

NINETY FIFTH DAY

MORNING SESSION

Senate Chamber, Olympia, Thursday, April 18, 2013

The Senate was called to order at 11:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senator Carrell.

The Sergeant at Arms Color Guard consisting of Pages Benjamin Byers and James Juntti, presented the Colors. Reverend Jim Erlandson of Community of Christ Church of Olympia offered the prayer.

MOTION

On motion of Senator Fain, the reading of the Journal of the previous day was dispensed with and it was approved.

MOTION

On motion of Senator Fain, the Senate advanced to the fourth order of business.

MESSAGE FROM THE HOUSE

April 17, 2013

MR. PRESIDENT:

The House has passed:

SENATE BILL NO. 5052,

SENATE BILL NO. 5297,

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

On motion of Senator Fain, the Senate advanced to the fifth order of business.

INTRODUCTION AND FIRST READING

SB 5914 by Senator Parlette

AN ACT Relating to a medicaid waiver for premium assistance to purchase market-based exchange coverage for medicaid-eligible adults and children; adding a new section to chapter 74.09 RCW; and creating a new section.

Referred to Committee on Ways & Means.

SB 5915 by Senators Kline, Darneille, Eide, Hasegawa, Braun and McAuliffe

AN ACT Relating to funding and requiring the use of distributions from the additional tax on beer and strong beer for improving impaired driving safety and enforcement; amending RCW 66.24.290, 46.68.260, and 46.20.117; adding a new section to chapter 46.68 RCW; adding a new section to chapter 46.61 RCW; prescribing penalties; providing effective dates; and declaring an emergency.

Referred to Committee on Ways & Means.

SB 5916 by Senators Bailey, Baumgartner, Hill, Holmquist Newbry, Ericksen, Schoesler, Hewitt and Mullet

AN ACT Relating to administration of public retirement plans; amending RCW 41.50.150 and 41.26.200; adding a new section to chapter 43.19 RCW; and creating a new section.

Referred to Committee on Ways & Means.

SB 5917 by Senators Kline, Darneille, Eide, Braun and McAuliffe

AN ACT Relating to funding improved impaired driving safety and enforcement; amending RCW 82.08.160, 46.68.260, and 46.20.117; adding a new section to chapter 46.68 RCW; adding a new section to chapter 46.61 RCW; prescribing penalties; providing effective dates; and declaring an emergency.

Referred to Committee on Ways & Means.

INTRODUCTION AND FIRST READING OF HOUSE BILLS

ESHB 1864 by House Committee on Transportation (originally sponsored by Representatives Clibborn, Liias, Ryu and Fey)

AN ACT Relating to transportation funding and appropriations; amending RCW 47.64.170, 47.64.270, 43.19.642, 46.12.630, 46.18.060, 46.68.113, 46.68.170, 46.68.325, 47.29.170, 47.56.403, 47.56.876, 46.20.745, and 90.58.140; amending 2012 c 86 ss 102, 201, 202, 203, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 302, 303, 305, 306, 307, 308, 309, 310, 401, 402, 404, 405, 406, 407, and 701 (uncodified); amending 2011 c 367 s 601 (uncodified); reenacting and amending RCW 46.63.170; adding a new section to chapter 47.06A RCW; creating new sections; repealing 2012 c 86 ss 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, and 716 (uncodified); prescribing penalties; making appropriations and authorizing expenditures for capital improvements; providing an effective date; providing a contingent effective date; and declaring an emergency.

Referred to Committee on Transportation.

EHB 1920 by Representatives Ormsby, Carlyle, Hunter and Pollet

AN ACT Relating to preserving funding deposited into the education legacy trust account used to support common schools and access to higher education by restoring the application of the Washington estate and transfer tax to certain property transfers; amending RCW 83.100.020, 83.100.047, and 83.100.047; creating new sections; providing an effective date; and providing an expiration date.

Referred to Committee on Ways & Means.

SHB 1961 by House Committee on Appropriations (originally sponsored by Representatives Pedersen, Rodne, Hudgins, Hunter and Ryu)

AN ACT Relating to judicial stabilization trust account surcharges; amending RCW 3.62.060, 36.18.018, and 36.18.020; providing an effective date; and declaring an emergency.

Referred to Committee on Ways & Means.

E2SHB 1971 by House Committee on Appropriations (originally sponsored by Representatives Carlyle and Nealey)

AN ACT Relating to communications services reform; amending RCW 82.14B.040, 82.14B.042, 82.14B.030, 82.14B.200, 80.36.430, 43.20A.725, 80.36.420, 80.36.450, 80.36.460, 80.36.470, and 80.36.610; reenacting and amending RCW 82.14B.020 and 82.08.0289; adding new sections to chapter 80.36 RCW; creating new sections; repealing RCW 82.72.010, 82.72.020, 82.72.030, 82.72.040, 82.72.050, 82.72.060, 82.72.070, 82.72.080, 82.72.090, and 80.36.600; prescribing penalties; providing effective dates; and providing expiration dates.

Referred to Committee on Ways & Means.

SHB 1982 by House Committee on Appropriations (originally sponsored by Representative Hunter)

AN ACT Relating to eliminating lottery games that generate insufficient net revenue; amending RCW 67.70.240; and repealing RCW 67.70.500.

Referred to Committee on Ways & Means.

SHB 2002 by House Committee on Appropriations (originally sponsored by Representatives Condotta and Reykdal)

AN ACT Relating to snowmobile license fees; amending RCW 46.17.350 and 46.17.350; creating new sections; and providing an expiration date.

Referred to Committee on Ways & Means.

2ESHB 2016 by House Committee on Appropriations (originally sponsored by Representatives Jinkins, Hunter and Alexander)

AN ACT Relating to a hospital safety net assessment; amending RCW 74.60.005, 74.60.010, 74.60.020, 74.60.030, 74.60.050, 74.60.070, 74.60.080, 74.60.090, 74.60.100, 74.60.110, 74.60.120, 74.60.130, 74.60.140, 74.60.150, 74.60.900, and 74.60.901; adding a new section to chapter 74.60 RCW; adding a new section to chapter 74.09 RCW; providing an expiration date; and declaring an emergency.

Referred to Committee on Ways & Means.

SHB 2018 by House Committee on Appropriations (originally sponsored by Representative Hunter)

AN ACT Relating to additional contribution rates for contributions made after the date the service is rendered for individual employers of the Washington state retirement systems; amending RCW 41.45.010, 41.45.050, and

41.45.060; creating a new section; and declaring an emergency.

Referred to Committee on Ways & Means.

MOTION

On motion of Senator Fain, all measures listed on the Introduction and First Reading report were referred to the committees as designated.

MOTION

On motion of Senator Fain, Senator Carrell was excused.

MOTION

On motion of Senator Fain, the Senate advanced to the eighth order of business.

MOTION

Senator Baumgartner moved adoption of the following resolution:

SENATE RESOLUTION 8657

By Senators Baumgartner, Padden, Brown, Smith, Parlette, Honeyford, Rivers, Shin, Bailey, Hill, Tom, Litzow, Ericksen, Becker, Roach, Fain, Dammeier, Holmquist Newbry, Sheldon, and Braun

WHEREAS, Baroness Margaret Thatcher, the daughter of a British grocer, rose to become the first woman to lead a conservative political party and Britain's first female Prime Minister; and

WHEREAS, While serving as Prime Minister, Margaret Thatcher was an unapologetic supporter of the special relationship forged between the United Kingdom and the United States and maintained with unyielding resolve that together the two nations could defeat the communist Soviet empire and extend freedom's promise; and

WHEREAS, Margaret Thatcher, who was the longest serving British Prime Minister of the 20th century, worked tirelessly during her 11 years and 209 days in office to end Britain's precipitous decline and restore the confidence and pride that is the hallmark of the Old Empire at its best; and

WHEREAS, She earned the respect of the world and the nickname the "Iron Lady" from the Soviet press for her uncompromising political savvy and decisive style of leadership; and

WHEREAS, She did not base her policies on textbook political or economic theory but on the values and attitudes everyday people lived by, with guiding sayings such as an honest day's work for an honest day's pay and live within your means and pay your bills on time; and

WHEREAS, Her work to restructure the British financial system provided paramount examples of the proper way to revitalize economies around the world; and

WHEREAS, Her policies helped expand women's rights; and
WHEREAS, Margaret Thatcher demonstrated confidence, conviction, and decisiveness during events such as the Falklands War; and

WHEREAS, She believed a life's path is determined by a force more powerful than fate and everyone is brought together for a

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profound purpose to accomplish much more than any individual would be able to on his or her own;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate honor the life, accomplishments, and legacy of Baroness Margaret Thatcher and strive to live by her words, "Where there is discord, may we bring harmony. Where there is error, may we bring truth. Where there is doubt, may we bring faith. And where there is despair, may we bring hope."

Senators Baumgartner, Brown, Parlette, Smith, Benton and Shin spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8657.

MOTION

On motion of Senator Billig, Senator Murray was excused.

MOTION

On motion of Senator Billig, Senators Keiser and Ranker were excused.

The motion by Senator Baumgartner carried and the resolution was adopted by voice vote.

MOTION

On motion of Senator Fain, Senate Rule 20 was suspended for the remainder of the day to allow consideration of additional floor resolutions.

EDITOR'S NOTE: Senate Rule 20 limits consideration of floor resolutions not essential to the operation of the Senate to one per day during regular daily sessions.

MOTION

Senator Kline moved adoption of the following resolution:

SENATE RESOLUTION

8638

By Senators Kline, Padden, Schlicher, Mullet, Kohl-Welles, Darneille, Eide, Hobbs, Keiser, Chase, Fain, Pearson, Smith, Harper, Murray, Conway, Hasegawa, Ranker, Fraser, Nelson, Cleveland, and McAuliffe

WHEREAS, In 1961 an obscure, penniless drifter was criminally charged with breaking into the Bay Harbor Poolroom in Panama City, Florida, and stealing approximately \$65 in change, 12 beers, 12 Coca-Colas, and four fifths of wine; and

WHEREAS, The trial court denied the indigent man's request for a lawyer to help him defend against the felony charges and convicted and sentenced Clarence Earl Gideon to five years in state prison, and the Florida Supreme Court declined his appeal; and

WHEREAS, From prison, again without a lawyer, Mr. Gideon mailed the United States Supreme Court a humble, hand-printed petition asking the High Court to find that he was deprived of a fair trial because he was denied assistance of legal counsel; and

WHEREAS, Washington State, whose State Constitution guarantees the right to counsel in Article I, Section 22, was among 22 states that submitted amicus curiae briefs supporting Mr. Gideon's right to a court-appointed lawyer; and

WHEREAS, 50 years ago, in March 1963, the United States Supreme Court announced a unanimous decision in *Gideon v.*

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Wainwright, establishing as the law of the land that the United States Constitution's Sixth Amendment guarantee of legal counsel is a fundamental right of all persons, essential to a fair trial, and is applied to the states through the due process requirements of the Fourteenth Amendment; and

WHEREAS, As Justice Hugo Black wrote for the court, "The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours"; and

WHEREAS, As a result of the ruling, the state of Florida granted Mr. Gideon a new trial in August 1963, where a court-appointed lawyer was able to present crucial evidence and the jury found Mr. Gideon not guilty; and

WHEREAS, Subsequent United States and Washington Supreme Court rulings have maintained the right to counsel, and have held that the right to counsel means the right to competent, effective counsel; and

WHEREAS, Although the functions of the three branches of Washington State Government differ, they complement one another in regards to the pursuit of justice: Their purpose is to assure the fair and impartial trial of those accused of crime, whether the result be conviction or acquittal;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate commemorate the March 18 anniversary of *Gideon v. Wainwright*, marking a significant step toward ensuring that in America, regardless of material wealth or personal privilege, all persons facing the deprivation of liberty at the hands of the government are guaranteed due process and the right to effective assistance of counsel to defend themselves.

Senators Kline and Padden spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8638.

The motion by Senator Kline carried and the resolution was adopted by voice vote.

INTRODUCTION OF SPECIAL GUESTS

The President recognized representatives of the hundreds of attorneys who ensure that citizens can exercise their constitutional right to legal counsel despite their circumstance who were present in the gallery. The President recognized Senator Padden's and Senator Harper's membership on the Office of Public Defense Advisory Committee and welcomed and introduced Ms. Joanne Moore, Director, Washington State Office of Public Defense, who was also present in the gallery.

MOTION

At 11:28 a.m., on motion of Senator Fain, the Senate was declared to be at ease subject to the call of the President.

AFTERNOON SESSION

The Senate was called to order at 3:21 p.m. by President Owen.

MOTION

On motion of Senator Fain, the Senate reverted to the fourth order of business.

SIGNED BY THE PRESIDENT

Pursuant to Article 2, Section 32 of the State Constitution and Senate Rule 1(5), the President announced the signing of and thereupon did sign in open session:

SENATE BILL NO. 5052,
 SUBSTITUTE SENATE BILL NO. 5182,
 SUBSTITUTE SENATE BILL NO. 5263,
 SUBSTITUTE SENATE BILL NO. 5264,
 SENATE BILL NO. 5297,
 SENATE BILL NO. 5476,
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5681,
 SENATE BILL NO. 5715.

MESSAGE FROM THE HOUSE

April 16, 2013

MR. PRESIDENT:

The House passed SECOND SUBSTITUTE SENATE BILL NO. 5595 with the following amendment(s): 5595-S2 AMH APP H2304.2

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 43.215.010 and 2011 c 295 s 3 and 2011 c 78 s 1 are each reenacted and amended to read as follows:

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

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" means an agency that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" means a child day care provider who regularly provides child day care and early learning services for not more than twelve children in the provider's home in the family living quarters;

(d) "Nongovernmental private-public partnership" means an entity registered as a nonprofit corporation in Washington state with a primary focus on early learning, school readiness, and parental support, and an ability to raise a minimum of five million dollars in contributions;

(e) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection (~~((2)(a))~~), even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the

purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools or kindergartens that are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children, and do not accept custody of children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing child care for periods of less than twenty-four hours when a parent or legal guardian of the child remains on the premises of the facility for the purpose of participating in:

(i) Activities other than employment; or

(ii) Employment of up to two hours per day when the facility is operated by a nonprofit entity that also operates a licensed child care program at the same facility in another location or at another facility;

(i) Any agency having been in operation in this state ten years before June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(j) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(k) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(l) An agency that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

(4) "Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the applicant.

(5) "Department" means the department of early learning.

(6) "Director" means the director of the department.

(7) "Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for participation.

(8) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

~~((8))~~ (9) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.215.300(1) or assessment of civil monetary penalties pursuant to RCW 43.215.300(3).

~~((9))~~ (10) "Negative action" means a court order, court judgment, or an adverse action taken by an agency, in any state, federal, tribal, or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability, and competence to care for or have unsupervised access to children in child care. This may include, but is not limited to:

(a) A decision issued by an administrative law judge;

(b) A final determination, decision, or finding made by an agency following an investigation;

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification, or contract in lieu of the adverse action;

(d) A revocation, denial, or restriction placed on any professional license; or

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(e) A final decision of a disciplinary board.

~~((10))~~ **(11)** "Nonconviction information" means arrest, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the applicant.

~~((11))~~ **(12)** "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

~~((12))~~ **(13)** "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

NEW SECTION. Sec. 2. A new section is added to chapter 43.215 RCW to read as follows:

(1) The early achievers program is designed to accomplish the following goals:

(a) Provide parents clear and easily accessible information about quality child care and early education programs;

(b) Improve early learning programs throughout Washington state;

(c) Increase school readiness for children;

(d) Close the disparity between segments of the population with regard to access to quality care; and

(e) Establish a uniform set of expectations and standards that define, measure, and improve the quality of the early learning environment.

(2) All licensed and certified child care programs may enroll in the early achievers program. Child care providers may voluntarily decide whether to participate.

(3) There are five quality levels in the early achievers program.

(4) The department shall prepare and implement rules in accordance with the early achievers program and this section.

NEW SECTION. Sec. 3. A new section is added to chapter 43.215 RCW to read as follows:

(1) The standards and guidelines described in this section are intended for the guidance of the department and the department of social and health services. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state.

(2) When providing services to parents applying for or receiving working connections child care benefits, the department must provide training to departmental employees on professionalism.

(3) When providing services to parents applying for or receiving working connections child care benefits, the department of social and health services has the following responsibilities:

(a) To return all calls from parents receiving working connections child care benefits within two business days of receiving the call;

(b) To develop a process by which parents receiving working connections child care benefits can submit required forms and information electronically by June 30, 2015;

(c) To notify providers and parents ten days before the loss of working connections child care benefits; and

(d) To provide parents with a document that explains in detail and in easily understood language what services they are eligible for, how they can appeal an adverse decision, and the parents' responsibilities in obtaining and maintaining eligibility for working connections child care.

NEW SECTION. Sec. 4. (1)(a) A legislative task force on child care improvements for the future is established with members as provided in this subsection.

(i) The president of the senate shall appoint two members from each of the two largest caucuses of the senate.

(ii) The speaker of the house of representatives shall appoint two members from each of the two largest caucuses in the house of representatives.

(iii) The president of the senate and the speaker of the house of representatives shall appoint fifteen members representing the following interests:

(A) The department of early learning;

(B) The department of social and health services;

(C) The early learning advisory committee;

(D) Thrive by five;

(E) Private pay child care consumers;

(F) Child care consumers receiving a subsidy;

(G) Family child care providers;

(H) Child care center providers;

(I) Exempt child care providers;

(J) The collective bargaining unit representing child care providers;

(K) School-age child care providers;

(L) Child care aware;

(M) The Washington state association of head start and the early childhood education and assistance program;

(N) The early learning action alliance; and

(O) Puget Sound educational service district.

(b) The task force shall choose its cochairs from among its legislative leadership. The members of the majority party in each house shall convene the first meeting.

(2) The task force shall address the following issues:

(a) The creation of a tiered reimbursement model that works for both consumers and providers and provides incentives for quality child care across communities;

(b) The development of recommendations and an implementation plan for expansion of the program referred to in RCW 43.215.400 to include a mixed delivery system that integrates community-based early learning providers, including but not limited to family child care, child care centers, schools, and educational services districts. Recommendations shall include:

(i) Areas of alignment and conflicts in restrictions and eligibility requirements associated with early learning funding and services;

(ii) A funding plan that blends and maximizes existing resources and identifies new revenue and other funding sources; and

(iii) Incentives for integrating child care and preschool programming to better serve working families;

(c) The development of recommendations for market rate reimbursement to allow access to high quality child care; and

(d) The development of recommendations for a further graduation of the copay scale to eliminate the cliff that occurs at subsidy cut off.

(3) Staff support for the task force must be provided by the senate committee services and the house of representatives office of program research.

(4) The task force shall report its findings and recommendations to the governor and the appropriate committees of the legislature no later than December 31, 2013.

(5) This section expires July 1, 2014.

NEW SECTION. Sec. 5. (1) The legislature finds that the Aclara group report on the eligibility requirements for working connections child care which came from the pedagogy of lean management and focused on identifying and eliminating nonvalue added work should be followed. The legislature further finds that, following some of the recommendations in the report, would result in simplifying and streamlining the child care system to improve access and customer service without decreasing the program's integrity.

(2) By December 1, 2013, the department and the department of social and health services shall accomplish the following:

(a) Eliminate the current custody/visitation policy and design a subsidy system that is flexible and accounts for small fluctuations in family circumstances;

(b) Create broad authorization categories so that relatively minor changes in parents' work schedule does not require changes in authorization;

(c) Establish rules to specify that parents who receive working connections child care benefits and participate in one hundred ten hours or more of approved work or related activities are eligible for full-time child care services; and

(d) Clarify and simplify the requirement to count child support as income."

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Pearson moved that the Senate refuse to concur in the House amendment(s) to Second Substitute Senate Bill No. 5595 and ask the House to recede therefrom.

Senator Pearson spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Pearson that the Senate refuse to concur in the House amendment(s) to Second Substitute Senate Bill No. 5595 and ask the House to recede therefrom.

The motion by Senator Pearson carried and the Senate refused to concur in the House amendment(s) to Second Substitute Senate Bill No. 5595 and asked the House to recede therefrom by voice vote.

MESSAGE FROM THE HOUSE

April 16, 2013

MR. PRESIDENT:

The House passed ENGROSSED SENATE BILL NO. 5666 with the following amendment(s): 5666.E AMH JUDI H2282.1

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 7.71.030 and 2012 c 165 s 1 are each amended to read as follows:

(1) If the limitation on damages under RCW 7.71.020 and P.L. 99-660 Sec. 411(1) does not apply, this section shall provide the exclusive ((remedy)) remedies in any lawsuit by a health care provider for any action taken by a professional peer review body of health care providers as defined in RCW 7.70.020((, that is found to be based on matters not related to the competence or professional conduct of a health care provider)).

(2) ~~((Actions))~~ Remedies shall be limited to appropriate injunctive relief, and damages shall be allowed only for lost earnings directly attributable to the action taken by the professional peer review body, incurred between the date of such action and the date the action is functionally reversed by the professional peer review body.

(3) Reasonable attorneys' fees and costs shall be awarded if approved by the court under RCW 7.71.035.

(4) The statute of limitations for actions under this section shall be one year from the date of the action of the professional peer review body.

Sec. 2. RCW 70.41.200 and 2007 c 273 s 22 and 2007 c 261 s 3 are each reenacted and amended to read as follows:

(1) Every hospital 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 shall include at least the following:

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

(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))~~ A process for the periodic review of the credentials, physical and mental capacity, professional conduct, and competence in delivering health care services of all ~~((persons))~~ other health care providers who are employed or associated with the hospital;

(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 hospital's experience with negative health care outcomes and incidents injurious to patients including health care-associated infections as defined in RCW 43.70.056, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital 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 physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, infection control, 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 shall not be 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) 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 no person who was in attendance at a meeting of such committee or who

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participated in the creation, collection, or maintenance of information or documents specifically for the committee shall 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. This subsection does not preclude:

(a) 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; (b) 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; (c) 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; (d) 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 (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health 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 physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other 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 hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital 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, a coordinated quality improvement committee maintained by an ambulatory surgical facility under RCW 70.230.070, 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 shall 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 shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

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

Sec. 3. RCW 70.41.230 and 1994 sp.s. c 9 s 744 are each amended to read as follows:

(1) Prior to granting or renewing clinical privileges or association of any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from the physician and the physician shall provide the following information:

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

(b) ~~(If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation))~~ Whether the physician 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, ambulatory surgical centers, or skilled nursing facilities;

(vi) Medicare, medicaid, the food and drug administration, the national institute of health (office of human research protection), 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;

(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 physician deems appropriate;

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

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

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

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

(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 pursuant to RCW 18.71.0195.

(3) The medical quality assurance commission shall be advised within thirty days of the name of any physician denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

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

(5) 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 no 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 shall 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. This subsection does not preclude:

(a) 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; (b) 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; (c) 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; (d) 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 (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(6) Hospitals shall be granted access to information held by the medical quality assurance commission and the board of osteopathic medicine and surgery pertinent to decisions of the hospital regarding credentialing and recredentialing of practitioners.

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

Sec. 4. RCW 70.230.080 and 2007 c 273 s 9 are each amended to read as follows:

(1) Every ambulatory surgical 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 shall include at least the following:

(a) The establishment of ~~((a))~~ one or more quality improvement committees with the responsibility to review the services rendered in the ambulatory surgical facility, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. ~~((The))~~ Different quality improvement committees may be established as a part of the quality improvement program to review different health care services. Such committees shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise the policies and procedures of the ambulatory surgical 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 ambulatory surgical 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 ambulatory surgical facility's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the ambulatory surgical 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 ambulatory surgical 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

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presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) 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 no 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 shall 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. This subsection does not preclude: (a) 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; (b) 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; (c) 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; (d) 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 (e) 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 ambulatory surgical facility, as identified in the facility's application, in which the committee is located. The report shall 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, the board of osteopathic medicine and surgery, or the podiatric medical board, as appropriate, may review and audit the records of committee decisions in which a practitioner's privileges are terminated or restricted. Each ambulatory surgical 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 shall be respected as required by subsection (3) of this section. Failure of an ambulatory surgical 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 ambulatory surgical facility. Information so obtained is not subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each ambulatory surgical 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

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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 shall 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 shall 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 ambulatory surgical facility that participates in a coordinated quality improvement program under RCW 43.70.510 shall be deemed to have met the requirements of this section.

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

Sec. 5. RCW 70.230.140 and 2007 c 273 s 15 are each amended to read as follows:

(1) Prior to granting or renewing clinical privileges or association of any practitioner or hiring a practitioner, an ambulatory surgical facility approved pursuant to this chapter shall request from the practitioner and the practitioner shall provide the following information:

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

(b) ~~(If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation))~~ Whether the physician 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, ambulatory surgical centers, or skilled nursing facilities;

(vi) Medicare, medicaid, the food and drug administration, the national institute of health (office of human research protection), 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;(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 ambulatory surgical 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 ambulatory surgical facility approved under this chapter shall request from any hospital or ambulatory surgical 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 ambulatory surgical facilities pursuant to RCW 18.130.070.

(3) The medical quality assurance commission, board of osteopathic medicine and surgery, podiatric medical board, or dental quality assurance commission, as appropriate, shall 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, ambulatory surgical facility, or other facility that receives a request for information from another hospital, ambulatory surgical facility, or other facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital, ambulatory surgical facility, or other facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital, ambulatory surgical facility, or facility. A hospital, ambulatory surgical 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) 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 no 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 shall 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. This subsection does not preclude:

(a) 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; (b) 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; (c) 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; (d) 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 (e) 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) Ambulatory surgical facilities shall be granted access to information held by the medical quality assurance commission, board of osteopathic medicine and surgery, or podiatric medical board pertinent to decisions of the ambulatory surgical facility regarding credentialing and recredentialing of practitioners.

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

Correct the title.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Dammeier moved that the Senate refuse to concur in the House amendment(s) to Engrossed Senate Bill No. 5666 and request of the House a conference thereon.

Senator Dammeier spoke in favor of the motion.

The President declared the question before the Senate to be motion by Senator Dammeier that the Senate refuse to concur in the House amendment(s) to Engrossed Senate Bill No. 5666 and request a conference thereon.

The motion by Senator Dammeier carried and the Senate refused to concur in the House amendment(s) to Engrossed Senate Bill No. 5666 and requested of the House a conference thereon by voice vote.

MESSAGE FROM THE HOUSE

April 16, 2013

MR. PRESIDENT:

The House passed SECOND SUBSTITUTE SENATE BILL NO. 5732 with the following amendment(s): 5732-S2 AMH APP H2375.1

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 43.20A RCW to read as follows:

(1) The systems responsible for financing, administration, and delivery of publicly funded mental health and chemical dependency services to adults must be designed and administered to achieve improved outcomes for adult clients served by those systems through increased use and development of evidence-based, research-based, and promising practices, as defined in RCW 71.24.025. For purposes of this section, client outcomes include: Improved health status; increased participation in employment and education; reduced involvement with the criminal justice system; enhanced safety and access to treatment for forensic patients; reduction in avoidable utilization of and costs associated with hospital, emergency room, and crisis services; increased housing stability; improved quality of life, including measures of recovery and resilience; and decreased population level disparities in access to treatment and treatment outcomes.

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(2) The department and the health care authority must implement a strategy for the improvement of the adult behavioral health system.

(a) The department must establish a steering committee that includes at least the following members: Behavioral health service recipients and their families; local government; representatives of regional support networks; representatives of county coordinators; law enforcement; city and county jails; tribal representatives; behavioral health service providers, including at least one chemical dependency provider and at least one psychiatric advanced registered nurse practitioner; housing providers; medicaid managed care plan representatives; long-term care service providers; organizations representing health care professionals providing services in mental health settings; the Washington state hospital association; the Washington state medical association; individuals with expertise in evidence-based and research-based behavioral health service practices; and the health care authority.

(b) The adult behavioral health system improvement strategy must include:

(i) An assessment of the capacity of the current publicly funded behavioral health services system to provide evidence-based, research-based, and promising practices;

(ii) Identification, development, and increased use of evidence-based, research-based, and promising practices;

(iii) Design and implementation of a transparent quality management system, including analysis of current system capacity to implement outcomes reporting and development of baseline and improvement targets for each outcome measure provided in this section;

(iv) Identification and phased implementation of service delivery, financing, or other strategies that will promote improvement of the behavioral health system as described in this section and incentivize the medical care, behavioral health, and long-term care service delivery systems to achieve the improvements described in this section and collaborate across systems. The strategies must include phased implementation of public reporting of outcome and performance measures in a form that allows for comparison of performance and levels of improvement between geographic regions of Washington; and

(v) Identification of effective methods for promoting workforce capacity, efficiency, stability, diversity, and safety.

(c) The department must seek private foundation and federal grant funding to support the adult behavioral health system improvement strategy.

(d) By May 15, 2014, the Washington state institute for public policy, in consultation with the department, the University of Washington evidence-based practice institute, the University of Washington alcohol and drug abuse institute, and the Washington institute for mental health research and training, shall prepare an inventory of evidence-based, research-based, and promising practices for prevention and intervention services pursuant to subsection (1) of this section. The department shall use the inventory in preparing the behavioral health improvement strategy. The department shall provide the institute with data necessary to complete the inventory.

(e) By August 1, 2014, the department must report to the governor and the relevant fiscal and policy committees of the legislature on the status of implementation of the behavioral health improvement strategy, including strategies developed or implemented to date, timelines, and costs to accomplish phased implementation of the adult behavioral health system improvement strategy.

(3) The department must contract for the services of an independent consultant to review the provision of forensic mental health services in Washington state and provide recommendations

as to whether and how the state's forensic mental health system should be modified to provide an appropriate treatment environment for individuals with mental disorders who have been charged with a crime while enhancing the safety and security of the public and other patients and staff at forensic treatment facilities. By August 1, 2014, the department must submit a report regarding the recommendations of the independent consultant to the governor and the relevant fiscal and policy committees of the legislature.

NEW SECTION. Sec. 2. A new section is added to chapter 70.97 RCW to read as follows:

To the extent that funds are specifically appropriated for this purpose, the department must issue a request for a proposal for enhanced services facility services by June 1, 2014, and complete the procurement process by January 1, 2015.

NEW SECTION. Sec. 3. A new section is added to chapter 71.05 RCW to read as follows:

When a person has been involuntarily committed for treatment to a hospital for a period of ninety or one hundred eighty days, and the superintendent or professional person in charge of the hospital determines that the person no longer requires active psychiatric treatment at an inpatient level of care, the regional support network responsible for resource management services for the person must work with the hospital to develop an individualized discharge plan and arrange for a transition to the community in accordance with the person's individualized discharge plan within twenty-one days of the determination.

Sec. 4. RCW 71.24.025 and 2012 c 10 s 59 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means funds appropriated for the purpose of providing community mental health programs, federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

(3) "Child" means a person under the age of eighteen years.

(4) "Chronically mentally ill adult" or "adult who is chronically mentally ill" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(5) "Clubhouse" means a community-based program that provides rehabilitation services and is certified by the department of social and health services.

(6) "Community mental health program" means all mental health services, activities, or programs using available resources.

(7) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from public sources.

(8) "Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for children who are acutely mentally ill or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, recovery services, and other services determined by regional support networks.

(9) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

(10) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

(11) "Department" means the department of social and health services.

(12) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(13) "Emerging best practice" or "promising practice" means a ~~((practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice))~~ program or practice that, based on statistical analyses or a well established theory of change, shows potential for meeting the evidence-based or research-based criteria, which may include the use of a program that is evidence-based for outcomes other than those listed in subsection (14) of this section.

(14) "Evidence-based" means a program or practice that has ~~((had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population))~~ been tested in heterogeneous or intended populations with multiple randomized, or statistically controlled evaluations, or both; or one large multiple site randomized, or statistically controlled evaluation, or both, where the weight of the evidence from a systemic review demonstrates sustained improvements in at least one outcome. "Evidence-based" also means a program or practice that can be implemented with a set of procedures to allow successful replication in Washington and, when possible, is determined to be cost-beneficial.

(15) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW or an entity deemed to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, that meets state minimum standards or persons licensed under chapter 18.57, 18.71,

18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

(16) "Long-term inpatient care" means inpatient services for persons committed for, or voluntarily receiving intensive treatment for, periods of ninety days or greater under chapter 71.05 RCW. "Long-term inpatient care" as used in this chapter does not include: (a) Services for individuals committed under chapter 71.05 RCW who are receiving services pursuant to a conditional release or a court-ordered less restrictive alternative to detention; or (b) services for individuals voluntarily receiving less restrictive alternative treatment on the grounds of the state hospital.

(17) "Mental health services" means all services provided by regional support networks and other services provided by the state for persons who are mentally ill.

(18) "Mentally ill persons," "persons who are mentally ill," and "the mentally ill" mean persons and conditions defined in subsections (1), (4), (27), and (28) of this section.

(19) "Recovery" means the process in which people are able to live, work, learn, and participate fully in their communities.

(20) "Regional support network" means a county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region.

(21) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(22) "Research-based" means a program or practice that has ~~((some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices))~~ been tested with a single randomized, or statistically controlled evaluation, or both, demonstrating sustained desirable outcomes; or where the weight of the evidence from a systemic review supports sustained outcomes as described in subsection (14) of this section but does not meet the full criteria for evidence-based.

(23) "Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for persons who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service persons who are mentally ill in nursing homes, assisted living facilities, and adult family homes, and may include outpatient services provided as an element in a package of services in a supported housing model. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

(24) "Resilience" means the personal and community qualities that enable individuals to rebound from adversity, trauma, tragedy, threats, or other stresses, and to live productive lives.

(25) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for: (a) Adults and children who are acutely mentally ill; (b) adults who are chronically mentally ill; (c) children who are severely emotionally disturbed; or (d) adults who are seriously disturbed and determined solely by a regional support network to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental

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health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding enrollment of adults and children who are mentally ill in services and their individual service plan to designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

(26) "Secretary" means the secretary of social and health services.

(27) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status, or under a less restrictive alternative order, at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

(28) "Severely emotionally disturbed child" or "child who is severely emotionally disturbed" means a child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a caretaker who is mentally ill or inadequate;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(29) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for: (a) Delivery of mental health services; (b) licensed service providers for the provision of mental health services; (c) residential services; and (d) community support services and resource management services.

(30) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

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(31) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest.

Sec. 5. RCW 18.19.210 and 2008 c 135 s 9 are each amended to read as follows:

(1)(a) An applicant for registration as an agency affiliated counselor who applies to the department within seven days of employment by an agency may work as an agency affiliated counselor for up to sixty days while the application is processed. The applicant must stop working on the sixtieth day of employment if the registration has not been granted for any reason.

(b) The applicant may not provide unsupervised counseling prior to completion of a criminal background check performed by either the employer or the secretary. For purposes of this subsection, "unsupervised" means the supervisor is not physically present at the location where the counseling occurs.

(2) Agency affiliated counselors shall notify the department if they are either no longer employed by the agency identified on their application or are now employed with another agency, or both. Agency affiliated counselors may not engage in the practice of counseling unless they are currently affiliated with an agency.

NEW SECTION. Sec. 6. A new section is added to chapter 43.20A RCW to read as follows:

(1) By November 30, 2013, the department and the health care authority must report to the governor and the relevant fiscal and policy committees of the legislature, consistent with RCW 43.01.036, a plan that establishes a tribal-centric behavioral health system incorporating both mental health and chemical dependency services. The plan must assure that child, adult, and older adult American Indians and Alaskan Natives eligible for medicaid have increased access to culturally appropriate mental health and chemical dependency services. The plan must:

(a) Include implementation dates, major milestones, and fiscal estimates as needed;

(b) Emphasize the use of culturally appropriate evidence-based and promising practices;

(c) Address equitable access to crisis services, outpatient care, voluntary and involuntary hospitalization, and behavioral health care coordination;

(d) Identify statutory changes necessary to implement the tribal-centric behavioral health system; and

(e) Be developed with the department's Indian policy advisory committee and the American Indian health commission, in consultation with Washington's federally recognized tribes.

(2) The department shall enter into agreements with the tribes and urban Indian health programs and modify regional support network contracts as necessary to develop a tribal-centric behavioral health system that better serves the needs of the tribes.

NEW SECTION. Sec. 7. Section 3 of this act takes effect July 1, 2018."

Correct the title.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

Senator Pearson moved that the Senate refuse to concur in the House amendment(s) to Second Substitute Senate Bill No. 5732 and ask the House to recede therefrom.

Senators Pearson and Darneille spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Pearson that the Senate refuse to concur in

the House amendment(s) to Second Substitute Senate Bill No. 5732 and ask the House to recede therefrom.

The motion by Senator Pearson carried and the Senate refused to concur in the House amendment(s) to Second Substitute Senate Bill No. 5732 and asked the House to recede therefrom by voice vote.

BRAD OWEN, President of the Senate

HUNTER GOODMAN, Secretary of the Senate

MOTION

At 3:30 p.m., on motion of Senator Fain, the Senate adjourned until 9:00 a.m. Friday, April 19, 2013.

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