
HOUSE BILL 2449

State of Washington 58th Legislature 2004 Regular Session

By Representatives Cody, Morrell and Schual-Berke

Read first time 01/14/2004. Referred to Committee on Health Care.

1 AN ACT Relating to health professions' scope of practice; and
2 amending RCW 18.120.010, 18.120.020, 18.120.030, and 18.120.040.

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

4 **Sec. 1.** RCW 18.120.010 and 1990 c 33 s 554 are each amended to
5 read as follows:

6 (1) The purpose of this chapter is to establish guidelines for the
7 regulation of health professions not licensed or regulated prior to
8 July 24, 1983, and those licensed or regulated health professions which
9 seek to substantially increase their scope of practice: PROVIDED, That
10 the provisions of this chapter are not intended and shall not be
11 construed to: (a) Apply to any regulatory entity created prior to July
12 24, 1983, except as provided in this chapter; (b) affect the powers and
13 responsibilities of the superintendent of public instruction or state
14 board of education under RCW 28A.305.130 and 28A.410.010; (c) apply to
15 or interfere in any way with the practice of religion or to any kind of
16 treatment by prayer; and (d) apply to any remedial or technical
17 amendments to any statutes which licensed or regulated activity before
18 July 24, 1983. The legislature believes that all individuals should be
19 permitted to enter into a health profession unless there is an

1 overwhelming need for the state to protect the interests of the public
2 by restricting entry into the profession. Where such a need is
3 identified, the regulation adopted by the state should be set at the
4 least restrictive level consistent with the public interest to be
5 protected.

6 (2) It is the intent of this chapter that no regulation shall,
7 after July 24, 1983, be imposed upon any health profession except for
8 the exclusive purpose of protecting the public interest. All bills
9 introduced in the legislature to regulate a health profession for the
10 first time should be reviewed according to the following criteria. A
11 health profession should be regulated by the state only when:

12 (a) Unregulated practice can clearly harm or endanger the health,
13 safety, or welfare of the public, and the potential for the harm is
14 easily recognizable and not remote or dependent upon tenuous argument;

15 (b) The public needs and can reasonably be expected to benefit from
16 an assurance of initial and continuing professional ability; and

17 (c) The public cannot be effectively protected by other means in a
18 more cost-beneficial manner.

19 (3) After evaluating the criteria in subsection (2) of this section
20 and considering governmental and societal costs and benefits, if the
21 legislature finds that it is necessary to regulate a health profession
22 not previously regulated by law, the least restrictive alternative
23 method of regulation should be implemented, consistent with the public
24 interest and this section:

25 (a) Where existing common law and statutory civil actions and
26 criminal prohibitions are not sufficient to eradicate existing harm,
27 the regulation should provide for stricter civil actions and criminal
28 prosecutions;

29 (b) Where a service is being performed for individuals involving a
30 hazard to the public health, safety, or welfare, the regulation should
31 impose inspection requirements and enable an appropriate state agency
32 to enforce violations by injunctive relief in court, including, but not
33 limited to, regulation of the business activity providing the service
34 rather than the employees of the business;

35 (c) Where the threat to the public health, safety, or economic
36 well-being is relatively small as a result of the operation of the
37 health profession, the regulation should implement a system of
38 registration;

1 (d) Where the consumer may have a substantial basis for relying on
2 the services of a practitioner, the regulation should implement a
3 system of certification; or

4 (e) Where apparent that adequate regulation cannot be achieved by
5 means other than licensing, the regulation should implement a system of
6 licensing.

7 (4) With respect to increasing the scope of practice of licensed or
8 regulated health professions, is the intent of this chapter not to
9 create excess demand for health care services, but to ensure that
10 practitioners are able to provide health care services to the extent
11 that they are qualified. The scope of practice for a health profession
12 should be increased only when:

13 (a) The training and education received by the profession is
14 adequate to protect the health, safety, and welfare of the public; and

15 (b) It is determined that the service to be added to the
16 profession's scope of practice provides a health benefit to the
17 recipient of the service and is not creating excessive demand on the
18 health care system.

19 **Sec. 2.** RCW 18.120.020 and 2001 c 251 s 26 are each amended to
20 read as follows:

21 The definitions in this section apply throughout this chapter
22 unless the context clearly requires otherwise.

23 (1) "Applicant group" includes any health professional group or
24 organization, any individual, or any other interested party which
25 proposes that any health professional group not presently regulated be
26 regulated or which proposes to substantially increase the scope of
27 practice of the profession.

28 (2) "Certificate" and "certification" mean a voluntary process by
29 which a statutory regulatory entity grants recognition to an individual
30 who (a) has met certain prerequisite qualifications specified by that
31 regulatory entity, and (b) may assume or use "certified" in the title
32 or designation to perform prescribed health professional tasks.

33 (3) "Grandfather clause" means a provision in a regulatory statute
34 applicable to practitioners actively engaged in the regulated health
35 profession prior to the effective date of the regulatory statute which
36 exempts the practitioners from meeting the prerequisite qualifications

1 set forth in the regulatory statute to perform prescribed occupational
2 tasks.

3 (4) "Health professions" means and includes the following health
4 and health-related licensed or regulated professions and occupations:
5 Podiatric medicine and surgery under chapter 18.22 RCW; chiropractic
6 under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW;
7 dentistry under chapter 18.32 RCW; denturism under chapter 18.30 RCW;
8 dispensing opticians under chapter 18.34 RCW; hearing instruments under
9 chapter 18.35 RCW; naturopaths under chapter 18.36A RCW; embalming and
10 funeral directing under chapter 18.39 RCW; midwifery under chapter
11 18.50 RCW; nursing home administration under chapter 18.52 RCW;
12 optometry under chapters 18.53 and 18.54 RCW; ocularists under chapter
13 18.55 RCW; osteopathic medicine and surgery under chapters 18.57 and
14 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW; medicine
15 under chapters 18.71 and 18.71A RCW; emergency medicine under chapter
16 18.73 RCW; physical therapy under chapter 18.74 RCW; practical nurses
17 under chapter 18.79 RCW; psychologists under chapter 18.83 RCW;
18 registered nurses under chapter 18.79 RCW; occupational therapists
19 licensed under chapter 18.59 RCW; respiratory care practitioners
20 licensed under chapter 18.89 RCW; veterinarians and veterinary
21 technicians under chapter 18.92 RCW; health care assistants under
22 chapter 18.135 RCW; massage practitioners under chapter 18.108 RCW;
23 acupuncturists licensed under chapter 18.06 RCW; persons registered
24 under chapter 18.19 RCW; persons licensed as mental health counselors,
25 marriage and family therapists, and social workers under chapter 18.225
26 RCW; dietitians and nutritionists certified by chapter 18.138 RCW;
27 radiologic technicians under chapter 18.84 RCW; and nursing assistants
28 registered or certified under chapter 18.88A RCW.

29 (5) "Inspection" means the periodic examination of practitioners by
30 a state agency in order to ascertain whether the practitioners'
31 occupation is being carried out in a fashion consistent with the public
32 health, safety, and welfare.

33 (6) "Legislative committees of reference" means the standing
34 legislative committees designated by the respective rules committees of
35 the senate and house of representatives to consider proposed
36 legislation to regulate health professions not previously regulated.

37 (7) "License," "licensing," and "licensure" mean permission to
38 engage in a health profession which would otherwise be unlawful in the

1 state in the absence of the permission. A license is granted to those
2 individuals who meet prerequisite qualifications to perform prescribed
3 health professional tasks and for the use of a particular title.

4 (8) "Professional license" means an individual, nontransferable
5 authorization to carry on a health activity based on qualifications
6 which include: (a) Graduation from an accredited or approved program,
7 and (b) acceptable performance on a qualifying examination or series of
8 examinations.

9 (9) "Practitioner" means an individual who (a) has achieved
10 knowledge and skill by practice, and (b) is actively engaged in a
11 specified health profession.

12 (10) "Public member" means an individual who is not, and never was,
13 a member of the health profession being regulated or the spouse of a
14 member, or an individual who does not have and never has had a material
15 financial interest in either the rendering of the health professional
16 service being regulated or an activity directly related to the
17 profession being regulated.

18 (11) "Registration" means the formal notification which, prior to
19 rendering services, a practitioner shall submit to a state agency
20 setting forth the name and address of the practitioner; the location,
21 nature and operation of the health activity to be practiced; and, if
22 required by the regulatory entity, a description of the service to be
23 provided.

24 (12) "Regulatory entity" means any board, commission, agency,
25 division, or other unit or subunit of state government which regulates
26 one or more professions, occupations, industries, businesses, or other
27 endeavors in this state.

28 (13) "Scope of practice" means the range of activities that may be
29 performed by individuals who are credentialed to practice a particular
30 profession.

31 (14) "State agency" includes every state office, department, board,
32 commission, regulatory entity, and agency of the state, and, where
33 provided by law, programs and activities involving less than the full
34 responsibility of a state agency.

35 **Sec. 3.** RCW 18.120.030 and 1991 c 332 s 6 are each amended to read
36 as follows:

1 After July 24, 1983, if appropriate, applicant groups shall explain
2 each of the following factors to the extent applicable and as requested
3 by the legislative committees of reference:

4 (1) A definition of the problem and why regulation or the increase
5 in the scope of practice is necessary:

6 (a) The nature of the potential harm to the public if the health
7 profession is not regulated or the scope of practice is not increased,
8 and the extent to which there is a threat to public health and safety;

9 (b) The extent to which consumers need and will benefit from a
10 method of regulation identifying competent practitioners, indicating
11 typical employers, if any, of practitioners in the health profession;

12 (~~and~~)

13 (c) The extent of autonomy a practitioner has, as indicated by:

14 (i) The extent to which the health profession calls for independent
15 judgment and the extent of skill or experience required in making the
16 independent judgment; and

17 (ii) The extent to which practitioners are supervised; and

18 (d) The extent to which the existing scope of practice prevents
19 practitioners from using skills that they are trained and competent to
20 perform;

21 (2) The efforts made to address the problem:

22 (a) Voluntary efforts, if any, by members of the health profession
23 to:

24 (i) Establish a code of ethics; or

25 (ii) Help resolve disputes between health practitioners and
26 consumers; and

27 (b) Recourse to and the extent of use of applicable law and whether
28 it could be strengthened to control the problem;

29 (3) The alternatives considered:

30 (a) Regulation of business employers or practitioners rather than
31 employee practitioners;

32 (b) Regulation of the program or service rather than the individual
33 practitioners;

34 (c) Registration of all practitioners;

35 (d) Certification of all practitioners;

36 (e) Other alternatives;

37 (f) Why the use of the alternatives specified in this subsection
38 would not be adequate to protect the public interest; and

1 (g) Why licensing would serve to protect the public interest;

2 (4) The benefit to the public if regulation or the increase in the
3 scope of practice is granted:

4 (a) The extent to which the incidence of specific problems present
5 in the unregulated health profession can reasonably be expected to be
6 reduced by regulation;

7 (b) Whether the public can identify qualified practitioners;

8 (c) The extent to which the public can be confident that qualified
9 practitioners are competent:

10 (i) Whether the proposed regulatory entity would be a board
11 composed of members of the profession and public members, or a state
12 agency, or both, and, if appropriate, their respective responsibilities
13 in administering the system of registration, certification, or
14 licensure, including the composition of the board and the number of
15 public members, if any; the powers and duties of the board or state
16 agency regarding examinations and for cause revocation, suspension, and
17 nonrenewal of registrations, certificates, or licenses; the
18 promulgation of rules and canons of ethics; the conduct of inspections;
19 the receipt of complaints and disciplinary action taken against
20 practitioners; and how fees would be levied and collected to cover the
21 expenses of administering and operating the regulatory system;

22 (ii) If there is a grandfather clause, whether such practitioners
23 will be required to meet the prerequisite qualifications established by
24 the regulatory entity at a later date;

25 (iii) The nature of the standards proposed for registration,
26 certification, or licensure as compared with the standards of other
27 jurisdictions;

28 (iv) Whether the regulatory entity would be authorized to enter
29 into reciprocity agreements with other jurisdictions;

30 (v) The nature and duration of any training including, but not
31 limited to, whether the training includes a substantial amount of
32 supervised field experience; whether training programs exist in this
33 state; if there will be an experience requirement; whether the
34 experience must be acquired under a registered, certificated, or
35 licensed practitioner; whether there are alternative routes of entry or
36 methods of meeting the prerequisite qualifications; whether all
37 applicants will be required to pass an examination; and, if an

1 examination is required, by whom it will be developed and how the costs
2 of development will be met; and

3 (vi) What additional training programs are anticipated to be
4 necessary to assure training accessible statewide; the anticipated time
5 required to establish the additional training programs; the types of
6 institutions capable of providing the training; a description of how
7 training programs will meet the needs of the expected work force,
8 including reentry workers, minorities, placebound students, and others;

9 (d) Assurance of the public that practitioners have maintained
10 their competence:

11 (i) Whether the registration, certification, or licensure will
12 carry an expiration date; and

13 (ii) Whether renewal will be based only upon payment of a fee, or
14 whether renewal will involve reexamination, peer review, or other
15 enforcement;

16 (e) Whether the regulation or the increase in the scope of practice
17 will increase access to health care services for the public or meet
18 recognized public health goals;

19 (5) The extent to which regulation or the increase in the scope of
20 practice might harm the public:

21 (a) The extent to which regulation will restrict entry into the
22 health profession:

23 (i) Whether the proposed standards are more restrictive than
24 necessary to ((insure)) ensure safe and effective performance; and

25 (ii) Whether the proposed legislation requires registered,
26 certificated, or licensed practitioners in other jurisdictions who
27 migrate to this state to qualify in the same manner as state applicants
28 for registration, certification, and licensure when the other
29 jurisdiction has substantially equivalent requirements for
30 registration, certification, or licensure as those in this state;
31 ((and))

32 (b) Whether there are similar professions to that of the applicant
33 group which should be included in, or portions of the applicant group
34 which should be excluded from, the proposed legislation;

35 (c) Whether the increase in the scope of practice will create an
36 excessive duplication of services that will affect the viability of
37 other health professions providing more extensive services to the
38 public; and

1 (d) The harm that the activity that increases the scope of practice
2 poses to the public if not performed properly and the experience of
3 similarly trained professionals, in this state or others, to perform
4 the activity properly;

5 (6) The maintenance of standards:

6 (a) Whether effective quality assurance standards exist in the
7 health profession, such as legal requirements associated with specific
8 programs that define or enforce standards, or a code of ethics; ~~((and))~~

9 (b) How the proposed legislation will assure quality:

10 (i) The extent to which a code of ethics, if any, will be adopted;
11 and

12 (ii) The grounds for suspension or revocation of registration,
13 certification, or licensure; and

14 (c) The extent to which education and training programs include the
15 activity that increases the scope of practice in the regular
16 curriculum;

17 (7) A description of the group proposed for regulation or for the
18 increase in the scope of practice, including a list of associations,
19 organizations, and other groups representing the practitioners in this
20 state, an estimate of the number of practitioners in each group,
21 ~~((and))~~ whether the groups represent different levels of practice,
22 other professions currently performing the activity that is the subject
23 of an increase in the scope of practice, and other states that
24 currently regulate the profession or allow the profession to perform
25 the increase in the scope of practice; and

26 (8) The expected costs of regulation or increased scope of
27 practice:

28 (a) The impact that the increase in the scope of practice, or the
29 registration, certification, or licensure of the profession will have
30 on the costs of the services to the public;

31 (b) The cost to the state and to the general public of implementing
32 the proposed legislation; and

33 (c) The cost to the state and the members of the group proposed for
34 regulation for the required education, including projected tuition and
35 expenses and expected increases in training programs, staffing, and
36 enrollments at state training institutions.

1 **Sec. 4.** RCW 18.120.040 and 1989 1st ex.s. c 9 s 305 are each
2 amended to read as follows:

3 (1) Applicant groups shall submit a written ((report)) proposal
4 explaining the factors enumerated in RCW 18.120.030 to the legislative
5 committees of reference, copies of which shall be sent to the state
6 board of health and the department of health for review and comment.
7 ((The state board of health and the department of health shall make
8 recommendations based on the report submitted by applicant groups to
9 the extent requested by the legislative committees.))

10 (2) For each application received, the department of health shall
11 convene a review committee composed of the state health officer and no
12 more than four other members from across the state with experience in
13 any of the following areas: Health care delivery models, health care
14 education, health care policy, health care economics, or other relevant
15 experience. The review committee shall:

16 (a) Determine the appropriate methodology for analyzing the merits
17 of the proposal;

18 (b) Review the proposal according to the applicable criteria and
19 factors listed in this chapter; and

20 (c) Comment and make recommendations to the department of health
21 regarding the content of proposal.

22 (3) The department shall assess the proposal according to the
23 methodology established by the review committee and prepare an initial
24 report of the merits of the proposal considering the review committee's
25 comments and recommendations.

26 (4) The department shall distribute the proposal and the initial
27 report to interested parties and hold a public hearing to solicit
28 comments on the proposal and initial report. Interested parties may
29 also submit written comments to the department.

30 (5) The department shall consider comments received regarding the
31 proposal and initial report and make any changes supported by evidence
32 before issuing a final report.

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