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SENATE BILL 5386

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State of Washington

53rd Legislature

1993 Regular Session

By Senators Wojahn, Moyer, Gaspard, Deccio, Hochstatter and Winsley

Read first time 01/26/93. Referred to Committee on Health & Human Services.

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, 70.127.080, 70.127.090, 70.127.100, 70.127.120, 70.127.130,  
4 and 70.127.250; adding new sections to chapter 70.127 RCW; creating a  
5 new section; repealing RCW 70.127.050, 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 direct care individuals.

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

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

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

23 (1) A family member;

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

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

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

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

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

1 the facility or institution if the delivery of the services is  
2 regulated by the state;

3 (7) Persons providing care to disabled persons through a contract  
4 with the department;

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

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

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

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

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

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

26 (14) An entity providing hospice care without receiving  
27 compensation for delivery of any of its services that is a tax-exempt  
28 organization under section 501(c)(3) of the federal internal revenue  
29 code as in effect on January 1, 1993. For the purposes of this  
30 subsection, it is not relevant if the entity compensates its staff.  
31 For the purposes of this subsection the word "compensation" does not  
32 include donations.

33 **Sec. 3.** RCW 70.127.080 and 1988 c 245 s 9 are each amended to read  
34 as follows:

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

37 (a) File a written application on a form provided by the  
38 department;

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

3 (c) Cooperate with on-site review conducted by the department prior  
4 to licensure or renewal except as provided in section 10 of this act;

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

10 (e) Provide evidence of and maintain public liability and property  
11 damage insurance coverage in the sum of fifty thousand dollars for  
12 injury or damage to property per occurrence and fifty thousand dollars  
13 for injury or damage, including death, to any one person and one  
14 hundred thousand dollars for injury or damage, including death, to more  
15 than one person, or evidence of adequate self-insurance for public  
16 liability and property damage as approved by the department. This  
17 subsection shall not apply to hospice agency applicants that provide  
18 hospice care without receiving compensation for delivery of services;

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

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

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

26 (i) Pay to the department a license fee as provided in RCW  
27 70.127.090; and

28 (j) Provide any other information that the department may  
29 reasonably require.

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

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

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

1       **Sec. 4.** RCW 70.127.090 and 1988 c 245 s 10 are each amended to  
2 read as follows:

3       An application for a license or any renewal shall be accompanied  
4 by a fee as established by the department under RCW 43.20B.110. ~~((A~~  
5 ~~surcharge no greater than fifty dollars per year may be assessed for~~  
6 ~~the period of time necessary to repay the cost of implementing this~~  
7 ~~chapter.)) Licensure fees shall be based on a sliding scale using the  
8 number of agency full-time equivalents, with agencies with the highest  
9 number of full-time equivalents paying the highest fee. Full-time  
10 equivalent is a measurement based on a forty-hour work week and is  
11 applicable to paid agency employees or contractors. For agencies  
12 receiving a licensure survey that requires more than one on-site review  
13 by the department per licensure period, an additional fee of fifty  
14 percent of the base licensure fee shall be charged for each additional  
15 on-site review. The department shall charge a fee, not to exceed one  
16 hundred dollars, for processing changes in ownership. The department  
17 may set different licensure fees for each licensure category.~~

18       **Sec. 5.** RCW 70.127.100 and 1988 c 245 s 11 are each amended to  
19 read as follows:

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

1        NEW SECTION.    **Sec. 6.**    The department is directed to continue to  
2 develop, with opportunity for comment from licensees, interpretive  
3 guidelines that are specific to each type of license and consistent  
4 with legislative intent.

5        **Sec. 7.**    RCW 70.127.120 and 1988 c 245 s 13 are each amended to  
6 read as follows:

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

11        (1) Maintenance and preservation of all records relating directly  
12 to the care and treatment of persons by licensees;

13        (2) Establishment of a procedure for the receipt, investigation,  
14 and disposition of complaints by the department regarding services  
15 provided by licensees;

16        (3) Establishment and implementation of a plan for on-going care of  
17 persons and preservation of records if the licensee ceases operations;

18        (4) Supervision of services;

19        (5) Maintenance of written policies regarding response to referrals  
20 and access to services at all times;

21        (6) Maintenance of written personnel policies and procedures and  
22 personnel records for paid staff that provide for prehire screening,  
23 minimum qualifications, regular performance evaluations, including  
24 observation in the home, participation in orientation and in-service  
25 training, and involvement in quality assurance activities. The  
26 department may not establish (~~qualifications for licensed~~  
27 ~~professionals other than those required for licensure~~) experience or  
28 other qualifications for agency personnel or contractors beyond that  
29 required by state law; ((and))

30        (7) Maintenance of written policies and procedures for volunteers  
31 that have direct patient contact and that provide for background and  
32 health screening, orientation, and supervision; and

33        (8) Maintenance of written policies on obtaining regular reports on  
34 patient satisfaction.

35        **Sec. 8.**    RCW 70.127.130 and 1988 c 245 s 14 are each amended to  
36 read as follows:

1 Licensees shall conform to the standards of RCW 69.41.030 and  
2 69.50.308. Rules adopted by the department concerning the use of  
3 legend drugs or controlled substances shall reference and be consistent  
4 with board of pharmacy rules.

5 **Sec. 9.** RCW 70.127.250 and 1988 c 245 s 25 are each amended to  
6 read as follows:

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

10 (a) Establishment of case management guidelines for acute and  
11 maintenance care patients;

12 (b) Establishment of guidelines for periodic review of the home  
13 health care plan of care and plan of treatment by appropriate health  
14 care professionals; and

15 (c) Maintenance of written policies regarding the delivery and  
16 supervision of patient care and clinical consultation as necessary by  
17 appropriate health care professionals.

18 (2) As used in this section:

19 (a) "Acute care" means care provided by a home health agency for  
20 patients who are not medically stable or have not attained a  
21 satisfactory level of rehabilitation. These patients require frequent  
22 monitoring by a health care professional in order to maintain their  
23 health status.

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

27 (c) "Home health plan of care" means a written plan of care  
28 established by a home health agency by appropriate health care  
29 professionals that describes maintenance care to be provided. A  
30 patient or his or her representative shall be allowed to participate in  
31 the development of the plan of care to the ~~((extend {extent}))~~ extent  
32 practicable.

33 (d) "Home health plan of treatment" means a written plan of care  
34 established by a physician licensed under chapter 18.57 or 18.71 RCW,  
35 a ~~((podiatrist))~~ podiatric physician and surgeon licensed under chapter  
36 18.22 RCW, or an advanced registered nurse practitioner as authorized  
37 by the board of nursing under chapter 18.88 RCW, in consultation with  
38 appropriate health care professionals within the agency that describes



1 medically necessary acute care to be provided for treatment of illness  
2 or injury.

3 NEW SECTION. **Sec. 10.** (1) Notwithstanding the provisions of RCW  
4 70.127.080(1)(c), a home health or hospice agency that is certified by  
5 the federal medicare program, or accredited by the community health  
6 accreditation program, or the joint commission on accreditation of  
7 health care organizations as a home health or hospice agency shall be  
8 granted the applicable license, both initial and renewal, without  
9 necessity of a state licensure on-site survey if:

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

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

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

20 (2) Notwithstanding the provisions of RCW 70.127.080(1)(c), a home  
21 care agency under contract with the department of social and health  
22 services to provide home care services and that is surveyed by the  
23 department of social and health services shall be granted a license,  
24 both initial and renewal, without necessity of an on-site survey by the  
25 department of health if:

26 (a) The department determines that the department of social and  
27 health services survey standards are substantially equivalent to those  
28 required by this chapter;

29 (b) An on-site survey has been conducted by the department of  
30 social and health services during the previous twenty-four months;

31 (c) The department includes in its survey a sample of private pay  
32 clients, if applicable; and

33 (d) The department receives directly from the department of social  
34 and health services or from the licensee applicant copies of the  
35 initial and subsequent survey reports and other relevant reports or  
36 findings that indicate compliance with licensure requirements.

37 (3) In reviewing the federal, the joint commission on accreditation  
38 of health care organizations, the community health accreditation

1 program, or the department of social and health services survey  
2 standards for substantial equivalency to those set forth in this  
3 chapter, the department is directed to provide the most liberal  
4 interpretation consistent with the intent of this chapter. In the  
5 event the department determines at any time that the survey standards  
6 are not substantially equivalent to those required by this chapter, the  
7 department is directed to notify the affected licensees. The  
8 notification shall contain a detailed description of the deficiencies  
9 in the alternative survey process, as well as an explanation concerning  
10 the risk to the consumer. The determination of substantial equivalency  
11 for alternative survey process and lack of substantial equivalency are  
12 agency actions and subject to RCW 34.05.210 through 34.05.395 and  
13 34.05.510 through 34.05.680.

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

20 (5) In order to avoid unnecessary costs, the department is not  
21 authorized to perform a validation survey if it is also the agency  
22 performing the certification or accreditation survey. Where this is  
23 not the case, the department is authorized to perform a validation  
24 survey on no greater than five percent of each type of certification or  
25 accreditation survey.

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

28 NEW SECTION. **Sec. 11.** The following acts or parts of acts are  
29 each repealed:

- 30 (1) RCW 70.127.050 and 1988 c 245 s 6;
- 31 (2) RCW 70.127.160 and 1988 c 245 s 17;
- 32 (3) RCW 70.127.900 and 1988 c 245 s 37; and
- 33 (4) RCW 70.127.901 and 1988 c 245 s 38.

34 NEW SECTION. **Sec. 12.** Sections 6 and 10 of this act are each  
35 added to chapter 70.127 RCW.

1        NEW SECTION.    **Sec. 13.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 14.**    (1) Sections 1 through 9 and 11 through 16  
6 of this act are necessary for the immediate preservation of the public  
7 peace, health, or safety, or support of the state government and its  
8 existing public institutions, and shall take effect June 30, 1993.

9        (2) Section 10 of this act shall take effect January 1, 1994.

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