

2 ESHB 1589 - S AMD - 424

3 By Senators Winsley, Moyer, Palmer, Deccio, A. Anderson and Owen

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5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** HOSPITAL DISCHARGE DATA--OTHER DATA  
8 REQUIREMENTS. (1) To promote the public interest consistent with the  
9 purposes of chapter 492, Laws of 1993 as amended by chapter . . . , Laws  
10 of 1995 (this act), the department shall continue to require hospitals  
11 to submit hospital financial and patient discharge information, which  
12 shall be collected, maintained, analyzed, and disseminated by the  
13 department. The department shall, if deemed cost-effective and  
14 efficient, contract with a private entity for any or all parts of data  
15 collection. Data elements shall be reported in conformance with a  
16 uniform reporting system established by the department. This includes  
17 data elements identifying each hospital's revenues, expenses,  
18 contractual allowances, charity care, bad debt, other income, total  
19 units of inpatient and outpatient services, and other financial  
20 information reasonably necessary to fulfill the purposes of this  
21 section. Data elements relating to use of hospital services by  
22 patients shall be the same as those currently compiled by hospitals  
23 through inpatient discharge abstracts. The department shall encourage  
24 and permit reporting by electronic transmission or hard copy as is  
25 practical and economical to reporters.

26 (2) In identifying financial reporting requirements, the department  
27 may require both annual reports and condensed quarterly reports from  
28 hospitals, so as to achieve both accuracy and timeliness in reporting,  
29 but shall craft such requirements with due regard of the data reporting  
30 burdens of hospitals.

31 (3) The health care data collected, maintained, and studied by the  
32 department shall only be available for retrieval in original or  
33 processed form to public and private requestors and shall be available  
34 within a reasonable period of time after the date of request. The cost  
35 of retrieving data for state officials and agencies shall be funded  
36 through the state general appropriation. The cost of retrieving data

1 for individuals and organizations engaged in research or private use of  
2 data or studies shall be funded by a fee schedule developed by the  
3 department that reflects the direct cost of retrieving the data or  
4 study in the requested form.

5 (4) The department shall, in consultation and collaboration with  
6 the federally recognized tribes, urban or other Indian health service  
7 organizations, and the federal area Indian health service, design,  
8 develop, and maintain an American Indian-specific health data,  
9 statistics information system. The department rules regarding  
10 confidentiality shall apply to safeguard the information from  
11 inappropriate use or release.

12 (5) All persons subject to the data collection requirements of this  
13 section shall comply with departmental requirements established by rule  
14 in the acquisition of data.

15 NEW SECTION. **Sec. 2. DATA STANDARDS.** (1) To promote the public  
16 interest consistent with this act, the department of health, in  
17 cooperation with the health care policy board and the information  
18 services board established under RCW 43.105.032, shall develop health  
19 care data standards to be used by, and developed in collaboration with,  
20 consumers, purchasers, health carriers, providers, and state government  
21 as consistent with the intent of chapter 492, Laws of 1993 as amended  
22 by chapter . . . , Laws of 1995 (this act), to promote the delivery of  
23 quality health services that improve health outcomes for state  
24 residents. The data standards shall include content, coding,  
25 confidentiality, and transmission standards for all health care data  
26 elements necessary to support the intent of this section, and to  
27 improve administrative efficiency and reduce cost. Purchasers, as  
28 allowed by federal law, health carriers, health facilities and  
29 providers as defined in chapter 48.43 RCW, and state government shall  
30 utilize the data standards. The information and data elements shall be  
31 reported as the department of health directs by rule in accordance with  
32 data standards developed under this section.

33 (2) The health care data collected, maintained, and studied by the  
34 department under this section, the health care policy board, or any  
35 other entity: (a) Shall include a method of associating all  
36 information on health care costs and services with discrete cases; (b)  
37 shall not contain any means of determining the personal identity of any  
38 enrollee, provider, or facility; (c) shall only be available for

1 retrieval in original or processed form to public and private  
2 requesters; (d) shall be available within a reasonable period of time  
3 after the date of request; and (e) shall give strong consideration to  
4 data standards that achieve national uniformity.

5 (3) The cost of retrieving data for state officials and agencies  
6 shall be funded through state general appropriation. The cost of  
7 retrieving data for individuals and organizations engaged in research  
8 or private use of data or studies shall be funded by a fee schedule  
9 developed by the department that reflects the direct cost of retrieving  
10 the data or study in the requested form.

11 (4) All persons subject to this section shall comply with  
12 departmental requirements established by rule in the acquisition of  
13 data, however, the department shall adopt no rule or effect no policy  
14 implementing the provisions of this section without an act of law.

15 (5) The department shall submit developed health care data  
16 standards to the appropriate committees of the legislature by December  
17 31, 1995.

18 NEW SECTION. **Sec. 3.** HEALTH CARE QUALITY--FINDINGS AND INTENT.  
19 The legislature finds that it is difficult for consumers of health care  
20 services to determine the quality of health care prior to purchase or  
21 utilization of medical care. The legislature also finds that  
22 accountability is a key component in promoting quality assurance and  
23 quality improvement throughout the health care delivery system,  
24 including public programs. Quality assurance and improvement standards  
25 are necessary to promote the public interest, contribute to cost  
26 efficiencies, and improve the ability of consumers to ascertain quality  
27 health care purchases.

28 The legislature intends to have consumers, health carriers, health  
29 care providers and facilities, and public agencies participate in the  
30 development of quality assurance and improvement standards that can be  
31 used to develop a uniform quality assurance program for use by all  
32 public and private health plans, providers, and facilities. To that  
33 end, in conducting the study required under section 4 of this act, the  
34 department of health shall:

35 (1) Consider the needs of consumers, employers, health care  
36 providers and facilities, and public and private health plans;

37 (2) Take full advantage of existing national standards of quality  
38 assurance to extend to middle-income populations the protections

1 required for state management of health programs for low-income  
2 populations;

3 (3) Consider the appropriate minimum level of quality assurance  
4 standards that should be disclosed to consumers and employers by health  
5 care providers and facilities, and public and private health plans; and

6 (4) Consider standards that permit health care providers and  
7 facilities to share responsibility for participation in a uniform  
8 quality assurance program.

9 NEW SECTION. **Sec. 4.** UNIFORM QUALITY ASSURANCE. (1) The  
10 department of health in consultation with the health policy board shall  
11 study the feasibility of a uniform quality assurance and improvement  
12 program for use by all public and private health plans and health care  
13 providers and facilities. In this study, the department shall consult  
14 with:

15 (a) Public and private purchasers of health care services;

16 (b) Health carriers;

17 (c) Health care providers and facilities; and

18 (d) Consumers of health services.

19 (2) In conducting the study, the department shall propose standards  
20 that meet the needs of affected persons and organizations, whether  
21 public or private, without creation of differing levels of quality  
22 assurance. All consumers of health services should be afforded the  
23 same level of quality assurance.

24 (3) At a minimum, the study shall include but not be limited to the  
25 following program components and indicators appropriate for consumer  
26 disclosure:

27 (a) Health care provider training, credentialing, and licensure  
28 standards;

29 (b) Health care facility credentialing and recredentialing;

30 (c) Staff ratios in health care facilities;

31 (d) Annual mortality and morbidity rates of cases based on a  
32 defined set of procedures performed or diagnoses treated in health care  
33 facilities, adjusted to fairly consider variable factors such as  
34 patient demographics and case severity;

35 (e) The average total cost and average length of hospital stay for  
36 a defined set of procedures and diagnoses;

1 (f) The total number of the defined set of procedures, by  
2 specialty, performed by each physician at a health care facility within  
3 the previous twelve months;

4 (g) Utilization performance profiles by provider, both primary care  
5 and specialty care, that have been adjusted to fairly consider variable  
6 factors such as patient demographics and severity of case;

7 (h) Health plan fiscal performance standards;

8 (i) Health care provider and facility recordkeeping and reporting  
9 standards;

10 (j) Health care utilization management that monitors trends in  
11 health service under-utilization, as well as over-utilization of  
12 services;

13 (k) Health monitoring that is responsive to consumer, purchaser,  
14 and public health assessment needs; and

15 (l) Assessment of consumer satisfaction and disclosure of consumer  
16 survey results.

17 (4) In conducting the study, the department shall develop standards  
18 that permit each health care facility, provider group, or health  
19 carrier to assume responsibility for and determine the physical method  
20 of collection, storage, and assimilation of quality indicators for  
21 consumer disclosure. The study may define the forms, frequency, and  
22 posting requirements for disclosure of information.

23 In developing proposed standards under this subsection, the  
24 department shall identify options that would minimize provider burden  
25 and administrative cost resulting from duplicative private sector data  
26 submission requirements.

27 (5) The department shall submit a preliminary report to the  
28 legislature by December 31, 1995, including recommendations for initial  
29 legislation pursuant to subsection (6) of this section, and shall  
30 submit supplementary reports and recommendations as completed,  
31 consistent with appropriated funds and staffing.

32 (6) The department shall not adopt any rule implementing the  
33 uniform quality assurance program or consumer disclosure provisions  
34 unless expressly directed to do so by an act of law.

35 NEW SECTION. **Sec. 5.** QUALITY ASSURANCE--INTERAGENCY COOPERATION--  
36 ELIMINATION AND COORDINATION OF DUPLICATE STATE PROGRAMS. No later  
37 than July 1, 1995, the health care policy board together with the  
38 department of health, the health care authority, the department of

1 social and health services, the office of the insurance commissioner,  
2 and the department of labor and industries shall form an interagency  
3 group for coordination and consultation on quality assurance activities  
4 and collaboration on final recommendations for the study required under  
5 section 4 of this act. By December 31, 1996, the group shall review  
6 all state agency programs governing health service quality assurance,  
7 in light of legislative actions pursuant to section 4(6) of this act,  
8 and shall recommend to the legislature, the consolidation,  
9 coordination, or elimination of rules and programs that would be made  
10 unnecessary pursuant to the development of a uniform quality assurance  
11 and improvement program.

12 **Sec. 6.** RCW 42.17.310 and 1994 c 233 s 2 and 1994 c 182 s 1 are  
13 each reenacted and amended to read as follows:

14 RECORDS EXEMPT FROM PUBLIC INSPECTION--MODIFIED. (1) The following  
15 are exempt from public inspection and copying:

16 (a) Personal information in any files maintained for students in  
17 public schools, patients or clients of public institutions or public  
18 health agencies, or welfare recipients.

19 (b) Personal information in files maintained for employees,  
20 appointees, or elected officials of any public agency to the extent  
21 that disclosure would violate their right to privacy.

22 (c) Information required of any taxpayer in connection with the  
23 assessment or collection of any tax if the disclosure of the  
24 information to other persons would (i) be prohibited to such persons by  
25 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result  
26 in unfair competitive disadvantage to the taxpayer.

27 (d) Specific intelligence information and specific investigative  
28 records compiled by investigative, law enforcement, and penology  
29 agencies, and state agencies vested with the responsibility to  
30 discipline members of any profession, the nondisclosure of which is  
31 essential to effective law enforcement or for the protection of any  
32 person's right to privacy.

33 (e) Information revealing the identity of persons who are witnesses  
34 to or victims of crime or who file complaints with investigative, law  
35 enforcement, or penology agencies, other than the public disclosure  
36 commission, if disclosure would endanger any person's life, physical  
37 safety, or property. If at the time a complaint is filed the  
38 complainant, victim or witness indicates a desire for disclosure or

1 nondisclosure, such desire shall govern. However, all complaints filed  
2 with the public disclosure commission about any elected official or  
3 candidate for public office must be made in writing and signed by the  
4 complainant under oath.

5 (f) Test questions, scoring keys, and other examination data used  
6 to administer a license, employment, or academic examination.

7 (g) Except as provided by chapter 8.26 RCW, the contents of real  
8 estate appraisals, made for or by any agency relative to the  
9 acquisition or sale of property, until the project or prospective sale  
10 is abandoned or until such time as all of the property has been  
11 acquired or the property to which the sale appraisal relates is sold,  
12 but in no event shall disclosure be denied for more than three years  
13 after the appraisal.

14 (h) Valuable formulae, designs, drawings, and research data  
15 obtained by any agency within five years of the request for disclosure  
16 when disclosure would produce private gain and public loss.

17 (i) Preliminary drafts, notes, recommendations, and intra-agency  
18 memorandums in which opinions are expressed or policies formulated or  
19 recommended except that a specific record shall not be exempt when  
20 publicly cited by an agency in connection with any agency action.

21 (j) Records which are relevant to a controversy to which an agency  
22 is a party but which records would not be available to another party  
23 under the rules of pretrial discovery for causes pending in the  
24 superior courts.

25 (k) Records, maps, or other information identifying the location of  
26 archaeological sites in order to avoid the looting or depredation of  
27 such sites.

28 (l) Any library record, the primary purpose of which is to maintain  
29 control of library materials, or to gain access to information, which  
30 discloses or could be used to disclose the identity of a library user.

31 (m) Financial information supplied by or on behalf of a person,  
32 firm, or corporation for the purpose of qualifying to submit a bid or  
33 proposal for (i) a ferry system construction or repair contract as  
34 required by RCW 47.60.680 through 47.60.750 or (ii) highway  
35 construction or improvement as required by RCW 47.28.070.

36 (n) Railroad company contracts filed prior to July 28, 1991, with  
37 the utilities and transportation commission under RCW 81.34.070, except  
38 that the summaries of the contracts are open to public inspection and  
39 copying as otherwise provided by this chapter.

1 (o) Financial and commercial information and records supplied by  
2 private persons pertaining to export services provided pursuant to  
3 chapter 43.163 RCW and chapter 53.31 RCW.

4 (p) Financial disclosures filed by private vocational schools under  
5 chapter 28C.10 RCW.

6 (q) Records filed with the utilities and transportation commission  
7 or attorney general under RCW 80.04.095 that a court has determined are  
8 confidential under RCW 80.04.095.

9 (r) Financial and commercial information and records supplied by  
10 businesses or individuals during application for loans or program  
11 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
12 or during application for economic development loans or program  
13 services provided by any local agency.

14 (s) Membership lists or lists of members or owners of interests of  
15 units in timeshare projects, subdivisions, camping resorts,  
16 condominiums, land developments, or common-interest communities  
17 affiliated with such projects, regulated by the department of  
18 licensing, in the files or possession of the department.

19 (t) All applications for public employment, including the names of  
20 applicants, resumes, and other related materials submitted with respect  
21 to an applicant.

22 (u) The residential addresses and residential telephone numbers of  
23 employees or volunteers of a public agency which are held by the agency  
24 in personnel records, employment or volunteer rosters, or mailing lists  
25 of employees or volunteers.

26 (v) The residential addresses and residential telephone numbers of  
27 the customers of a public utility contained in the records or lists  
28 held by the public utility of which they are customers.

29 (w)(i) The federal social security number of individuals governed  
30 under chapter 18.130 RCW maintained in the files of the department of  
31 health, except this exemption does not apply to requests made directly  
32 to the department from federal, state, and local agencies of  
33 government, and national and state licensing, credentialing,  
34 investigatory, disciplinary, and examination organizations; (ii) the  
35 current residential address and current residential telephone number of  
36 a health care provider governed under chapter 18.130 RCW maintained in  
37 the files of the department, if the provider requests that this  
38 information be withheld from public inspection and copying, and  
39 provides to the department an accurate alternate or business address



1 and business telephone number. On or after January 1, 1995, the  
2 current residential address and residential telephone number of a  
3 health care provider governed under RCW 18.130.140 maintained in the  
4 files of the department shall automatically be withheld from public  
5 inspection and copying if the provider has provided the department with  
6 an accurate alternative or business address and telephone number.

7 (x) Information obtained by the board of pharmacy as provided in  
8 RCW 69.45.090.

9 (y) Information obtained by the board of pharmacy or the department  
10 of health and its representatives as provided in RCW 69.41.044,  
11 69.41.280, and 18.64.420.

12 (z) Financial information, business plans, examination reports, and  
13 any information produced or obtained in evaluating or examining a  
14 business and industrial development corporation organized or seeking  
15 certification under chapter 31.24 RCW.

16 (aa) Financial and commercial information supplied to the state  
17 investment board by any person when the information relates to the  
18 investment of public trust or retirement funds and when disclosure  
19 would result in loss to such funds or in private loss to the providers  
20 of this information.

21 (bb) Financial and valuable trade information under RCW 51.36.120.

22 (cc) Client records maintained by an agency that is a domestic  
23 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape  
24 crisis center as defined in RCW 70.125.030.

25 (dd) Information that identifies a person who, while an agency  
26 employee: (i) Seeks advice, under an informal process established by  
27 the employing agency, in order to ascertain his or her rights in  
28 connection with a possible unfair practice under chapter 49.60 RCW  
29 against the person; and (ii) requests his or her identity or any  
30 identifying information not be disclosed.

31 (ee) Investigative records compiled by an employing agency  
32 conducting a current investigation of a possible unfair practice under  
33 chapter 49.60 RCW or of a possible violation of other federal, state,  
34 or local laws prohibiting discrimination in employment.

35 (ff) Business related information protected from public inspection  
36 and copying under RCW 15.86.110.

37 (gg) Financial, commercial, operations, and technical and research  
38 information and data submitted to or obtained by the clean Washington

1 center in applications for, or delivery of, program services under  
2 chapter 70.95H RCW.

3 (hh) Information and documents created specifically for, and  
4 collected and maintained by a quality improvement committee pursuant to  
5 RCW 43.70.510, regardless of which agency is in possession of the  
6 information and documents.

7 (2) Except for information described in subsection (1)(c)(i) of  
8 this section and confidential income data exempted from public  
9 inspection pursuant to RCW 84.40.020, the exemptions of this section  
10 are inapplicable to the extent that information, the disclosure of  
11 which would violate personal privacy or vital governmental interests,  
12 can be deleted from the specific records sought. No exemption may be  
13 construed to permit the nondisclosure of statistical information not  
14 descriptive of any readily identifiable person or persons.

15 (3) Inspection or copying of any specific records exempt under the  
16 provisions of this section may be permitted if the superior court in  
17 the county in which the record is maintained finds, after a hearing  
18 with notice thereof to every person in interest and the agency, that  
19 the exemption of such records is clearly unnecessary to protect any  
20 individual's right of privacy or any vital governmental function.

21 (4) Agency responses refusing, in whole or in part, inspection of  
22 any public record shall include a statement of the specific exemption  
23 authorizing the withholding of the record (or part) and a brief  
24 explanation of how the exemption applies to the record withheld.

25 **Sec. 7.** RCW 43.70.510 and 1993 c 492 s 417 are each amended to  
26 read as follows:

27 QUALITY IMPROVEMENT PROGRAMS--ADDING CERTAIN STATE AGENCIES AND  
28 HEALTH CARRIERS. (1)(a) Health care institutions and medical  
29 facilities, other than hospitals, that are licensed by the department,  
30 professional societies or organizations, (~~and certified~~) health care  
31 service contractors, health maintenance organizations, health ((plans))  
32 carriers approved pursuant to ((RCW 43.72.100)) chapter 48.43 RCW, and  
33 any other person or entity providing health care coverage under chapter  
34 48.42 RCW that is subject to the jurisdiction and regulation of any  
35 state agency or any subdivision thereof may maintain a coordinated  
36 quality improvement program for the improvement of the quality of  
37 health care services rendered to patients and the identification and  
38 prevention of medical malpractice as set forth in RCW 70.41.200.

1 (b) All such programs shall comply with the requirements of RCW  
2 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h) as modified to  
3 reflect the structural organization of the institution, facility,  
4 professional societies or organizations, (~~or certified~~) health care  
5 service contractors, health maintenance organizations, health ((plan))  
6 carriers, or any other person or entity providing health care coverage  
7 under chapter 48.42 RCW that is subject to the jurisdiction and  
8 regulation of any state agency or any subdivision thereof, unless an  
9 alternative quality improvement program substantially equivalent to RCW  
10 70.41.200(1)(a) is developed. All such programs, whether complying  
11 with the requirement set forth in RCW 70.41.200(1)(a) or in the form of  
12 an alternative program, must be approved by the department before the  
13 discovery limitations provided in subsections (3) and (4) of this  
14 section and the exemption under RCW 42.17.310(1)(hh) and subsection (5)  
15 of this section shall apply. In reviewing plans submitted by licensed  
16 entities that are associated with physicians' offices, the department  
17 shall ensure that the exemption under RCW 42.17.310(1)(hh) and the  
18 discovery limitations of this section are applied only to information  
19 and documents related specifically to quality improvement activities  
20 undertaken by the licensed entity.

21 (2) Health care provider groups of ten or more providers may  
22 maintain a coordinated quality improvement program for the improvement  
23 of the quality of health care services rendered to patients and the  
24 identification and prevention of medical malpractice as set forth in  
25 RCW 70.41.200. All such programs shall comply with the requirements of  
26 RCW 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h) as modified to  
27 reflect the structural organization of the health care provider group.  
28 All such programs must be approved by the department before the  
29 discovery limitations provided in subsections (3) and (4) of this  
30 section and the exemption under RCW 42.17.310(1)(hh) and subsection (5)  
31 of this section shall apply.

32 (3) Any person who, in substantial good faith, provides information  
33 to further the purposes of the quality improvement and medical  
34 malpractice prevention program or who, in substantial good faith,  
35 participates on the quality improvement committee shall not be subject  
36 to an action for civil damages or other relief as a result of such  
37 activity.

38 (4) Information and documents, including complaints and incident  
39 reports, created specifically for, and collected, and maintained by a

1 quality improvement committee are not subject to discovery or  
2 introduction into evidence in any civil action, and no person who was  
3 in attendance at a meeting of such committee or who participated in the  
4 creation, collection, or maintenance of information or documents  
5 specifically for the committee shall be permitted or required to  
6 testify in any civil action as to the content of such proceedings or  
7 the documents and information prepared specifically for the committee.  
8 This subsection does not preclude: (a) In any civil action, the  
9 discovery of the identity of persons involved in the medical care that  
10 is the basis of the civil action whose involvement was independent of  
11 any quality improvement activity; (b) in any civil action, the  
12 testimony of any person concerning the facts that form the basis for  
13 the institution of such proceedings of which the person had personal  
14 knowledge acquired independently of such proceedings; (c) in any civil  
15 action by a health care provider regarding the restriction or  
16 revocation of that individual's clinical or staff privileges,  
17 introduction into evidence information collected and maintained by  
18 quality improvement committees regarding such health care provider; (d)  
19 in any civil action challenging the termination of a contract by a  
20 state agency with any entity maintaining a coordinated quality  
21 improvement program under this section if the termination was on the  
22 basis of quality of care concerns, introduction into evidence of  
23 information created, collected, or maintained by the quality  
24 improvement committees of the subject entity, which may be under terms  
25 of a protective order as specified by the court; (e) in any civil  
26 action, disclosure of the fact that staff privileges were terminated or  
27 restricted, including the specific restrictions imposed, if any and the  
28 reasons for the restrictions; or ~~((+e))~~ (f) in any civil action,  
29 discovery and introduction into evidence of the patient's medical  
30 records required by rule of the department of health to be made  
31 regarding the care and treatment received.

32 (5) Information and documents created specifically for, and  
33 collected and maintained by a quality improvement committee are exempt  
34 from disclosure under chapter 42.17 RCW.

35 (6) The department of health shall adopt rules as are necessary to  
36 implement this section.

37 **Sec. 8.** RCW 43.72.310 and 1993 c 492 s 448 are each amended to  
38 read as follows:

1       (1) Until the effective date of this section and after June 30,  
2 1996, a certified health plan, health care facility, health care  
3 provider, or other person involved in the development, delivery, or  
4 marketing of health care or certified health plans may request, in  
5 writing, that the commission obtain an informal opinion from the  
6 attorney general as to whether particular conduct is authorized by  
7 chapter 492, Laws of 1993. Trade secret or proprietary information  
8 contained in a request for informal opinion shall be identified as such  
9 and shall not be disclosed other than to an authorized employee of the  
10 commission or attorney general without the consent of the party making  
11 the request, except that information in summary or aggregate form and  
12 market share data may be contained in the informal opinion issued by  
13 the attorney general. The attorney general shall issue such opinion  
14 within thirty days of receipt of a written request for an opinion or  
15 within thirty days of receipt of any additional information requested  
16 by the attorney general necessary for rendering an opinion unless  
17 extended by the attorney general for good cause shown. If the attorney  
18 general concludes that such conduct is not authorized by chapter 492,  
19 Laws of 1993, the person or organization making the request may  
20 petition the commission for review and approval of such conduct in  
21 accordance with subsection (3) of this section.

22       (2) After obtaining the written opinion of the attorney general and  
23 consistent with such opinion, the health services commission:

24       (a) May authorize conduct by a certified health plan, health care  
25 facility, health care provider, or any other person that could tend to  
26 lessen competition in the relevant market upon a strong showing that  
27 the conduct is likely to achieve the policy goals of chapter 492, Laws  
28 of 1993 and a more competitive alternative is impractical;

29       (b) Shall adopt rules governing conduct among providers, health  
30 care facilities, and certified health plans including rules governing  
31 provider and facility contracts with certified health plans, rules  
32 governing the use of "most favored nation" clauses and exclusive  
33 dealing clauses in such contracts, and rules providing that certified  
34 health plans in rural areas contract with a sufficient number and type  
35 of health care providers and facilities to ensure consumer access to  
36 local health care services;

37       (c) Shall adopt rules permitting health care providers within the  
38 service area of a plan to collectively negotiate the terms and  
39 conditions of contracts with a certified health plan including the

1 ability of providers to meet and communicate for the purposes of these  
2 negotiations; and

3 (d) Shall adopt rules governing cooperative activities among health  
4 care facilities and providers.

5 (3) Until the effective date of this section and after June 30,  
6 1996, a certified health plan, health care facility, health care  
7 provider, or any other person involved in the development, delivery,  
8 and marketing of health services or certified health plans may file a  
9 written petition with the commission requesting approval of conduct  
10 that could tend to lessen competition in the relevant market. Such  
11 petition shall be filed in a form and manner prescribed by rule of the  
12 commission.

13 The commission shall issue a written decision approving or denying  
14 a petition filed under this section within ninety days of receipt of a  
15 properly completed written petition unless extended by the commission  
16 for good cause shown. The decision shall set forth findings as to  
17 benefits and disadvantages and conclusions as to whether the benefits  
18 outweigh the disadvantages.

19 (4) In authorizing conduct and adopting rules of conduct under this  
20 section, the commission with the advice of the attorney general, shall  
21 consider the benefits of such conduct in furthering the goals of health  
22 care reform including but not limited to:

- 23 (a) Enhancement of the quality of health services to consumers;
- 24 (b) Gains in cost efficiency of health services;
- 25 (c) Improvements in utilization of health services and equipment;
- 26 (d) Avoidance of duplication of health services resources; or
- 27 (e) And as to (b) and (c) of this subsection: (i) Facilitates the  
28 exchange of information relating to performance expectations; (ii)  
29 simplifies the negotiation of delivery arrangements and relationships;  
30 and (iii) reduces the transactions costs on the part of certified  
31 health plans and providers in negotiating more cost-effective delivery  
32 arrangements.

33 These benefits must outweigh disadvantages including and not  
34 limited to:

35 (i) Reduced competition among certified health plans, health care  
36 providers, or health care facilities;

37 (ii) Adverse impact on quality, availability, or price of health  
38 care services to consumers; or

1 (iii) The availability of arrangements less restrictive to  
2 competition that achieve the same benefits.

3 (5) Conduct authorized by the commission shall be deemed taken  
4 pursuant to state statute and in the furtherance of the public purposes  
5 of the state of Washington.

6 (6) With the assistance of the attorney general's office, the  
7 commission shall actively supervise any conduct authorized under this  
8 section to determine whether such conduct or rules permitting certain  
9 conduct should be continued and whether a more competitive alternative  
10 is practical. The commission shall periodically review petitioned  
11 conduct through, at least, annual progress reports from petitioners,  
12 annual or more frequent reviews by the commission that evaluate whether  
13 the conduct is consistent with the petition, and whether the benefits  
14 continue to outweigh any disadvantages. If the commission determines  
15 that the likely benefits of any conduct approved through rule,  
16 petition, or otherwise by the commission no longer outweigh the  
17 disadvantages attributable to potential reduction in competition, the  
18 commission shall order a modification or discontinuance of such  
19 conduct. Conduct ordered discontinued by the commission shall no  
20 longer be deemed to be taken pursuant to state statute and in the  
21 furtherance of the public purposes of the state of Washington.

22 (7) Nothing contained in chapter 492, Laws of 1993 is intended to  
23 in any way limit the ability of rural hospital districts to enter into  
24 cooperative agreements and contracts pursuant to RCW 70.44.450 and  
25 chapter 39.34 RCW.

26 (8) Only requests for informal opinions under subsection (1) of  
27 this section and petitions under subsection (3) of this section that  
28 were received prior to the effective date of this section or after June  
29 30, 1996, shall be considered.

30 NEW SECTION. **Sec. 9.** The office of the attorney general shall  
31 study the impact on competition and efficiency of antitrust immunities  
32 for health care providers and facilities in Washington that exceed  
33 those provided under federal law and shall report to the legislature by  
34 December 15, 1995. The study and report shall include a summary of how  
35 other states have allowed for greater coordination and consolidation of  
36 health care services without such additional immunities.

1        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 43.72 RCW  
2 to read as follows:

3        (1) Effective July 1, 1995, except as provided in subsection (2) of  
4 this section, the duties of the health services commission under RCW  
5 43.72.310 shall be carried out by the health care policy board  
6 established in section 9, chapter . . . (ESHB 1046), Laws of 1995.

7        (2) For purposes of the transfer of duties under this section to  
8 the health care policy board, legislative members are not appointed to  
9 the board and are not members of the board.

10        **Sec. 11.**    1995 c . . . (ESHB 1046) s 27 (uncodified) is amended to  
11 read as follows:

12        The following acts or parts of acts are each repealed:

- 13        (1) RCW 18.130.320 and 1993 c 492 s 408;
- 14        (2) RCW 18.130.330 and 1994 c 102 s 1 & 1993 c 492 s 412;
- 15        (3) RCW 43.72.005 and 1993 c 492 s 401;
- 16        (4) RCW 43.72.010 and 1994 c 4 s 1, 1993 c 494 s 1, & 1993 c 492 s  
17 402;
- 18        (5) RCW 43.72.020 and 1994 c 154 s 311 & 1993 c 492 s 403;
- 19        (6) RCW 43.72.030 and 1993 c 492 s 405;
- 20        (7) RCW 43.72.040 and 1994 c 4 s 3, 1993 c 494 s 2, & 1993 c 492 s  
21 406;
- 22        (8) RCW 43.72.050 and 1993 c 492 s 407;
- 23        (9) RCW 43.72.060 and 1994 c 4 s 2 & 1993 c 492 s 404;
- 24        (10) RCW 43.72.070 and 1993 c 492 s 409;
- 25        (11) RCW 43.72.080 and 1993 c 492 s 425;
- 26        (12) RCW 43.72.090 and 1995 c 2 s 1 & 1993 c 492 s 427;
- 27        (13) RCW 43.72.100 and 1993 c 492 s 428;
- 28        (14) RCW 43.72.110 and 1993 c 492 s 429;
- 29        (15) RCW 43.72.120 and 1993 c 492 s 430;
- 30        (16) RCW 43.72.130 and 1993 c 492 s 449;
- 31        (17) RCW 43.72.140 and 1993 c 492 s 450;
- 32        (18) RCW 43.72.150 and 1993 c 492 s 451;
- 33        (19) RCW 43.72.160 and 1993 c 492 s 452;
- 34        (20) RCW 43.72.170 and 1995 c 2 s 2 & 1993 c 492 s 453;
- 35        (21) RCW 43.72.180 and 1993 c 492 s 454;
- 36        (22) RCW 43.72.190 and 1993 c 492 s 455;
- 37        (23) RCW 43.72.210 and 1993 c 492 s 463;
- 38        (24) RCW 43.72.220 and 1993 c 494 s 3 & 1993 c 492 s 464;



1 (25) RCW 43.72.225 and 1994 c 4 s 4;  
2 (26) RCW 43.72.230 and 1993 c 492 s 465;  
3 (27) RCW 43.72.240 and 1993 c 494 s 4 & 1993 c 492 s 466;  
4 (28) (~~(RCW 43.72.300 and 1993 c 492 s 447;~~  
5 ~~(29) RCW 43.72.310 and 1993 c 492 s 448;~~  
6 ~~(30))~~) RCW 43.72.800 and 1993 c 492 s 457;  
7 (~~(31)~~) (29) RCW 43.72.810 and 1993 c 492 s 474;  
8 (~~(32)~~) (30) RCW 43.72.820 and 1993 c 492 s 475;  
9 (~~(33)~~) (31) RCW 43.72.830 and 1993 c 492 s 476;  
10 (~~(34)~~) (32) RCW 43.72.840 and 1993 c 492 s 478;  
11 (~~(35)~~) (33) RCW 43.72.870 and 1993 c 494 s 5;  
12 (~~(36)~~) (34) RCW 48.01.200 and 1993 c 492 s 294;  
13 (~~(37)~~) (35) RCW 48.43.010 and 1993 c 492 s 432;  
14 (~~(38)~~) (36) RCW 48.43.020 and 1993 c 492 s 433;  
15 (~~(39)~~) (37) RCW 48.43.030 and 1993 c 492 s 434;  
16 (~~(40)~~) (38) RCW 48.43.040 and 1993 c 492 s 435;  
17 (~~(41)~~) (39) RCW 48.43.050 and 1993 c 492 s 436;  
18 (~~(42)~~) (40) RCW 48.43.060 and 1993 c 492 s 437;  
19 (~~(43)~~) (41) RCW 48.43.070 and 1993 c 492 s 438;  
20 (~~(44)~~) (42) RCW 48.43.080 and 1993 c 492 s 439;  
21 (~~(45)~~) (43) RCW 48.43.090 and 1993 c 492 s 440;  
22 (~~(46)~~) (44) RCW 48.43.100 and 1993 c 492 s 441;  
23 (~~(47)~~) (45) RCW 48.43.110 and 1993 c 492 s 442;  
24 (~~(48)~~) (46) RCW 48.43.120 and 1993 c 492 s 443;  
25 (~~(49)~~) (47) RCW 48.43.130 and 1993 c 492 s 444;  
26 (~~(50)~~) (48) RCW 48.43.140 and 1993 c 492 s 445;  
27 (~~(51)~~) (49) RCW 48.43.150 and 1993 c 492 s 446;  
28 (~~(52)~~) (50) RCW 48.43.160 and 1993 c 492 s 426;  
29 (~~(53)~~) (51) RCW 48.43.170 and 1993 c 492 s 431;  
30 (~~(54)~~) (52) RCW 48.01.210 and 1993 c 462 s 51;  
31 (~~(55)~~) (53) RCW 48.20.540 and 1993 c 492 s 283;  
32 (~~(56)~~) (54) RCW 48.21.340 and 1993 c 492 s 284;  
33 (~~(57)~~) (55) RCW 48.44.480 and 1993 c 492 s 285;  
34 (~~(58)~~) (56) RCW 48.46.550 and 1993 c 492 s 286;  
35 (~~(59)~~) (57) RCW 70.170.100 and 1993 c 492 s 259, 1990 c 269 s 12,  
36 & 1989 1st ex.s. c 9 s 510;  
37 (~~(60)~~) (58) RCW 70.170.110 and 1993 c 492 s 260 & 1989 1st ex.s.  
38 c 9 s 511;  
39 (~~(61)~~) (59) RCW 70.170.120 and 1993 c 492 s 261;

1       (~~(62)~~) (60) RCW 70.170.130 and 1993 c 492 s 262;  
2       (~~(63)~~) (61) RCW 70.170.140 and 1993 c 492 s 263;  
3       (~~(64)~~) (62) RCW 48.44.490 and 1993 c 492 s 288;  
4       (~~(65)~~) (63) RCW 48.46.560 and 1993 c 492 s 289; and  
5       (~~(66)~~) (64) RCW 43.72.200 and 1993 c 492 s 456.

6       NEW SECTION. Sec. 12. REPEALERS. The following acts or parts of  
7 acts are each repealed:

8       (1) RCW 70.170.100 and 1993 c 492 s 259, 1990 c 269 s 12, & 1989  
9 1st ex.s. c 9 s 510;

10       (2) RCW 70.170.110 and 1993 c 492 s 260 & 1989 1st ex.s. c 9 s 511;

11       (3) RCW 70.170.120 and 1993 c 492 s 261;

12       (4) RCW 70.170.130 and 1993 c 492 s 262;

13       (5) RCW 70.170.140 and 1993 c 492 s 263; and

14       (6) RCW 43.72.070 and 1993 c 492 s 409.

15       NEW SECTION. Sec. 13. RCW 70.170.080 and 1993 sp.s. c 24 s 925,  
16 1991 sp.s. c 13 s 71, & 1989 1st ex.s. c 9 s 508 are each repealed.

17       NEW SECTION. Sec. 14. If specific funding through the health  
18 services account to continue the comprehensive hospital abstract  
19 reporting system is not provided by June 30, 1995, in the omnibus  
20 appropriations act, section 13 of this act is null and void.

21       NEW SECTION. Sec. 15. CODIFICATION. Sections 1 through 4 of this  
22 act are each added to chapter 43.70 RCW.

23       NEW SECTION. Sec. 16. CAPTIONS. Captions as used in this act  
24 constitute no part of the law.

25       NEW SECTION. Sec. 17. SEVERABILITY. If any provision of this act  
26 or its application to any person or circumstance is held invalid, the  
27 remainder of the act or the application of the provision to other  
28 persons or circumstances is not affected.

29       NEW SECTION. Sec. 18. EMERGENCY CLAUSE--EFFECTIVE DATE. This act  
30 is necessary for the immediate preservation of the public peace,  
31 health, or safety, or support of the state government and its existing

1 public institutions, and shall take effect July 1, 1995, except  
2 sections 8 through 11 of this act which shall take effect immediately."

3 **ESHB 1589** - S AMD

4 By Senators Winsley, Moyer, Palmer, Deccio, A. Anderson and Owen

5

6 On page 1, line 1 of the title, after "assurance;" strike the  
7 remainder of the title and insert "amending RCW 43.70.510 and  
8 43.72.310; amending 1995 c . . . (ESHB 1046) s 27 (uncodified);  
9 reenacting and amending RCW 42.17.310; adding new sections to chapter  
10 43.70 RCW; adding a new section to chapter 43.72 RCW; creating new  
11 sections; repealing RCW 70.170.100, 70.170.110, 70.170.120, 70.170.130,  
12 70.170.140, 43.72.070, and 70.170.080; providing an effective date; and  
13 declaring an emergency."

--- END ---