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**HOUSE BILL 2426**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Representatives Cody and Robinson; by request of Department of Health

1 AN ACT Relating to protecting patient safety in psychiatric  
2 hospitals and other health care facilities regulated by the  
3 department of health through improvements to licensing and  
4 enforcement; amending RCW 71.12.460, 71.12.470, 71.12.480, and  
5 71.12.500; reenacting and amending RCW 71.12.455; adding new sections  
6 to chapter 43.70 RCW; adding new sections to chapter 71.12 RCW;  
7 creating a new section; and declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that current  
10 regulatory oversight of psychiatric hospitals licensed under chapter  
11 71.12 RCW is insufficient to protect the health, safety, and well-  
12 being of patients seeking behavioral health care in these facilities.  
13 Several hospitals have failed to comply with state licensing  
14 requirements for extended periods of time leaving patients at risk.  
15 Additional enforcement tools are needed to address noncompliance and  
16 protect patients from risk of harm.

17 The legislature also finds that licensing and enforcement  
18 requirements for all health care facility types regulated by the  
19 department of health are inconsistent. Review of the regulatory  
20 requirements for all health care facility types, including acute care  
21 hospitals, is needed to identify gaps and opportunities to

1 consolidate and standardize requirements. Legislation will be  
2 necessary to implement uniform requirements that assure provision of  
3 safe, quality care and create consistency and predictability for  
4 facilities.

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

7 (1) In any case in which the department finds that a psychiatric  
8 hospital licensed or provisionally licensed under chapter 71.12 RCW  
9 has failed or refused to comply with applicable state statutes or  
10 regulations, the department may take one or more of the following  
11 actions:

12 (a) Refuse to issue a license;

13 (b) Impose reasonable conditions on a license, including but not  
14 limited to correction within a specified time, training, or requiring  
15 the facility to hire a department-approved consultant;

16 (c) In accordance with RCW 43.70.095, impose civil fines of at  
17 least ten thousand dollars per violation, not to exceed a total fine  
18 of one million dollars. Fines may only be used by the department for  
19 provision of technical assistance to psychiatric hospitals and to  
20 offset the cost of psychiatric hospital licensing activities;

21 (d) In accordance with RCW 43.70.095, impose civil fines of up to  
22 ten thousand dollars for each day a person operates a psychiatric  
23 hospital without a valid license. Fines may only be used by the  
24 department for provision of technical assistance, as defined in RCW  
25 71.12.455, to psychiatric hospitals and to offset the cost of  
26 psychiatric hospital licensing activities;

27 (e) Suspend, revoke, or refuse to renew a license;

28 (f) Suspend new admissions to the facility by immediately  
29 imposing a stop placement; or

30 (g) Suspend admission of a specific category or categories of  
31 patients as related to the violation by imposing a limited stop  
32 placement.

33 (2) When the department orders a stop placement, the facility may  
34 not admit any new patients until the stop placement order is  
35 terminated. When the department orders a limited stop placement, the  
36 facility may not admit any new patients in the category subject to  
37 the limited stop placement until the limited stop placement order is  
38 terminated.

1 (a) Within fifteen business days of receiving written notice from  
2 the licensee that describes how the violations necessitating the stop  
3 placement or limited stop placement were corrected, the department  
4 shall conduct a follow-up inspection to verify the corrections have  
5 been made and implemented.

6 (b) The department shall terminate the stop placement or limited  
7 stop placement when:

8 (i) The department verifies the violations necessitating the stop  
9 placement or limited stop placement have been corrected; and

10 (ii) The facility establishes the ability to maintain correction  
11 of the violations previously found deficient.

12 (c) This subsection does not prevent the department from  
13 enforcing license suspensions or revocations. Nothing in this  
14 subsection interferes with or diminishes the department's authority  
15 and duty to enforce compliance with this section, chapter 71.12 RCW,  
16 or the rules adopted under chapter 71.12 RCW or this section.

17 (3) RCW 43.70.115 governs notice of a license denial, revocation,  
18 suspension, stop placement, limited stop placement, imposition of  
19 conditions on a license, or modification, but the department may make  
20 license suspension, stop placement, limited stop placement, or  
21 conditions for continuation of a license effective immediately upon  
22 receipt by the licensee or provisional licensee, pending any hearing.

23 (4) A license applicant or licensee who is aggrieved by  
24 department action under this section may request an adjudicative  
25 proceeding. The proceeding is governed by the administrative  
26 procedure act, chapter 34.05 RCW. The application for an adjudicative  
27 proceeding must be in writing, state the basis for contesting the  
28 adverse action, include a copy of the adverse notice, be served on  
29 and received by the department within twenty-eight days of the  
30 license applicant's or licensee's receiving the adverse notice, and  
31 be served in a manner that shows proof of receipt.

32 NEW SECTION. **Sec. 3.** 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 reports available to the public  
36 on the internet, starting with psychiatric hospitals.

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

1 The department must conduct a review of statutes for all health  
2 care facility types regulated by the department to evaluate  
3 appropriate levels of oversight and identify opportunities to  
4 consolidate and standardize licensing and enforcement requirements  
5 across facility types. The department must work with stakeholders to  
6 create recommendations for a uniform health care facility enforcement  
7 act for consideration in the 2021 legislative session.

8 **Sec. 5.** RCW 71.12.455 and 2017 c 263 s 2 are each reenacted and  
9 amended to read as follows:

10 The definitions in this section apply throughout this chapter  
11 unless the context clearly requires otherwise.

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

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

14 (a) Every private or county or municipal hospital, including  
15 public hospital districts, sanitariums, homes, or other places  
16 receiving or caring for any person with mental illness, mentally  
17 incompetent person, or chemically dependent person; and

18 (b) Beginning January 1, 2019, facilities providing pediatric  
19 transitional care services.

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

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

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

30 (6) "Elopement" means any situation in which an admitted patient  
31 of a psychiatric hospital who is cognitively, physically, mentally,  
32 emotionally, and/or chemically impaired wanders, walks, runs away,  
33 escapes, or otherwise leaves a psychiatric hospital prior to their  
34 scheduled discharge unsupervised, unnoticed, and without the staff's  
35 knowledge.

36 (7) "Psychiatric hospital" means a hospital caring for any person  
37 with mental illness or substance use disorder excluding acute care  
38 hospitals licensed under chapter 70.41 RCW, state psychiatric

1 hospitals established under chapter 72.23 RCW, and residential  
2 treatment facilities as defined in this section.

3 (8) "Residential treatment facility" means a facility in which  
4 twenty-four hour on-site care is provided for the evaluation,  
5 stabilization, or treatment of residents for substance use, mental  
6 health, co-occurring disorders, or for drug exposed infants.

7 (9) "Technical assistance" means the provision of information on  
8 the state laws and rules applicable to the regulation of psychiatric  
9 hospitals, the process to apply for a license, and methods and  
10 resources to avoid or address compliance problems. Technical  
11 assistance does not include assistance provided under chapter 43.05  
12 RCW.

13 **Sec. 6.** RCW 71.12.460 and 2001 c 254 s 2 are each amended to  
14 read as follows:

15 (1) No person, association, county, municipality, public hospital  
16 district, or corporation, shall establish or keep, for compensation  
17 or hire, an establishment as defined in this chapter without first  
18 having obtained a license therefor from the department of health,  
19 complied with rules adopted under this chapter, and paid the license  
20 fee provided in this chapter. Any person who carries on, conducts, or  
21 attempts to carry on or conduct an establishment as defined in this  
22 chapter without first having obtained a license from the department  
23 of health, as in this chapter provided, is guilty of a misdemeanor  
24 and on conviction thereof shall be punished by imprisonment in a  
25 county jail not exceeding six months, or by a fine not exceeding one  
26 thousand dollars, or by both such fine and imprisonment. The managing  
27 and executive officers of any corporation violating the provisions of  
28 this chapter shall be liable under the provisions of this chapter in  
29 the same manner and to the same effect as a private individual  
30 violating the same.

31 (2) New psychiatric hospitals meeting the minimum licensing  
32 requirements and any existing psychiatric hospital that changes  
33 ownership after July 1, 2020, shall be issued a provisional license.  
34 During the period of provisional licensing, the department must  
35 provide enhanced oversight through inspections and technical  
36 assistance. The provisional license is effective for a period of  
37 twenty-four months and is not subject to renewal. The psychiatric  
38 hospital is eligible to apply for a license sixty days before the end  
39 of the provisional license period if the hospital has established

1 that it is substantially compliant with this chapter and the rules  
2 adopted under this chapter for at least three inspections. The  
3 department shall verify the hospital's substantial compliance with  
4 this chapter and the rules adopted under this chapter by conducting  
5 at least three inspections of the hospital during the provisional  
6 license period separated by at least one hundred twenty days.

7 (3) A provisional licensee that submits a license application  
8 thirty to sixty days prior to expiration of the provisional license  
9 in accordance with this section and the applicable rules and fee  
10 schedule shall be deemed to possess a valid license for the year  
11 following the expiration date of the provisional license, or until  
12 the department denies the license application pursuant to this  
13 section and chapter 71.12 RCW.

14 (4) The department shall issue a license to operate a psychiatric  
15 hospital after the psychiatric hospital has established that it has  
16 substantially complied with the licensing requirements and rules  
17 adopted under this chapter, and submits an application to the  
18 department in such form and manner as the department requires. The  
19 department may deny an application for a license to any applicant  
20 that fails to meet the requirements in this section.

21 **Sec. 7.** RCW 71.12.470 and 2000 c 93 s 23 are each amended to  
22 read as follows:

23 (1) Every application for a license or provisional license shall  
24 be accompanied by a plan of the premises proposed to be occupied,  
25 describing the capacities of the buildings for the uses intended, the  
26 extent and location of grounds appurtenant thereto, and the number of  
27 patients proposed to be received therein, with such other  
28 information, and in such form, as the department of health requires.  
29 The application shall be accompanied by the proper license fee. The  
30 amount of the license and provisional license fees shall be  
31 established by the department of health under RCW 43.70.110.

32 (2) Until the department of health establishes a separate  
33 provisional license fee in rule, psychiatric hospitals seeking or  
34 operating under a provisional license shall pay the annual  
35 psychiatric hospital licensing fee.

36 **Sec. 8.** RCW 71.12.480 and 2000 c 93 s 24 are each amended to  
37 read as follows:

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

9       (2) The department shall perform at least three unannounced  
10 inspections of a psychiatric hospital operating under a provisional  
11 license during the provisional license period and conduct additional  
12 inspections of the hospital as necessary to determine whether the  
13 hospital has met the requirements in RCW 71.12.460 for licensure.

14       NEW SECTION.   **Sec. 9.** A new section is added to chapter 71.12  
15 RCW to read as follows:

16       Every psychiatric hospital licensed or provisionally licensed  
17 under this chapter shall report to the department every patient  
18 elopement and every death that occurs on the hospital grounds within  
19 three days of the elopement or death to the department's complaint  
20 intake system or another reporting mechanism specified by the  
21 department in rule.

22       NEW SECTION.   **Sec. 10.** A new section is added to chapter 71.12  
23 RCW to read as follows:

24       Upon request, the department shall make available technical  
25 assistance to psychiatric hospitals in compliance with all categories  
26 of regulation, except during the time between when an investigation  
27 of a psychiatric hospital has been initiated and when such  
28 investigation is resolved.

29       **Sec. 11.** RCW 71.12.500 and 2000 c 93 s 25 are each amended to  
30 read as follows:

31       The department of health may at any time examine and ascertain  
32 how far a licensed establishment is conducted in compliance with this  
33 chapter, the rules adopted under this chapter, and the requirements  
34 of the license therefor. If the interests of the patients of the  
35 establishment so demand, the department may, for just and reasonable  
36 cause, suspend, modify, or revoke any such license or provisional  
37 license. RCW 43.70.115 governs notice of a license denial,

1 revocation, suspension, or modification and provides the right to an  
2 adjudicative proceeding.

3 NEW SECTION. **Sec. 12.** This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of  
5 the state government and its existing public institutions, and takes  
6 effect immediately.

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