
ENGROSSED SUBSTITUTE SENATE BILL 6210

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Keiser, Winsley, Thibaudeau and Deccio)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to peer review committees and coordinated quality
2 improvement programs; and amending RCW 4.24.250, 43.70.510, and
3 70.41.200.

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

5 **Sec. 1.** RCW 4.24.250 and 1981 c 181 s 1 are each amended to read
6 as follows:

7 (1) Any health care provider as defined in RCW 7.70.020 (1) and (2)
8 as now existing or hereafter amended who, in good faith, files charges
9 or presents evidence against another member of their profession based
10 on the claimed incompetency or gross misconduct of such person before
11 a regularly constituted review committee or board of a professional
12 society or hospital whose duty it is to evaluate the competency and
13 qualifications of members of the profession, including limiting the
14 extent of practice of such person in a hospital or similar institution,
15 or before a regularly constituted committee or board of a hospital
16 whose duty it is to review and evaluate the quality of patient care and
17 any person or entity who, in good faith, shares any information or
18 documents with one or more other committees, boards, or programs under
19 subsection (2) of this section, shall be immune from civil action for

1 damages arising out of such activities. For the purposes of this
2 section, sharing information is presumed to be in good faith. However,
3 the presumption may be rebutted upon a showing of clear, cogent, and
4 convincing evidence that the information shared was knowingly false or
5 deliberately misleading. The proceedings, reports, and written records
6 of such committees or boards, or of a member, employee, staff person,
7 or investigator of such a committee or board, shall not be subject to
8 subpoena or discovery proceedings in any civil action, except actions
9 arising out of the recommendations of such committees or boards
10 involving the restriction or revocation of the clinical or staff
11 privileges of a health care provider as defined above.

12 (2) A coordinated quality improvement program maintained in
13 accordance with RCW 43.70.510 or 70.41.200 and any committees or boards
14 under subsection (1) of this section may share information and
15 documents, including complaints and incident reports, created
16 specifically for, and collected and maintained by a coordinated quality
17 improvement committee or committees or boards under subsection (1) of
18 this section, with one or more other coordinated quality improvement
19 programs or committees or boards under subsection (1) of this section
20 for the improvement of the quality of health care services rendered to
21 patients and the identification and prevention of medical malpractice.
22 The privacy protections of chapter 70.02 RCW and the federal health
23 insurance portability and accountability act of 1996 and its
24 implementing regulations apply to the sharing of individually
25 identifiable patient information held by a coordinated quality
26 improvement program. Information and documents disclosed by one
27 coordinated quality improvement program or committee or board under
28 subsection (1) of this section to another coordinated quality
29 improvement program or committee or board under subsection (1) of this
30 section and any information and documents created or maintained as a
31 result of the sharing of information and documents shall not be subject
32 to the discovery process and confidentiality shall be respected as
33 required by subsection (1) of this section and by RCW 43.70.510(4) and
34 70.41.200(3).

35 **Sec. 2.** RCW 43.70.510 and 1995 c 267 s 7 are each amended to read
36 as follows:

37 (1)(a) Health care institutions and medical facilities, other than

1 hospitals, that are licensed by the department, professional societies
2 or organizations, health care service contractors, health maintenance
3 organizations, health carriers approved pursuant to chapter 48.43 RCW,
4 and any other person or entity providing health care coverage under
5 chapter 48.42 RCW that is subject to the jurisdiction and regulation of
6 any state agency or any subdivision thereof may maintain a coordinated
7 quality improvement program for the improvement of the quality of
8 health care services rendered to patients and the identification and
9 prevention of medical malpractice as set forth in RCW 70.41.200.

10 (b) All such programs shall comply with the requirements of RCW
11 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h) as modified to
12 reflect the structural organization of the institution, facility,
13 professional societies or organizations, health care service
14 contractors, health maintenance organizations, health carriers, or any
15 other person or entity providing health care coverage under chapter
16 48.42 RCW that is subject to the jurisdiction and regulation of any
17 state agency or any subdivision thereof, unless an alternative quality
18 improvement program substantially equivalent to RCW 70.41.200(1)(a) is
19 developed. All such programs, whether complying with the requirement
20 set forth in RCW 70.41.200(1)(a) or in the form of an alternative
21 program, must be approved by the department before the discovery
22 limitations provided in subsections (3) and (4) of this section and the
23 exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section
24 shall apply. In reviewing plans submitted by licensed entities that
25 are associated with physicians' offices, the department shall ensure
26 that the exemption under RCW 42.17.310(1)(hh) and the discovery
27 limitations of this section are applied only to information and
28 documents related specifically to quality improvement activities
29 undertaken by the licensed entity.

30 (2) Health care provider groups of (~~ten~~) five or more providers
31 may maintain a coordinated quality improvement program for the
32 improvement of the quality of health care services rendered to patients
33 and the identification and prevention of medical malpractice as set
34 forth in RCW 70.41.200. All such programs shall comply with the
35 requirements of RCW 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h)
36 as modified to reflect the structural organization of the health care
37 provider group. All such programs must be approved by the department

1 before the discovery limitations provided in subsections (3) and (4) of
2 this section and the exemption under RCW 42.17.310(1)(hh) and
3 subsection (5) of this section shall apply.

4 (3) Any person who, in substantial good faith, provides information
5 to further the purposes of the quality improvement and medical
6 malpractice prevention program or who, in substantial good faith,
7 participates on the quality improvement committee shall not be subject
8 to an action for civil damages or other relief as a result of such
9 activity. Any person or entity participating in a coordinated quality
10 improvement program that, in substantial good faith, shares information
11 or documents with one or more other programs, committees, or boards
12 under subsection (6) of this section is not subject to an action for
13 civil damages or other relief as a result of the activity or its
14 consequences. For the purposes of this section, sharing information is
15 presumed to be in substantial good faith. However, the presumption may
16 be rebutted upon a showing of clear, cogent, and convincing evidence
17 that the information shared was knowingly false or deliberately
18 misleading.

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

1 in any civil action challenging the termination of a contract by a
2 state agency with any entity maintaining a coordinated quality
3 improvement program under this section if the termination was on the
4 basis of quality of care concerns, introduction into evidence of
5 information created, collected, or maintained by the quality
6 improvement committees of the subject entity, which may be under terms
7 of a protective order as specified by the court; (e) in any civil
8 action, disclosure of the fact that staff privileges were terminated or
9 restricted, including the specific restrictions imposed, if any and the
10 reasons for the restrictions; or (f) in any civil action, discovery and
11 introduction into evidence of the patient's medical records required by
12 rule of the department of health to be made regarding the care and
13 treatment received.

14 (5) Information and documents created specifically for, and
15 collected and maintained by a quality improvement committee are exempt
16 from disclosure under chapter 42.17 RCW.

17 (6) A coordinated quality improvement program may share information
18 and documents, including complaints and incident reports, created
19 specifically for, and collected and maintained by a quality improvement
20 committee or a peer review committee under RCW 4.24.250 with one or
21 more other coordinated quality improvement programs maintained in
22 accordance with this section or with RCW 70.41.200 or a peer review
23 committee under RCW 4.24.250, for the improvement of the quality of
24 health care services rendered to patients and the identification and
25 prevention of medical malpractice. The privacy protections of chapter
26 70.02 RCW and the federal health insurance portability and
27 accountability act of 1996 and its implementing regulations apply to
28 the sharing of individually identifiable patient information held by a
29 coordinated quality improvement program. Information and documents
30 disclosed by one coordinated quality improvement program to another
31 coordinated quality improvement program or a peer review committee
32 under RCW 4.24.250 and any information and documents created or
33 maintained as a result of the sharing of information and documents
34 shall not be subject to the discovery process and confidentiality shall
35 be respected as required by subsection (4) of this section and RCW
36 4.24.250.

37 (7) The department of health shall adopt rules as are necessary to
38 implement this section.

1 **Sec. 3.** RCW 70.41.200 and 2000 c 6 s 3 are each amended to read as
2 follows:

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

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

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

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

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

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

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

34 (g) Education programs dealing with quality improvement, patient
35 safety, medication errors, injury prevention, staff responsibility to
36 report professional misconduct, the legal aspects of patient care,
37 improved communication with patients, and causes of malpractice claims
38 for staff personnel engaged in patient care activities; and

1 (h) Policies to ensure compliance with the reporting requirements
2 of this section.

3 (2) Any person who, in substantial good faith, provides information
4 to further the purposes of the quality improvement and medical
5 malpractice prevention program or who, in substantial good faith,
6 participates on the quality improvement committee shall not be subject
7 to an action for civil damages or other relief as a result of such
8 activity. Any person or entity participating in a coordinated quality
9 improvement program that, in substantial good faith, shares information
10 or documents with one or more other programs, committees, or boards
11 under subsection (8) of this section is not subject to an action for
12 civil damages or other relief as a result of the activity. For the
13 purposes of this section, sharing information is presumed to be in
14 substantial good faith. However, the presumption may be rebutted upon
15 a showing of clear, cogent, and convincing evidence that the
16 information shared was knowingly false or deliberately misleading.

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

1 if any and the reasons for the restrictions; or (e) in any civil
2 action, discovery and introduction into evidence of the patient's
3 medical records required by regulation of the department of health to
4 be made regarding the care and treatment received.

5 (4) Each quality improvement committee shall, on at least a
6 semiannual basis, report to the governing board of the hospital in
7 which the committee is located. The report shall review the quality
8 improvement activities conducted by the committee, and any actions
9 taken as a result of those activities.

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

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

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

31 (8) A coordinated quality improvement program may share information
32 and documents, including complaints and incident reports, created
33 specifically for, and collected and maintained by a quality improvement
34 committee or a peer review committee under RCW 4.24.250 with one or
35 more other coordinated quality improvement programs maintained in
36 accordance with this section or with RCW 43.70.510 or a peer review
37 committee under RCW 4.24.250, for the improvement of the quality of
38 health care services rendered to patients and the identification and

1 prevention of medical malpractice. The privacy protections of chapter
2 70.02 RCW and the federal health insurance portability and
3 accountability act of 1996 and its implementing regulations apply to
4 the sharing of individually identifiable patient information held by a
5 coordinated quality improvement program. Information and documents
6 disclosed by one coordinated quality improvement program to another
7 coordinated quality improvement program or a peer review committee
8 under RCW 4.24.250 and any information and documents created or
9 maintained as a result of the sharing of information and documents
10 shall not be subject to the discovery process and confidentiality shall
11 be respected as required by subsection (3) of this section and RCW
12 4.24.250.

13 (9) Violation of this section shall not be considered negligence
14 per se.

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