
SUBSTITUTE HOUSE BILL 2426

AS AMENDED BY THE SENATE

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Cody, Robinson, Kilduff, Tharinger, Davis, Macri, Riccelli, and Pollet; by request of Department of Health)

READ FIRST TIME 02/07/20.

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 71.12.480; reenacting and amending RCW
5 71.12.455; adding new sections to chapter 71.12 RCW; adding new
6 sections to chapter 43.70 RCW; creating a new section; and declaring
7 an emergency.

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

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

18 The legislature also finds that licensing and enforcement
19 requirements for all health care facility types regulated by the
20 department of health are inconsistent and that patients are not well-
21 served by this inconsistency. Review of the regulatory requirements

1 for all health care facility types, including acute care hospitals,
2 is needed to identify gaps and opportunities to consolidate and
3 standardize requirements. Legislation will be necessary to implement
4 uniform requirements that assure provision of safe, quality care and
5 create consistency and predictability for facilities.

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

8 (1) Any psychiatric hospital may request from the department or
9 the department may offer to any psychiatric hospital technical
10 assistance. The department may not provide technical assistance
11 during an inspection or during the time between when an investigation
12 of a psychiatric hospital has been initiated and when such
13 investigation is resolved.

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

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 71.12
17 RCW to read as follows:

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

23 (a) When the department determines the psychiatric hospital has
24 previously been subject to an enforcement action for the same or
25 similar type of violation of the same statute or rule, or has been
26 given any previous statement of deficiency that included the same or
27 similar type of violation of the same or similar statute or rule, or
28 when the psychiatric hospital failed to correct noncompliance with a
29 statute or rule by a date established or agreed to by the department,
30 the department may impose reasonable conditions on a license.
31 Conditions may include correction within a specified amount of time,
32 training, or hiring a department-approved consultant if the hospital
33 cannot demonstrate to the department that it has access to sufficient
34 internal expertise.

35 (b) (i) In accordance with the authority the department has under
36 RCW 43.70.095, the department may assess a civil fine of up to ten
37 thousand dollars per violation, not to exceed a total fine of one
38 million dollars, on a hospital licensed under this chapter when the

1 department determines the psychiatric hospital has previously been
2 subject to an enforcement action for the same or similar type of
3 violation of the same statute or rule, or has been given any previous
4 statement of deficiency that included the same or similar type of
5 violation of the same or similar statute or rule, or when the
6 psychiatric hospital failed to correct noncompliance with a statute
7 or rule by a date established or agreed to by the department.

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

11 (iii) The department shall adopt in rules under this chapter
12 specific fine amounts in relation to the severity of the
13 noncompliance.

14 (iv) If a licensee is aggrieved by the department's action of
15 assessing civil fines, the licensee has the right to appeal under RCW
16 43.70.095.

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

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

27 (i) Prior to imposing a limited stop placement, the department
28 shall provide a psychiatric hospital written notification upon
29 identifying deficient practices or conditions that constitute an
30 immediate jeopardy, and the psychiatric hospital shall have twenty-
31 four hours from notification to develop and implement a department-
32 approved plan to correct the deficient practices or conditions that
33 constitute an immediate jeopardy. If the deficient practice or
34 conditions that constitute immediate jeopardy are not verified by the
35 department as having been corrected within the same twenty-four hour
36 period, the department may issue the limited stop placement.

37 (ii) When the department imposes a limited stop placement, the
38 psychiatric hospital may not admit any new patients in the category
39 or categories subject to the limited stop placement until the limited
40 stop placement order is terminated.

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

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

7 (A) The department verifies the violation necessitating the
8 limited stop placement has been corrected or the department
9 determines that the psychiatric hospital has taken intermediate
10 action to address the immediate jeopardy; and

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

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

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

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

31 (iii) The department shall conduct a follow-up inspection within
32 five business days or within the time period requested by the
33 psychiatric hospital if more than five business days is needed to
34 verify the violation necessitating the stop placement has been
35 corrected.

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

37 (A) The department verifies the violation necessitating the stop
38 placement has been corrected or the department determines that the
39 psychiatric hospital has taken intermediate action to address the
40 immediate jeopardy; and

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

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

5 (2)(a) Except as otherwise provided, RCW 43.70.115 governs notice
6 of the imposition of conditions on a license, a limited stop
7 placement, stop placement, or the suspension, revocation, or refusal
8 to renew a license and provides the right to an adjudicative
9 proceeding. Adjudicative proceedings and hearings under this section
10 are governed by the administrative procedure act, chapter 34.05 RCW.
11 The application for an adjudicative proceeding must be in writing,
12 state the basis for contesting the adverse action, including a copy
13 of the department's notice, be served on and received by the
14 department within twenty-eight days of the licensee's receipt of the
15 adverse notice, and be served in a manner that shows proof of
16 receipt.

17 (b) When the department determines a licensee's noncompliance
18 results in immediate jeopardy, the department may make the imposition
19 of conditions on a licensee, a limited stop placement, stop
20 placement, or the suspension of a license effective immediately upon
21 receipt of the notice by the licensee, pending any adjudicative
22 proceeding.

23 (i) When the department makes the suspension of a license or
24 imposition of conditions on a license effective immediately, a
25 licensee is entitled to a show cause hearing before a presiding
26 officer within fourteen days of making the request. The licensee must
27 request the show cause hearing within twenty-eight days of receipt of
28 the notice of immediate suspension or immediate imposition of
29 conditions. At the show cause hearing the department has the burden
30 of demonstrating that more probably than not there is an immediate
31 jeopardy.

32 (ii) At the show cause hearing, the presiding officer may
33 consider the notice and documents supporting the immediate suspension
34 or immediate imposition of conditions and the licensee's response and
35 must provide the parties with an opportunity to provide documentary
36 evidence and written testimony, and to be represented by counsel.
37 Prior to the show cause hearing, the department must provide the
38 licensee with all documentation that supports the department's
39 immediate suspension.

1 (iii) If the presiding officer determines there is no immediate
2 jeopardy, the presiding officer may overturn the immediate suspension
3 or immediate imposition of conditions.

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

7 (v) If the secretary sustains the immediate suspension or
8 immediate imposition of conditions, the licensee may request an
9 expedited full hearing on the merits of the department's action. A
10 full hearing must be provided within ninety days of the licensee's
11 request.

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

14 As resources allow, the department shall make health care
15 facility inspection and investigation statements of deficiencies,
16 plans of correction, notice of acceptance of plans of correction,
17 enforcement actions, and notices of resolution available to the
18 public on the internet, starting with psychiatric hospitals and
19 residential treatment facilities.

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

22 The department must conduct a review of statutes for all health
23 care facility types licensed by the department under chapters 18.46,
24 18.64, 70.41, 70.42, 70.127, 70.230, 71.12, and 71.24 RCW to evaluate
25 appropriate levels of oversight and identify opportunities to
26 consolidate and standardize licensing and enforcement requirements
27 across facility types. The department must work with stakeholders
28 including, but not limited to, the statewide associations of the
29 facilities under review to create recommendations that will be shared
30 with stakeholders and the legislature for a uniform health care
31 facility enforcement act for consideration in the 2021 legislative
32 session.

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

35 The definitions in this section apply throughout this chapter
36 unless the context clearly requires otherwise.

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

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

2 (a) Every private or county or municipal hospital, including
3 public hospital districts, sanitariums, homes, psychiatric hospitals,
4 residential treatment facilities, or other places receiving or caring
5 for any person with mental illness, mentally incompetent person, or
6 chemically dependent person; and

7 (b) Beginning January 1, 2019, facilities providing pediatric
8 transitional care services.

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

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

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

19 (6) "Elopement" means any situation in which an admitted patient
20 of a psychiatric hospital who is cognitively, physically, mentally,
21 emotionally, and/or chemically impaired wanders, walks, runs away,
22 escapes, or otherwise leaves a psychiatric hospital or the grounds of
23 a psychiatric hospital prior to the patient's scheduled discharge
24 unsupervised, unnoticed, and without the staff's knowledge.

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

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

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

39 (10) "Technical assistance" means the provision of information on
40 the state laws and rules applicable to the regulation of psychiatric

1 hospitals, the process to apply for a license, and methods and
2 resources to avoid or address compliance problems. Technical
3 assistance does not include assistance provided under chapter 43.05
4 RCW.

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

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

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

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

23 (1) Every psychiatric hospital licensed under this chapter shall
24 report to the department every patient elopement and every death that
25 meets the circumstances specified in subsection (2) of this section
26 that occurs on the hospital grounds within three days of the
27 elopement or death to the department's complaint intake system or
28 another reporting mechanism specified by the department in rule.

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

- 32 (a) Patient death associated with patient elopement;
- 33 (b) Patient suicide;
- 34 (c) Patient death associated with medication error;
- 35 (d) Patient death associated with a fall;
- 36 (e) Patient death associated with the use of physical restraints
37 or bedrails; and

1 (f) Patient or staff member death resulting from a physical
2 assault.

3 NEW SECTION. **Sec. 9.** 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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