

SHB 2426 - S COMM AMD

By Subcommittee on Behavioral Health

ADOPTED AS AMENDED 03/06/2020

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that patients
4 seeking behavioral health care in Washington would benefit from
5 consistent regulatory oversight and transparency about patient
6 outcomes. Current regulatory oversight of psychiatric hospitals
7 licensed under chapter 71.12 RCW needs to be enhanced to protect the
8 health, safety, and well-being of patients seeking behavioral health
9 care in these facilities. Some hospitals have not complied with state
10 licensing requirements. Additional enforcement tools are needed to
11 address noncompliance and protect patients from risk of harm.

12 The legislature also finds that licensing and enforcement
13 requirements for all health care facility types regulated by the
14 department of health are inconsistent and that patients are not well-
15 served by this inconsistency. Review of the regulatory requirements
16 for all health care facility types, including acute care hospitals,
17 is needed to identify gaps and opportunities to consolidate and
18 standardize requirements. Legislation will be necessary to implement
19 uniform requirements that assure provision of safe, quality care and
20 create consistency and predictability for facilities.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 71.12
22 RCW to read as follows:

23 (1) Any psychiatric hospital may request from the department or
24 the department may offer to any psychiatric hospital technical
25 assistance. The department may not provide technical assistance
26 during an inspection or during the time between when an investigation
27 of a psychiatric hospital has been initiated and when such
28 investigation is resolved.

29 (2) The department may offer group training to psychiatric
30 hospitals licensed under this chapter.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 71.12

2 RCW to read as follows:

3 (1) In any case in which the department finds that a licensed
4 psychiatric hospital has failed or refused to comply with applicable
5 state statutes or regulations, the department may take one or more of
6 the actions identified in this section, except as otherwise limited
7 in this section.

8 (a) When the department determines the psychiatric hospital has
9 previously been subject to an enforcement action for the same or
10 similar type of violation of the same statute or rule, or has been
11 given any previous statement of deficiency that included the same or
12 similar type of violation of the same or similar statute or rule, or
13 when the psychiatric hospital failed to correct noncompliance with a
14 statute or rule by a date established or agreed to by the department,
15 the department may impose reasonable conditions on a license.
16 Conditions may include correction within a specified amount of time,
17 training, or hiring a department-approved consultant if the hospital
18 cannot demonstrate to the department that it has access to sufficient
19 internal expertise.

20 (b) (i) In accordance with the authority the department has under
21 RCW 43.70.095, the department may assess a civil fine of up to ten
22 thousand dollars per violation, not to exceed a total fine of one
23 million dollars, on a hospital licensed under this chapter when the
24 department determines the psychiatric hospital has previously been
25 subject to an enforcement action for the same or similar type of
26 violation of the same statute or rule, or has been given any previous
27 statement of deficiency that included the same or similar type of
28 violation of the same or similar statute or rule, or when the
29 psychiatric hospital failed to correct noncompliance with a statute
30 or rule by a date established or agreed to by the department.

31 (ii) Proceeds from these fines may only be used by the department
32 to provide training or technical assistance to psychiatric hospitals
33 and to offset costs associated with licensing psychiatric hospitals.

34 (iii) The department shall adopt in rules under this chapter
35 specific fine amounts in relation to the severity of the
36 noncompliance.

37 (iv) If a licensee is aggrieved by the department's action of
38 assessing civil fines, the licensee has the right to appeal under RCW
39 43.70.095.

1 (c) In accordance with RCW 43.70.095, the department may impose
2 civil fines of up to ten thousand dollars for each day a person
3 operates a psychiatric hospital without a valid license. Proceeds
4 from these fines may only be used by the department to provide
5 training or technical assistance to psychiatric hospitals and to
6 offset costs associated with licensing psychiatric hospitals.

7 (d) The department may suspend admissions of a specific category
8 or categories of patients as related to the violation by imposing a
9 limited stop placement. This may only be done if the department finds
10 that noncompliance results in immediate jeopardy.

11 (i) Prior to imposing a limited stop placement, the department
12 shall provide a psychiatric hospital written notification upon
13 identifying deficient practices or conditions that constitute an
14 immediate jeopardy, and the psychiatric hospital shall have twenty-
15 four hours from notification to develop and implement a department-
16 approved plan to correct the deficient practices or conditions that
17 constitute an immediate jeopardy. If the deficient practice or
18 conditions that constitute immediate jeopardy are not verified by the
19 department as having been corrected within the same twenty-four hour
20 period, the department may issue the limited stop placement.

21 (ii) When the department imposes a limited stop placement, the
22 psychiatric hospital may not admit any new patients in the category
23 or categories subject to the limited stop placement until the limited
24 stop placement order is terminated.

25 (iii) The department shall conduct a follow-up inspection within
26 five business days or within the time period requested by the
27 psychiatric hospital if more than five business days is needed to
28 verify the violation necessitating the limited stop placement has
29 been corrected.

30 (iv) The limited stop placement shall be terminated when:

31 (A) The department verifies the violation necessitating the
32 limited stop placement has been corrected; and

33 (B) The psychiatric hospital establishes the ability to maintain
34 correction of the violation previously found deficient.

35 (e) The department may suspend new admissions to the psychiatric
36 hospital by imposing a stop placement. This may only be done if the
37 department finds that noncompliance results in immediate jeopardy and
38 is not confined to a specific category or categories of patients or a
39 specific area of the psychiatric hospital.

1 (i) Prior to imposing a stop placement, the department shall
2 provide a psychiatric hospital written notification upon identifying
3 deficient practices or conditions that constitute an immediate
4 jeopardy, and the psychiatric hospital shall have twenty-four hours
5 from notification to develop and implement a department-approved plan
6 to correct the deficient practices or conditions that constitute an
7 immediate jeopardy. If the deficient practice or conditions that
8 constitute immediate jeopardy are not verified by the department as
9 having been corrected within the same twenty-four hour period, the
10 department may issue the stop placement.

11 (ii) When the department imposes a stop placement, the
12 psychiatric hospital may not admit any new patients until the stop
13 placement order is terminated.

14 (iii) The department shall conduct a follow-up inspection within
15 five business days or within the time period requested by the
16 psychiatric hospital if more than five business days is needed to
17 verify the violation necessitating the stop placement has been
18 corrected.

19 (iv) The stop placement order shall be terminated when:

20 (A) The department verifies the violation necessitating the stop
21 placement has been corrected; and

22 (B) The psychiatric hospital establishes the ability to maintain
23 correction of the violation previously found deficient.

24 (f) The department may suspend, revoke, or refuse to renew a
25 license.

26 (2) (a) Except as otherwise provided, RCW 43.70.115 governs notice
27 of the imposition of conditions on a license, a limited stop
28 placement, stop placement, or the suspension, revocation, or refusal
29 to renew a license and provides the right to an adjudicative
30 proceeding. Adjudicative proceedings and hearings under this section
31 are governed by the administrative procedure act, chapter 34.05 RCW.
32 The application for an adjudicative proceeding must be in writing,
33 state the basis for contesting the adverse action, including a copy
34 of the department's notice, be served on and received by the
35 department within twenty-eight days of the licensee's receipt of the
36 adverse notice, and be served in a manner that shows proof of
37 receipt.

38 (b) When the department determines a licensee's noncompliance
39 results in immediate jeopardy, the department may make the imposition
40 of conditions on a licensee, a limited stop placement, stop

1 placement, or the suspension of a license effective immediately upon
2 receipt of the notice by the licensee, pending any adjudicative
3 proceeding.

4 (i) When the department makes the suspension of a license or
5 imposition of conditions on a license effective immediately, a
6 licensee is entitled to a show cause hearing before a presiding
7 officer within fourteen days of making the request. The licensee must
8 request the show cause hearing within twenty-eight days of receipt of
9 the notice of immediate suspension or immediate imposition of
10 conditions. At the show cause hearing the department has the burden
11 of demonstrating that more probably than not there is an immediate
12 jeopardy.

13 (ii) At the show cause hearing, the presiding officer may
14 consider the notice and documents supporting the immediate suspension
15 or immediate imposition of conditions and the licensee's response and
16 must provide the parties with an opportunity to provide documentary
17 evidence and written testimony, and to be represented by counsel.
18 Prior to the show cause hearing, the department must provide the
19 licensee with all documentation that supports the department's
20 immediate suspension.

21 (iii) If the presiding officer determines there is no immediate
22 jeopardy, the presiding officer may overturn the immediate suspension
23 or immediate imposition of conditions.

24 (iv) If the presiding officer determines there is immediate
25 jeopardy, the immediate suspension or immediate imposition of
26 conditions shall remain in effect pending a full hearing.

27 (v) If the secretary sustains the immediate suspension or
28 immediate imposition of conditions, the licensee may request an
29 expedited full hearing on the merits of the department's action. A
30 full hearing must be provided within ninety days of the licensee's
31 request.

32 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.70
33 RCW to read as follows:

34 As resources allow, the department shall make health care
35 facility inspection and investigation statements of deficiencies,
36 plans of correction, notice of acceptance of plans of correction,
37 enforcement actions, and notices of resolution available to the
38 public on the internet, starting with psychiatric hospitals and
39 residential treatment facilities.

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

3 The department must conduct a review of statutes for all health
4 care facility types licensed by the department under chapters 18.46,
5 18.64, 70.41, 70.42, 70.127, 70.230, 71.12, and 71.24 RCW to evaluate
6 appropriate levels of oversight and identify opportunities to
7 consolidate and standardize licensing and enforcement requirements
8 across facility types. The department must work with stakeholders
9 including, but not limited to, the statewide associations of the
10 facilities under review to create recommendations that will be shared
11 with stakeholders and the legislature for a uniform health care
12 facility enforcement act for consideration in the 2021 legislative
13 session.

14 **Sec. 6.** RCW 71.12.455 and 2017 c 263 s 2 are each reenacted and
15 amended to read as follows:

16 The definitions in this section apply throughout this chapter
17 unless the context clearly requires otherwise.

18 (1) "Department" means the department of health.

19 (2) "Establishment" and "institution" mean:

20 (a) Every private or county or municipal hospital, including
21 public hospital districts, sanitariums, homes, psychiatric hospitals,
22 residential treatment facilities, or other places receiving or caring
23 for any person with mental illness, mentally incompetent person, or
24 chemically dependent person; and

25 (b) Beginning January 1, 2019, facilities providing pediatric
26 transitional care services.

27 (3) "Pediatric transitional care services" means short-term,
28 temporary, health and comfort services for drug exposed infants
29 according to the requirements of this chapter and provided in an
30 establishment licensed by the department of health.

31 (4) "Secretary" means the secretary of the department of health.

32 (5) "Trained caregiver" means a noncredentialed, unlicensed
33 person trained by the establishment providing pediatric transitional
34 care services to provide hands-on care to drug exposed infants.
35 Caregivers may not provide medical care to infants and may only work
36 under the supervision of an appropriate health care professional.

37 (6) "Elopement" means any situation in which an admitted patient
38 of a psychiatric hospital who is cognitively, physically, mentally,
39 emotionally, and/or chemically impaired wanders, walks, runs away,

1 escapes, or otherwise leaves a psychiatric hospital or the grounds of
2 a psychiatric hospital prior to the patient's scheduled discharge
3 unsupervised, unnoticed, and without the staff's knowledge.

4 (7) "Immediate jeopardy" means a situation in which the
5 psychiatric hospital's noncompliance with one or more statutory or
6 regulatory requirements has placed the health and safety of patients
7 in its care at risk for serious injury, serious harm, serious
8 impairment, or death.

9 (8) "Psychiatric hospital" means an establishment caring for any
10 person with mental illness or substance use disorder excluding acute
11 care hospitals licensed under chapter 70.41 RCW, state psychiatric
12 hospitals established under chapter 72.23 RCW, and residential
13 treatment facilities as defined in this section.

14 (9) "Residential treatment facility" means an establishment in
15 which twenty-four hour on-site care is provided for the evaluation,
16 stabilization, or treatment of residents for substance use, mental
17 health, co-occurring disorders, or for drug exposed infants.

18 (10) "Technical assistance" means the provision of information on
19 the state laws and rules applicable to the regulation of psychiatric
20 hospitals, the process to apply for a license, and methods and
21 resources to avoid or address compliance problems. Technical
22 assistance does not include assistance provided under chapter 43.05
23 RCW.

24 **Sec. 7.** RCW 71.12.480 and 2000 c 93 s 24 are each amended to
25 read as follows:

26 (1) The department of health shall not grant any such license
27 until it has made an examination of all phases of the operation of
28 the establishment necessary to determine compliance with rules
29 adopted under this chapter including the premises proposed to be
30 licensed and is satisfied that the premises are substantially as
31 described, and are otherwise fit and suitable for the purposes for
32 which they are designed to be used, and that such license should be
33 granted.

34 (2) During the first two years of licensure for a new psychiatric
35 hospital or any existing psychiatric hospital that changes ownership
36 after July 1, 2020, the department shall provide technical
37 assistance, perform at least three unannounced inspections, and
38 conduct additional inspections of the hospital as necessary to verify
39 the hospital is complying with the requirements of this chapter.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 71.12
2 RCW to read as follows:

3 (1) Every psychiatric hospital licensed under this chapter shall
4 report to the department every patient elopement and every death that
5 meets the circumstances specified in subsection (2) of this section
6 that occurs on the hospital grounds within three days of the
7 elopement or death to the department's complaint intake system or
8 another reporting mechanism specified by the department in rule.

9 (2) The patient or staff deaths that must be reported to the
10 department under subsection (1) of this section include the
11 following:

- 12 (a) Patient death associated with patient elopement;
- 13 (b) Patient suicide;
- 14 (c) Patient death associated with medication error;
- 15 (d) Patient death associated with a fall;
- 16 (e) Patient death associated with the use of physical restraints
17 or bedrails; and
- 18 (f) Patient or staff member death resulting from a physical
19 assault.

20 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of
22 the state government and its existing public institutions, and takes
23 effect immediately."

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24 On page 1, line 4 of the title, after "enforcement;" strike the
25 remainder of the title and insert "amending RCW 71.12.480; reenacting
26 and amending RCW 71.12.455; adding new sections to chapter 71.12 RCW;
27 adding new sections to chapter 43.70 RCW; creating a new section; and
28 declaring an emergency."

EFFECT: (1) Requires notifications of deficiencies to be provided
in writing before a stop placement or limited stop placement order
may be imposed;

(2) Allows DOH to take immediate action against a licensee only
if DOH determines a licensee's noncompliance results in immediate
jeopardy;

(3) Entitles facilities to a show cause hearing if DOH makes the suspension of a license or imposition of conditions on a license effective immediately;

(4) Requires DOH to start posting inspection and investigation documents for residential treatment facilities in addition to psychiatric hospitals;

(5) Refines the definition of "elopement" to include leaving the grounds of a psychiatric hospital.

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