

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1589

54th Legislature
1995 Regular Session

Passed by the House April 23, 1995
Yeas 93 Nays 1

Speaker of the
House of Representatives

Passed by the Senate April 23, 1995
Yeas 44 Nays 3

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1589** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE HOUSE BILL 1589

AS AMENDED BY THE SENATE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By House Committee on Health Care (originally sponsored by
Representatives Backlund and Dyer)

Read first time 03/01/95.

1 AN ACT Relating to quality assurance; amending RCW 43.70.510 and
2 43.72.310; amending 1995 c . . . (ESHB 1046) s 27 (uncodified);
3 reenacting and amending RCW 42.17.310; adding new sections to chapter
4 43.70 RCW; adding a new section to chapter 43.72 RCW; creating new
5 sections; repealing RCW 70.170.100, 70.170.110, 70.170.120, 70.170.130,
6 70.170.140, 43.72.070, and 70.170.080; providing an effective date; and
7 declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** HOSPITAL DISCHARGE DATA--OTHER DATA
10 REQUIREMENTS. (1) To promote the public interest consistent with the
11 purposes of chapter 492, Laws of 1993 as amended by chapter . . . , Laws
12 of 1995 (this act), the department shall continue to require hospitals
13 to submit hospital financial and patient discharge information, which
14 shall be collected, maintained, analyzed, and disseminated by the
15 department. The department shall, if deemed cost-effective and
16 efficient, contract with a private entity for any or all parts of data
17 collection. Data elements shall be reported in conformance with a
18 uniform reporting system established by the department. This includes
19 data elements identifying each hospital's revenues, expenses,

1 contractual allowances, charity care, bad debt, other income, total
2 units of inpatient and outpatient services, and other financial
3 information reasonably necessary to fulfill the purposes of this
4 section. Data elements relating to use of hospital services by
5 patients shall be the same as those currently compiled by hospitals
6 through inpatient discharge abstracts. The department shall encourage
7 and permit reporting by electronic transmission or hard copy as is
8 practical and economical to reporters.

9 (2) In identifying financial reporting requirements, the department
10 may require both annual reports and condensed quarterly reports from
11 hospitals, so as to achieve both accuracy and timeliness in reporting,
12 but shall craft such requirements with due regard of the data reporting
13 burdens of hospitals.

14 (3) The health care data collected, maintained, and studied by the
15 department shall only be available for retrieval in original or
16 processed form to public and private requestors and shall be available
17 within a reasonable period of time after the date of request. The cost
18 of retrieving data for state officials and agencies shall be funded
19 through the state general appropriation. The cost of retrieving data
20 for individuals and organizations engaged in research or private use of
21 data or studies shall be funded by a fee schedule developed by the
22 department that reflects the direct cost of retrieving the data or
23 study in the requested form.

24 (4) The department shall, in consultation and collaboration with
25 the federally recognized tribes, urban or other Indian health service
26 organizations, and the federal area Indian health service, design,
27 develop, and maintain an American Indian-specific health data,
28 statistics information system. The department rules regarding
29 confidentiality shall apply to safeguard the information from
30 inappropriate use or release.

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

34 NEW SECTION. **Sec. 2.** DATA STANDARDS. (1) To promote the public
35 interest consistent with this act, the department of health, in
36 cooperation with the health care policy board and the information
37 services board established under RCW 43.105.032, shall develop health
38 care data standards to be used by, and developed in collaboration with,

1 consumers, purchasers, health carriers, providers, and state government
2 as consistent with the intent of chapter 492, Laws of 1993 as amended
3 by chapter . . . , Laws of 1995 (this act), to promote the delivery of
4 quality health services that improve health outcomes for state
5 residents. The data standards shall include content, coding,
6 confidentiality, and transmission standards for all health care data
7 elements necessary to support the intent of this section, and to
8 improve administrative efficiency and reduce cost. Purchasers, as
9 allowed by federal law, health carriers, health facilities and
10 providers as defined in chapter 48.43 RCW, and state government shall
11 utilize the data standards. The information and data elements shall be
12 reported as the department of health directs by rule in accordance with
13 data standards developed under this section.

14 (2) The health care data collected, maintained, and studied by the
15 department under this section, the health care policy board, or any
16 other entity: (a) Shall include a method of associating all
17 information on health care costs and services with discrete cases; (b)
18 shall not contain any means of determining the personal identity of any
19 enrollee, provider, or facility; (c) shall only be available for
20 retrieval in original or processed form to public and private
21 requesters; (d) shall be available within a reasonable period of time
22 after the date of request; and (e) shall give strong consideration to
23 data standards that achieve national uniformity.

24 (3) The cost of retrieving data for state officials and agencies
25 shall be funded through state general appropriation. The cost of
26 retrieving data for individuals and organizations engaged in research
27 or private use of data or studies shall be funded by a fee schedule
28 developed by the department that reflects the direct cost of retrieving
29 the data or study in the requested form.

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

34 (5) The department shall submit developed health care data
35 standards to the appropriate committees of the legislature by December
36 31, 1995.

37 NEW SECTION. **Sec. 3.** HEALTH CARE QUALITY--FINDINGS AND INTENT.
38 The legislature finds that it is difficult for consumers of health care

1 services to determine the quality of health care prior to purchase or
2 utilization of medical care. The legislature also finds that
3 accountability is a key component in promoting quality assurance and
4 quality improvement throughout the health care delivery system,
5 including public programs. Quality assurance and improvement standards
6 are necessary to promote the public interest, contribute to cost
7 efficiencies, and improve the ability of consumers to ascertain quality
8 health care purchases.

9 The legislature intends to have consumers, health carriers, health
10 care providers and facilities, and public agencies participate in the
11 development of quality assurance and improvement standards that can be
12 used to develop a uniform quality assurance program for use by all
13 public and private health plans, providers, and facilities. To that
14 end, in conducting the study required under section 4 of this act, the
15 department of health shall:

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

18 (2) Take full advantage of existing national standards of quality
19 assurance to extend to middle-income populations the protections
20 required for state management of health programs for low-income
21 populations;

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

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

28 NEW SECTION. **Sec. 4.** UNIFORM QUALITY ASSURANCE. (1) The
29 department of health in consultation with the health policy board shall
30 study the feasibility of a uniform quality assurance and improvement
31 program for use by all public and private health plans and health care
32 providers and facilities. In this study, the department shall consult
33 with:

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

35 (b) Health carriers;

36 (c) Health care providers and facilities; and

37 (d) Consumers of health services.

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

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

9 (a) Health care provider training, credentialing, and licensure
10 standards;

11 (b) Health care facility credentialing and recredentialing;

12 (c) Staff ratios in health care facilities;

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

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

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

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

25 (h) Health plan fiscal performance standards;

26 (i) Health care provider and facility recordkeeping and reporting
27 standards;

28 (j) Health care utilization management that monitors trends in
29 health service under-utilization, as well as over-utilization of
30 services;

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

33 (l) Assessment of consumer satisfaction and disclosure of consumer
34 survey results.

35 (4) In conducting the study, the department shall develop standards
36 that permit each health care facility, provider group, or health
37 carrier to assume responsibility for and determine the physical method
38 of collection, storage, and assimilation of quality indicators for

1 consumer disclosure. The study may define the forms, frequency, and
2 posting requirements for disclosure of information.

3 In developing proposed standards under this subsection, the
4 department shall identify options that would minimize provider burden
5 and administrative cost resulting from duplicative private sector data
6 submission requirements.

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

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

15 NEW SECTION. **Sec. 5.** QUALITY ASSURANCE--INTERAGENCY COOPERATION--
16 ELIMINATION AND COORDINATION OF DUPLICATE STATE PROGRAMS. No later
17 than July 1, 1995, the health care policy board together with the
18 department of health, the health care authority, the department of
19 social and health services, the office of the insurance commissioner,
20 and the department of labor and industries shall form an interagency
21 group for coordination and consultation on quality assurance activities
22 and collaboration on final recommendations for the study required under
23 section 4 of this act. By December 31, 1996, the group shall review
24 all state agency programs governing health service quality assurance,
25 in light of legislative actions pursuant to section 4(6) of this act,
26 and shall recommend to the legislature, the consolidation,
27 coordination, or elimination of rules and programs that would be made
28 unnecessary pursuant to the development of a uniform quality assurance
29 and improvement program.

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

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

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

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

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

9 (d) Specific intelligence information and specific investigative
10 records compiled by investigative, law enforcement, and penology
11 agencies, and state agencies vested with the responsibility to
12 discipline members of any profession, the nondisclosure of which is
13 essential to effective law enforcement or for the protection of any
14 person's right to privacy.

15 (e) Information revealing the identity of persons who are witnesses
16 to or victims of crime or who file complaints with investigative, law
17 enforcement, or penology agencies, other than the public disclosure
18 commission, if disclosure would endanger any person's life, physical
19 safety, or property. If at the time a complaint is filed the
20 complainant, victim or witness indicates a desire for disclosure or
21 nondisclosure, such desire shall govern. However, all complaints filed
22 with the public disclosure commission about any elected official or
23 candidate for public office must be made in writing and signed by the
24 complainant under oath.

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

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

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

37 (i) Preliminary drafts, notes, recommendations, and intra-agency
38 memorandums in which opinions are expressed or policies formulated or

1 recommended except that a specific record shall not be exempt when
2 publicly cited by an agency in connection with any agency action.

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

7 (k) Records, maps, or other information identifying the location of
8 archaeological sites in order to avoid the looting or depredation of
9 such sites.

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

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

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

22 (o) Financial and commercial information and records supplied by
23 private persons pertaining to export services provided pursuant to
24 chapter 43.163 RCW and chapter 53.31 RCW.

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

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

30 (r) Financial and commercial information and records supplied by
31 businesses or individuals during application for loans or program
32 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
33 or during application for economic development loans or program
34 services provided by any local agency.

35 (s) Membership lists or lists of members or owners of interests of
36 units in timeshare projects, subdivisions, camping resorts,
37 condominiums, land developments, or common-interest communities
38 affiliated with such projects, regulated by the department of
39 licensing, in the files or possession of the department.

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

4 (u) The residential addresses and residential telephone numbers of
5 employees or volunteers of a public agency which are held by the agency
6 in personnel records, employment or volunteer rosters, or mailing lists
7 of employees or volunteers.

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

11 (w)(i) The federal social security number of individuals governed
12 under chapter 18.130 RCW maintained in the files of the department of
13 health, except this exemption does not apply to requests made directly
14 to the department from federal, state, and local agencies of
15 government, and national and state licensing, credentialing,
16 investigatory, disciplinary, and examination organizations; (ii) the
17 current residential address and current residential telephone number of
18 a health care provider governed under chapter 18.130 RCW maintained in
19 the files of the department, if the provider requests that this
20 information be withheld from public inspection and copying, and
21 provides to the department an accurate alternate or business address
22 and business telephone number. On or after January 1, 1995, the
23 current residential address and residential telephone number of a
24 health care provider governed under RCW 18.130.140 maintained in the
25 files of the department shall automatically be withheld from public
26 inspection and copying if the provider has provided the department with
27 an accurate alternative or business address and telephone number.

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

30 (y) Information obtained by the board of pharmacy or the department
31 of health and its representatives as provided in RCW 69.41.044,
32 69.41.280, and 18.64.420.

33 (z) Financial information, business plans, examination reports, and
34 any information produced or obtained in evaluating or examining a
35 business and industrial development corporation organized or seeking
36 certification under chapter 31.24 RCW.

37 (aa) Financial and commercial information supplied to the state
38 investment board by any person when the information relates to the
39 investment of public trust or retirement funds and when disclosure

1 would result in loss to such funds or in private loss to the providers
2 of this information.

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

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

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

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

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

19 (gg) Financial, commercial, operations, and technical and research
20 information and data submitted to or obtained by the clean Washington
21 center in applications for, or delivery of, program services under
22 chapter 70.95H RCW.

23 (hh) Information and documents created specifically for, and
24 collected and maintained by a quality improvement committee pursuant to
25 RCW 43.70.510, regardless of which agency is in possession of the
26 information and documents.

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

35 (3) Inspection or copying of any specific records exempt under the
36 provisions of this section may be permitted if the superior court in
37 the county in which the record is maintained finds, after a hearing
38 with notice thereof to every person in interest and the agency, that

1 the exemption of such records is clearly unnecessary to protect any
2 individual's right of privacy or any vital governmental function.

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

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

9 QUALITY IMPROVEMENT PROGRAMS--ADDING CERTAIN STATE AGENCIES AND
10 HEALTH CARRIERS. (1)(a) Health care institutions and medical
11 facilities, other than hospitals, that are licensed by the department,
12 professional societies or organizations, (~~and certified~~) health care
13 service contractors, health maintenance organizations, health ((plans))
14 carriers approved pursuant to ((RCW 43.72.100)) chapter 48.43 RCW, and
15 any other person or entity providing health care coverage under chapter
16 48.42 RCW that is subject to the jurisdiction and regulation of any
17 state agency or any subdivision thereof may maintain a coordinated
18 quality improvement program for the improvement of the quality of
19 health care services rendered to patients and the identification and
20 prevention of medical malpractice as set forth in RCW 70.41.200.

21 (b) All such programs shall comply with the requirements of RCW
22 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h) as modified to
23 reflect the structural organization of the institution, facility,
24 professional societies or organizations, (~~or certified~~) health care
25 service contractors, health maintenance organizations, health ((plan))
26 carriers, or any other person or entity providing health care coverage
27 under chapter 48.42 RCW that is subject to the jurisdiction and
28 regulation of any state agency or any subdivision thereof, unless an
29 alternative quality improvement program substantially equivalent to RCW
30 70.41.200(1)(a) is developed. All such programs, whether complying
31 with the requirement set forth in RCW 70.41.200(1)(a) or in the form of
32 an alternative program, must be approved by the department before the
33 discovery limitations provided in subsections (3) and (4) of this
34 section and the exemption under RCW 42.17.310(1)(hh) and subsection (5)
35 of this section shall apply. In reviewing plans submitted by licensed
36 entities that are associated with physicians' offices, the department
37 shall ensure that the exemption under RCW 42.17.310(1)(hh) and the
38 discovery limitations of this section are applied only to information

1 and documents related specifically to quality improvement activities
2 undertaken by the licensed entity.

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

14 (3) Any person who, in substantial good faith, provides information
15 to further the purposes of the quality improvement and medical
16 malpractice prevention program or who, in substantial good faith,
17 participates on the quality improvement committee shall not be subject
18 to an action for civil damages or other relief as a result of such
19 activity.

20 (4) Information and documents, including complaints and incident
21 reports, created specifically for, and collected, and maintained by a
22 quality improvement committee are not subject to discovery or
23 introduction into evidence in any civil action, and no person who was
24 in attendance at a meeting of such committee or who participated in the
25 creation, collection, or maintenance of information or documents
26 specifically for the committee shall be permitted or required to
27 testify in any civil action as to the content of such proceedings or
28 the documents and information prepared specifically for the committee.
29 This subsection does not preclude: (a) In any civil action, the
30 discovery of the identity of persons involved in the medical care that
31 is the basis of the civil action whose involvement was independent of
32 any quality improvement activity; (b) in any civil action, the
33 testimony of any person concerning the facts that form the basis for
34 the institution of such proceedings of which the person had personal
35 knowledge acquired independently of such proceedings; (c) in any civil
36 action by a health care provider regarding the restriction or
37 revocation of that individual's clinical or staff privileges,
38 introduction into evidence information collected and maintained by
39 quality improvement committees regarding such health care provider; (d)

1 in any civil action challenging the termination of a contract by a
2 state agency with any entity maintaining a coordinated quality
3 improvement program under this section if the termination was on the
4 basis of quality of care concerns, introduction into evidence of
5 information created, collected, or maintained by the quality
6 improvement committees of the subject entity, which may be under terms
7 of a protective order as specified by the court; (e) in any civil
8 action, disclosure of the fact that staff privileges were terminated or
9 restricted, including the specific restrictions imposed, if any and the
10 reasons for the restrictions; or ~~((e))~~ (f) in any civil action,
11 discovery and introduction into evidence of the patient's medical
12 records required by rule of the department of health to be made
13 regarding the care and treatment received.

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

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

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

21 (1) Until the effective date of this section and after June 30,
22 1996, a certified health plan, health care facility, health care
23 provider, or other person involved in the development, delivery, or
24 marketing of health care or certified health plans may request, in
25 writing, that the commission obtain an informal opinion from the
26 attorney general as to whether particular conduct is authorized by
27 chapter 492, Laws of 1993. Trade secret or proprietary information
28 contained in a request for informal opinion shall be identified as such
29 and shall not be disclosed other than to an authorized employee of the
30 commission or attorney general without the consent of the party making
31 the request, except that information in summary or aggregate form and
32 market share data may be contained in the informal opinion issued by
33 the attorney general. The attorney general shall issue such opinion
34 within thirty days of receipt of a written request for an opinion or
35 within thirty days of receipt of any additional information requested
36 by the attorney general necessary for rendering an opinion unless
37 extended by the attorney general for good cause shown. If the attorney
38 general concludes that such conduct is not authorized by chapter 492,

1 Laws of 1993, the person or organization making the request may
2 petition the commission for review and approval of such conduct in
3 accordance with subsection (3) of this section.

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

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

11 (b) Shall adopt rules governing conduct among providers, health
12 care facilities, and certified health plans including rules governing
13 provider and facility contracts with certified health plans, rules
14 governing the use of "most favored nation" clauses and exclusive
15 dealing clauses in such contracts, and rules providing that certified
16 health plans in rural areas contract with a sufficient number and type
17 of health care providers and facilities to ensure consumer access to
18 local health care services;

19 (c) Shall adopt rules permitting health care providers within the
20 service area of a plan to collectively negotiate the terms and
21 conditions of contracts with a certified health plan including the
22 ability of providers to meet and communicate for the purposes of these
23 negotiations; and

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

26 (3) Until the effective date of this section and after June 30,
27 1996, a certified health plan, health care facility, health care
28 provider, or any other person involved in the development, delivery,
29 and marketing of health services or certified health plans may file a
30 written petition with the commission requesting approval of conduct
31 that could tend to lessen competition in the relevant market. Such
32 petition shall be filed in a form and manner prescribed by rule of the
33 commission.

34 The commission shall issue a written decision approving or denying
35 a petition filed under this section within ninety days of receipt of a
36 properly completed written petition unless extended by the commission
37 for good cause shown. The decision shall set forth findings as to
38 benefits and disadvantages and conclusions as to whether the benefits
39 outweigh the disadvantages.

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

5 (a) Enhancement of the quality of health services to consumers;

6 (b) Gains in cost efficiency of health services;

7 (c) Improvements in utilization of health services and equipment;

8 (d) Avoidance of duplication of health services resources; or

9 (e) And as to (b) and (c) of this subsection: (i) Facilitates the
10 exchange of information relating to performance expectations; (ii)
11 simplifies the negotiation of delivery arrangements and relationships;
12 and (iii) reduces the transactions costs on the part of certified
13 health plans and providers in negotiating more cost-effective delivery
14 arrangements.

15 These benefits must outweigh disadvantages including and not
16 limited to:

17 (i) Reduced competition among certified health plans, health care
18 providers, or health care facilities;

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

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

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

26 (6) With the assistance of the attorney general's office, the
27 commission shall actively supervise any conduct authorized under this
28 section to determine whether such conduct or rules permitting certain
29 conduct should be continued and whether a more competitive alternative
30 is practical. The commission shall periodically review petitioned
31 conduct through, at least, annual progress reports from petitioners,
32 annual or more frequent reviews by the commission that evaluate whether
33 the conduct is consistent with the petition, and whether the benefits
34 continue to outweigh any disadvantages. If the commission determines
35 that the likely benefits of any conduct approved through rule,
36 petition, or otherwise by the commission no longer outweigh the
37 disadvantages attributable to potential reduction in competition, the
38 commission shall order a modification or discontinuance of such
39 conduct. Conduct ordered discontinued by the commission shall no

1 longer be deemed to be taken pursuant to state statute and in the
2 furtherance of the public purposes of the state of Washington.

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

7 (8) Only requests for informal opinions under subsection (1) of
8 this section and petitions under subsection (3) of this section that
9 were received prior to the effective date of this section or after June
10 30, 1996, shall be considered.

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

18 NEW SECTION. Sec. 10. A new section is added to chapter 43.72 RCW
19 to read as follows:

20 (1) Effective July 1, 1995, except as provided in subsection (2) of
21 this section, the duties of the health services commission under RCW
22 43.72.310 shall be carried out by the health care policy board
23 established in section 9, chapter . . . (ESHB 1046), Laws of 1995.

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

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

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

- 30 (1) RCW 18.130.320 and 1993 c 492 s 408;
31 (2) RCW 18.130.330 and 1994 c 102 s 1 & 1993 c 492 s 412;
32 (3) RCW 43.72.005 and 1993 c 492 s 401;
33 (4) RCW 43.72.010 and 1994 c 4 s 1, 1993 c 494 s 1, & 1993 c 492 s
34 402;
35 (5) RCW 43.72.020 and 1994 c 154 s 311 & 1993 c 492 s 403;
36 (6) RCW 43.72.030 and 1993 c 492 s 405;

1 (7) RCW 43.72.040 and 1994 c 4 s 3, 1993 c 494 s 2, & 1993 c 492 s
2 406;
3 (8) RCW 43.72.050 and 1993 c 492 s 407;
4 (9) RCW 43.72.060 and 1994 c 4 s 2 & 1993 c 492 s 404;
5 (10) RCW 43.72.070 and 1993 c 492 s 409;
6 (11) RCW 43.72.080 and 1993 c 492 s 425;
7 (12) RCW 43.72.090 and 1995 c 2 s 1 & 1993 c 492 s 427;
8 (13) RCW 43.72.100 and 1993 c 492 s 428;
9 (14) RCW 43.72.110 and 1993 c 492 s 429;
10 (15) RCW 43.72.120 and 1993 c 492 s 430;
11 (16) RCW 43.72.130 and 1993 c 492 s 449;
12 (17) RCW 43.72.140 and 1993 c 492 s 450;
13 (18) RCW 43.72.150 and 1993 c 492 s 451;
14 (19) RCW 43.72.160 and 1993 c 492 s 452;
15 (20) RCW 43.72.170 and 1995 c 2 s 2 & 1993 c 492 s 453;
16 (21) RCW 43.72.180 and 1993 c 492 s 454;
17 (22) RCW 43.72.190 and 1993 c 492 s 455;
18 (23) RCW 43.72.210 and 1993 c 492 s 463;
19 (24) RCW 43.72.220 and 1993 c 494 s 3 & 1993 c 492 s 464;
20 (25) RCW 43.72.225 and 1994 c 4 s 4;
21 (26) RCW 43.72.230 and 1993 c 492 s 465;
22 (27) RCW 43.72.240 and 1993 c 494 s 4 & 1993 c 492 s 466;
23 (~~(28) ((RCW 43.72.300 and 1993 c 492 s 447;~~
24 ~~(29) RCW 43.72.310 and 1993 c 492 s 448;~~
25 ~~(30))~~) RCW 43.72.800 and 1993 c 492 s 457;
26 ((~~(31)~~)) (29) RCW 43.72.810 and 1993 c 492 s 474;
27 ((~~(32)~~)) (30) RCW 43.72.820 and 1993 c 492 s 475;
28 ((~~(33)~~)) (31) RCW 43.72.830 and 1993 c 492 s 476;
29 ((~~(34)~~)) (32) RCW 43.72.840 and 1993 c 492 s 478;
30 ((~~(35)~~)) (33) RCW 43.72.870 and 1993 c 494 s 5;
31 ((~~(36)~~)) (34) RCW 48.01.200 and 1993 c 492 s 294;
32 ((~~(37)~~)) (35) RCW 48.43.010 and 1993 c 492 s 432;
33 ((~~(38)~~)) (36) RCW 48.43.020 and 1993 c 492 s 433;
34 ((~~(39)~~)) (37) RCW 48.43.030 and 1993 c 492 s 434;
35 ((~~(40)~~)) (38) RCW 48.43.040 and 1993 c 492 s 435;
36 ((~~(41)~~)) (39) RCW 48.43.050 and 1993 c 492 s 436;
37 ((~~(42)~~)) (40) RCW 48.43.060 and 1993 c 492 s 437;
38 ((~~(43)~~)) (41) RCW 48.43.070 and 1993 c 492 s 438;
39 ((~~(44)~~)) (42) RCW 48.43.080 and 1993 c 492 s 439;

1 (~~(45)~~) (43) RCW 48.43.090 and 1993 c 492 s 440;
2 (~~(46)~~) (44) RCW 48.43.100 and 1993 c 492 s 441;
3 (~~(47)~~) (45) RCW 48.43.110 and 1993 c 492 s 442;
4 (~~(48)~~) (46) RCW 48.43.120 and 1993 c 492 s 443;
5 (~~(49)~~) (47) RCW 48.43.130 and 1993 c 492 s 444;
6 (~~(50)~~) (48) RCW 48.43.140 and 1993 c 492 s 445;
7 (~~(51)~~) (49) RCW 48.43.150 and 1993 c 492 s 446;
8 (~~(52)~~) (50) RCW 48.43.160 and 1993 c 492 s 426;
9 (~~(53)~~) (51) RCW 48.43.170 and 1993 c 492 s 431;
10 (~~(54)~~) (52) RCW 48.01.210 and 1993 c 462 s 51;
11 (~~(55)~~) (53) RCW 48.20.540 and 1993 c 492 s 283;
12 (~~(56)~~) (54) RCW 48.21.340 and 1993 c 492 s 284;
13 (~~(57)~~) (55) RCW 48.44.480 and 1993 c 492 s 285;
14 (~~(58)~~) (56) RCW 48.46.550 and 1993 c 492 s 286;
15 (~~(59)~~) (57) RCW 70.170.100 and 1993 c 492 s 259, 1990 c 269 s 12,
16 & 1989 1st ex.s. c 9 s 510;
17 (~~(60)~~) (58) RCW 70.170.110 and 1993 c 492 s 260 & 1989 1st ex.s.
18 c 9 s 511;
19 (~~(61)~~) (59) RCW 70.170.120 and 1993 c 492 s 261;
20 (~~(62)~~) (60) RCW 70.170.130 and 1993 c 492 s 262;
21 (~~(63)~~) (61) RCW 70.170.140 and 1993 c 492 s 263;
22 (~~(64)~~) (62) RCW 48.44.490 and 1993 c 492 s 288;
23 (~~(65)~~) (63) RCW 48.46.560 and 1993 c 492 s 289; and
24 (~~(66)~~) (64) RCW 43.72.200 and 1993 c 492 s 456.

25 NEW SECTION. **Sec. 12.** REPEALERS. The following acts or parts of
26 acts are each repealed:

- 27 (1) RCW 70.170.100 and 1993 c 492 s 259, 1990 c 269 s 12, & 1989
28 1st ex.s. c 9 s 510;
29 (2) RCW 70.170.110 and 1993 c 492 s 260 & 1989 1st ex.s. c 9 s 511;
30 (3) RCW 70.170.120 and 1993 c 492 s 261;
31 (4) RCW 70.170.130 and 1993 c 492 s 262;
32 (5) RCW 70.170.140 and 1993 c 492 s 263; and
33 (6) RCW 43.72.070 and 1993 c 492 s 409.

34 NEW SECTION. **Sec. 13.** RCW 70.170.080 and 1993 sp.s. c 24 s 925,
35 1991 sp.s. c 13 s 71, & 1989 1st ex.s. c 9 s 508 are each repealed.

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

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

7 NEW SECTION. **Sec. 16.** CAPTIONS. Captions as used in this act
8 constitute no part of the law.

9 NEW SECTION. **Sec. 17.** SEVERABILITY. If any provision of this act
10 or its application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 18.** EMERGENCY CLAUSE--EFFECTIVE DATE. This act
14 is necessary for the immediate preservation of the public peace,
15 health, or safety, or support of the state government and its existing
16 public institutions, and shall take effect July 1, 1995, except
17 sections 8 through 11 of this act which shall take effect immediately.

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