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HOUSE BILL 1035

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State of Washington

68th Legislature

2023 Regular Session

By Representative Walen

Prefiled 12/13/22.

1 AN ACT Relating to prohibiting health care entities from  
2 restricting the provision of certain health care services by health  
3 care providers; and amending RCW 70.400.010, 70.400.020, and  
4 70.245.190.

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

6 **Sec. 1.** RCW 70.400.010 and 2021 c 235 s 1 are each amended to  
7 read as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

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

11 (2) "Health care entity" means an entity that supervises,  
12 controls, grants privileges to, directs the practice of, or directly  
13 or indirectly restricts the practice of, a health care provider.

14 (3) "Health care provider" has the same meaning as in RCW  
15 70.02.010.

16 (4) "Medically accurate" means information that is verified or  
17 supported by research in compliance with scientific methods, is  
18 published in peer-reviewed journals, where appropriate, and is  
19 recognized as accurate and objective by professional organizations  
20 and agencies with expertise in the relevant field.

1       **Sec. 2.** RCW 70.400.020 and 2021 c 235 s 2 are each amended to  
2 read as follows:

3       (1) Except as provided in subsection (2) of this section, if a  
4 health care provider is acting in good faith, within the provider's  
5 scope of practice, education, training, and experience and within the  
6 accepted standard of care, a health care entity may not ~~((prohibit))~~:

7       (a) Prohibit the health care provider from providing health care  
8 services related to complications of pregnancy, including but not  
9 limited to health services related to miscarriage management and  
10 treatment for ectopic pregnancies, in cases in which failure to  
11 provide the service would violate the accepted standard of care or  
12 when the patient presents a medical condition manifesting itself by  
13 acute symptoms of sufficient severity such that the absence of  
14 medical attention could reasonably be expected to pose a risk:

15       ~~((a))~~ (i) To the patient's life; or

16       ~~((b))~~ (ii) Of irreversible complications or impairment to the  
17 patient's bodily functions or any bodily organ or part;

18       (b) Limit the health care provider's provision of medically  
19 accurate and comprehensive information to a patient regarding the  
20 patient's health status including, but not limited to, diagnosis,  
21 prognosis, recommended treatment, treatment alternatives, and any  
22 potential risks to the patient's health or life;

23       (c) Limit the health care provider's provision of information  
24 regarding Washington's death with dignity act, chapter 70.245 RCW;

25       (d) Limit the health care provider's referrals, or the timing of  
26 referrals; or

27       (e) Prohibit the health care provider from providing health  
28 services in cases in which failure to provide the services would pose  
29 a serious risk to an individual's life or health or would violate the  
30 standard of care.

31       (2) Nothing in this section prohibits a health care entity from  
32 limiting a health care provider's practice for purposes of:

33       (a) Complying with the network or utilization review requirements  
34 of any program or entity authorized by state or federal law to  
35 provide insurance coverage for health care services to enrollees; or

36       (b) Quality control and patient safety, including when quality  
37 control or patient safety issues are identified pursuant to peer  
38 review.

1 (3) A health care entity may not discharge, demote, suspend,  
2 discipline, or otherwise discriminate against a health care provider  
3 for providing services in compliance with this section.

4 **Sec. 3.** RCW 70.245.190 and 2009 c 1 s 19 are each amended to  
5 read as follows:

6 (1) Except as provided in RCW 70.245.200 and subsection (2) of  
7 this section:

8 (a) A person shall not be subject to civil or criminal liability  
9 or professional disciplinary action for participating in good faith  
10 compliance with this chapter. This includes being present when a  
11 qualified patient takes the prescribed medication to end his or her  
12 life in a humane and dignified manner;

13 (b) A professional organization or association, or health care  
14 provider, may not subject a person to censure, discipline,  
15 suspension, loss of license, loss of privileges, loss of membership,  
16 or other penalty for participating or refusing to participate in good  
17 faith compliance with this chapter;

18 (c) A patient's request for or provision by an attending  
19 physician of medication in good faith compliance with this chapter  
20 does not constitute neglect for any purpose of law or provide the  
21 sole basis for the appointment of a guardian or conservator; and

22 (d) Only willing health care providers shall participate in the  
23 provision to a qualified patient of medication to end his or her life  
24 in a humane and dignified manner. If a health care provider is unable  
25 or unwilling to carry out a patient's request under this chapter, and  
26 the patient transfers his or her care to a new health care provider,  
27 the prior health care provider shall transfer, upon request, a copy  
28 of the patient's relevant medical records to the new health care  
29 provider.

30 (2) (a) ((A)) Except for the provision of information as permitted  
31 under RCW 70.400.020(1)(c), a health care provider may prohibit  
32 another health care provider from participating under chapter 1, Laws  
33 of 2009 on the premises of the prohibiting provider if the  
34 prohibiting provider has given notice to all health care providers  
35 with privileges to practice on the premises and to the general public  
36 of the prohibiting provider's policy regarding participating under  
37 chapter 1, Laws of 2009. A health care provider may not, by contract  
38 or other form of agreement, prohibit another health care provider  
39 from participating under chapter 1, Laws of 2009, while acting

1 outside the course and scope of the provider's capacity as an  
2 employee or independent contractor of the prohibiting health care  
3 provider and while at a location that is not on the prohibiting  
4 health care provider's premises. This subsection does not prevent a  
5 health care provider from providing health care services to a patient  
6 that do not constitute participation under chapter 1, Laws of 2009.

7 (b) (i) A health care provider may subject another health care  
8 provider to the sanctions stated in this subsection if the  
9 sanctioning health care provider has notified the sanctioned provider  
10 before participation in chapter 1, Laws of 2009 that it prohibits  
11 participation in chapter 1, Laws of 2009:

12 ~~((+i))~~ (A) Loss of privileges, loss of membership, or other  
13 sanctions provided under the medical staff bylaws, policies, and  
14 procedures of the sanctioning health care provider if the sanctioned  
15 provider is a member of the sanctioning provider's medical staff and  
16 participates in chapter 1, Laws of 2009 while on the health care  
17 facility premises of the sanctioning health care provider, but not  
18 including the private medical office of a physician or other  
19 provider;

20 ~~((+ii))~~ (B) Termination of a lease or other property contract or  
21 other nonmonetary remedies provided by a lease contract, not  
22 including loss or restriction of medical staff privileges or  
23 exclusion from a provider panel, if the sanctioned provider  
24 participates in chapter 1, Laws of 2009 while on the premises of the  
25 sanctioning health care provider or on property that is owned by or  
26 under the direct control of the sanctioning health care provider; or

27 ~~((+iii))~~ (C) Termination of a contract or other nonmonetary  
28 remedies provided by contract if the sanctioned provider participates  
29 in chapter 1, Laws of 2009 while acting in the course and scope of  
30 the sanctioned provider's capacity as an employee or independent  
31 contractor of the sanctioning health care provider.

32 (ii) Nothing in this subsection (2) (b) ~~((+iii))~~ prevents:

33 (A) A health care provider from participating in chapter 1, Laws  
34 of 2009 while acting outside the course and scope of the provider's  
35 capacity as an employee or independent contractor and while at a  
36 location that is not on the sanctioning health care provider's  
37 facility premises; or

38 (B) A patient from contracting with his or her attending  
39 physician and consulting physician to act outside the course and  
40 scope of the provider's capacity as an employee or independent

1 contractor of the sanctioning health care provider and while at a  
2 location that is not on the sanctioning health care provider's  
3 facility premises.

4 (c) A health care provider that imposes sanctions under (b) of  
5 this subsection shall follow all due process and other procedures the  
6 sanctioning health care provider may have that are related to the  
7 imposition of sanctions on another health care provider.

8 (d) For the purposes of this subsection:

9 (i) "Notify" means a separate statement in writing to the health  
10 care provider specifically informing the health care provider before  
11 the provider's participation in chapter 1, Laws of 2009 of the  
12 sanctioning health care provider's policy about participation in  
13 activities covered by this chapter.

14 (ii) "Participate in chapter 1, Laws of 2009" means to perform  
15 the duties of an attending physician under RCW 70.245.040, the  
16 consulting physician function under RCW 70.245.050, or the counseling  
17 function under RCW 70.245.060. "Participate in chapter 1, Laws of  
18 2009" does not include:

19 (A) Making an initial determination that a patient has a terminal  
20 disease and informing the patient of the medical prognosis;

21 (B) Providing information about the Washington death with dignity  
22 act to a patient upon the request of the patient;

23 (C) Providing a patient, upon the request of the patient, with a  
24 referral to another physician; or

25 (D) A patient contracting with his or her attending physician and  
26 consulting physician to act outside of the course and scope of the  
27 provider's capacity as an employee or independent contractor of the  
28 sanctioning health care provider.

29 (3) Suspension or termination of staff membership or privileges  
30 under subsection (2) of this section is not reportable under RCW  
31 18.130.070. Action taken under RCW 70.245.030, 70.245.040,  
32 70.245.050, or 70.245.060 may not be the sole basis for a report of  
33 unprofessional conduct under RCW 18.130.180.

34 (4) References to "good faith" in subsection (1)(a), (b), and (c)  
35 of this section do not allow a lower standard of care for health care  
36 providers in the state of Washington.

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