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**SUBSTITUTE SENATE BILL 5540**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Deccio, Wojahn and Thibaudeau; by request of Department of Health)

Read first time 03/03/1999.

1 AN ACT Relating to the disclosure of hospital information; and  
2 amending RCW 70.41.150, 70.41.200, and 42.17.310.

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

4 **Sec. 1.** RCW 70.41.150 and 1985 c 213 s 24 are each amended to read  
5 as follows:

6 (1) Information received by the department through filed reports,  
7 inspection, or as otherwise authorized under this chapter, ((shall  
8 not)) may be disclosed publicly ((in such manner as to identify  
9 individuals or hospitals, except in a proceeding involving the question  
10 of licensure. Such records of the department shall at all times be  
11 available to the council and the members thereof)), as set forth under  
12 chapter 42.17 RCW, except:

13 (a) Licensing inspections, or complaint investigations, may be  
14 disclosed no sooner than three business days after the hospital has  
15 received the resulting assessment report; and

16 (b) Information regarding administrative action against the license  
17 may be disclosed after the hospital has received the documents  
18 initiating the administrative action.

1       (2) The department may adopt rules necessary to implement this  
2 section.

3       **Sec. 2.** RCW 70.41.200 and 1994 sp.s. c 9 s 742 are each amended to  
4 read as follows:

5       (1) Every hospital shall maintain a coordinated quality improvement  
6 program for the improvement of the quality of health care services  
7 rendered to patients and the identification and prevention of medical  
8 malpractice. The program shall include at least the following:

9       (a) The establishment of a quality improvement committee with the  
10 responsibility to review the services rendered in the hospital, both  
11 retrospectively and prospectively, in order to improve the quality of  
12 medical care of patients and to prevent medical malpractice. The  
13 committee shall oversee and coordinate the quality improvement and  
14 medical malpractice prevention program and shall (~~insure~~) ensure that  
15 information gathered pursuant to the program is used to review and to  
16 revise hospital policies and procedures;

17       (b) A medical staff privileges sanction procedure through which  
18 credentials, physical and mental capacity, and competence in delivering  
19 health care services are periodically reviewed as part of an evaluation  
20 of staff privileges;

21       (c) The periodic review of the credentials, physical and mental  
22 capacity, and competence in delivering health care services of all  
23 persons who are employed or associated with the hospital;

24       (d) A procedure for the prompt resolution of grievances by patients  
25 or their representatives related to accidents, injuries, treatment, and  
26 other events that may result in claims of medical malpractice;

27       (e) The maintenance and continuous collection of information  
28 concerning the hospital's experience with negative health care outcomes  
29 and incidents injurious to patients, patient grievances, professional  
30 liability premiums, settlements, awards, costs incurred by the hospital  
31 for patient injury prevention, and safety improvement activities;

32       (f) The maintenance of relevant and appropriate information  
33 gathered pursuant to (a) through (e) of this subsection concerning  
34 individual physicians within the physician's personnel or credential  
35 file maintained by the hospital;

36       (g) Education programs dealing with quality improvement, patient  
37 safety, injury prevention, staff responsibility to report professional  
38 misconduct, the legal aspects of patient care, improved communication

1 with patients, and causes of malpractice claims for staff personnel  
2 engaged in patient care activities; and

3 (h) Policies to ensure compliance with the reporting requirements  
4 of this section.

5 (2) Any person who, in substantial good faith, provides information  
6 to further the purposes of the quality improvement and medical  
7 malpractice prevention program or who, in substantial good faith,  
8 participates on the quality improvement committee shall not be subject  
9 to an action for civil damages or other relief as a result of such  
10 activity.

11 (3) Information and documents, including complaints and incident  
12 reports, created specifically for, and collected, and maintained by a  
13 quality improvement committee are not subject to discovery or  
14 introduction into evidence in any civil action, and no person who was  
15 in attendance at a meeting of such committee or who participated in the  
16 creation, collection, or maintenance of information or documents  
17 specifically for the committee shall be permitted or required to  
18 testify in any civil action as to the content of such proceedings or  
19 the documents and information prepared specifically for the committee.  
20 This subsection does not preclude: (a) In any civil action, the  
21 discovery of the identity of persons involved in the medical care that  
22 is the basis of the civil action whose involvement was independent of  
23 any quality improvement activity; (b) in any civil action, the  
24 testimony of any person concerning the facts which form the basis for  
25 the institution of such proceedings of which the person had personal  
26 knowledge acquired independently of such proceedings; (c) in any civil  
27 action by a health care provider regarding the restriction or  
28 revocation of that individual's clinical or staff privileges,  
29 introduction into evidence information collected and maintained by  
30 quality improvement committees regarding such health care provider; (d)  
31 in any civil action, disclosure of the fact that staff privileges were  
32 terminated or restricted, including the specific restrictions imposed,  
33 if any and the reasons for the restrictions; or (e) in any civil  
34 action, discovery and introduction into evidence of the patient's  
35 medical records required by regulation of the department of health to  
36 be made regarding the care and treatment received.

37 (4) Each quality improvement committee shall, on at least a  
38 semiannual basis, report to the governing board of the hospital in  
39 which the committee is located. The report shall review the quality

1 improvement activities conducted by the committee, and any actions  
2 taken as a result of those activities.

3 (5) The department of health shall adopt such rules as are deemed  
4 appropriate to effectuate the purposes of this section.

5 (6) The medical quality assurance commission or the board of  
6 osteopathic medicine and surgery, as appropriate, may review and audit  
7 the records of committee decisions in which a physician's privileges  
8 are terminated or restricted. Each hospital shall produce and make  
9 accessible to the commission or board the appropriate records and  
10 otherwise facilitate the review and audit. Information so gained shall  
11 not be subject to the discovery process and confidentiality shall be  
12 respected as required by subsection (3) of this section. Failure of a  
13 hospital to comply with this subsection is punishable by a civil  
14 penalty not to exceed two hundred fifty dollars.

15 (7) The department, the joint commission on accreditation of health  
16 care organizations, and any other accrediting organization may review  
17 and audit the records of a quality improvement committee or peer review  
18 committee in connection with their inspection and review of hospitals.  
19 Information so obtained shall not be subject to the discovery process,  
20 and confidentiality shall be respected as required by subsection (3) of  
21 this section. Each hospital shall produce and make accessible to the  
22 department the appropriate records and otherwise facilitate the review  
23 and audit.

24 (8) Violation of this section shall not be considered negligence  
25 per se.

26 **Sec. 3.** RCW 42.17.310 and 1998 c 69 s 1 are each amended to read  
27 as follows:

28 (1) The following are exempt from public inspection and copying:

29 (a) Personal information in any files maintained for students in  
30 public schools, patients or clients of public institutions or public  
31 health agencies, or welfare recipients.

32 (b) Personal information in files maintained for employees,  
33 appointees, or elected officials of any public agency to the extent  
34 that disclosure would violate their right to privacy.

35 (c) Information required of any taxpayer in connection with the  
36 assessment or collection of any tax if the disclosure of the  
37 information to other persons would (i) be prohibited to such persons by  
38 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the

1 taxpayer's right to privacy or result in unfair competitive  
2 disadvantage to the taxpayer.

3 (d) Specific intelligence information and specific investigative  
4 records compiled by investigative, law enforcement, and penology  
5 agencies, and state agencies vested with the responsibility to  
6 discipline members of any profession, the nondisclosure of which is  
7 essential to effective law enforcement or for the protection of any  
8 person's right to privacy.

9 (e) Information revealing the identity of persons who are witnesses  
10 to or victims of crime or who file complaints with investigative, law  
11 enforcement, or penology agencies, other than the public disclosure  
12 commission, if disclosure would endanger any person's life, physical  
13 safety, or property. If at the time a complaint is filed the  
14 complainant, victim or witness indicates a desire for disclosure or  
15 nondisclosure, such desire shall govern. However, all complaints filed  
16 with the public disclosure commission about any elected official or  
17 candidate for public office must be made in writing and signed by the  
18 complainant under oath.

19 (f) Test questions, scoring keys, and other examination data used  
20 to administer a license, employment, or academic examination.

21 (g) Except as provided by chapter 8.26 RCW, the contents of real  
22 estate appraisals, made for or by any agency relative to the  
23 acquisition or sale of property, until the project or prospective sale  
24 is abandoned or until such time as all of the property has been  
25 acquired or the property to which the sale appraisal relates is sold,  
26 but in no event shall disclosure be denied for more than three years  
27 after the appraisal.

28 (h) Valuable formulae, designs, drawings, and research data  
29 obtained by any agency within five years of the request for disclosure  
30 when disclosure would produce private gain and public loss.

31 (i) Preliminary drafts, notes, recommendations, and intra-agency  
32 memorandums in which opinions are expressed or policies formulated or  
33 recommended except that a specific record shall not be exempt when  
34 publicly cited by an agency in connection with any agency action.

35 (j) Records which are relevant to a controversy to which an agency  
36 is a party but which records would not be available to another party  
37 under the rules of pretrial discovery for causes pending in the  
38 superior courts.

1 (k) Records, maps, or other information identifying the location of  
2 archaeological sites in order to avoid the looting or depredation of  
3 such sites.

4 (l) Any library record, the primary purpose of which is to maintain  
5 control of library materials, or to gain access to information, which  
6 discloses or could be used to disclose the identity of a library user.

7 (m) Financial information supplied by or on behalf of a person,  
8 firm, or corporation for the purpose of qualifying to submit a bid or  
9 proposal for (i) a ferry system construction or repair contract as  
10 required by RCW 47.60.680 through 47.60.750 or (ii) highway  
11 construction or improvement as required by RCW 47.28.070.

12 (n) Railroad company contracts filed prior to July 28, 1991, with  
13 the utilities and transportation commission under RCW 81.34.070, except  
14 that the summaries of the contracts are open to public inspection and  
15 copying as otherwise provided by this chapter.

16 (o) Financial and commercial information and records supplied by  
17 private persons pertaining to export services provided pursuant to  
18 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to  
19 export projects pursuant to RCW 43.23.035.

20 (p) Financial disclosures filed by private vocational schools under  
21 chapters 28B.85 and 28C.10 RCW.

22 (q) Records filed with the utilities and transportation commission  
23 or attorney general under RCW 80.04.095 that a court has determined are  
24 confidential under RCW 80.04.095.

25 (r) Financial and commercial information and records supplied by  
26 businesses or individuals during application for loans or program  
27 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
28 or during application for economic development loans or program  
29 services provided by any local agency.

30 (s) Membership lists or lists of members or owners of interests of  
31 units in timeshare projects, subdivisions, camping resorts,  
32 condominiums, land developments, or common-interest communities  
33 affiliated with such projects, regulated by the department of  
34 licensing, in the files or possession of the department.

35 (t) All applications for public employment, including the names of  
36 applicants, resumes, and other related materials submitted with respect  
37 to an applicant.

38 (u) The residential addresses and residential telephone numbers of  
39 employees or volunteers of a public agency which are held by the agency

1 in personnel records, employment or volunteer rosters, or mailing lists  
2 of employees or volunteers.

3 (v) The residential addresses and residential telephone numbers of  
4 the customers of a public utility contained in the records or lists  
5 held by the public utility of which they are customers, except that  
6 this information may be released to the division of child support or  
7 the agency or firm providing child support enforcement for another  
8 state under Title IV-D of the federal social security act, for the  
9 establishment, enforcement, or modification of a support order.

10 (w)(i) The federal social security number of individuals governed  
11 under chapter 18.130 RCW maintained in the files of the department of  
12 health, except this exemption does not apply to requests made directly  
13 to the department from federal, state, and local agencies of  
14 government, and national and state licensing, credentialing,  
15 investigatory, disciplinary, and examination organizations; (ii) the  
16 current residential address and current residential telephone number of  
17 a health care provider governed under chapter 18.130 RCW maintained in  
18 the files of the department, if the provider requests that this  
19 information be withheld from public inspection and copying, and  
20 provides to the department an accurate alternate or business address  
21 and business telephone number. On or after January 1, 1995, the  
22 current residential address and residential telephone number of a  
23 health care provider governed under RCW 18.130.140 maintained in the  
24 files of the department shall automatically be withheld from public  
25 inspection and copying unless the provider specifically requests the  
26 information be released, and except as provided for under RCW  
27 42.17.260(9).

28 (x) Information obtained by the board of pharmacy as provided in  
29 RCW 69.45.090.

30 (y) Information obtained by the board of pharmacy or the department  
31 of health and its representatives as provided in RCW 69.41.044,  
32 69.41.280, and 18.64.420.

33 (z) Financial information, business plans, examination reports, and  
34 any information produced or obtained in evaluating or examining a  
35 business and industrial development corporation organized or seeking  
36 certification under chapter 31.24 RCW.

37 (aa) Financial and commercial information supplied to the state  
38 investment board by any person when the information relates to the  
39 investment of public trust or retirement funds and when disclosure

1 would result in loss to such funds or in private loss to the providers  
2 of this information.

3 (bb) Financial and valuable trade information under RCW 51.36.120.

4 (cc) Client records maintained by an agency that is a domestic  
5 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape  
6 crisis center as defined in RCW 70.125.030.

7 (dd) Information that identifies a person who, while an agency  
8 employee: (i) Seeks advice, under an informal process established by  
9 the employing agency, in order to ascertain his or her rights in  
10 connection with a possible unfair practice under chapter 49.60 RCW  
11 against the person; and (ii) requests his or her identity or any  
12 identifying information not be disclosed.

13 (ee) Investigative records compiled by an employing agency  
14 conducting a current investigation of a possible unfair practice under  
15 chapter 49.60 RCW or of a possible violation of other federal, state,  
16 or local laws prohibiting discrimination in employment.

17 (ff) Business related information protected from public inspection  
18 and copying under RCW 15.86.110.

19 (gg) Financial, commercial, operations, and technical and research  
20 information and data submitted to or obtained by the clean Washington  
21 center in applications for, or delivery of, program services under  
22 chapter 70.95H RCW.

23 (hh) Information and documents created specifically for, and  
24 collected and maintained by a quality improvement committee pursuant to  
25 RCW 43.70.510 or 70.41.200, or by a peer review committee pursuant to  
26 RCW 4.24.250, regardless of which agency is in possession of the  
27 information and documents.

28 (ii) Personal information in files maintained in a data base  
29 created under RCW 43.07.360.

30 (jj) Financial and commercial information requested by the public  
31 stadium authority from any person or organization that leases or uses  
32 the stadium and exhibition center as defined in RCW 36.102.010.

33 (kk) Names of individuals residing in emergency or transitional  
34 housing that are furnished to the department of revenue or a county  
35 assessor in order to substantiate a claim for property tax exemption  
36 under RCW 84.36.043.

37 (ll) The names, residential addresses, residential telephone  
38 numbers, and other individually identifiable records held by an agency  
39 in relation to a vanpool, carpool, or other ride-sharing program or



1 service. However, these records may be disclosed to other persons who  
2 apply for ride-matching services and who need that information in order  
3 to identify potential riders or drivers with whom to share rides.

4 (mm) Proprietary financial and commercial information that the  
5 submitting entity, with review by the department of health,  
6 specifically identifies at the time it is submitted and that is  
7 provided to or obtained by the department of health in connection with  
8 an application for, or the supervision of, an antitrust exemption  
9 sought by the submitting entity under RCW 43.72.310. If a request for  
10 such information is received, the submitting entity must be notified of  
11 the request. Within ten business days of receipt of the notice, the  
12 submitting entity shall provide a written statement of the continuing  
13 need for confidentiality, which shall be provided to the requester.  
14 Upon receipt of such notice, the department of health shall continue to  
15 treat information designated under this section as exempt from  
16 disclosure. If the requester initiates an action to compel disclosure  
17 under this chapter, the submitting entity must be joined as a party to  
18 demonstrate the continuing need for confidentiality.

19 (nn) Records maintained by the board of industrial insurance  
20 appeals that are related to appeals of crime victims' compensation  
21 claims filed with the board under RCW 7.68.110.

22 (oo) Financial and commercial information supplied by or on behalf  
23 of a person, firm, corporation, or entity under chapter 28B.95 RCW  
24 relating to the purchase or sale of tuition units and contracts for the  
25 purchase of multiple tuition units.

26 (2) Except for information described in subsection (1)(c)(i) of  
27 this section and confidential income data exempted from public  
28 inspection pursuant to RCW 84.40.020, the exemptions of this section  
29 are inapplicable to the extent that information, the disclosure of  
30 which would violate personal privacy or vital governmental interests,  
31 can be deleted from the specific records sought. No exemption may be  
32 construed to permit the nondisclosure of statistical information not  
33 descriptive of any readily identifiable person or persons.

34 (3) Inspection or copying of any specific records exempt under the  
35 provisions of this section may be permitted if the superior court in  
36 the county in which the record is maintained finds, after a hearing  
37 with notice thereof to every person in interest and the agency, that  
38 the exemption of such records is clearly unnecessary to protect any  
39 individual's right of privacy or any vital governmental function.

1       (4) Agency responses refusing, in whole or in part, inspection of  
2 any public record shall include a statement of the specific exemption  
3 authorizing the withholding of the record (or part) and a brief  
4 explanation of how the exemption applies to the record withheld.

--- **END** ---