

SSB 5173 - S AMD 41
By Senator Chase

ADOPTED 03/01/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 43.19.003 and 2011 1st sp.s. c 43 s 102 are each
4 amended to read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Department" means the department of enterprise services.

8 (2) "Director" means the director of enterprise services.

9 (3) "State agency" means every state agency, office, officer,
10 board, commission, institution, and institution of higher education,
11 including all state universities, regional universities, The
12 Evergreen State College, and community and technical colleges.

13 Sec. 2. RCW 43.19.782 and 2011 1st sp.s. c 43 s 508 are each
14 amended to read as follows:

15 (1) ~~((The director))~~ In consultation with the department and upon
16 delegation, a state agency shall appoint a loss prevention review
17 team when the death of a person, serious injury to a person, or other
18 substantial loss is alleged or suspected to be caused at least in
19 part by the actions of a state agency~~((, unless the director in his~~
20 ~~or her discretion determines that the incident does not merit~~
21 ~~review))~~ except when the death, injury, or substantial loss is
22 already being investigated by another federal or state agency or by
23 the affected state agency pursuant to the federal or state agency
24 requirements including the provisions required under chapter 70.56
25 RCW. Investigations made pursuant to chapter 70.56 RCW shall continue
26 to be subject to the investigative, reporting, and confidentiality
27 requirements under chapter 70.56 RCW, RCW 43.70.510 and 70.41.200,
28 and the requirements of the department of health. The department may
29 also direct a state agency to conduct a loss prevention review ~~((team~~
30 ~~may also be appointed when any other substantial loss occurs as a~~
31 ~~result of agency policies, litigation or defense practices, or other~~

1 ~~management practices. When the director decides not to appoint a loss~~
2 ~~prevention review team he or she shall issue a statement of the~~
3 ~~reasons for the director's decision. The statement shall be made~~
4 ~~available on the department's web site. The director's decision~~
5 ~~pursuant to this section to appoint or not appoint a loss prevention~~
6 ~~review team shall not be admitted into evidence in a civil or~~
7 ~~administrative proceeding.)) after consultation with the affected~~
8 ~~agency as to the purpose, scope, necessary resources, and intended~~
9 ~~outcomes of the loss prevention review. The department may provide~~
10 ~~guidance to the state agency conducting the loss prevention review as~~
11 ~~requested by the state agency.~~

12 (2) A loss prevention review team shall consist of at least three
13 (~~but no more than five~~) persons, and may include independent
14 consultants, contractors, or state employees, but it shall not
15 include any person (~~employed by the agency~~) directly involved in
16 the loss or risk of loss giving rise to the review, nor any person
17 with testimonial knowledge of the incident to be reviewed. At least
18 one member of the review team shall have expertise relevant to the
19 matter under review.

20 (3) The loss prevention review team shall review the death,
21 serious injury, or other incident and the circumstances surrounding
22 it, evaluate its causes, and recommend steps to reduce the risk of
23 such incidents occurring in the future. The loss prevention review
24 team shall accomplish these tasks by reviewing relevant
25 documents(~~(r)~~) and interviewing persons with relevant knowledge(~~(r~~
26 ~~and reporting its recommendations)~~). The loss prevention review team
27 must submit a report in writing to the director and the (~~director~~)
28 head of the state agency involved in the loss or risk of loss
29 (~~within the time requested by the director~~). The report must
30 include the teams' findings, analyze the causes and contributing
31 factors, analyze future risk, include methods that the agency will
32 use to address and mitigate the risks identified, which may include
33 changes to policies or procedures, and any legislative recommendation
34 necessary to address and carry out the risk treatment strategies
35 identified in the subject report and include the manner in which the
36 agency will measure the effectiveness of its changes. The final
37 report shall not disclose the contents of any documents required by
38 law or regulation to be kept private or confidential, or that are
39 subject to legal privilege or exemption. Reports made by medical
40 facilities under the requirements of chapter 70.56 RCW shall remain

1 subject to the confidentiality provisions, privileges, and exemptions
2 described in chapter 70.56 RCW and RCW 43.70.510, 42.56.360, and
3 70.41.200, and be provided to the department of health.

4 ~~((Pursuant to guidelines established by the director,))~~ The
5 director may develop and enact rules to implement the provisions of
6 this chapter that apply to all state agency loss prevention review
7 teams. State agencies must notify the department immediately upon
8 becoming aware of a death, serious injury, or other substantial loss
9 that is alleged or suspected to be caused at least in part by the
10 actions of the state agency.

11 (5) All state agencies shall provide the loss prevention review
12 team ready access to relevant documents in their possession and ready
13 access to their employees.

14 (6) The director shall submit an annual report to the legislature
15 identifying the reviews conducted in the past year, providing
16 appropriate metrics on effectiveness and efficiency of the loss
17 prevention review team and programs, and summarizing any
18 determinations of trends in incidents such as reductions or increases
19 in the frequency or magnitude of losses and innovative approaches to
20 mitigating risks identified.

21 **Sec. 3.** RCW 43.19.783 and 2011 1st sp.s. c 43 s 509 are each
22 amended to read as follows:

23 (1) The final report from ~~((a))~~ the state agency's loss
24 prevention review team to the director shall be made public by the
25 director promptly ~~((upon receipt))~~ after review, and shall be subject
26 to public disclosure. The final report shall be subject to discovery
27 in a civil or administrative proceeding. However, the final report
28 shall not be admitted into evidence or otherwise used in a civil or
29 administrative proceeding except pursuant to subsection (2) of this
30 section.

31 (2) The relevant excerpt or excerpts from the final report of a
32 loss prevention review team may be used to impeach a fact witness in
33 a civil or administrative proceeding only if the party wishing to use
34 the excerpt or excerpts from the report first shows the court by
35 clear and convincing evidence that the witness, in testimony provided
36 in deposition or at trial in the present proceeding, has contradicted
37 his or her previous statements to the loss prevention review team on
38 an issue of fact material to the present proceeding. In that case,
39 the party may use only the excerpt or excerpts necessary to

1 demonstrate the contradiction. This section shall not be interpreted
2 as expanding the scope of material that may be used to impeach a
3 witness.

4 (3) No member of a loss prevention review team may be examined in
5 a civil or administrative proceeding as to (a) the work of the loss
6 prevention review team, (b) the incident under review, (c) his or her
7 statements, deliberations, thoughts, analyses, or impressions
8 relating to the work of the loss prevention review team or the
9 incident under review, or (d) the statements, deliberations,
10 thoughts, analyses, or impressions of any other member of the loss
11 prevention review team, or any person who provided information to it,
12 relating to the work of the loss prevention review team or the
13 incident under review.

14 (4) Any document that exists prior to the appointment of a loss
15 prevention review team, or that is created independently of such a
16 team, does not become inadmissible merely because it is reviewed or
17 used by the loss prevention review team. A person does not become
18 unavailable as a witness merely because the person has been
19 interviewed by or has provided a statement to a loss prevention
20 review team. However, if called as a witness, the person may not be
21 examined regarding the person's interactions with the loss prevention
22 review team, including without limitation whether the loss prevention
23 review team interviewed the person, what questions the loss
24 prevention review team asked, and what answers the person provided to
25 the loss prevention review team. This section shall not be construed
26 as restricting the person from testifying fully in any proceeding
27 regarding his or her knowledge of the incident under review.

28 (5) Documents prepared by or for the loss prevention review team
29 are inadmissible and may not be used in a civil or administrative
30 proceeding, except that excerpts may be used to impeach the
31 credibility of a witness under the same circumstances that excerpts
32 of the final report may be used pursuant to subsection (2) of this
33 section.

34 (6) The restrictions set forth in this section shall not apply in
35 a licensing or disciplinary proceeding arising from an agency's
36 effort to revoke or suspend the license of any licensed professional
37 based in whole or in part upon allegations of wrongdoing in
38 connection with the death, injury, or other incident reviewed by the
39 loss prevention review team.

1 (7) (~~Within one hundred twenty days after completion of the~~
2 ~~final report of a loss prevention review team, the agency under~~
3 ~~review shall issue to the department a response to the report. The~~
4 ~~response will indicate (a) which of the report's recommendations the~~
5 ~~agency hopes to implement, (b) whether implementation of those~~
6 ~~recommendations will require additional funding or legislation, and~~
7 ~~(c) whatever other information the director may require. This~~
8 ~~response shall be considered part of the final report and shall be~~
9 ~~subject to all provisions of this section that apply to the final~~
10 ~~report, including without limitation the restrictions on~~
11 ~~admissibility and use in civil or administrative proceedings and the~~
12 ~~obligation of the director to make the final report public.~~

13 ~~(8))~~ Nothing in RCW (~~(43.41.370)~~) 43.19.782 or this section is
14 intended to limit the scope of a legislative inquiry into or review
15 of an incident that is the subject of a loss prevention review.

16 ~~((9))~~ (8) Nothing in RCW (~~(43.41.370)~~) 43.19.782 or in this
17 section affects chapter 70.41 RCW and application of that chapter to
18 state-owned or managed hospitals licensed under chapter 70.41 RCW."

SSB 5173 - S AMD 41
By Senator Chase

ADOPTED 03/01/2017

19 On page 1, line 1 of the title, after "agencies;" strike the
20 remainder of the title and insert "and amending RCW 43.19.003,
21 43.19.782, and 43.19.783."

EFFECT: Clarifies that agencies required to complete an adverse health event and incident reports under chapter 70.56 RCW are not required to conduct a separate investigation.

Clarifies that investigations and reports made under chapter 70.56 RCW are subject to the investigative, reporting, and confidentiality requirements under statute and reports must be provided to the Department of Health.

--- END ---