, and supervision; and
- 23 (8) Maintenance of written policies on obtaining regular reports on  
24 patient satisfaction.

25 **Sec. 9.** RCW 70.127.130 and 1988 c 245 s 14 are each amended to  
26 read as follows:

27 Licensees shall conform to the standards of RCW 69.41.030 and  
28 69.50.308. Rules adopted by the department concerning the use of  
29 legend drugs or controlled substances shall reference and be consistent  
30 with board of pharmacy rules.

31 **Sec. 10.** RCW 70.127.250 and 1988 c 245 s 25 are each amended to  
32 read as follows:

33 (1) In addition to the rules consistent with RCW 70.127.005 adopted  
34 under RCW 70.127.120, the department shall adopt rules for home health  
35 agencies which address the following:

36 (a) Establishment of case management guidelines for acute and  
37 maintenance care patients;



1 (b) Establishment of guidelines for periodic review of the home  
2 health care plan of care and plan of treatment by appropriate health  
3 care professionals; and

4 (c) Maintenance of written policies regarding the delivery and  
5 supervision of patient care and clinical consultation as necessary by  
6 appropriate health care professionals.

7 (2) As used in this section:

8 (a) "Acute care" means care provided by a home health agency for  
9 patients who are not medically stable or have not attained a  
10 satisfactory level of rehabilitation. These patients require frequent  
11 monitoring by a health care professional in order to maintain their  
12 health status.

13 (b) "Maintenance care" means care provided by home health agencies  
14 that is necessary to support an existing level of health and to  
15 preserve a patient from further failure or decline.

16 (c) "Home health plan of care" means a written plan of care  
17 established by a home health agency by appropriate health care  
18 professionals that describes maintenance care to be provided. A  
19 patient or his or her representative shall be allowed to participate in  
20 the development of the plan of care to the ~~((extend {extent}))~~ extent  
21 practicable.

22 (d) "Home health plan of treatment" means a written plan of care  
23 established by a physician licensed under chapter 18.57 or 18.71 RCW,  
24 a ~~((podiatrist))~~ podiatric physician and surgeon licensed under chapter  
25 18.22 RCW, or an advanced registered nurse practitioner as authorized  
26 by the board of nursing under chapter 18.88 RCW, in consultation with  
27 appropriate health care professionals within the agency that describes  
28 medically necessary acute care to be provided for treatment of illness  
29 or injury.

30 NEW SECTION. Sec. 11. (1) Notwithstanding the provisions of RCW  
31 70.127.080(1)(c), a home health or hospice agency that is certified by  
32 the federal medicare program, or accredited by the community health  
33 accreditation program, or the joint commission on accreditation of  
34 health care organizations as a home health or hospice agency shall be  
35 granted the applicable renewal license, without necessity of a state  
36 licensure on-site survey if:

1 (a) The department determines that the applicable survey standards  
2 of the certification or accreditation program are substantially  
3 equivalent to those required by this chapter;

4 (b) An on-site survey has been conducted for the purposes of  
5 certification or accreditation during the previous twenty-four months;  
6 and

7 (c) The department receives directly from the certifying or  
8 accrediting entity or from the licensee applicant copies of the initial  
9 and subsequent survey reports and other relevant reports or findings  
10 that indicate compliance with licensure requirements.

11 (2) Notwithstanding the provisions of RCW 70.127.080(1)(c), a home  
12 care agency under contract with the department of social and health  
13 services or area agency on aging to provide home care services and that  
14 is monitored by the department of social and health services or area  
15 agency on aging shall be granted a renewal license, without necessity  
16 of an on-site survey by the department of health if:

17 (a) The department determines that the department of social and  
18 health services or area agency on aging monitoring standards are  
19 substantially equivalent to those required by this chapter;

20 (b) An on-site monitoring has been conducted by the department of  
21 social and health services or area agency on aging during the previous  
22 twenty-four months;

23 (c) The department of social and health services or area agency on  
24 aging includes in its monitoring a sample of private pay clients, if  
25 applicable; and

26 (d) The department receives directly from the department of social  
27 and health services copies of monitoring reports and other relevant  
28 reports or findings that indicate compliance with licensure  
29 requirements.

30 (3) In reviewing the federal, the joint commission on accreditation  
31 of health care organizations, the community health accreditation  
32 program, or the department of social and health services survey  
33 standards for substantial equivalency to those set forth in this  
34 chapter, the department is directed to provide the most liberal  
35 interpretation consistent with the intent of this chapter. In the  
36 event the department determines at any time that the survey standards  
37 are not substantially equivalent to those required by this chapter, the  
38 department is directed to notify the affected licensees. The  
39 notification shall contain a detailed description of the deficiencies

1 in the alternative survey process, as well as an explanation concerning  
2 the risk to the consumer. The determination of substantial equivalency  
3 for alternative survey process and lack of substantial equivalency are  
4 agency actions and subject to RCW 34.05.210 through 34.05.395 and  
5 34.05.510 through 34.05.680.

6 (4) Agencies receiving a license without necessity of an on-site  
7 survey by the department under this chapter shall pay the same  
8 licensure or transfer fee as other agencies in their licensure  
9 category. It is the intent of this section that the licensure fees for  
10 all agencies will be lowered by the elimination of the duplication that  
11 currently exists.

12 (5) In order to avoid unnecessary costs, the department is not  
13 authorized to perform a validation survey if it is also the agency  
14 performing the certification or accreditation survey. Where this is  
15 not the case, the department is authorized to perform a validation  
16 survey on no greater than five percent of each type of certification or  
17 accreditation survey.

18 (6) This section does not affect the department's enforcement  
19 authority for licensed agencies.

20 NEW SECTION. **Sec. 12.** The following acts or parts of acts are  
21 each repealed:

- 22 (1) RCW 70.127.160 and 1988 c 245 s 17;
- 23 (2) RCW 70.127.900 and 1988 c 245 s 37; and
- 24 (3) RCW 70.127.901 and 1988 c 245 s 38.

25 NEW SECTION. **Sec. 13.** Sections 7 and 11 of this act are each  
26 added to chapter 70.127 RCW.

27 NEW SECTION. **Sec. 14.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 15.** (1) Sections 1 through 10 and 12 of this  
32 act are necessary for the immediate preservation of the public peace,

1 health, or safety, or support of the state government and its existing  
2 public institutions, and shall take effect June 30, 1993.  
3 (2) Section 11 of this act shall take effect January 1, 1994.

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