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**SENATE BILL 5721**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Fortunato and Padden

AN ACT Relating to the regulation of abortion facilities; adding a new chapter to Title 70 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abortion facility" means any place where abortions are performed, except medical facilities licensed and regulated by the state on the effective date of this section, including hospitals licensed under chapters 70.41 and 71.12 RCW and ambulatory surgical facilities licensed under chapter 70.230 RCW.

(2) "Department" means the department of health.

(3) "Person" means an individual, firm, partnership, corporation, company, association, joint stock association, and the legal successor thereof.

(4) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW or an osteopathic physician or surgeon licensed under chapter 18.57 RCW.

(5) "Secretary" means the secretary of health.

NEW SECTION. **Sec.**  The secretary shall:

(1) Issue a license to any abortion facility that:

(a) Submits payment of the fee established in RCW 43.70.110 and 43.70.250;

(b) Submits a completed application that demonstrates the ability to comply with the standards established for operating and maintaining an abortion facility in statute and rule. An abortion facility must be deemed to have met the standards if it submits proof of accreditation by an organization that the secretary has determined to have substantially equivalent standards to those of the department; and

(c) Successfully completes the survey requirements established in this chapter;

(2) Develop an application form for applicants for a license to operate an abortion facility;

(3) Initiate investigations and enforcement actions for complaints or other information regarding failure to comply with this chapter or the standards and rules adopted under this chapter;

(4) Conduct surveys of abortion facilities, including reviews of medical records and documents required to be maintained under this chapter or rules adopted under this chapter;

(5) By March 1, 2020, determine which accreditation organizations have substantially equivalent standards for purposes of deeming specific licensing requirements required in statute and rule as having met the department's standards for operating and maintaining an abortion facility; and

(6) Adopt any rules necessary to implement this chapter.

NEW SECTION. **Sec.**  After January 1, 2020, a person or governmental unit of the state of Washington, acting separately or jointly with any other person or governmental unit, may not establish, maintain, or conduct an abortion facility in this state without a license issued by the department under this chapter.

NEW SECTION. **Sec.**  (1) An applicant for a license to operate an abortion facility must demonstrate the ability to comply with the standards established for operating and maintaining an abortion facility in statute and rule, including:

(a) Submitting a written application to the department providing all necessary information on a form provided by the department;

(b) Submitting building plans for review and approval by the department for new construction, alterations other than minor alterations, and additions to existing abortion facilities, prior to obtaining a license and occupying the building;

(c) Demonstrating the ability to comply with this chapter and any rules adopted under this chapter;

(d) Cooperating with the department during on-site surveys prior to obtaining an initial license or renewing an existing license;

(e) Providing such proof as the department may require concerning the ownership and management of the abortion facility, including information about the organization and governance of the abortion facility and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(f) Submitting proof of operation of a coordinated quality improvement program in accordance with this chapter;

(g) Submitting a copy of the abortion facility safety and emergency training program established under this chapter;

(h) Paying any fees established by the secretary under RCW 43.70.110 and 43.70.250; and

(i) Providing any other information that the department may reasonably require.

(2) A license is valid for three years, after which an abortion facility must submit (a) an application for renewal of the license upon forms provided by the department, and (b) the renewal fee as established in RCW 43.70.110 and 43.70.250. The applicant must demonstrate the ability to comply with the standards established for operating and maintaining an abortion facility in statutes, standards, and rules. The applicant must submit the license renewal document no later than thirty days prior to the date of expiration of the license.

(3) The applicant may demonstrate compliance with any of the requirements of subsection (1) of this section by providing satisfactory documentation to the secretary that it has met the standards of an accreditation organization or federal agency that the secretary has determined to have substantially equivalent standards as the statutes and rules of this state.

NEW SECTION. **Sec.**  An abortion facility is required to have an abortion facility safety and emergency training program. The program must include:

(1) On-site equipment, medication, and trained personnel to facilitate handling of services sought or provided, and to facilitate the management of any medical emergency that might arise in connection with services sought or provided;

(2) Written transfer agreements with local hospitals licensed under chapter 70.41 RCW, approved by the abortion facility's medical staff; and

(3) A procedural plan for handling medical emergencies that must be available for review during surveys and inspections.

NEW SECTION. **Sec.**  (1) The secretary may deny, suspend, or revoke the license of any abortion facility in any case in which the secretary finds the applicant or registered entity knowingly made a false statement of material fact in the application for the license or any supporting data in any record required by this chapter or matter under investigation by the department.

(2)(a) The secretary shall investigate complaints concerning operation of an abortion facility without a license. The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed operation of an abortion facility. If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order must be provided an opportunity for a prompt hearing. The temporary cease and desist order must remain in effect until further order of the secretary.

(b) Any person operating an abortion facility under this chapter without a license is guilty of a misdemeanor, and each day of operation of an unlicensed abortion facility constitutes a separate offense.

(3) The secretary is authorized to deny, suspend, revoke, or modify a license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(4) Pursuant to chapter 34.05 RCW, the secretary may assess monetary penalties of a civil nature not to exceed one thousand dollars per violation.

NEW SECTION. **Sec.**  (1) Every abortion facility shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program must include at least the following:

(a) The establishment of one or more quality improvement committees with the responsibility to review the services rendered in the abortion facility, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. Different quality improvement committees may be established as a part of the coordinated quality improvement program to review different health care services. The committees shall oversee and coordinate the quality improvement and medical malpractice prevention program and ensure that information gathered pursuant to the program is used to review and revise the policies and procedures of the abortion facility;

(b) A process, including a medical staff privileges sanction procedure which must be conducted substantially in accordance with medical staff bylaws and applicable rules, regulations, or policies of the medical staff, through which credentials, physical and mental capacity, professional conduct, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

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

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

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

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual practitioners within the practitioner's personnel or credential file maintained by the abortion facility;

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

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

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

(3)(a) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and a person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee may not be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee.

(b) This subsection does not preclude:

(i) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity;

(ii) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings;

(iii) In any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence of information collected and maintained by quality improvement committees regarding such health care provider;

(iv) In any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or

(v) In any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the management of the abortion facility, as identified in the abortion facility's application, in which the committee is located. The report must review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

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

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

(7) The department and any accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of the abortion facility. Information so obtained is not subject to the discovery process, and confidentiality must be respected as required by subsection (3) of this section. Each abortion facility shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510 or 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section must meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents are not subject to the discovery process and confidentiality must be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 70.41.200(3), 74.42.640 (7) and (9), and 4.24.250.

(9) An abortion facility that participates in a coordinated quality improvement program under RCW 43.70.510 must be deemed to have met the requirements of this section.

(10) Violation of this section must not be considered negligence per se.

NEW SECTION. **Sec.**  The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of abortion facilities, and rescind, amend, or modify such rules, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of patient care required for the safe and adequate care and treatment of patients. In establishing the format and content of these standards and rules, the department must give consideration to maintaining consistency with the minimum standards and rules applicable to abortion facilities in the survey standards of accrediting organizations or federal agencies that the secretary has determined to have substantially equivalent standards as the statutes and rules of this state.

NEW SECTION. **Sec.**  (1) The department shall make or cause to be made a survey of all abortion facilities no more than once every eighteen months.

(2) Every survey of an abortion facility may include an inspection of every part of the surgical facility. The department may make an examination of all phases of the abortion facility operation necessary to determine compliance with all applicable statutes, rules, and regulations. In the event that the department is unable to make a survey or cause a survey to be made during the three years of the term of the license, the license of the abortion facility must remain in effect until the state conducts a survey or a substitute survey is performed if the abortion facility is in compliance with all other licensing requirements.

(3) Abortion facilities shall make the written reports of surveys conducted by an approved accrediting organization available to department surveyors during any department surveys or upon request.

NEW SECTION. **Sec.**  The department shall require abortion facilities to submit data related to the quality of patient care for review by the department. The data must be submitted every eighteen months. The department shall consider the reporting standards of other public and private organizations that measure quality in order to maintain consistency in reporting and minimize the burden on the abortion facility. The department shall review the data to determine the maintenance of quality patient care at the abortion facility. If the department determines that the care offered at the abortion facility might present a risk to the health and safety of patients, the department may conduct an inspection of the abortion facility and initiate appropriate actions to protect the public. Information submitted to the department pursuant to this section is exempt from disclosure under chapter 42.56 RCW.

NEW SECTION. **Sec.**  (1) The chief administrator or executive officer of an abortion facility shall report to the department when the practice of a health care provider licensed by a disciplining authority under RCW 18.130.040 is restricted, suspended, limited, or terminated based upon a conviction, determination, or finding by the abortion facility that the provider has committed an action defined as unprofessional conduct under RCW 18.130.180. The chief administrator or executive officer shall also report any voluntary restriction or termination of the practice of a health care provider licensed by a disciplining authority under RCW 18.130.040 while the provider is under investigation or the subject of a proceeding by the abortion facility regarding unprofessional conduct, or in return for the abortion facility not conducting such an investigation or proceeding or not taking action. The department shall forward the report to the appropriate disciplining authority.

(2) Reports made under subsection (1) of this section must be made within fifteen days of the date of: (a) A conviction, determination, or finding by the abortion facility that the health care provider has committed an action defined as unprofessional conduct under RCW 18.130.180; or (b) acceptance by the abortion facility of the voluntary restriction or termination of the practice of a health care provider, including his or her voluntary resignation, while under investigation or the subject of proceedings regarding unprofessional conduct under RCW 18.130.180.

(3) Failure of an abortion facility to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars.

(4) An abortion facility, its chief administrator, or its executive officer who files a report under this section is immune from suit, whether direct or derivative, in any civil action related to the filing or contents of the report, unless the conviction, determination, or finding on which the report and its content are based is proven to not have been made in good faith. The prevailing party in any action brought alleging that the conviction, determination, finding, or report was not made in good faith is entitled to recover the costs of litigation, including reasonable attorneys' fees.

(5) The department shall forward reports made under subsection (1) of this section to the appropriate disciplining authority designated under Title 18 RCW within fifteen days of the date the report is received by the department. The department shall notify an abortion facility that has made a report under subsection (1) of this section of the results of the disciplining authority's case disposition decision within fifteen days after the case disposition. Case disposition is the decision whether to issue a statement of charges, take informal action, or close the complaint without action against a provider. In its biennial report to the legislature under RCW 18.130.310, the department shall specifically identify the case dispositions of reports made by abortion facilities under subsection (1) of this section.

NEW SECTION. **Sec.**  Each abortion facility shall keep written records of decisions to restrict or terminate privileges of practitioners. Copies of such records must be made available to the medical quality assurance commission or the board of osteopathic medicine and surgery, within thirty days of a request, and all information so gained remains confidential in accordance with sections 7 and 11 of this act and is protected from the discovery process. Failure of an abortion facility to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars.

NEW SECTION. **Sec.**  (1) Prior to granting or renewing clinical privileges or association of any practitioner or hiring a practitioner, an abortion facility approved pursuant to this chapter must request from the practitioner, and the practitioner must provide, the following information:

(a) The name of any hospital, abortion facility, or other facility with or at which the practitioner had or has any association, employment, privileges, or practice during the prior five years. However, the abortion facility may request additional information going back further than five years, and the practitioner must use his or her best efforts to comply with such a request for additional information;

(b) Whether the practitioner has ever been or is in the process of being denied, revoked, terminated, suspended, restricted, reduced, limited, sanctioned, placed on probation, monitored, or not renewed for any professional activity listed in (b)(i) through (x) of this subsection, or has ever voluntarily or involuntarily relinquished, withdrawn, or failed to proceed with an application for any professional activity listed in (b)(i) through (x) of this subsection in order to avoid an adverse action or to preclude an investigation or while under investigation relating to professional competence or conduct:

(i) License to practice any profession in any jurisdiction;

(ii) Other professional registration or certification in any jurisdiction;

(iii) Specialty or subspecialty board certification;

(iv) Membership on any hospital medical staff;

(v) Clinical privileges at any facility, including hospitals, abortion centers, or skilled nursing facilities;

(vi) Medicare, medicaid, the food and drug administration, the national institute of health, the office for human research protections, any governmental, national, or international regulatory agency, or any public program;

(vii) Professional society membership or fellowship;

(viii) Participation or membership in a health maintenance organization, preferred provider organization, independent practice association, physician hospital organization, or other entity;

(ix) Academic appointment; or

(x) Authority to prescribe controlled substances (drug enforcement agency or other authority);

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the practitioner deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the practitioner deems appropriate;

(e) A waiver by the practitioner of any confidentiality provisions concerning the information required to be provided to abortion facilities pursuant to this subsection; and

(f) A verification by the practitioner that the information provided by the practitioner is accurate and complete.

(2) Prior to granting privileges or association to any practitioner or hiring a practitioner, an abortion facility approved under this chapter shall request from any hospital, abortion facility, or abortion facility with or at which the practitioner had or has privileges, was associated, or was employed, during the preceding five years, the following information concerning the practitioner:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals or abortion facilities pursuant to RCW 18.130.070.

(3) The medical quality assurance commission or board of osteopathic medicine and surgery as appropriate, must be advised within thirty days of the name of any practitioner denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital, abortion facility, or other facility that receives a request for information from another hospital, abortion facility, or other facility pursuant to subsections (1) and (2) of this section shall provide the information concerning the practitioner in question to the extent the information is known to the hospital, abortion facility, or other facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital, abortion facility, or other facility. A hospital, abortion facility, other facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5)(a) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and a person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee may not be permitted or required to testify in any civil action as to the content of the proceedings or the documents and information prepared specifically for the committee.

(b) This subsection does not preclude:

(i) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity;

(ii) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings;

(iii) In any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider;

(iv) In any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or

(v) In any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(6) Abortion facilities must be granted access to information held by the medical quality assurance commission or board of osteopathic medicine and surgery pertinent to decisions of the abortion facility regarding credentialing and recredentialing of practitioners.

(7) Violation of this section must not be considered negligence per se.

NEW SECTION. **Sec.**  An abortion facility must have policies in place to assure that, when appropriate, information about unanticipated outcomes is provided to patients or their families or any surrogate decision makers identified pursuant to RCW 7.70.065. Notifications of unanticipated outcomes under this section do not constitute an acknowledgment or admission of liability, nor may the fact of notification, the content disclosed, or any and all statements, affirmations, gestures, or conduct expressing apology be introduced as evidence in a civil action.

NEW SECTION. **Sec.**  Every abortion facility shall post in conspicuous locations a notice of the department's abortion facility complaint toll-free telephone number. The form of the notice must be approved by the department.

NEW SECTION. **Sec.**  Information received by the department through filed reports, inspections, or as otherwise authorized under this chapter may be disclosed publicly, as permitted under chapter 42.56 RCW, subject to the following provisions:

(1) Licensing inspections, or complaint investigations regardless of findings, must, as requested, be disclosed no sooner than three business days after the abortion facility has received the resulting assessment report;

(2) Information regarding administrative action against the licensee must, as requested, be disclosed after the abortion facility has received the documents initiating the administrative action;

(3) Information about complaints that did not warrant an investigation may not be disclosed except to notify the abortion facility and the complainant that the complaint did not warrant an investigation; and

(4) Information disclosed under this section may not disclose individual names.

NEW SECTION. **Sec.**  Sections 1 through 16 of this act constitute a new chapter in Title 70 RCW.

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