
SECOND SUBSTITUTE HOUSE BILL 1106

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Campbell, Chase, Hankins, Morrell, Appleton, Hudgins, McDermott and Wallace)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to the reporting of infections acquired in health
2 care facilities; reenacting and amending RCW 70.41.200 and 42.56.360;
3 adding new sections to chapter 43.70 RCW; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that each year health
6 care-associated infections affect two million Americans. These
7 infections result in the unnecessary death of ninety thousand patients
8 and costs the health care system 4.5 billion dollars. Hospitals should
9 be implementing evidence-based measures to reduce hospital-acquired
10 infections. The legislature further finds the public should have
11 access to data on outcome measures regarding hospital-acquired
12 infections. Data reporting should be consistent with national hospital
13 reporting standards.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.70 RCW
15 to read as follows:

16 (1) The definitions in this subsection apply throughout this
17 section unless the context clearly requires otherwise.

1 (a) "Health care-associated infection" means a localized or
2 systemic condition that results from adverse reaction to the presence
3 of an infectious agent or its toxins and that was not present or
4 incubating at the time of admission to the hospital.

5 (b) "Hospital" means a health care facility licensed under chapter
6 70.41 RCW, including an ambulatory surgical facility maintained and
7 operated by a health care facility licensed under chapter 70.41 RCW.
8 An ambulatory surgical facility not maintained and operated by a health
9 care facility licensed under chapter 70.41 RCW shall be considered a
10 hospital for purposes of this definition on the effective date of a
11 requirement for state registration or licensure of ambulatory surgical
12 facilities.

13 (2)(a) Except as provided in (b) of this subsection:

14 (i) A hospital shall collect data related to health care-associated
15 infections according to the definitions and methods of the centers for
16 disease control and prevention's national healthcare safety network on
17 the following:

18 (A) Beginning July 1, 2008, central line-associated bloodstream
19 infection in the intensive care unit;

20 (B) Beginning January 1, 2009: (I) Ventilator-associated
21 pneumonia; and (II) antimicrobial use and resistance, as determined by
22 the department under subsection (3) of this section;

23 (C) Beginning January 1, 2010, surgical site infection for selected
24 procedures, as determined by the department under subsection (3) of
25 this section;

26 (D) Beginning January 1, 2011, other health care-associated
27 infection events or procedures as determined by the department under
28 subsection (3) of this section.

29 (ii)(A) A hospital must routinely submit the data collected under
30 (a)(i) of this subsection to the national healthcare safety network of
31 the United States centers for disease control and prevention in
32 accordance with national healthcare safety network requirements and
33 procedures. Data collection and submission must be overseen by a
34 trained infection control professional.

35 (B) With respect to the data required to be reported under this
36 subsection, a hospital must release to the department, or grant the
37 department access to, its hospital-specific information contained in
38 the national healthcare safety network report on that hospital.

1 (b)(i) Except as provided in (b)(ii) of this subsection, the
2 department may by rule, upon recommendation of the advisory committee
3 established under subsection (5) of this section, require hospitals to
4 collect and submit the data collected on health care-associated
5 infections to the centers for medicare and medicaid services according
6 to the definitions, methods, requirements, and procedures of the
7 hospital compare program, rather than the national healthcare safety
8 network, if:

9 (A) The health care-associated events and procedures are
10 substantially the same events and procedures required to be reported
11 under (a)(i)(A) through (D) of this subsection;

12 (B) The hospital-specific information required to be reported to
13 the hospital compare program under this subsection (2)(b) is available
14 to the department; and

15 (C) The department determines that reporting under this subsection
16 (2)(b) will facilitate reporting and will provide substantially the
17 same information to the hospitals and the public as reporting under the
18 national healthcare safety network will provide.

19 (ii) Unless the department determines that reporting is available
20 to them under the hospital compare program, ambulatory surgical
21 facilities not maintained and operated by a health care facility
22 licensed under chapter 70.41 RCW must report to the national healthcare
23 safety network as required under (a) of this subsection.

24 (c) The hospital reports obtained by the department under this
25 section, and any of the information contained in them, are not subject
26 to discovery by subpoena or admissible as evidence in a civil
27 proceeding, and are not subject to public disclosure as provided in RCW
28 42.56.360.

29 (3) The department shall:

30 (a) Provide oversight of the health care-associated infection
31 reporting program established in this section;

32 (b) Adopt by rule additional categories of health care-associated
33 infection events or procedures for which data must be collected,
34 subject to the following:

35 (i) Categories to be added are those reported under the national
36 healthcare safety network or, if reporting under subsection (2)(b) of
37 this section, reported under the hospital compare program of the
38 centers for medicare and medicaid services; and

1 (ii) The department determines that reporting the additional
2 categories is necessary to protect public health and safety;

3 (c) Delete, by rule, the reporting of categories that the
4 department determines are no longer necessary to protect public health
5 and safety;

6 (d) By December 1, 2009, and by each December 1st thereafter,
7 prepare and publish a report on the department's web site that compares
8 the health care-associated infection rates at individual hospitals in
9 the state using the data reported in the previous calendar year
10 pursuant to subsection (2) of this section. The department may update
11 the reports quarterly. In developing a methodology for the report and
12 determining its contents, the department shall consider the
13 recommendations of the advisory committee established in subsection (5)
14 of this section. The report is subject to the following:

15 (i) The report must disclose data in a format that does not release
16 health information about any individual patient; and

17 (ii) The report must not include data if the department determines
18 that a data set is too small or possesses other characteristics that
19 make it otherwise unrepresentative of a hospital's particular ability
20 to achieve a specific outcome; and

21 (e) Evaluate, on a regular basis, the quality and accuracy of
22 health care-associated infection reporting required under this section
23 and the data collection, analysis, and reporting methodologies.

24 (4) The department may respond to requests for data and other
25 information from the data required to be reported under subsection (2)
26 of this section, at the requestor's expense, for special studies and
27 analysis consistent with requirements for confidentiality of patient
28 records.

29 (5)(a) The department shall establish an advisory committee which
30 may include members representing infection control professionals and
31 epidemiologists, licensed health care providers, nursing staff,
32 organizations that represent health care providers and facilities,
33 health maintenance organizations, health care payers and consumers, and
34 the department. The advisory committee shall make recommendations to
35 assist the department in carrying out its responsibilities under this
36 section, including making recommendations on allowing a hospital to
37 review and verify data to be released in the report and on excluding
38 from the report selected data from certified critical access hospitals.

1 (b) In developing its recommendations, the advisory committee shall
2 consider methodologies and practices related to health care-associated
3 infections of the United States centers for disease control and
4 prevention, the centers for medicare and medicaid services, the joint
5 commission, the national quality forum, and the institute for
6 healthcare improvement.

7 (6) The department shall adopt rules as necessary to carry out its
8 responsibilities under this section.

9 **Sec. 3.** RCW 70.41.200 and 2005 c 291 s 3 and 2005 c 33 s 7 are
10 each reenacted and amended to read as follows:

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

15 (a) The establishment of a quality improvement committee with the
16 responsibility to review the services rendered in the hospital, both
17 retrospectively and prospectively, in order to improve the quality of
18 medical care of patients and to prevent medical malpractice. The
19 committee shall oversee and coordinate the quality improvement and
20 medical malpractice prevention program and shall ensure that
21 information gathered pursuant to the program is used to review and to
22 revise hospital policies and procedures;

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

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

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

33 (e) The maintenance and continuous collection of information
34 concerning the hospital's experience with negative health care outcomes
35 and incidents injurious to patients including health care-associated
36 infections as defined in section 2(1)(a) of this act, patient

1 grievances, professional liability premiums, settlements, awards, costs
2 incurred by the hospital for patient injury prevention, and safety
3 improvement activities;

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

8 (g) Education programs dealing with quality improvement, patient
9 safety, medication errors, injury prevention, infection control, staff
10 responsibility to report professional misconduct, the legal aspects of
11 patient care, improved communication with patients, and causes of
12 malpractice claims for staff personnel engaged in patient care
13 activities; and

14 (h) Policies to ensure compliance with the reporting requirements
15 of this section.

16 (2) Any person who, in substantial good faith, provides information
17 to further the purposes of the quality improvement and medical
18 malpractice prevention program or who, in substantial good faith,
19 participates on the quality improvement committee shall not be subject
20 to an action for civil damages or other relief as a result of such
21 activity. Any person or entity participating in a coordinated quality
22 improvement program that, in substantial good faith, shares information
23 or documents with one or more other programs, committees, or boards
24 under subsection (8) of this section is not subject to an action for
25 civil damages or other relief as a result of the activity. For the
26 purposes of this section, sharing information is presumed to be in
27 substantial good faith. However, the presumption may be rebutted upon
28 a showing of clear, cogent, and convincing evidence that the
29 information shared was knowingly false or deliberately misleading.

30 (3) Information and documents, including complaints and incident
31 reports, created specifically for, and collected and maintained by, a
32 quality improvement committee are not subject to review or disclosure,
33 except as provided in this section, or discovery or introduction into
34 evidence in any civil action, and no person who was in attendance at a
35 meeting of such committee or who participated in the creation,
36 collection, or maintenance of information or documents specifically for
37 the committee shall be permitted or required to testify in any civil
38 action as to the content of such proceedings or the documents and

1 information prepared specifically for the committee. This subsection
2 does not preclude: (a) In any civil action, the discovery of the
3 identity of persons involved in the medical care that is the basis of
4 the civil action whose involvement was independent of any quality
5 improvement activity; (b) in any civil action, the testimony of any
6 person concerning the facts which form the basis for the institution of
7 such proceedings of which the person had personal knowledge acquired
8 independently of such proceedings; (c) in any civil action by a health
9 care provider regarding the restriction or revocation of that
10 individual's clinical or staff privileges, introduction into evidence
11 information collected and maintained by quality improvement committees
12 regarding such health care provider; (d) in any civil action,
13 disclosure of the fact that staff privileges were terminated or
14 restricted, including the specific restrictions imposed, if any and the
15 reasons for the restrictions; or (e) in any civil action, discovery and
16 introduction into evidence of the patient's medical records required by
17 regulation of the department of health to be made regarding the care
18 and treatment received.

19 (4) Each quality improvement committee shall, on at least a
20 semiannual basis, report to the governing board of the hospital in
21 which the committee is located. The report shall review the quality
22 improvement activities conducted by the committee, and any actions
23 taken as a result of those activities.

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

26 (6) The medical quality assurance commission or the board of
27 osteopathic medicine and surgery, as appropriate, may review and audit
28 the records of committee decisions in which a physician's privileges
29 are terminated or restricted. Each hospital shall produce and make
30 accessible to the commission or board the appropriate records and
31 otherwise facilitate the review and audit. Information so gained shall
32 not be subject to the discovery process and confidentiality shall be
33 respected as required by subsection (3) of this section. Failure of a
34 hospital to comply with this subsection is punishable by a civil
35 penalty not to exceed two hundred fifty dollars.

36 (7) The department, the joint commission on accreditation of health
37 care organizations, and any other accrediting organization may review
38 and audit the records of a quality improvement committee or peer review

1 committee in connection with their inspection and review of hospitals.
2 Information so obtained shall not be subject to the discovery process,
3 and confidentiality shall be respected as required by subsection (3) of
4 this section. Each hospital shall produce and make accessible to the
5 department the appropriate records and otherwise facilitate the review
6 and audit.

7 (8) A coordinated quality improvement program may share information
8 and documents, including complaints and incident reports, created
9 specifically for, and collected and maintained by, a quality
10 improvement committee or a peer review committee under RCW 4.24.250
11 with one or more other coordinated quality improvement programs
12 maintained in accordance with this section or RCW 43.70.510, a quality
13 assurance committee maintained in accordance with RCW 18.20.390 or
14 74.42.640, or a peer review committee under RCW 4.24.250, for the
15 improvement of the quality of health care services rendered to patients
16 and the identification and prevention of medical malpractice. The
17 privacy protections of chapter 70.02 RCW and the federal health
18 insurance portability and accountability act of 1996 and its
19 implementing regulations apply to the sharing of individually
20 identifiable patient information held by a coordinated quality
21 improvement program. Any rules necessary to implement this section
22 shall meet the requirements of applicable federal and state privacy
23 laws. Information and documents disclosed by one coordinated quality
24 improvement program to another coordinated quality improvement program
25 or a peer review committee under RCW 4.24.250 and any information and
26 documents created or maintained as a result of the sharing of
27 information and documents shall not be subject to the discovery process
28 and confidentiality shall be respected as required by subsection (3) of
29 this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and
30 4.24.250.

31 (9) A hospital that operates a nursing home as defined in RCW
32 18.51.010 may conduct quality improvement activities for both the
33 hospital and the nursing home through a quality improvement committee
34 under this section, and such activities shall be subject to the
35 provisions of subsections (2) through (8) of this section.

36 (10) Violation of this section shall not be considered negligence
37 per se.

1 **Sec. 4.** RCW 42.56.360 and 2006 c 209 s 9 and 2006 c 8 s 112 are
2 each reenacted and amended to read as follows:

3 (1) The following health care information is exempt from disclosure
4 under this chapter:

5 (a) Information obtained by the board of pharmacy as provided in
6 RCW 69.45.090;

7 (b) Information obtained by the board of pharmacy or the department
8 of health and its representatives as provided in RCW 69.41.044,
9 69.41.280, and 18.64.420;

10 (c) Information and documents created specifically for, and
11 collected and maintained by a quality improvement committee under RCW
12 43.70.510 or 70.41.200, or by a peer review committee under RCW
13 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640
14 or 18.20.390, or by a hospital, as defined in section 2 of this act,
15 for reporting of health care-associated infections under section 2 of
16 this act, and notifications or reports of adverse events or incidents
17 made under RCW 70.56.020 or 70.56.040, regardless of which agency is in
18 possession of the information and documents;

19 (d)(i) Proprietary financial and commercial information that the
20 submitting entity, with review by the department of health,
21 specifically identifies at the time it is submitted and that is
22 provided to or obtained by the department of health in connection with
23 an application for, or the supervision of, an antitrust exemption
24 sought by the submitting entity under RCW 43.72.310;

25 (ii) If a request for such information is received, the submitting
26 entity must be notified of the request. Within ten business days of
27 receipt of the notice, the submitting entity shall provide a written
28 statement of the continuing need for confidentiality, which shall be
29 provided to the requester. Upon receipt of such notice, the department
30 of health shall continue to treat information designated under this
31 subsection (1)(d) as exempt from disclosure;

32 (iii) If the requester initiates an action to compel disclosure
33 under this chapter, the submitting entity must be joined as a party to
34 demonstrate the continuing need for confidentiality;

35 (e) Records of the entity obtained in an action under RCW 18.71.300
36 through 18.71.340;

37 (f) Except for published statistical compilations and reports
38 relating to the infant mortality review studies that do not identify

1 individual cases and sources of information, any records or documents
2 obtained, prepared, or maintained by the local health department for
3 the purposes of an infant mortality review conducted by the department
4 of health under RCW 70.05.170; and

5 (g) Complaints filed under chapter 18.130 RCW after July 27, 1997,
6 to the extent provided in RCW 18.130.095(1).

7 (2) Chapter 70.02 RCW applies to public inspection and copying of
8 health care information of patients.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.70 RCW
10 to read as follows:

11 The hospital infection control grant account is created in the
12 custody of the state treasury. All receipts from gifts, grants,
13 bequests, devises, or other funds from public or private sources to
14 support its activities must be deposited into the account.
15 Expenditures from the account may be used only for awarding hospital
16 infection control grants to hospitals and public agencies for
17 establishing and maintaining hospital infection control and
18 surveillance programs, for providing support for such programs, and for
19 the administrative costs associated with the grant program. Only the
20 secretary or the secretary's designee may authorize expenditures from
21 the account. The account is subject to allotment procedures under
22 chapter 43.88 RCW, but an appropriation is not required for
23 expenditures.

24 NEW SECTION. **Sec. 6.** If specific funding for the purposes of this
25 act, referencing this act by bill or chapter number, is not provided by
26 June 30, 2007, in the omnibus appropriations act, this act is null and
27 void.

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