

1 1850-S2.E AMC CONF H3358.1

2 E2SHB 1850 - 2ND CONF REPT  
3 By Conference Committee

4 ADOPTED 4/27/97

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

7 "PART I

8 NEW SECTION. **Sec. 101.** This act shall be known and may be cited  
9 as the Clara act.

10 NEW SECTION. **Sec. 102.** FINDINGS AND INTENT. The legislature  
11 finds and declares that the state's current fragmented categorical  
12 system for administering services to persons with disabilities and the  
13 elderly is not client and family-centered and has created significant  
14 organizational barriers to providing high quality, safe, and effective  
15 care and support. The present fragmented system results in  
16 uncoordinated enforcement of regulations designed to protect the health  
17 and safety of disabled persons, lacks accountability due to the absence  
18 of management information systems' client tracking data, and  
19 perpetuates difficulty in matching client needs and services to  
20 multiple categorical funding sources.

21 The legislature further finds that Washington's chronically  
22 functionally disabled population of all ages is growing at a rapid pace  
23 due to a population of the very old and increased incidence of  
24 disability due in large measure to technological improvements in acute  
25 care causing people to live longer. Further, to meet the significant  
26 and growing long-term care needs into the near future, rapid,  
27 fundamental changes must take place in the way we finance, organize,  
28 and provide long-term care services to the chronically functionally  
29 disabled.

30 The legislature further finds that the public demands that  
31 long-term care services be safe, client and family-centered, and  
32 designed to encourage individual dignity, autonomy, and development of  
33 the fullest human potential at home or in other residential settings,  
34 whenever practicable.

1        NEW SECTION.    **Sec. 103.**    A new section is added to chapter 74.39A  
2    RCW to read as follows:

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

5        (1) "Adult family home" means a home licensed under chapter 70.128  
6    RCW.

7        (2) "Adult residential care" means services provided by a boarding  
8    home that is licensed under chapter 18.20 RCW and that has a contract  
9    with the department under RCW 74.39A.020.

10       (3) "Assisted living services" means services provided by a  
11    boarding home that has a contract with the department under RCW  
12    74.39A.010 and the resident is housed in a private apartment-like unit.

13       (4) "Boarding home" means a facility licensed under chapter 18.20  
14    RCW.

15       (5) "Cost-effective care" means care provided in a setting of an  
16    individual's choice that is necessary to promote the most appropriate  
17    level of physical, mental, and psychosocial well-being consistent with  
18    client choice, in an environment that is appropriate to the care and  
19    safety needs of the individual, and such care cannot be provided at a  
20    lower cost in any other setting.    But this in no way precludes an  
21    individual from choosing a different residential setting to achieve his  
22    or her desired quality of life.

23       (6) "Department" means the department of social and health  
24    services.

25       (7) "Enhanced adult residential care" means services provided by a  
26    boarding home that is licensed under chapter 18.20 RCW and that has a  
27    contract with the department under RCW 74.39A.010.

28       (8) "Functionally disabled person" is synonymous with chronic  
29    functionally disabled and means a person who because of a recognized  
30    chronic physical or mental condition or disease, including chemical  
31    dependency, is impaired to the extent of being dependent upon others  
32    for direct care, support, supervision, or monitoring to perform  
33    activities of daily living.    "Activities of daily living", in this  
34    context, means self-care abilities related to personal care such as  
35    bathing, eating, using the toilet, dressing, and transfer.  
36    Instrumental activities of daily living may also be used to assess a  
37    person's functional abilities as they are related to the mental  
38    capacity to perform activities in the home and the community such as

1 cooking, shopping, house cleaning, doing laundry, working, and managing  
2 personal finances.

3 (9) "Home and community services" means adult family homes, in-home  
4 services, and other services administered or provided by contract by  
5 the department directly or through contract with area agencies on aging  
6 or similar services provided by facilities and agencies licensed by the  
7 department.

8 (10) "Long-term care" is synonymous with chronic care and means  
9 care and supports delivered indefinitely, intermittently, or over a  
10 sustained time to persons of any age disabled by chronic mental or  
11 physical illness, disease, chemical dependency, or a medical condition  
12 that is permanent, not reversible or curable, or is long-lasting and  
13 severely limits their mental or physical capacity for self-care. The  
14 use of this definition is not intended to expand the scope of services,  
15 care, or assistance by any individuals, groups, residential care  
16 settings, or professions unless otherwise expressed by law.

17 (11) "Nursing home" means a facility licensed under chapter 18.51  
18 RCW.

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

20 (13) "Tribally licensed boarding home" means a boarding home  
21 licensed by a federally recognized Indian tribe which home provides  
22 services similar to boarding homes licensed under chapter 18.20 RCW.

23 NEW SECTION. **Sec. 104.** JOINT LEGISLATIVE COMMITTEE ON LONG-TERM  
24 CARE OVERSIGHT. (1) There is created a joint legislative committee on  
25 long-term care oversight. The committee shall consist of: (a) Four  
26 members of the senate appointed by the president of the senate, two of  
27 whom shall be members of the majority party and two of whom shall be  
28 members of the minority party; and (b) four members of the house of  
29 representatives, two of whom shall be members of the majority party and  
30 two of whom shall be members of the minority party.

31 (2) The committee shall elect a chair and vice-chair. The chair  
32 shall be a member of the senate in even-numbered years and a member of  
33 the house of representatives in odd-numbered years. The vice-chair  
34 shall be a member of the senate in odd-numbered years and a member of  
35 the house of representatives in even-numbered years.

36 (3) The committee shall:

37 (a) Review the need for reorganization and reform of long-term care  
38 administration and service delivery;

1 (b) Review all quality standards developed, revised, and enforced  
2 by the department;

3 (c) In cooperation with the department of social and health  
4 services, develop suggestions to simplify, reduce, or eliminate  
5 unnecessary rules, procedures, and burdensome paperwork that prove to  
6 be barriers to providing effective coordination or high quality direct  
7 services;

8 (d) Suggest methods of cost-efficiencies that can be used to  
9 reallocate funds to unmet needs in direct services;

10 (e) List all nonmeans tested programs and activities funded by the  
11 federal older Americans act and state funded senior citizens act or  
12 other such state funded programs and recommend how to integrate such  
13 services into existing long-term care programs for the functionally  
14 disabled;

15 (f) Suggest methods to establish a single point of entry for  
16 service eligibility and delivery for functionally disabled persons;

17 (g) Evaluate the need for long-term care training and review all  
18 long-term care training and education programs conducted by the  
19 department and suggest modifications to improve the training system;

20 (h) Describe current facilities and services that provide long-term  
21 care to all types of chronically disabled individuals in the state  
22 including Revised Code of Washington requirements, Washington  
23 Administrative Code rules, allowable occupancy, typical clientele,  
24 discharge practices, agency oversight, rates, eligibility requirements,  
25 entry process, social and health services and other services provided,  
26 staffing standards, and physical plant standards;

27 (i) Determine the extent to which the current long-term care system  
28 meets the health and safety needs of the state's long-term care  
29 population and is appropriate for the specific and identified needs of  
30 the residents in all settings;

31 (j) Assess the adequacy of the discharge and referral process in  
32 protecting the health and safety of long-term care clients;

33 (k) Determine the extent to which training and supervision of  
34 direct care staff are adequate to ensure safety and appropriate care;

35 (l) Identify opportunities for consolidation between categories of  
36 care; and

37 (m) Determine if payment rates are adequate to cover the varying  
38 costs of clients with different levels of need.

1 PART II

2 QUALITY STANDARDS AND COMPLAINT ENFORCEMENT

3 NEW SECTION. **Sec. 201.** A new section is added to chapter 70.124  
4 RCW to read as follows:

5 (1) An employee who is a whistleblower and who as a result of being  
6 a whistleblower has been subjected to workplace reprisal or retaliatory  
7 action, has the remedies provided under chapter 49.60 RCW. RCW  
8 4.24.500 through 4.24.520, providing certain protection to persons who  
9 communicate to government agencies, apply to complaints made under this  
10 section. The identity of a whistleblower who complains, in good faith,  
11 to the department about suspected abuse, neglect, financial  
12 exploitation, or abandonment by any person in a nursing home, state  
13 hospital, or adult family home may remain confidential if requested.  
14 The identity of the whistleblower shall subsequently remain  
15 confidential unless the department determines that the complaint was  
16 not made in good faith.

17 (2)(a) An attempt to discharge a resident from a nursing home,  
18 state hospital, adult family home, or any type of discriminatory  
19 treatment of a resident by whom, or upon whose behalf, a complaint  
20 substantiated by the department has been submitted to the department or  
21 any proceeding instituted under or related to this chapter within one  
22 year of the filing of the complaint or the institution of the action,  
23 raises a rebuttable presumption that the action was in retaliation for  
24 the filing of the complaint.

25 (b) The presumption is rebutted by credible evidence establishing  
26 the alleged retaliatory action was initiated prior to the complaint.

27 (c) The presumption is rebutted by a functional assessment  
28 conducted by the department that shows that the resident's needs cannot  
29 be met by the reasonable accommodations of the facility due to the  
30 increased needs of the resident.

31 (3) For the purposes of this section:

32 (a) "Whistleblower" means a resident or employee of a nursing home,  
33 state hospital, or adult family home, or any person licensed under  
34 Title 18 RCW, who in good faith reports alleged abuse, neglect,  
35 exploitation, or abandonment to the department or to a law enforcement  
36 agency;

37 (b) "Workplace reprisal or retaliatory action" means, but is not  
38 limited to: Denial of adequate staff to perform duties; frequent staff

1 changes; frequent and undesirable office changes; refusal to assign  
2 meaningful work; unwarranted and unsubstantiated report of misconduct  
3 under Title 18 RCW; letters of reprimand or unsatisfactory performance  
4 evaluations; demotion; denial of employment; or a supervisor or  
5 superior encouraging coworkers to behave in a hostile manner toward the  
6 whistleblower; and

7 (c) "Reasonable accommodation" by a facility to the needs of a  
8 prospective or current resident has the meaning given to this term  
9 under the federal Americans with disabilities act of 1990, 42 U.S.C.  
10 Sec. 12101 et seq. and other applicable federal or state  
11 antidiscrimination laws and regulations.

12 (4) This section does not prohibit a nursing home, state hospital,  
13 or adult family home from exercising its authority to terminate,  
14 suspend, or discipline an employee who engages in workplace reprisal or  
15 retaliatory action against a whistleblower. The protections provided  
16 to whistleblowers under this chapter shall not prevent a nursing home,  
17 state hospital, or adult family home from: (a) Terminating,  
18 suspending, or disciplining a whistleblower for other lawful purposes;  
19 or (b) for facilities with six or fewer residents, reducing the hours  
20 of employment or terminating employment as a result of the demonstrated  
21 inability to meet payroll requirements. The department shall determine  
22 if the facility cannot meet payroll in cases where a whistleblower has  
23 been terminated or had hours of employment reduced due to the inability  
24 of a facility to meet payroll.

25 (5) The department shall adopt rules to implement procedures for  
26 filing, investigation, and resolution of whistleblower complaints that  
27 are integrated with complaint procedures under this chapter.

28 (6) No frail elder or vulnerable person who relies upon and is  
29 being provided spiritual treatment in lieu of medical treatment in  
30 accordance with the tenets and practices of a well-recognized religious  
31 denomination shall for that reason alone be considered abandoned,  
32 abused, or neglected, nor shall anything in this chapter be construed  
33 to authorize, permit, or require medical treatment contrary to the  
34 stated or clearly implied objection of such a person.

35 (7) The department shall adopt rules designed to discourage  
36 whistleblower complaints made in bad faith or for retaliatory purposes.

37 NEW SECTION. **Sec. 202.** A new section is added to chapter 74.34  
38 RCW to read as follows:

1 (1) An employee or contractor who is a whistleblower and who as a  
2 result of being a whistleblower has been subjected to workplace  
3 reprisal or retaliatory action, has the remedies provided under chapter  
4 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection  
5 to persons who communicate to government agencies, apply to complaints  
6 made under this section. The identity of a whistleblower who  
7 complains, in good faith, to the department about suspected abuse,  
8 neglect, exploitation, or abandonment by any person in a boarding home  
9 licensed or required to be licensed pursuant to chapter 18.20 RCW or a  
10 veterans' home pursuant to chapter 72.36 RCW or care provided in a  
11 boarding home or a veterans' home by any person associated with a  
12 hospice, home care, or home health agency licensed under chapter 70.127  
13 RCW or other in-home provider may remain confidential if requested.  
14 The identity of the whistleblower shall subsequently remain  
15 confidential unless the department determines that the complaint was  
16 not made in good faith.

17 (2)(a) An attempt to expel a resident from a boarding home or  
18 veterans' home, or any type of discriminatory treatment of a resident  
19 who is a consumer of hospice, home health, home care services, or other  
20 in-home services by whom, or upon whose behalf, a complaint  
21 substantiated by the department or the department of health has been  
22 submitted to the department or any proceeding instituted under or  
23 related to this chapter within one year of the filing of the complaint  
24 or the institution of the action, raises a rebuttable presumption that  
25 the action was in retaliation for the filing of the complaint.

26 (b) The presumption is rebutted by credible evidence establishing  
27 the alleged retaliatory action was initiated prior to the complaint.

28 (c) The presumption is rebutted by a functional assessment  
29 conducted by the department that shows that the resident or consumer's  
30 needs cannot be met by the reasonable accommodations of the facility  
31 due to the increased needs of the resident.

32 (3) For the purposes of this section:

33 (a) "Whistleblower" means a resident or a person with a mandatory  
34 duty to report under this chapter, or any person licensed under Title  
35 18 RCW, who in good faith reports alleged abuse, neglect, exploitation,  
36 or abandonment to the department, or the department of health, or to a  
37 law enforcement agency;

38 (b) "Workplace reprisal or retaliatory action" means, but is not  
39 limited to: Denial of adequate staff to perform duties; frequent staff

1 changes; frequent and undesirable office changes; refusal to assign  
2 meaningful work; unwarranted and unsubstantiated report of misconduct  
3 under Title 18 RCW; letters of reprimand or unsatisfactory performance  
4 evaluations; demotion; denial of employment; or a supervisor or  
5 superior encouraging coworkers to behave in a hostile manner toward the  
6 whistleblower. The protections provided to whistleblowers under this  
7 chapter shall not prevent a nursing home, state hospital, boarding  
8 home, or adult family home from: (i) Terminating, suspending, or  
9 disciplining a whistleblower for other lawful purposes; or (ii) for  
10 facilities licensed under chapter 70.128 RCW, reducing the hours of  
11 employment or terminating employment as a result of the demonstrated  
12 inability to meet payroll requirements. The department shall determine  
13 if the facility cannot meet payroll in cases in which a whistleblower  
14 has been terminated or had hours of employment reduced because of the  
15 inability of a facility to meet payroll; and

16 (c) "Reasonable accommodation" by a facility to the needs of a  
17 prospective or current resident has the meaning given to this term  
18 under the federal Americans with disabilities act of 1990, 42 U.S.C.  
19 Sec. 12101 et seq. and other applicable federal or state  
20 antidiscrimination laws and regulations.

21 (4) This section does not prohibit a boarding home or veterans'  
22 home from exercising its authority to terminate, suspend, or discipline  
23 any employee who engages in workplace reprisal or retaliatory action  
24 against a whistleblower.

25 (5) The department shall adopt rules to implement procedures for  
26 filing, investigation, and resolution of whistleblower complaints that  
27 are integrated with complaint procedures under this chapter.

28 (6) No frail elder or vulnerable person who relies upon and is  
29 being provided spiritual treatment in lieu of medical treatment in  
30 accordance with the tenets and practices of a well-recognized religious  
31 denomination shall for that reason alone be considered abandoned,  
32 abused, or neglected, nor shall anything in this chapter be construed  
33 to authorize, permit, or require medical treatment contrary to the  
34 stated or clearly implied objection of such a person.

35 (7) The department, and the department of health for facilities,  
36 agencies, or individuals it regulates, shall adopt rules designed to  
37 discourage whistleblower complaints made in bad faith or for  
38 retaliatory purposes.



1       **Sec. 203.** RCW 70.129.010 and 1994 c 214 s 2 are each amended to  
2 read as follows:

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

5       (1) "Department" means the department of state government  
6 responsible for licensing the provider in question.

7       (2) "Facility" means a long-term care facility.

8       (3) "Long-term care facility" means a facility that is licensed or  
9 required to be licensed under chapter 18.20, 72.36, or 70.128 RCW.

10       (4) "Resident" means the individual receiving services in a long-  
11 term care facility, that resident's attorney in fact, guardian, or  
12 other legal representative acting within the scope of their authority.

13       (5) "Physical restraint" means a manual method, obstacle, or  
14 physical or mechanical device, material, or equipment attached or  
15 adjacent to the resident's body that restricts freedom of movement or  
16 access to his or her body((+))\_ is used for discipline or  
17 convenience((+))\_ and not required to treat the resident's medical  
18 symptoms.

19       (6) "Chemical restraint" means a psychopharmacologic drug that is  
20 used for discipline or convenience and not required to treat the  
21 resident's medical symptoms.

22       (7) "Representative" means a person appointed under RCW 7.70.065.

23       (8) "Reasonable accommodation" by a facility to the needs of a  
24 prospective or current resident has the meaning given to this term  
25 under the federal Americans with disabilities act of 1990, 42 U.S.C.  
26 Sec. 12101 et seq. and other applicable federal or state  
27 antidiscrimination laws and regulations.

28       **Sec. 204.** RCW 70.129.030 and 1994 c 214 s 4 are each amended to  
29 read as follows:

30       (1) The facility must inform the resident both orally and in  
31 writing in a language that the resident understands of his or her  
32 rights and all rules and regulations governing resident conduct and  
33 responsibilities during the stay in the facility. The notification  
34 must be made prior to or upon admission. Receipt of the information  
35 must be acknowledged in writing.

36       (2) The resident or his or her legal representative has the right:

1 (a) Upon an oral or written request, to access all records  
2 pertaining to himself or herself including clinical records within  
3 twenty-four hours; and

4 (b) After receipt of his or her records for inspection, to purchase  
5 at a cost not to exceed the community standard photocopies of the  
6 records or portions of them upon request and two working days' advance  
7 notice to the facility.

8 (3) The facility shall only admit or retain individuals whose needs  
9 it can safely and appropriately serve in the facility with appropriate  
10 available staff or through the provision of reasonable accommodations  
11 as required by state or federal law. Except in cases of emergency,  
12 facilities shall not admit an individual before obtaining a  
13 comprehensive assessment of the resident's needs and preferences,  
14 unless unavailable despite the best efforts of the facility and other  
15 interested parties. The assessment shall contain, within existing  
16 department funds, the following information: Recent medical history;  
17 necessary and prohibited medications; a medical professional's  
18 diagnosis; significant known behaviors or symptoms that may cause  
19 concern or require special care; mental illness except where protected  
20 by confidentiality laws; level of personal care needs; activities and  
21 service preferences; and preferences regarding issues important to the  
22 potential resident, such as food and daily routine. The facility must  
23 inform each resident in writing in a language the resident or his or  
24 her representative understands before (~~, or at the time of~~) admission,  
25 and at least once every twenty-four months thereafter, of: (a)  
26 Services, items, and activities customarily available in the facility  
27 or arranged for by the facility; (b) charges for those services, items,  
28 and activities including charges for services, items, and activities  
29 not covered by the facility's per diem rate or applicable public  
30 benefit programs; and (c) the rules of facility operations required  
31 under RCW 70.129.140(2). Each resident and his or her representative  
32 must be informed in writing in advance of changes in the availability  
33 or the charges for services, items, or activities, or of changes in the  
34 facility's rules. Except in unusual circumstances, thirty days'  
35 advance notice must be given prior to the change. However, for  
36 facilities licensed for six or fewer residents, if there has been a  
37 substantial and continuing change in the resident's condition  
38 necessitating substantially greater or lesser services, items, or

1 activities, then the charges for those services, items, or activities  
2 may be changed upon fourteen days advance written notice.

3 (4) The facility must furnish a written description of residents  
4 rights that includes:

5 (a) A description of the manner of protecting personal funds, under  
6 RCW 70.129.040;

7 (b) A posting of names, addresses, and telephone numbers of the  
8 state survey and certification agency, the state licensure office, the  
9 state ombudsmen program, and the protection and advocacy systems; and

10 (c) A statement that the resident may file a complaint with the  
11 appropriate state licensing agency concerning resident abuse, neglect,  
12 and misappropriation of resident property in the facility.

13 (5) Notification of changes.

14 (a) A facility must immediately consult with the resident's  
15 physician, and if known, make reasonable efforts to notify the  
16 resident's legal representative or an interested family member when  
17 there is:

18 (i) An accident involving the resident which requires or has the  
19 potential for requiring physician intervention;

20 (ii) A significant change in the resident's physical, mental, or  
21 psychosocial status (i.e., a deterioration in health, mental, or  
22 psychosocial status in either life-threatening conditions or clinical  
23 complications).

24 (b) The facility must promptly notify the resident or the  
25 resident's representative shall make reasonable efforts to notify an  
26 interested family member, if known, when there is:

27 (i) A change in room or roommate assignment; or

28 (ii) A decision to transfer or discharge the resident from the  
29 facility.

30 (c) The facility must record and update the address and phone  
31 number of the resident's representative or interested family member,  
32 upon receipt of notice from them.

33 (6) This section applies to long-term care facilities covered under  
34 this chapter.

35 **Sec. 205.** RCW 70.129.110 and 1994 c 214 s 12 are each amended to  
36 read as follows:

1 (1) The facility must permit each resident to remain in the  
2 facility, and not transfer or discharge the resident from the facility  
3 unless:

4 (a) The transfer or discharge is necessary for the resident's  
5 welfare and the resident's needs cannot be met in the facility;

6 (b) The safety of individuals in the facility is endangered;

7 (c) The health of individuals in the facility would otherwise be  
8 endangered;

9 (d) The resident has failed to make the required payment for his or  
10 her stay; or

11 (e) The facility ceases to operate.

12 (2) All long-term care facilities shall fully disclose to potential  
13 residents or their legal representative the service capabilities of the  
14 facility prior to admission to the facility. If the care needs of the  
15 applicant who is medicaid eligible are in excess of the facility's  
16 service capabilities, the department shall identify other care settings  
17 or residential care options consistent with federal law.

18 (3) Before a long-term care facility transfers or discharges a  
19 resident, the facility must:

20 (a) First attempt through reasonable accommodations to avoid the  
21 transfer or discharge, unless agreed to by the resident;

22 (b) Notify the resident and representative and make a reasonable  
23 effort to notify, if known, an interested family member of the transfer  
24 or discharge and the reasons for the move in writing and in a language  
25 and manner they understand;

26 ~~((b))~~ (c) Record the reasons in the resident's record; and

27 ~~((e))~~ (d) Include in the notice the items described in subsection  
28 ~~((4))~~ (5) of this section.

29 ~~((3))~~ (4)(a) Except when specified in this subsection, the notice  
30 of transfer ~~((of -or))~~ or discharge required under subsection ~~((2))~~  
31 (3) of this section must be made by the facility at least thirty days  
32 before the resident is transferred or discharged.

33 (b) Notice may be made as soon as practicable before transfer or  
34 discharge when:

35 (i) The safety of individuals in the facility would be endangered;

36 (ii) The health of individuals in the facility would be endangered;

37 (iii) An immediate transfer or discharge is required by the  
38 resident's urgent medical needs; or

39 (iv) A resident has not resided in the facility for thirty days.

1       (~~(4)~~) (5) The written notice specified in subsection (~~(2)~~) (3)  
2 of this section must include the following:

3       (a) The reason for transfer or discharge;

4       (b) The effective date of transfer or discharge;

5       (c) The location to which the resident is transferred or  
6 discharged;

7       (d) The name, address, and telephone number of the state long-term  
8 care ombudsman;

9       (e) For residents with developmental disabilities, the mailing  
10 address and telephone number of the agency responsible for the  
11 protection and advocacy of developmentally disabled individuals  
12 established under part C of the developmental disabilities assistance  
13 and bill of rights act; and

14       (f) For residents who are mentally ill, the mailing address and  
15 telephone number of the agency responsible for the protection and  
16 advocacy of mentally ill individuals established under the protection  
17 and advocacy for mentally ill individuals act.

18       (~~(5)~~) (6) A facility must provide sufficient preparation and  
19 orientation to residents to ensure safe and orderly transfer or  
20 discharge from the facility.

21       (~~(6)~~) (7) A resident discharged in violation of this section has  
22 the right to be readmitted immediately upon the first availability of  
23 a gender-appropriate bed in the facility.

24       **Sec. 206.** RCW 70.129.150 and 1994 c 214 s 16 are each amended to  
25 read as follows:

26       (1) Prior to admission, all long-term care facilities or nursing  
27 facilities licensed under chapter 18.51 RCW that require payment of an  
28 admissions fee, deposit, or a minimum stay fee, by or on behalf of a  
29 person seeking (~~admissions [admission]~~) admission to the long-term  
30 care facility or nursing facility, shall provide the resident, or his  
31 or her representative, full disclosure in writing (~~of the long-term  
32 care facility or nursing facility's schedule of charges for items and  
33 services provided by the facility and~~) in a language the resident or  
34 his or her representative understands, a statement of the amount of any  
35 admissions fees, deposits, prepaid charges, or minimum stay fees. The  
36 facility shall also disclose to the person, or his or her  
37 representative, the facility's advance notice or transfer requirements,  
38 prior to admission. In addition, the long-term care facility or

1 nursing facility shall also fully disclose in writing prior to  
2 admission what portion of the deposits, admissions fees, prepaid  
3 charges, or minimum stay fees will be refunded to the resident or his  
4 or her representative if the resident leaves the long-term care  
5 facility or nursing facility. Receipt of the disclosures required  
6 under this subsection must be acknowledged in writing. If the facility  
7 does not provide these disclosures, the deposits, admissions fees,  
8 prepaid charges, or minimum stay fees may not be kept by the facility.  
9 If a resident(~~(, during the first thirty days of residence,)~~) dies or  
10 is hospitalized or is transferred to another facility for more  
11 appropriate care and does not return to the original facility, the  
12 facility shall refund any deposit or charges already paid less the  
13 facility's per diem rate for the days the resident actually resided or  
14 reserved or retained a bed in the facility notwithstanding any minimum  
15 stay policy or discharge notice requirements, except that the facility  
16 may retain an additional amount to cover its reasonable, actual  
17 expenses incurred as a result of a private-pay resident's move, not to  
18 exceed five days' per diem charges, unless the resident has given  
19 advance notice in compliance with the admission agreement. All long-  
20 term care facilities or nursing facilities covered under this section  
21 are required to refund any and all refunds due the resident or  
22 (~~their~~) his or her representative within thirty days from the  
23 resident's date of discharge from the facility. Nothing in this  
24 section applies to provisions in contracts negotiated between a nursing  
25 facility or long-term care facility and a certified health plan, health  
26 or disability insurer, health maintenance organization, managed care  
27 organization, or similar entities.

28 (2) Where a long-term care facility or nursing facility requires  
29 the execution of an admission contract by or on behalf of an individual  
30 seeking admission to the facility, the terms of the contract shall be  
31 consistent with the requirements of this section, and the terms of an  
32 admission contract by a long-term care facility shall be consistent  
33 with the requirements of this chapter.

34 **Sec. 207.** RCW 74.39A.030 and 1995 1st sp.s. c 18 s 2 are each  
35 amended to read as follows:

36 (1) To the extent of available funding, the department shall expand  
37 cost-effective options for home and community services for consumers  
38 for whom the state participates in the cost of their care.

1 (2) In expanding home and community services, the department shall:  
2 (a) Take full advantage of federal funding available under Title XVIII  
3 and Title XIX of the federal social security act, including home  
4 health, adult day care, waiver options, and state plan services; and  
5 (b) be authorized to use funds available under its community options  
6 program entry system waiver granted under section 1915(c) of the  
7 federal social security act to expand the availability of in-home,  
8 adult residential care, adult family homes, enhanced adult residential  
9 care, and assisted living services. By June 30, 1997, the department  
10 shall undertake to reduce the nursing home medicaid census by at least  
11 one thousand six hundred by assisting individuals who would otherwise  
12 require nursing facility services to obtain services of their choice,  
13 including assisted living services, enhanced adult residential care,  
14 and other home and community services. The department shall make  
15 reasonable efforts to contract for at least one hundred eighty state  
16 clients who would otherwise be served in nursing facilities or in  
17 assisted living to instead be served in enhanced adult residential care  
18 settings by June 30, 1999. If a resident, or his or her legal  
19 representative, objects to a discharge decision initiated by the  
20 department, the resident shall not be discharged if the resident has  
21 been assessed and determined to require nursing facility services. In  
22 contracting with nursing homes and boarding homes for enhanced adult  
23 residential care placements, neither the department nor the department  
24 of health shall ((not)) require, by contract or through other means,  
25 structural modifications to existing building construction.

26 (3)(a) The department shall by rule establish payment rates for  
27 home and community services that support the provision of cost-  
28 effective care. In contracting with licensed boarding homes for  
29 providing additional enhanced adult residential care services for up to  
30 one hundred eighty clients pursuant to subsection (2)(b) of this  
31 section, the payment rate shall be established at no less than thirty-  
32 five and no greater than forty percent of the average state-wide  
33 nursing facility medicaid payment rate.

34 (b) The department may authorize an enhanced adult residential care  
35 rate for nursing homes that temporarily or permanently convert their  
36 bed use for the purpose of providing enhanced adult residential care  
37 under chapter 70.38 RCW, when the department determines that payment of  
38 an enhanced rate is cost-effective and necessary to foster expansion of  
39 contracted enhanced adult residential care services. As an incentive

1 for nursing homes to permanently convert a portion of its nursing home  
2 bed capacity for the purpose of providing enhanced adult residential  
3 care, the department may authorize a supplemental add-on to the  
4 enhanced adult residential care rate.

5 (c) The department may authorize a supplemental assisted living  
6 services or an enhanced adult residential care services rate for up to  
7 four years for facilities that convert from nursing home use and do not  
8 retain rights to the converted nursing home beds under chapter 70.38  
9 RCW, if the department determines that payment of a supplemental rate  
10 is cost-effective and necessary to foster expansion of contracted  
11 assisted living or enhanced adult residential care services.

12 **Sec. 208.** RCW 74.39A.040 and 1995 1st sp.s. c 18 s 6 are each  
13 amended to read as follows:

14 The department shall work in partnership with hospitals, who choose  
15 to participate, in assisting patients and their families to find long-  
16 term care services of their choice according to subsections (1) through  
17 (4) of this section. The department shall not delay hospital  
18 discharges but shall assist and support the activities of hospital  
19 discharge planners. The department also shall coordinate with home  
20 health and hospice agencies whenever appropriate. The role of the  
21 department is to assist the hospital and to assist patients and their  
22 families in making informed choices by providing information regarding  
23 home and community options to individuals who are hospitalized and  
24 likely to need long-term care.

25 (1) To the extent of available funds, the department shall assess  
26 individuals who:

27 (a) Are medicaid clients, medicaid applicants, or eligible for both  
28 medicare and medicaid; and

29 (b) Apply or are likely to apply for admission to a nursing  
30 facility.

31 (2) For individuals who are reasonably expected to become medicaid  
32 recipients within one hundred eighty days of admission to a nursing  
33 facility, the department shall, to the extent of available funds, offer  
34 an assessment and information regarding appropriate in-home and  
35 community services.

36 (3) When the department finds, based on assessment, that the  
37 individual prefers and could live appropriately and cost-effectively at  
38 home or in some other community-based setting, the department shall:



1 (a) Advise the individual that an in-home or other community  
2 service is appropriate;

3 (b) Develop, with the individual or the individual's  
4 representative, a comprehensive community service plan;

5 (c) Inform the individual regarding the availability of services  
6 that could meet the applicant's needs as set forth in the community  
7 service plan and explain the cost to the applicant of the available in-  
8 home and community services relative to nursing facility care; and

9 (d) Discuss and evaluate the need for on-going involvement with the  
10 individual or the individual's representative.

11 (4) When the department finds, based on assessment, that the  
12 individual prefers and needs nursing facility care, the department  
13 shall:

14 (a) Advise the individual that nursing facility care is appropriate  
15 and inform the individual of the available nursing facility vacancies;

16 (b) If appropriate, advise the individual that the stay in the  
17 nursing facility may be short term; and

18 (c) Describe the role of the department in providing nursing  
19 facility case management.

20 (5) All hospitals who choose to not participate with the department  
21 according to subsections (1) through (4) of this section shall provide  
22 their own hospital long-term care discharge services for patients  
23 needing long-term care information or services. The hospital shall  
24 advise the individual regarding its recommended discharge placement for  
25 individuals requiring posthospital care and shall, consistent with the  
26 individual's expressed preferences and in accordance with his or her  
27 care needs, identify services, including known costs, available in the  
28 community and shall develop with the individual and his or her legal  
29 representative a comprehensive community service plan, if in-home or  
30 other community service is appropriate and preferred.

31 **Sec. 209.** RCW 74.39A.050 and 1995 1st sp.s. c 18 s 12 are each  
32 amended to read as follows:

33 The department's system of quality improvement for long-term care  
34 services shall ~~((be guided by))~~ use the following principles,  
35 consistent with applicable federal laws and regulations:

36 (1) The system shall be ~~((consumer))~~ client-centered and promote  
37 privacy, independence, dignity, choice, and a home or home-like

1 environment for consumers consistent with chapter . . . , Laws of 1997  
2 (this act).

3 (2) The goal of the system is continuous quality improvement with  
4 the focus on consumer satisfaction and outcomes for consumers. This  
5 includes that when conducting licensing inspections, the department  
6 shall interview an appropriate percentage of residents, family members,  
7 resident managers, and advocates in addition to interviewing providers  
8 and staff.

9 (3) Providers should be supported in their efforts to improve  
10 quality and address identified problems initially through training,  
11 consultation, technical assistance, and case management.

12 (4) The emphasis should be on problem prevention both in monitoring  
13 and in screening potential providers of service.

14 (5) Monitoring should be outcome based and responsive to consumer  
15 complaints and a clear set of health, quality of care, and safety  
16 standards that are easily understandable and have been made available  
17 to providers.

18 (~~Providers generally should be assisted in addressing~~  
19 ~~identified problems initially through consultation and technical~~  
20 ~~assistance.)) Prompt and specific enforcement remedies shall also be  
21 ((available)) implemented without delay, pursuant to RCW 74.39A.080,  
22 RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers  
23 found to have delivered care or failed to deliver care resulting in  
24 problems that are serious, recurring, or ((that have been))  
25 uncorrected, or that create a hazard that is causing or likely to cause  
26 death or serious harm to one or more residents. These enforcement  
27 remedies may also include, when appropriate, reasonable conditions on  
28 a contract or license. In the selection of remedies, the safety,  
29 health, and well-being of residents shall be of paramount importance.~~

30 (7) To the extent funding is available, all long-term care staff  
31 directly responsible for the care, supervision, or treatment of  
32 vulnerable persons should be screened through background checks in a  
33 uniform and timely manner to ensure that they do not have a criminal  
34 history that would disqualify them from working with vulnerable  
35 persons. Whenever a state conviction record check is required by state  
36 law, persons may be employed or engaged as volunteers or independent  
37 contractors on a conditional basis according to law and rules adopted  
38 by the department.

1       (8) No provider or staff, or prospective provider or staff, with a  
2 stipulated finding of fact, conclusion of law, an agreed order, or  
3 finding of fact, conclusion of law, or final order issued by a  
4 disciplining authority, a court of law, or entered into a state  
5 registry finding him or her guilty of abuse, neglect, exploitation, or  
6 abandonment of a minor or a vulnerable adult as defined in chapter  
7 74.34 RCW shall be employed in the care of and have unsupervised access  
8 to vulnerable adults.

9       (9) Under existing funds the department shall establish internally  
10 a quality improvement standards committee to monitor the development of  
11 standards and to suggest modifications.

12       (10) Within existing funds, the department shall design, develop,  
13 and implement a long-term care training program that is flexible,  
14 relevant, and qualifies towards the requirements for a nursing  
15 assistant certificate as established under chapter 18.88A RCW. This  
16 subsection does not require completion of the nursing assistant  
17 certificate training program by providers or their staff. The long-  
18 term care teaching curriculum must consist of a fundamental module, or  
19 modules, and a range of other available relevant training modules that  
20 provide the caregiver with appropriate options that assist in meeting  
21 the resident's care needs. Some of the training modules may include,  
22 but are not limited to, specific training on the special care needs of  
23 persons with developmental disabilities, dementia, mental illness, and  
24 the care needs of the elderly. No less than one training module must  
25 be dedicated to workplace violence prevention. The nursing care  
26 quality assurance commission shall work together with the department to  
27 develop the curriculum modules and accept some or all of the curriculum  
28 modules hour for hour towards meeting the requirements for a nursing  
29 assistant certificate as defined in chapter 18.88A RCW. The department  
30 may review whether facilities can develop their own related long-term  
31 care training programs. The department may develop a review process  
32 for determining what previous experience and training may be used to  
33 waive some or all of the mandatory training.

34       **Sec. 210.** RCW 74.39A.060 and 1995 1st sp.s. c 18 s 13 are each  
35 amended to read as follows:

36       (1) The aging and adult services administration of the department  
37 shall establish and maintain a toll-free telephone number for receiving

1 complaints regarding a facility that the administration licenses or  
2 with which it contracts for long-term care services.

3 (2) All facilities that are licensed by, or that contract with the  
4 aging and adult services administration to provide chronic long-term  
5 care services shall post in a place and manner clearly visible to  
6 residents and visitors the department's toll-free complaint telephone  
7 number and the toll-free number and program description of the long-  
8 term care ombudsman as provided by RCW 43.190.050.

9 (3) The aging and adult services administration shall investigate  
10 complaints if the subject of the complaint is within its authority  
11 unless the department determines that: (a) The complaint is intended  
12 to willfully harass a licensee or employee of the licensee; or (b)  
13 there is no reasonable basis for investigation; or (c) corrective  
14 action has been taken as determined by the ombudsman or the department.

15 (4) The aging and adult services administration shall refer  
16 complaints to appropriate state agencies, law enforcement agencies, the  
17 attorney general, the long-term care ombudsman, or other entities if  
18 the department lacks authority to investigate or if its investigation  
19 reveals that a follow-up referral to one or more of these entities is  
20 appropriate.

21 (5) The department shall adopt rules that include the following  
22 complaint investigation protocols:

23 (a) Upon receipt of a complaint, the department shall make a  
24 preliminary review of the complaint, assess the severity of the  
25 complaint, and assign an appropriate response time. Complaints  
26 involving imminent danger to the health, safety, or well-being of a  
27 resident must be responded to within two days. When appropriate, the  
28 department shall make an on-site investigation within a reasonable time  
29 after receipt of the complaint or otherwise ensure that complaints are  
30 responded to.

31 (b) The complainant must be: Promptly contacted by the department,  
32 unless anonymous or unavailable despite several attempts by the  
33 department, and informed of the right to discuss the alleged violations  
34 with the inspector and to provide other information the complainant  
35 believes will assist the inspector; informed of the department's course  
36 of action; and informed of the right to receive a written copy of the  
37 investigation report.

38 (c) In conducting the investigation, the department shall interview  
39 the complainant, unless anonymous, and shall use its best efforts to

1 interview the resident or residents allegedly harmed by the violations,  
2 and, in addition to facility staff, any available independent sources  
3 of relevant information, including if appropriate the family members of  
4 the resident.

5 (d) Substantiated complaints involving harm to a resident, if an  
6 applicable law or regulation has been violated, shall be subject to one  
7 or more of the actions provided in RCW 74.39A.080 or 70.128.160.  
8 Whenever appropriate, the department shall also give consultation and  
9 technical assistance to the provider.

10 (e) In the best practices of total quality management and  
11 continuous quality improvement, after a department finding of a  
12 violation that is serious, recurring, or uncorrected following a  
13 previous citation, the department shall make an on-site revisit of the  
14 facility to ensure correction of the violation, except for license or  
15 contract suspensions or revocations.

16 (f) Substantiated complaints of neglect, abuse, exploitation, or  
17 abandonment of residents, or suspected criminal violations, shall also  
18 be referred by the department to the appropriate law enforcement  
19 agencies, the attorney general, and appropriate professional  
20 disciplining authority.

21 (6) The department may ((not)) provide the substance of the  
22 complaint to the licensee or contractor before the completion of the  
23 investigation by the department unless such disclosure would reveal the  
24 identity of a complainant, witness, or resident who chooses to remain  
25 anonymous. Neither the substance of the complaint provided to the  
26 licensee or contractor nor any copy of the complaint or related report  
27 published, released, or made otherwise available shall disclose, or  
28 reasonably lead to the disclosure of, the name, title, or identity of  
29 any complainant, or other person mentioned in the complaint, except  
30 that the name of the provider and the name or names of any officer,  
31 employee, or agent of the department conducting the investigation shall  
32 be disclosed after the investigation has been closed and the complaint  
33 has been substantiated. The department may disclose the identity of  
34 the complainant if such disclosure is requested in writing by the  
35 complainant. Nothing in this subsection shall be construed to  
36 interfere with the obligation of the long-term care ombudsman program  
37 or department staff to monitor the department's licensing, contract,  
38 and complaint investigation files for long-term care facilities.

1        ~~((6))~~ (7) The resident has the right to be free of interference,  
2 coercion, discrimination, and reprisal from a facility in exercising  
3 his or her rights, including the right to voice grievances about  
4 treatment furnished or not furnished. A facility that provides long-  
5 term care services shall not discriminate or retaliate in any manner  
6 against a resident, employee, or any other person on the basis or for  
7 the reason that such resident or any other person made a complaint to  
8 the department, the attorney general, law enforcement agencies, or the  
9 long-term care ombudsman, provided information, or otherwise cooperated  
10 with the investigation of such a complaint. Any attempt to discharge  
11 a resident against the resident's wishes, or any type of retaliatory  
12 treatment of a resident by whom or upon whose behalf a complaint  
13 substantiated by the department has been made to the department, the  
14 attorney general, law enforcement agencies, or the long-term care  
15 ombudsman, within one year of the filing of the complaint, raises a  
16 rebuttable presumption that such action was in retaliation for the  
17 filing of the complaint. "Retaliatory treatment" means, but is not  
18 limited to, monitoring a resident's phone, mail, or visits; involuntary  
19 seclusion or isolation; transferring a resident to a different room  
20 unless requested or based upon legitimate management reasons;  
21 withholding or threatening to withhold food or treatment unless  
22 authorized by a terminally ill resident or his or her representative  
23 pursuant to law; or persistently delaying responses to a resident's  
24 request for service or assistance. A facility that provides long-term  
25 care services shall not willfully interfere with the performance of  
26 official duties by a long-term care ombudsman. The department shall  
27 sanction and may impose a civil penalty of not more than three thousand  
28 dollars for a violation of this subsection (~~and require the facility~~  
29 ~~to mitigate any damages incurred by the resident)).~~

30        **Sec. 211.** RCW 70.129.105 and 1994 c 214 s 17 are each amended to  
31 read as follows:

32        No long-term care facility or nursing facility licensed under  
33 chapter 18.51 RCW shall require or request residents to sign waivers of  
34 potential liability for losses of personal property or injury, or to  
35 sign waivers of residents' rights set forth in this chapter or in the  
36 applicable licensing or certification laws.

1       **Sec. 212.** RCW 74.42.030 and 1979 ex.s. c 211 s 3 are each amended  
2 to read as follows:

3       Each resident or guardian or legal representative, if any, shall be  
4 fully informed and receive in writing, in a language the resident or  
5 his or her representative understands, the following information:

- 6       (1) The resident's rights and responsibilities in the facility;  
7       (2) Rules governing resident conduct;  
8       (3) Services, items, and activities available in the facility; and  
9       (4) Charges for services, items, and activities, including those  
10 not included in the facility's basic daily rate or not paid by  
11 medicaid.

12       The facility shall provide this information before admission, or at  
13 the time of admission in case of emergency, and as changes occur during  
14 the resident's stay. The resident and his or her representative must  
15 be informed in writing in advance of changes in the availability or  
16 charges for services, items, or activities, or of changes in the  
17 facility's rules. Except in unusual circumstances, thirty days'  
18 advance notice must be given prior to the change. The resident or  
19 legal guardian or representative shall acknowledge in writing receipt  
20 of this information (~~(and any changes in the information)~~).

21       The written information provided by the facility pursuant to this  
22 section, and the terms of any admission contract executed between the  
23 facility and an individual seeking admission to the facility, must be  
24 consistent with the requirements of this chapter and chapter 18.51 RCW  
25 and, for facilities certified under medicaid or medicare, with the  
26 applicable federal requirements.

27       NEW SECTION. **Sec. 213.** A new section is added to chapter 18.20  
28 RCW to read as follows:

29       The department's system of quality improvement for long-term care  
30 services shall use the following principles, consistent with applicable  
31 federal laws and regulations:

32       (1) The system shall be resident-centered and promote privacy,  
33 independence, dignity, choice, and a home or home-like environment for  
34 residents consistent with chapter 70.129 RCW.

35       (2) The goal of the system is continuous quality improvement with  
36 the focus on resident satisfaction and outcomes for residents. This  
37 includes that when conducting licensing inspections, the department

1 shall interview an appropriate percentage of residents, family members,  
2 and advocates in addition to interviewing appropriate staff.

3 (3) Facilities should be supported in their efforts to improve  
4 quality and address identified problems initially through training,  
5 consultation, and technical assistance.

6 (4) The emphasis should be on problem prevention both in monitoring  
7 and in screening potential providers of service.

8 (5) Monitoring should be outcome based and responsive to resident  
9 complaints and a clear set of health, quality of care, and safety  
10 standards that are easily understandable and have been made available  
11 to facilities.

12 (6) Prompt and specific enforcement remedies shall also be  
13 implemented without delay, consistent with RCW 18.20.190, for  
14 facilities found to have delivered care or failed to deliver care  
15 resulting in problems that are serious, recurring, or uncorrected, or  
16 that create a hazard that is causing or likely to cause death or  
17 serious harm to one or more residents. These enforcement remedies may  
18 also include, when appropriate, reasonable conditions on a license. In  
19 the selection of remedies, the safety, health, and well-being of  
20 residents shall be of paramount importance.

21 (7) To the extent funding is available, the licensee,  
22 administrator, and their staff should be screened through background  
23 checks in a uniform and timely manner to ensure that they do not have  
24 a criminal history that would disqualify them from working with  
25 vulnerable adults. Employees may be provisionally hired pending the  
26 results of the background check if they have been given three positive  
27 references.

28 (8) The department shall promote the development of a training  
29 system that is practical and relevant to the needs of residents and  
30 staff. To improve access to training, especially for rural  
31 communities, the training system may include, but is not limited to,  
32 the use of satellite technology distance learning that is coordinated  
33 through community colleges or other appropriate organizations.

34 (9) No licensee, administrator, or staff, or prospective licensee,  
35 administrator, or staff, with a stipulated finding of fact, conclusion  
36 of law, and agreed order, or finding of fact, conclusion of law, or  
37 final order issued by a disciplining authority, a court of law, or  
38 entered into the state registry finding him or her guilty of abuse,  
39 neglect, exploitation, or abandonment of a minor or a vulnerable adult



1 as defined in chapter 74.34 RCW shall be employed in the care of and  
2 have unsupervised access to vulnerable adults.

3 NEW SECTION. **Sec. 214.** A new section is added to chapter 18.20  
4 RCW to read as follows:

5 (1) The department shall establish and maintain a toll-free  
6 telephone number for receiving complaints regarding a facility that the  
7 department licenses.

8 (2) All facilities that are licensed under this chapter shall post  
9 in a place and manner clearly visible to residents and visitors the  
10 department's toll-free complaint telephone number and the toll-free  
11 number and program description of the long-term care ombudsman as  
12 provided by RCW 43.190.050.

13 (3) The department shall investigate complaints if the subject of  
14 the complaint is within its authority unless the department determines  
15 that: (a) The complaint is intended to willfully harass a licensee or  
16 employee of the licensee; or (b) there is no reasonable basis for  
17 investigation; or (c) corrective action has been taken as determined by  
18 the ombudsman or the department.

19 (4) The department shall refer complaints to appropriate state  
20 agencies, law enforcement agencies, the attorney general, the long-term  
21 care ombudsman, or other entities if the department lacks authority to  
22 investigate or if its investigation reveals that a follow-up referral  
23 to one or more of these entities is appropriate.

24 (5) The department shall adopt rules that include the following  
25 complaint investigation protocols:

26 (a) Upon receipt of a complaint, the department shall make a  
27 preliminary review of the complaint, assess the severity of the  
28 complaint, and assign an appropriate response time. Complaints  
29 involving imminent danger to the health, safety, or well-being of a  
30 resident must be responded to within two days. When appropriate, the  
31 department shall make an on-site investigation within a reasonable time  
32 after receipt of the complaint or otherwise ensure that complaints are  
33 responded to.

34 (b) The complainant must be: Promptly contacted by the department,  
35 unless anonymous or unavailable despite several attempts by the  
36 department, and informed of the right to discuss alleged violations  
37 with the inspector and to provide other information the complainant  
38 believes will assist the inspector; informed of the department's course

1 of action; and informed of the right to receive a written copy of the  
2 investigation report.

3 (c) In conducting the investigation, the department shall interview  
4 the complainant, unless anonymous, and shall use its best efforts to  
5 interview the resident or residents allegedly harmed by the violations,  
6 and, in addition to facility staff, any available independent sources  
7 of relevant information, including if appropriate the family members of  
8 the resident.

9 (d) Substantiated complaints involving harm to a resident, if an  
10 applicable law or regulation has been violated, shall be subject to one  
11 or more of the actions provided in RCW 18.20.190. Whenever  
12 appropriate, the department shall also give consultation and technical  
13 assistance to the facility.

14 (e) In the best practices of total quality management and  
15 continuous quality improvement, after a department finding of a  
16 violation that is serious, recurring, or uncorrected following a  
17 previous citation, the department shall make an on-site revisit of the  
18 facility to ensure correction of the violation. This subsection does  
19 not prevent the department from enforcing license suspensions or  
20 revocations.

21 (f) Substantiated complaints of neglect, abuse, exploitation, or  
22 abandonment of residents, or suspected criminal violations, shall also  
23 be referred by the department to the appropriate law enforcement  
24 agencies, the attorney general, and appropriate professional  
25 disciplining authority.

26 (6) The department may provide the substance of the complaint to  
27 the licensee before the completion of the investigation by the  
28 department unless such disclosure would reveal the identity of a  
29 complainant, witness, or resident who chooses to remain anonymous.  
30 Neither the substance of the complaint provided to the licensee or  
31 contractor nor any copy of the complaint or related report published,  
32 released, or made otherwise available shall disclose, or reasonably  
33 lead to the disclosure of, the name, title, or identity of any  
34 complainant, or other person mentioned in the complaint, except that  
35 the name of the provider and the name or names of any officer,  
36 employee, or agent of the department conducting the investigation shall  
37 be disclosed after the investigation has been closed and the complaint  
38 has been substantiated. The department may disclose the identity of  
39 the complainant if such disclosure is requested in writing by the

1 complainant. Nothing in this subsection shall be construed to  
2 interfere with the obligation of the long-term care ombudsman program  
3 to monitor the department's licensing, contract, and complaint  
4 investigation files for long-term care facilities.

5 (7) The resident has the right to be free of interference,  
6 coercion, discrimination, and reprisal from a facility in exercising  
7 his or her rights, including the right to voice grievances about  
8 treatment furnished or not furnished. A facility licensed under this  
9 chapter shall not discriminate or retaliate in any manner against a  
10 resident, employee, or any other person on the basis or for the reason  
11 that such resident or any other person made a complaint to the  
12 department, the attorney general, law enforcement agencies, or the  
13 long-term care ombudsman, provided information, or otherwise cooperated  
14 with the investigation of such a complaint. Any attempt to discharge  
15 a resident against the resident's wishes, or any type of retaliatory  
16 treatment of a resident by whom or upon whose behalf a complaint  
17 substantiated by the department has been made to the department, the  
18 attorney general, law enforcement agencies, or the long-term care  
19 ombudsman, within one year of the filing of the complaint, raises a  
20 rebuttable presumption that such action was in retaliation for the  
21 filing of the complaint. "Retaliatory treatment" means, but is not  
22 limited to, monitoring a resident's phone, mail, or visits; involuntary  
23 seclusion or isolation; transferring a resident to a different room  
24 unless requested or based upon legitimate management reasons;  
25 withholding or threatening to withhold food or treatment unless  
26 authorized by a terminally ill resident or his or her representative  
27 pursuant to law; or persistently delaying responses to a resident's  
28 request for service or assistance. A facility licensed under this  
29 chapter shall not willfully interfere with the performance of official  
30 duties by a long-term care ombudsman. The department shall sanction  
31 and may impose a civil penalty of not more than three thousand dollars  
32 for a violation of this subsection.

33 NEW SECTION. **Sec. 215.** Within existing funds, the long-term care  
34 ombudsman shall conduct a follow-up review of the department of  
35 health's licensing inspections and complaint investigations of boarding  
36 homes and of the department of social and health services' monitoring  
37 of boarding homes with contracts under chapter 74.39A RCW. The review  
38 must include, but is not limited to, an examination of the enforcement

1 of resident rights and care standards in boarding homes, the timeliness  
2 of complaint investigations, and compliance by the departments with the  
3 standards set forth in this act. The long-term care ombudsman shall  
4 consult with the departments of health and social and health services,  
5 long-term care facility organizations, resident groups, and senior and  
6 disabled citizen organizations and report to appropriate committees of  
7 the house of representatives and the senate concerning its review of  
8 the departments' enforcement activities and any applicable  
9 recommendations by January 5, 1998.

10 **Sec. 216.** RCW 74.42.450 and 1995 1st sp.s. c 18 s 64 are each  
11 amended to read as follows:

12 (1) The facility shall admit as residents only those individuals  
13 whose needs can be met by:

14 (a) The facility;

15 (b) The facility cooperating with community resources; or

16 (c) The facility cooperating with other providers of care  
17 affiliated or under contract with the facility.

18 (2) The facility shall transfer a resident to a hospital or other  
19 appropriate facility when a change occurs in the resident's physical or  
20 mental condition that requires care or service that the facility cannot  
21 provide. The resident, the resident's guardian, if any, the resident's  
22 next of kin, the attending physician, and the department shall be  
23 consulted at least fifteen days before a transfer or discharge unless  
24 the resident is transferred under emergency circumstances. The  
25 department shall use casework services or other means to insure that  
26 adequate arrangements are made to meet the resident's needs.

27 (3) A resident shall be transferred or discharged only for medical  
28 reasons, the resident's welfare or request, the welfare of other  
29 residents, or nonpayment. A resident may not be discharged for  
30 nonpayment if the discharge would be prohibited by the medicaid  
31 program.

32 (4) If a resident chooses to remain in the nursing facility, the  
33 department shall respect that choice, provided that if the resident is  
34 a medicaid recipient, the resident continues to require a nursing  
35 facility level of care.

36 (5) If the department determines that a resident no longer requires  
37 a nursing facility level of care, the resident shall not be discharged  
38 from the nursing facility until at least thirty days after written

1 notice is given to the resident, the resident's surrogate decision  
2 maker and, if appropriate, a family member or the resident's  
3 representative. A form for requesting a hearing to appeal the  
4 discharge decision shall be attached to the written notice. The  
5 written notice shall include at least the following:

6 (a) The reason for the discharge;

7 (b) A statement that the resident has the right to appeal the  
8 discharge; and

9 (c) The name, address, and telephone number of the state long-term  
10 care ombudsman.

11 (6) If the resident appeals a department discharge decision, the  
12 resident shall not be discharged without the resident's consent until  
13 at least thirty days after a final order is entered upholding the  
14 decision to discharge the resident.

15 (7) Before the facility transfers or discharges a resident, the  
16 facility must first attempt through reasonable accommodations to avoid  
17 the transfer or discharge unless the transfer or discharge is agreed to  
18 by the resident. The facility shall admit or retain only individuals  
19 whose needs it can safely and appropriately serve in the facility with  
20 available staff or through the provision of reasonable accommodations  
21 required by state or federal law. "Reasonable accommodations" has the  
22 meaning given to this term under the federal Americans with  
23 disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other  
24 applicable federal or state antidiscrimination laws and regulations.

25 **PART III**

26 **ESTATE RECOVERY CONSUMER DISCLOSURE**

27 NEW SECTION. Sec. 301. A new section is added to chapter 43.20B  
28 RCW to read as follows:

29 (1) It is the intent of the legislature to ensure that needy  
30 individuals have access to basic long-term care without requiring them  
31 to sell their homes. In the face of rising medical costs and limited  
32 funding for social welfare programs, however, the state's medicaid and  
33 state-funded long-term care programs have placed an increasing  
34 financial burden on the state. By balancing the interests of  
35 individuals with immediate and future unmet medical care needs,  
36 surviving spouses and dependent children, adult nondependent children,  
37 more distant heirs, and the state, the estate recovery provisions of

1 RCW 43.20B.080 and 74.39A.170 provide an equitable and reasonable  
2 method of easing the state's financial burden while ensuring the  
3 continued viability of the medicaid and state-funded long-term care  
4 programs.

5 (2) It is further the intent of the legislature to confirm that  
6 chapter 21, Laws of 1994, effective July 1, 1994, repealed and  
7 substantially reenacted the state's medicaid estate recovery laws and  
8 did not eliminate the department's authority to recover the cost of  
9 medical assistance paid prior to October 1, 1993, from the estates of  
10 deceased recipients regardless of whether they received benefits  
11 before, on, or after July 1, 1994.

12 **Sec. 302.** RCW 43.20B.080 and 1995 1st sp.s. c 18 s 67 are each  
13 amended to read as follows:

14 (1) The department shall file liens, seek adjustment, or otherwise  
15 effect recovery for medical assistance correctly paid on behalf of an  
16 individual (~~as required by this chapter and~~) consistent with 42  
17 U.S.C. Sec. 1396p.

18 (2) Liens may be adjusted by foreclosure in accordance with chapter  
19 61.12 RCW.

20 (3) In the case of an individual who was fifty-five years of age or  
21 older when the individual received medical assistance, the department  
22 shall seek adjustment or recovery from the individual's estate, and  
23 from nonprobate assets of the individual as defined by RCW 11.02.005  
24 (~~except property passing through a community property agreement~~), but  
25 only for medical assistance consisting of nursing facility services,  
26 home and community-based services, other services that the department  
27 determines to be appropriate, and related hospital and prescription  
28 drug services. Recovery from the individual's estate, including  
29 foreclosure of liens imposed under this section, shall be undertaken as  
30 soon as practicable, consistent with (~~the requirements of~~) 42 U.S.C.  
31 Sec. 1396p.

32 (4) The department shall apply the medical assistance estate  
33 recovery law as it existed on the date that benefits were received when  
34 calculating an estate's liability to reimburse the department for those  
35 benefits.

36 (5)(a) The department shall establish procedures consistent with  
37 standards established by the federal department of health and human

1 services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when  
2 such recovery would work an undue hardship.

3 (b) Recovery of medical assistance from a recipient's estate shall  
4 not include property made exempt from claims by federal law or treaty,  
5 including exemption for tribal artifacts that may be held by individual  
6 Native Americans.

7 ~~((5))~~ (6) A lien authorized under subsections (1) through (5) of  
8 this section relates back to attach to any real property that the  
9 decedent had an ownership interest in immediately before death and is  
10 effective as of that date.

11 (7) The department is authorized to adopt rules to effect recovery  
12 under this section. The department may adopt by rule later enactments  
13 of the federal laws referenced in this section.

14 (8) The office of financial management shall review the cost and  
15 feasibility of the department of social and health services collecting  
16 the client copayment for long-term care consistent with the terms and  
17 conditions of RCW 74.39A.120, and the cost impact to community  
18 providers under the current system for collecting the client's  
19 copayment in addition to the amount charged to the client for estate  
20 recovery, and report to the legislature by December 12, 1997.

21 **Sec. 303.** RCW 74.34.010 and 1995 1st sp.s. c 18 s 82 are each  
22 amended to read as follows:

23 The legislature finds that frail elders and vulnerable adults may  
24 be subjected to abuse, neglect, exploitation, or abandonment. The  
25 legislature finds that there are a number of adults sixty years of age  
26 or older who lack the ability to perform or obtain those services  
27 necessary to maintain or establish their well-being. The legislature  
28 finds that many frail elders and vulnerable adults have health problems  
29 that place them in a dependent position. The legislature further finds  
30 that a significant number of frail elders and vulnerable adults have  
31 mental and verbal limitations that leave them vulnerable and incapable  
32 of asking for help and protection.

33 It is the intent of the legislature to prevent or remedy the abuse,  
34 neglect, exploitation, or abandonment of persons sixty years of age or  
35 older who have a functional, mental, or physical inability to care for  
36 or protect themselves.

37 It is the intent of the legislature to assist frail elders and  
38 vulnerable adults by providing these persons with the protection of the

1 courts and with the least-restrictive services, such as home care, and  
2 by preventing or reducing inappropriate institutional care. The  
3 legislature finds that it is in the interests of the public health,  
4 safety, and welfare of the people of the state to provide a procedure  
5 for identifying these vulnerable persons and providing the services and  
6 remedies necessary for their well-being.

7 It is further the intent of the legislature that the cost of  
8 protective services rendered to a frail elder or vulnerable adult under  
9 this chapter that are paid with state funds only not be subject to  
10 recovery from the recipient or the recipient's estate, whether by lien,  
11 adjustment, or any other means of recovery, regardless of the income or  
12 assets of the recipient of the services. In making this exemption the  
13 legislature recognizes that receipt of such services is voluntary and  
14 incentives to decline services or delay permission must be kept to a  
15 minimum. There may be a need to act or intervene quickly to protect  
16 the assets, health, or well-being of a frail elder or vulnerable adult;  
17 to prevent or halt the exploitation, neglect, abandonment, or abuse of  
18 the person or assets of a frail elder or vulnerable adult; or to  
19 prevent or limit inappropriate placement or retention in an institution  
20 providing long-term care. The delivery of such services is less likely  
21 to be impeded, and consent to such services will be more readily  
22 obtained, if the cost of these services is not subject to recovery.  
23 The legislature recognizes that there will be a cost in not seeking  
24 financial recovery for such services, but that this cost may be offset  
25 by preventing costly and inappropriate institutional placement.

26 NEW SECTION. Sec. 304. A new section is added to chapter 74.34  
27 RCW to read as follows:

28 The cost of benefits and services provided to a frail elder or  
29 vulnerable adult under this chapter with state funds only does not  
30 constitute an obligation or lien and is not recoverable from the  
31 recipient of the services or from the recipient's estate, whether by  
32 lien, adjustment, or any other means of recovery.

33 **Sec. 305.** RCW 74.39A.170 and 1995 1st sp.s. c 18 s 56 are each  
34 amended to read as follows:

35 (1) All payments made in state-funded long-term care shall be  
36 recoverable as if they were medical assistance payments subject to  
37 recovery under 42 U.S.C. Sec. 1396p and chapter 43.20B RCW(~~(, but)~~)



1 without regard to the recipient's age, except the cost of state-funded  
2 adult protective services provided under chapter 74.34 RCW to frail  
3 elders and vulnerable adults.

4 (2) In determining eligibility for state-funded long-term care  
5 services programs, except for protective services provided to frail  
6 elders and vulnerable adults, the department shall impose the same  
7 rules with respect to the transfer of assets for less than fair market  
8 value as are imposed under 42 U.S.C. 1396p with respect to nursing home  
9 and home and community services.

10 (3) It is the responsibility of the department to fully disclose in  
11 advance verbally and in writing, in easy to understand language, the  
12 terms and conditions of estate recovery. The disclosure must include  
13 billing and recovery and copayment procedures to all persons offered  
14 long-term care services subject to recovery of payments.

15 (4) It is the intent of the legislature that the department  
16 collect, to the extent possible, all costs associated with the  
17 individual provider program including, but not limited to, training,  
18 taxes, and fringe benefits.

19 By November 15, 1997, the secretary shall identify and report to  
20 the legislature:

21 (a) The costs of identifying or tracking direct and indirect costs  
22 associated with the individual provider program, including any  
23 necessary changes to the department's information systems; and

24 (b) Any federal or state laws limiting the department's ability to  
25 recover direct or indirect costs of the individual provider program  
26 from the estate.

27 (5) To the extent funds are available and in compliance with  
28 federal law, the department is responsible for also notifying the  
29 client, or his or her advocate, quarterly of the types of services  
30 used, charges for services, credit amount of copayment, and the  
31 difference (debt) that will be charged against the estate.

32 **PART IV**  
33 **ADULT FAMILY HOMES**

34 **Sec. 401.** RCW 70.128.175 and 1995 1st sp.s. c 18 s 29 are each  
35 amended to read as follows:

1 (1) Unless the context clearly requires otherwise, these  
2 definitions shall apply throughout this section and RCW 35.63.140,  
3 35A.63.149, 36.70.755, 35.22.680, and 36.32.560:

4 (a) "Adult family home" means a regular family abode ~~((of))~~ in  
5 which a person or persons ~~((providing))~~ provides personal care, special  
6 care, room, and board to more than one but not more than six adults who  
7 are not related by blood or marriage to the person or persons providing  
8 the services.

9 (b) "Residential care facility" means a facility that cares for at  
10 least five, but not more than fifteen functionally disabled persons,  
11 that is not licensed pursuant to chapter 70.128 RCW.

12 (c) "Department" means the department of social and health  
13 services.

14 (2) An adult family home shall be considered a residential use of  
15 property for zoning and public and private utility rate purposes.  
16 Adult family homes shall be a permitted use in all areas zoned for  
17 residential or commercial purposes, including areas zoned for single  
18 family dwellings.

19 NEW SECTION. **Sec. 402.** The department of social and health  
20 services shall implement a limited moratorium on the authorization of  
21 adult family home licenses until December 12, 1997, or until the  
22 secretary has determined that all adult family home and group home  
23 safety and quality of care standards have been reviewed by the  
24 department, determined by the secretary to reasonably protect the life,  
25 safety, and health of residents, and has notified all adult family home  
26 and group home operators of the standards of care or any modifications  
27 to the existing standards. This limited moratorium shall in no way  
28 prevent a person eligible to receive services from receiving the same  
29 or equivalent chronic long-term care services. In the event of a need  
30 for such services, the department shall develop a process for  
31 determining the availability of chronic long-term care residential  
32 services on a case-by-case basis to determine if an adult family home  
33 license should be granted to accommodate the needs of a particular  
34 geographical or ethnic community. The department may review the cost  
35 and feasibility of creating an adult family home advisory committee.  
36 The secretary shall make the final determination on individual case  
37 licensure until December 12, 1997, or until the moratorium has been

1 removed and determine if an adult family home advisory committee should  
2 be developed.

3 NEW SECTION. **Sec. 403.** The department of social and health  
4 services is authorized to adopt rules, including emergency rules, for  
5 implementing the provisions of section 402 of this act.

6 **PART V**  
7 **MISCELLANEOUS PROVISIONS**

8 NEW SECTION. **Sec. 501.** The department of health in cooperation  
9 with the department of social and health services may develop a plan  
10 for implementing a pilot program for accrediting boarding homes  
11 licensed under RCW 18.20.020 with a recognized national nongovernmental  
12 accreditation organization or an organization with experience in  
13 developing and implementing accreditation programs in at least two  
14 states. The pilot plan, if funded, shall be developed with the input  
15 of residents, provider representatives, and other vested interest  
16 groups. If funded, the plan shall review the overall feasibility of  
17 implementation, cost or savings to the department of health, impact on  
18 client health and safety, and financial and other impacts to the  
19 boarding industry. If funded, the pilot boarding home accreditation  
20 plan shall be presented to the appropriate committees of the house of  
21 representatives and the senate by January 5, 1998.

22 NEW SECTION. **Sec. 502.** The department of community, trade, and  
23 economic development, in collaboration with the organizations  
24 designated by state or federal law to provide protection and advocacy  
25 and ombuds services for older Americans and people with disabilities  
26 using publicly funded long-term care residential services, may conduct  
27 a study, make recommendations, and draft legislation necessary to  
28 implement changes that will result in a single coordinating umbrella  
29 for ombuds and advocacy services that maximizes efficiency, minimizes  
30 duplication, and allows for specialization in target populations such  
31 as developmental disabilities, older Americans, and mental illness, and  
32 assures that the providers of ombuds services have sufficient expertise  
33 and experience with target populations and the systems that serve them.  
34 The study, if funded, shall include review of all relevant federal and  
35 state laws and regulations, including but not limited to the older

1 Americans act, 42 U.S.C. 3001 as amended, the developmental  
2 disabilities assistance and bill of rights act as amended, 42 U.S.C.  
3 6000, the protection and advocacy for persons with mental illness act  
4 as amended, 42 U.S.C. 10801, the rehabilitation act of 1973 as amended,  
5 29 U.S.C. 701, the long-term care ombudsman statute chapter 43.190 RCW,  
6 developmental disabilities statute, Title 71A RCW, and the community  
7 mental health services regulations, chapter 275-57 WAC. If funded, the  
8 study shall identify the gaps in current ombuds and advocacy services,  
9 and develop a cost assessment for implementation of a comprehensive  
10 umbrella of ombuds and advocacy services. If funded, the department of  
11 community, trade, and economic development shall report to the  
12 appropriate committees of the house of representatives and the senate  
13 by January 10, 1998.

14 NEW SECTION. **Sec. 503.** The department of social and health  
15 services may review the cost and feasibility of implementing  
16 developmental disabilities certification standards for community  
17 residential alternatives to ensure that services are adequate for the  
18 health, safety, care, treatment, and support of persons with  
19 developmental disabilities. The community residential alternatives  
20 shall include, but not be limited to, entities that contract or  
21 directly provide services with the division of developmental  
22 disabilities such as group homes, agency alternative living, intensive  
23 and other tenant support services, adult family homes, or boarding  
24 homes. Certification standards shall review at a minimum the following  
25 areas. Administrative and financial capabilities of the provider,  
26 health and safety practices, the opportunities for the individuals  
27 served by the programs to have power and choice in their lives,  
28 opportunities to develop friendships and relationships, and  
29 opportunities to develop self-respect and to gain respect from others,  
30 to participate in the community, and to gain independent living skills.  
31 If the review is funded, the department shall also recommend whether  
32 adult family homes that choose to provide services only to persons with  
33 developmental disabilities should receive special certification or  
34 licensure apart from or in place of the existing adult family home  
35 license. The review may also recommend the type and amount of provider  
36 training necessary to appropriately support persons with developmental  
37 disabilities in community residential alternatives. The department may  
38 include the assistance of other departments, vested interest groups,

1 and family members in the development of recommendations. If funded,  
2 the department shall report to the appropriate committees of the house  
3 of representatives and the senate by January 30, 1998.

4 NEW SECTION. **Sec. 504.** Any section or provision of this act that  
5 may be susceptible to more than one construction shall be interpreted  
6 in favor of the construction most likely to comply with federal laws  
7 entitling this state to receive federal funds for the various programs  
8 of the department of health or the department of social and health  
9 services. If any section of this act is found to be in conflict with  
10 federal requirements that are a prescribed condition of the allocation  
11 of federal funds to the state, or to any departments or agencies  
12 thereof, the conflicting part is declared to be inoperative solely to  
13 the extent of the conflict. The rules issued under this act shall meet  
14 federal requirements that are a necessary condition to the receipt of  
15 federal funds by the state.

16 NEW SECTION. **Sec. 505.** A new section is added to chapter 43.70  
17 RCW to read as follows:

18 The department of health, and the disciplining authorities as  
19 agents of the department of social and health services for purposes of  
20 this section in cooperation with the department of social and health  
21 services, shall implement a nursing home resident protection program in  
22 accordance with guidelines established by the federal health care  
23 financing administration. The department of social and health services  
24 shall retain authority to review and investigate all allegations of  
25 nursing home resident neglect, abuse, and misappropriation of resident  
26 property. If the department of social and health services makes a  
27 preliminary determination, based upon credible evidence and an  
28 investigation by the department, that a licensed, certified, or  
29 registered health care provider listed in RCW 18.130.040 and used by  
30 the nursing home to provide services to a resident, except for a  
31 certified or registered nursing assistant, has neglected or abused a  
32 resident or misappropriated a resident's property, the department of  
33 social and health services shall immediately refer its determination  
34 regarding the individual to the appropriate disciplining authority, as  
35 defined in chapter 18.130 RCW. The disciplining authority shall pursue  
36 administrative adjudicatory or disciplinary proceedings according to  
37 federal timelines and requirements, and consistent with the

1 administrative procedure act, chapter 34.05 RCW. Meeting federal  
2 requirements for the resident protection program shall not compromise  
3 due process protections when state disciplining authorities take  
4 actions against health professionals regulated under the uniform  
5 disciplinary act, chapter 18.130 RCW. The secretary of social and  
6 health services shall have access to all information concerning any  
7 complaint referred under the resident protection program to the  
8 secretary of health and the other disciplining authorities. If the  
9 department of social and health services determines that the  
10 disciplining authority has failed to meet the applicable requirements  
11 of federal law for the resident protection program, jurisdiction on the  
12 individual case shall revert to the secretary of social and health  
13 services for actions under the federal law, which shall not interfere  
14 with the action under the uniform disciplinary act. The secretary of  
15 social and health services and the secretary of health shall enter into  
16 an interagency agreement to implement the provisions of this section.  
17 A finding of fact, stipulated finding of fact, agreed order, or final  
18 order issued by the disciplining authority that finds the individual  
19 health care provider guilty of neglect, abuse, or misappropriation of  
20 resident property shall be promptly reported to the department of  
21 social and health services.

22 NEW SECTION. **Sec. 506.** A new section is added to chapter 18.51  
23 RCW to read as follows:

24 The department of social and health services shall retain authority  
25 to review and investigate all allegations of nursing home resident  
26 neglect, abuse, and misappropriation of resident property. The  
27 department of social and health services in cooperation with the  
28 department of health and disciplining authorities shall implement a  
29 nursing home resident protection program according to guidelines  
30 established by the federal health care financing administration. The  
31 department of social and health services, as the federally responsible  
32 state agency, shall conduct or coordinate the conduct of the most  
33 appropriate and timely review and investigation of all credible  
34 allegations of nursing home resident neglect, abuse, and  
35 misappropriation of resident property. If the department of social and  
36 health services makes a preliminary determination, based upon credible  
37 evidence and an investigation by the department, that a licensed,  
38 certified, or registered health care provider listed in RCW 18.130.040

1 and used by the nursing home to provide services to a resident, except  
2 for a certified or registered nursing assistant, has neglected or  
3 abused a resident or misappropriated a resident's property, the  
4 department of social and health services shall immediately refer its  
5 determination regarding the individual to the department of health or  
6 disciplining authority, as defined in RCW 18.130.020. The disciplining  
7 authority shall pursue administrative adjudicatory or disciplinary  
8 proceedings according to federal timelines and requirements, and  
9 consistent with the administrative procedure act, chapter 34.05 RCW.  
10 When the department of social and health services determines such  
11 proceeding does not meet federal timelines and requirements, the  
12 department of social and health services shall have the authority to  
13 take federally required actions. Other individuals used by a nursing  
14 home, including certified and registered nursing assistants, with a  
15 preliminary determination of neglect, abuse, or misappropriation of  
16 resident property shall receive notice and the right to an  
17 administrative fair hearing from the department of social and health  
18 services according to federal timelines and requirements. An  
19 individual with a finding of fact, stipulated finding of fact, agreed  
20 order, or final order issued by the department of social and health  
21 services or the disciplining authority that finds the individual guilty  
22 of neglect, abuse, or misappropriation of resident property shall not  
23 be employed in the care of and have unsupervised access to vulnerable  
24 adults, as defined in chapter 74.34 RCW. Upon receipt from the  
25 disciplining authority of a finding of fact, stipulated finding of  
26 fact, agreed order, or final order that finds the individual health  
27 care provider guilty of neglect, abuse, or misappropriation of resident  
28 property, the department of social and health services shall report  
29 this information to the nursing home where the incident occurred, the  
30 long-term care facility where the individual works, if different, and  
31 other entities serving vulnerable adults upon request by the entity.

32 NEW SECTION. **Sec. 507.** A new section is added to chapter 9A.42  
33 RCW to read as follows:

34 The legislature finds that there is a significant need to protect  
35 children and dependent persons, including frail elder and vulnerable  
36 adults, from abuse and neglect by their parents, by persons entrusted  
37 with their physical custody, or by persons employed to provide them  
38 with the basic necessities of life. The legislature further finds that

1 such abuse and neglect often takes the forms of either withholding from  
2 them the basic necessities of life, including food, water, shelter,  
3 clothing, and health care, or abandoning them, or both. Therefore, it  
4 is the intent of the legislature that criminal penalties be imposed on  
5 those guilty of such abuse or neglect. It is the intent of the  
6 legislature that a person who, in good faith, is furnished Christian  
7 Science treatment by a duly accredited Christian Science practitioner  
8 in lieu of medical care is not considered deprived of medically  
9 necessary health care or abandoned. Prosecutions under this chapter  
10 shall be consistent with the rules of evidence, including hearsay,  
11 under law.

12 **Sec. 508.** RCW 9A.42.010 and 1996 c 302 s 1 are each amended to  
13 read as follows:

14 As used in this chapter:

15 (1) "Basic necessities of life" means food, water, shelter,  
16 clothing, and medically necessary health care, including but not  
17 limited to health-related treatment or activities, hygiene, oxygen, and  
18 medication.

19 (2)(a) "Bodily injury" means physical pain or injury, illness, or  
20 an impairment of physical condition;

21 (b) "Substantial bodily harm" means bodily injury which involves a  
22 temporary but substantial disfigurement, or which causes a temporary  
23 but substantial loss or impairment of the function of any bodily part  
24 or organ, or which causes a fracture of any bodily part;

25 (c) "Great bodily harm" means bodily injury which creates a high  
26 probability of death, or which causes serious permanent disfigurement,  
27 or which causes a permanent or protracted loss or impairment of the  
28 function of any bodily part or organ.

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

30 (4) "Dependent person" means a person who, because of physical or  
31 mental disability, or because of extreme advanced age, is dependent  
32 upon another person to provide the basic necessities of life. A  
33 resident of a nursing home, as defined in RCW 18.51.010, a resident of  
34 an adult family home, as defined in RCW 70.128.010, and a frail elder  
35 or vulnerable adult, as defined in RCW 74.34.020(8), is presumed to be  
36 a dependent person for purposes of this chapter.

37 (5) "Employed" means hired by a dependent person, another person  
38 acting on behalf of a dependent person, or by an organization or



1 governmental entity, to provide to a dependent person any of the basic  
2 necessities of life. A person may be "employed" regardless of whether  
3 the person is paid for the services or, if paid, regardless of who pays  
4 for the person's services.

5 (6) "Parent" has its ordinary meaning and also includes a guardian  
6 and the authorized agent of a parent or guardian.

7 (7) "Abandons" means leaving a child or other dependent person  
8 without the means or ability to obtain one or more of the basic  
9 necessities of life.

10 **Sec. 509.** RCW 9A.42.050 and 1986 c 250 s 5 are each amended to  
11 read as follows:

12 In any prosecution for criminal mistreatment, it shall be a defense  
13 that the withholding of the basic necessities of life is due to  
14 financial inability only if the person charged has made a reasonable  
15 effort to obtain adequate assistance. This defense is available to a  
16 person employed to provide the basic necessities of life only when the  
17 agreed-upon payment has not been made.

18 **Sec. 510.** RCW 9A.42.020 and 1986 c 250 s 2 are each amended to  
19 read as follows:

20 (1) A parent of a child ((~~or~~)), the person entrusted with the  
21 physical custody of a child or dependent person, or a person employed  
22 to provide to the child or dependent person the basic necessities of  
23 life is guilty of criminal mistreatment in the first degree if he or  
24 she recklessly, as defined in RCW 9A.08.010, causes great bodily harm  
25 to a child or dependent person by withholding any of the basic  
26 necessities of life.

27 (2) Criminal mistreatment in the first degree is a class B felony.

28 **Sec. 511.** RCW 9A.42.030 and 1986 c 250 s 3 are each amended to  
29 read as follows:

30 (1) A parent of a child ((~~or~~)), the person entrusted with the  
31 physical custody of a child or dependent person, or a person employed  
32 to provide to the child or dependent person the basic necessities of  
33 life is guilty of criminal mistreatment in the second degree if he or  
34 she recklessly, as defined in RCW 9A.08.010, either (a) creates an  
35 imminent and substantial risk of death or great bodily harm, or (b)

1 causes substantial bodily harm by withholding any of the basic  
2 necessities of life.

3 (2) Criminal mistreatment in the second degree is a class C felony.

4 NEW SECTION. **Sec. 512.** A new section is added to chapter 9A.42  
5 RCW to read as follows:

6 RCW 9A.42.020 and 9A.42.030 do not apply when a terminally ill  
7 person or his or her designee requests palliative care and the person  
8 receives palliative care from a licensed home health agency, hospice  
9 agency, nursing home, or hospital who is providing care under the  
10 medical direction of a physician.

11 **Sec. 513.** RCW 9A.44.010 and 1994 c 271 s 302 are each amended to  
12 read as follows:

13 As used in this chapter:

14 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs  
15 upon any penetration, however slight, and

16 (b) Also means any penetration of the vagina or anus however  
17 slight, by an object, when committed on one person by another, whether  
18 such persons are of the same or opposite sex, except when such  
19 penetration is accomplished for medically recognized treatment or  
20 diagnostic purposes, and

21 (c) Also means any act of sexual contact between persons involving  
22 the sex organs of one person and the mouth or anus of another whether  
23 such persons are of the same or opposite sex.

24 (2) "Sexual contact" means any touching of the sexual or other  
25 intimate parts of a person done for the purpose of gratifying sexual  
26 desire of either party or a third party.

27 (3) "Married" means one who is legally married to another, but does  
28 not include a person who is living separate and apart from his or her  
29 spouse and who has filed in an appropriate court for legal separation  
30 or for dissolution of his or her marriage.

31 (4) "Mental incapacity" is that condition existing at the time of  
32 the offense which prevents a person from understanding the nature or  
33 consequences of the act of sexual intercourse whether that condition is  
34 produced by illness, defect, the influence of a substance or from some  
35 other cause.

1 (5) "Physically helpless" means a person who is unconscious or for  
2 any other reason is physically unable to communicate unwillingness to  
3 an act.

4 (6) "Forcible compulsion" means physical force which overcomes  
5 resistance, or a threat, express or implied, that places a person in  
6 fear of death or physical injury to herself or himself or another  
7 person, or in fear that she or he or another person will be kidnapped.

8 (7) "Consent" means that at the time of the act of sexual  
9 intercourse or sexual contact there are actual words or conduct  
10 indicating freely given agreement to have sexual intercourse or sexual  
11 contact.

12 (8) "Significant relationship" means a situation in which the  
13 perpetrator is:

14 (a) A person who undertakes the responsibility, professionally or  
15 voluntarily, to provide education, health, welfare, or organized  
16 recreational activities principally for minors; (~~(or)~~)

17 (b) A person who in the course of his or her employment supervises  
18 minors; or

19 (c) A person who provides welfare, health or residential  
20 assistance, personal care, or organized recreational activities to  
21 frail elders or vulnerable adults, including a provider, employee,  
22 temporary employee, volunteer, or independent contractor who supplies  
23 services to long-term care facilities licensed or required to be  
24 licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home  
25 health, hospice, or home care agencies licensed or required to be  
26 licensed under chapter 70.127 RCW, but not including a consensual  
27 sexual partner.

28 (9) "Abuse of a supervisory position" means a direct or indirect  
29 threat or promise to use authority to the detriment or benefit of a  
30 minor.

31 (10) "Developmentally disabled," for purposes of RCW  
32 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a  
33 developmental disability as defined in RCW 71A.10.020.

34 (11) "Person with supervisory authority," for purposes of RCW  
35 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any  
36 proprietor or employee of any public or private care or treatment  
37 facility who directly supervises developmentally disabled, mentally  
38 disordered, or chemically dependent persons at the facility.

1 (12) "Mentally disordered person" for the purposes of RCW  
2 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental  
3 disorder" as defined in RCW 71.05.020(2).

4 (13) "Chemically dependent person" for purposes of RCW  
5 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically  
6 dependent" as defined in RCW 70.96A.020(4).

7 (14) "Health care provider" for purposes of RCW 9A.44.050 and  
8 9A.44.100 means a person who is, holds himself or herself out to be, or  
9 provides services as if he or she were: (a) A member of a health care  
10 profession under chapter 18.130 RCW; or (b) registered or certified  
11 under chapter 18.19 RCW, regardless of whether the health care provider  
12 is licensed, certified, or registered by the state.

13 (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means  
14 the active delivery of professional services by a health care provider  
15 which the health care provider holds himself or herself out to be  
16 qualified to provide.

17 (16) "Frail elder or vulnerable adult" means a person sixty years  
18 of age or older who has the functional, mental, or physical inability  
19 to care for himself or herself. "Frail elder or vulnerable adult" also  
20 includes a person found incapacitated under chapter 11.88 RCW, a person  
21 over eighteen years of age who has a developmental disability under  
22 chapter 71A.10 RCW, a person admitted to a long-term care facility that  
23 is licensed or required to be licensed under chapter 18.20, 18.51,  
24 72.36, or 70.128 RCW, and a person receiving services from a home  
25 health, hospice, or home care agency licensed or required to be  
26 licensed under chapter 70.127 RCW.

27 **Sec. 514.** RCW 9A.44.050 and 1993 c 477 s 2 are each amended to  
28 read as follows:

29 (1) A person is guilty of rape in the second degree when, under  
30 circumstances not constituting rape in the first degree, the person  
31 engages in sexual intercourse with another person:

32 (a) By forcible compulsion;

33 (b) When the victim is incapable of consent by reason of being  
34 physically helpless or mentally incapacitated;

35 (c) When the victim is developmentally disabled and the perpetrator  
36 is a person who is not married to the victim and who has supervisory  
37 authority over the victim;

1 (d) When the perpetrator is a health care provider, the victim is  
2 a client or patient, and the sexual intercourse occurs during a  
3 treatment session, consultation, interview, or examination. It is an  
4 affirmative defense that the defendant must prove by a preponderance of  
5 the evidence that the client or patient consented to the sexual  
6 intercourse with the knowledge that the sexual intercourse was not for  
7 the purpose of treatment; ~~((or))~~

8 (e) When the victim is a resident of a facility for mentally  
9 disordered or chemically dependent persons and the perpetrator is a  
10 person who is not married to the victim and has supervisory authority  
11 over the victim; or

12 (f) When the victim is a frail elder or vulnerable adult and the  
13 perpetrator is a person who is not married to the victim and who has a  
14 significant relationship with the victim.

15 (2) Rape in the second degree is a class A felony.

16 **Sec. 515.** RCW 9A.44.100 and 1993 c 477 s 3 are each amended to  
17 read as follows:

18 (1) A person is guilty of indecent liberties when he knowingly  
19 causes another person who is not his spouse to have sexual contact with  
20 him or another:

21 (a) By forcible compulsion; ~~((or))~~

22 (b) When the other person is incapable of consent by reason of  
23 being mentally defective, mentally incapacitated, or physically  
24 helpless;

25 (c) When the victim is developmentally disabled and the perpetrator  
26 is a person who is not married to the victim and who has supervisory  
27 authority over the victim;

28 (d) When the perpetrator is a health care provider, the victim is  
29 a client or patient, and the sexual contact occurs during a treatment  
30 session, consultation, interview, or examination. It is an affirmative  
31 defense that the defendant must prove by a preponderance of the  
32 evidence that the client or patient consented to the sexual contact  
33 with the knowledge that the sexual contact was not for the purpose of  
34 treatment; ~~((or))~~

35 (e) When the victim is a resident of a facility for mentally  
36 disordered or chemically dependent persons and the perpetrator is a  
37 person who is not married to the victim and has supervisory authority  
38 over the victim; or

1        (f) When the victim is a frail elder or vulnerable adult and the  
2 perpetrator is a person who is not married to the victim and who has a  
3 significant relationship with the victim.

4        (2) Indecent liberties is a class B felony.

5        **Sec. 516.** RCW 18.130.040 and 1996 c 200 s 32 and 1996 c 81 s 5 are  
6 each reenacted and amended to read as follows:

7        (1) This chapter applies only to the secretary and the boards and  
8 commissions having jurisdiction in relation to the professions licensed  
9 under the chapters specified in this section. This chapter does not  
10 apply to any business or profession not licensed under the chapters  
11 specified in this section.

12        (2)(a) The secretary has authority under this chapter in relation  
13 to the following professions:

14        (i) Dispensing opticians licensed under chapter 18.34 RCW;

15        (ii) Naturopaths licensed under chapter 18.36A RCW;

16        (iii) Midwives licensed under chapter 18.50 RCW;

17        (iv) Ocularists licensed under chapter 18.55 RCW;

18        (v) Massage operators and businesses licensed under chapter 18.108  
19 RCW;

20        (vi) Dental hygienists licensed under chapter 18.29 RCW;

21        (vii) Acupuncturists licensed under chapter 18.06 RCW;

22        (viii) Radiologic technologists certified and X-ray technicians  
23 registered under chapter 18.84 RCW;

24        (ix) Respiratory care practitioners certified under chapter 18.89  
25 RCW;

26        (x) Persons registered or certified under chapter 18.19 RCW;

27        (xi) Persons registered as nursing pool operators under chapter  
28 18.52C RCW;

29        (xii) Nursing assistants registered or certified under chapter  
30 ~~((18.79))~~ 18.88A RCW;

31        (xiii) Health care assistants certified under chapter 18.135 RCW;

32        (xiv) Dietitians and nutritionists certified under chapter 18.138  
33 RCW;

34        (xv) Sex offender treatment providers certified under chapter  
35 18.155 RCW;

36        (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW  
37 18.71.205;

1 (xvii) Persons registered as adult family home providers and  
2 resident managers under RCW 18.48.020; and  
3 (xviii) Denturists licensed under chapter 18.30 RCW.  
4 (b) The boards and commissions having authority under this chapter  
5 are as follows:  
6 (i) The podiatric medical board as established in chapter 18.22  
7 RCW;  
8 (ii) The chiropractic quality assurance commission as established  
9 in chapter 18.25 RCW;  
10 (iii) The dental quality assurance commission as established in  
11 chapter 18.32 RCW;  
12 (iv) The board of hearing and speech as established in chapter  
13 18.35 RCW;  
14 (v) The board of examiners for nursing home administrators as  
15 established in chapter 18.52 RCW;  
16 (vi) The optometry board as established in chapter 18.54 RCW  
17 governing licenses issued under chapter 18.53 RCW;  
18 (vii) The board of osteopathic medicine and surgery as established  
19 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and  
20 18.57A RCW;  
21 (viii) The board of pharmacy as established in chapter 18.64 RCW  
22 governing licenses issued under chapters 18.64 and 18.64A RCW;  
23 (ix) The medical quality assurance commission as established in  
24 chapter 18.71 RCW governing licenses and registrations issued under  
25 chapters 18.71 and 18.71A RCW;  
26 (x) The board of physical therapy as established in chapter 18.74  
27 RCW;  
28 (xi) The board of occupational therapy practice as established in  
29 chapter 18.59 RCW;  
30 (xii) The nursing care quality assurance commission as established  
31 in chapter 18.79 RCW governing licenses issued under that chapter;  
32 (xiii) The examining board of psychology and its disciplinary  
33 committee as established in chapter 18.83 RCW; and  
34 (xiv) The veterinary board of governors as established in chapter  
35 18.92 RCW.  
36 (3) In addition to the authority to discipline license holders, the  
37 disciplining authority has the authority to grant or deny licenses  
38 based on the conditions and criteria established in this chapter and  
39 the chapters specified in subsection (2) of this section. This chapter

1 also governs any investigation, hearing, or proceeding relating to  
2 denial of licensure or issuance of a license conditioned on the  
3 applicant's compliance with an order entered pursuant to RCW 18.130.160  
4 by the disciplining authority.

5 (4) All disciplining authorities shall adopt procedures to ensure  
6 substantially consistent application of this chapter, the Uniform  
7 Disciplinary Act, among the disciplining authorities listed in  
8 subsection (2) of this section.

9 **Sec. 517.** RCW 18.130.200 and 1986 c 259 s 12 are each amended to  
10 read as follows:

11 A person who attempts to obtain ~~((or))~~, obtains, or attempts to  
12 maintain a license by willful misrepresentation or fraudulent  
13 representation is guilty of a gross misdemeanor.

14 **Sec. 518.** RCW 43.43.842 and 1992 c 104 s 1 are each amended to  
15 read as follows:

16 (1)(a) The secretary of social and health services and the  
17 secretary of health shall adopt additional requirements for the  
18 licensure or relicensure of agencies ~~((or))~~, facilities ((which)), and  
19 licensed individuals who provide care and treatment to vulnerable  
20 adults, including nursing pools registered under chapter 18.52C RCW.  
21 These additional requirements shall ensure that any person associated  
22 with a licensed agency or facility having ~~((direct—contact))~~  
23 unsupervised access with a vulnerable adult shall not have been:  
24 ~~((+a))~~ (i) Convicted of a crime against persons as defined in RCW  
25 43.43.830, except as provided in this section; ~~((+b))~~ (ii) convicted  
26 of crimes relating to financial exploitation as defined in RCW  
27 43.43.830, except as provided in this section; ~~((+c))~~ (iii) found in  
28 any disciplinary board final decision to have abused a vulnerable adult  
29 under RCW 43.43.830; or ~~((+d))~~ (iv) the subject in a protective  
30 proceeding under chapter 74.34 RCW.

31 (b) A person associated with a licensed agency or facility who has  
32 unsupervised access with a vulnerable adult shall make the disclosures  
33 specified in RCW 43.43.834(2). The person shall make the disclosures  
34 in writing, sign, and swear to the contents under penalty of perjury.  
35 The person shall, in the disclosures, specify all crimes against  
36 children or other persons, and all crimes relating to financial  
37 exploitation as defined in RCW 43.43.830, committed by the person.



1 (2) The rules adopted under this section shall permit the licensee  
2 to consider the criminal history of an applicant for employment in a  
3 licensed facility when the applicant has one or more convictions for a  
4 past offense and:

5 (a) The offense was simple assault, assault in the fourth degree,  
6 or the same offense as it may be renamed, and three or more years have  
7 passed between the most recent conviction and the date of application  
8 for employment;

9 (b) The offense was prostitution, or the same offense as it may be  
10 renamed, and three or more years have passed between the most recent  
11 conviction and the date of application for employment;

12 (c) The offense was theft in the third degree, or the same offense  
13 as it may be renamed, and three or more years have passed between the  
14 most recent conviction and the date of application for employment;

15 (d) The offense was theft in the second degree, or the same offense  
16 as it may be renamed, and five or more years have passed between the  
17 most recent conviction and the date of application for employment;

18 (e) The offense was forgery, or the same offense as it may be  
19 renamed, and five or more years have passed between the most recent  
20 conviction and the date of application for employment.

21 The offenses set forth in (a) through (e) of this subsection do not  
22 automatically disqualify an applicant from employment by a licensee.  
23 Nothing in this section may be construed to require the employment of  
24 any person against a licensee's judgment.

25 (3) In consultation with law enforcement personnel, the secretary  
26 of social and health services and the secretary of health shall  
27 investigate, or cause to be investigated, the conviction record and the  
28 protection proceeding record information under this chapter (~~((43.43 RCW~~  
29 ~~of each agency or facility and its))~~ of the staff of each agency or  
30 facility under their respective jurisdictions seeking licensure or  
31 relicensure. An individual responding to a criminal background inquiry  
32 request from his or her employer or potential employer shall disclose  
33 the information about his or her criminal history under penalty of  
34 perjury. The secretaries shall use the information solely for the  
35 purpose of determining eligibility for licensure or relicensure.  
36 Criminal justice agencies shall provide the secretaries such  
37 information as they may have and that the secretaries may require for  
38 such purpose.

1       **Sec. 519.** RCW 70.124.020 and 1996 c 178 s 24 are each amended to  
2 read as follows:

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

5       (1) "Court" means the superior court of the state of Washington.

6       (2) "Law enforcement agency" means the police department, the  
7 director of public safety, or the office of the sheriff.

8       (3) "Practitioner of the healing arts" or "practitioner" means a  
9 person licensed by this state to practice podiatric medicine and  
10 surgery, optometry, pharmacy, physical therapy, chiropractic, nursing,  
11 dentistry, osteopathic medicine and surgery, or medicine and surgery.  
12 The term "practitioner" shall include a nurses aide, a nursing home  
13 administrator licensed under chapter 18.52 RCW, and a duly accredited  
14 Christian Science practitioner: PROVIDED, HOWEVER, That a nursing home  
15 patient who is being furnished Christian Science treatment by a duly  
16 accredited Christian Science practitioner shall not be considered, for  
17 that reason alone, a neglected patient for the purposes of this  
18 chapter.

19       (4) "Department" means the state department of social and health  
20 services.

21       (5) "Nursing home" has the meaning prescribed by RCW 18.51.010.

22       (6) "Social worker" means anyone engaged in a professional capacity  
23 during the regular course of employment in encouraging or promoting the  
24 health, welfare, support, or education of nursing home patients, or  
25 providing social services to nursing home patients, whether in an  
26 individual capacity or as an employee or agent of any public or private  
27 organization or institution.

28       (7) "Psychologist" means any person licensed to practice psychology  
29 under chapter 18.83 RCW, whether acting in an individual capacity or as  
30 an employee or agent of any public or private organization or  
31 institution.

32       (8) "Pharmacist" means any registered pharmacist under chapter  
33 18.64 RCW, whether acting in an individual capacity or as an employee  
34 or agent of any public or private organization or institution.

35       (9) "Abuse or neglect" or "patient abuse or neglect" means the  
36 nonaccidental physical injury or condition, sexual abuse, or negligent  
37 treatment of a nursing home or state hospital patient under  
38 circumstances which indicate that the patient's health, welfare,  
39 ((and)) or safety is harmed thereby.

1 (10) "Negligent treatment" means an act or omission which evinces  
2 a serious disregard of consequences of such magnitude as to constitute  
3 a clear and present danger to the patient's health, welfare, ~~((and))~~ or  
4 safety.

5 (11) "State hospital" means any hospital operated and maintained by  
6 the state for the care of the mentally ill under chapter 72.23 RCW.

7 **Sec. 520.** RCW 70.124.040 and 1981 c 174 s 4 are each amended to  
8 read as follows:

9 (1) Where a report is ~~((deemed warranted))~~ required under RCW  
10 70.124.030, an immediate oral report shall be made by telephone or  
11 otherwise to either a law enforcement agency or to the department and,  
12 upon request, shall be followed by a report in writing. The reports  
13 shall contain the following information, if known:

14 (a) The name and address of the person making the report;

15 (b) The name and address of the nursing home or state hospital  
16 patient;

17 (c) The name and address of the patient's relatives having  
18 responsibility for the patient;

19 (d) The nature and extent of the injury or injuries;

20 (e) The nature and extent of the neglect;

21 (f) The nature and extent of the sexual abuse;

22 (g) Any evidence of previous injuries, including their nature and  
23 extent; and

24 (h) Any other information which may be helpful in establishing the  
25 cause of the patient's death, injury, or injuries, and the identity of  
26 the perpetrator or perpetrators.

27 (2) Each law enforcement agency receiving such a report shall, in  
28 addition to taking the action required by RCW 70.124.050, immediately  
29 relay the report to the department, and to other law enforcement  
30 agencies, including the medicaid fraud control unit of the office of  
31 the attorney general, as appropriate. For any report it receives, the  
32 department shall likewise take the required action and in addition  
33 relay the report to the appropriate law enforcement agency or agencies.  
34 The appropriate law enforcement agency or agencies shall receive  
35 immediate notification when the department, upon receipt of such  
36 report, has reasonable cause to believe that a criminal act has been  
37 committed.

1       **Sec. 521.** RCW 70.124.070 and 1979 ex.s. c 228 s 7 are each amended  
2 to read as follows:

3       A person who is required to make or to cause to be made a report  
4 pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to  
5 make such report or fails to cause such report to be made is guilty of  
6 a gross misdemeanor.

7       NEW SECTION. **Sec. 522.** A new section is added to chapter 74.34  
8 RCW to read as follows:

9       A person who is required to make or cause to be made a report under  
10 RCW 74.34.030 or 74.34.040 and who knowingly fails to make the report  
11 or fails to cause the report to be made is guilty of a gross  
12 misdemeanor.

13       **Sec. 523.** RCW 74.34.020 and 1995 1st sp.s. c 18 s 84 are each  
14 amended to read as follows:

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

17       (1) "Abandonment" means action or inaction by a person or entity  
18 with a duty of care for a frail elder or a vulnerable adult that leaves  
19 the vulnerable person without the means or ability to obtain necessary  
20 food, clothing, shelter, or health care.

21       (2) "Abuse" means a nonaccidental act of physical or mental  
22 mistreatment or injury, or sexual mistreatment, which harms a person  
23 through action or inaction by another individual.

24       (3) "Consent" means express written consent granted after the  
25 person has been fully informed of the nature of the services to be  
26 offered and that the receipt of services is voluntary.

27       (4) "Department" means the department of social and health  
28 services.

29       (5) "Exploitation" means the illegal or improper use of a frail  
30 elder or vulnerable adult or that person's income or resources,  
31 including trust funds, for another person's profit or advantage.

32       (6) "Neglect" means a pattern of conduct or inaction by a person or  
33 entity with a duty of care for a frail elder or vulnerable adult that  
34 results in the deprivation of care necessary to maintain the vulnerable  
35 person's physical or mental health.

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

1 (8) "Frail elder or vulnerable adult" means a person sixty years of  
2 age or older who has the functional, mental, or physical inability to  
3 care for himself or herself. "Frail elder or vulnerable adult" shall  
4 include persons found incapacitated under chapter 11.88 RCW, or a  
5 person who has a developmental disability under chapter 71A.10 RCW, and  
6 persons admitted to any long-term care facility that is licensed or  
7 required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128  
8 RCW, or persons receiving services from home health, hospice, or home  
9 care agencies licensed or required to be licensed under chapter 70.127  
10 RCW.

11 (9) No frail elder or vulnerable person who relies upon and is  
12 being provided spiritual treatment in lieu of medical treatment in  
13 accordance with the tenets and practices of a well-recognized religious  
14 denomination shall for that reason alone be considered abandoned,  
15 abused, or neglected.

16 **Sec. 524.** RCW 43.43.832 and 1995 c 250 s 2 are each amended to  
17 read as follows:

18 (1) The legislature finds that businesses and organizations  
19 providing services to children, developmentally disabled persons, and  
20 vulnerable adults need adequate information to determine which  
21 employees or licensees to hire or engage. The legislature further  
22 finds that many developmentally disabled individuals and vulnerable  
23 adults desire to hire their own employees directly and also need  
24 adequate information to determine which employees or licensees to hire  
25 or engage. Therefore, the Washington state patrol criminal  
26 identification system (~~may~~) shall disclose, upon the request of a  
27 business or organization as defined in RCW 43.43.830, a developmentally  
28 disabled person, or a vulnerable adult as defined in RCW 43.43.830 or  
29 his or her guardian, an applicant's record for convictions of offenses  
30 against children or other persons, convictions for crimes relating to  
31 financial exploitation, but only if the victim was a vulnerable adult,  
32 adjudications of child abuse in a civil action, the issuance of a  
33 protection order against the respondent under chapter 74.34 RCW, and  
34 disciplinary board final decisions and any subsequent criminal charges  
35 associated with the conduct that is the subject of the disciplinary  
36 board final decision. (~~When necessary, applicants may be employed on~~  
37 ~~a conditional basis pending completion of such a background~~  
38 ~~investigation.))~~

1 (2) The legislature also finds that the state board of education  
2 may request of the Washington state patrol criminal identification  
3 system information regarding a certificate applicant's record for  
4 convictions under subsection (1) of this section.

5 (3) The legislature also finds that law enforcement agencies, the  
6 office of the attorney general, prosecuting authorities, and the  
7 department of social and health services may request this same  
8 information to aid in the investigation and prosecution of child,  
9 developmentally disabled person, and vulnerable adult abuse cases and  
10 to protect children and adults from further incidents of abuse.

11 (4) The legislature further finds that the department of social and  
12 health services ~~((7))~~ must consider the information listed in subsection  
13 (1) of this section in the following circumstances:

14 (a) When considering persons for state positions directly  
15 responsible for the care, supervision, or treatment of children,  
16 developmentally disabled persons, or vulnerable adults ((or))i

17 (b) When licensing ((or authorizing such persons or)) agencies  
18 ((pursuant to its authority)) or facilities with individuals in  
19 positions directly responsible for the care, supervision, or treatment  
20 of children, developmentally disabled persons, or vulnerable adults,  
21 including but not limited to agencies or facilities licensed under  
22 chapter 74.15((7)) or 18.51((7, 18.20, or 72.23)) RCW((7, or any later-  
23 enacted statute which purpose is to license or regulate a facility  
24 which handles vulnerable adults, must consider the information listed  
25 in subsection (1) of this section))i

26 (c) When contracting with individuals or businesses or  
27 organizations for the care, supervision, or treatment of children,  
28 developmentally disabled persons, or vulnerable adults, including but  
29 not limited to services contracted for under chapter 18.20, 18.48,  
30 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW. ((However, when  
31 necessary))

32 (5) Whenever a state conviction record check is required by state  
33 law, persons may be employed or engaged as volunteers or independent  
34 contractors on a conditional basis pending completion of the state  
35 background investigation. Whenever a national criminal record check  
36 through the federal bureau of investigation is required by state law,  
37 a person may be employed or engaged as a volunteer or independent  
38 contractor on a conditional basis pending completion of the national  
39 check. The Washington personnel resources board shall adopt rules to

1 accomplish the purposes of this subsection as it applies to state  
2 employees.

3 (6)(a) For purposes of facilitating timely access to criminal  
4 background information and to reasonably minimize the number of  
5 requests made under this section, recognizing that certain health care  
6 providers change employment frequently, health care facilities may,  
7 upon request from another health care facility, share copies of  
8 completed criminal background inquiry information.

9 (b) Completed criminal background inquiry information may be shared  
10 by a willing health care facility only if the following conditions are  
11 satisfied: The licensed health care facility sharing the criminal  
12 background inquiry information is reasonably known to be the person's  
13 most recent employer, no more than twelve months has elapsed from the  
14 date the person was last employed at a licensed health care facility to  
15 the date of their current employment application, and the criminal  
16 background information is no more than two years old.

17 (c) If criminal background inquiry information is shared, the  
18 health care facility employing the subject of the inquiry must require  
19 the applicant to sign a disclosure statement indicating that there has  
20 been no conviction or finding as described in RCW 43.43.842 since the  
21 completion date of the most recent criminal background inquiry.

22 (d) Any health care facility that knows or has reason to believe  
23 that an applicant has or may have a disqualifying conviction or finding  
24 as described in RCW 43.43.842, subsequent to the completion date of  
25 their most recent criminal background inquiry, shall be prohibited from  
26 relying on the applicant's previous employer's criminal background  
27 inquiry information. A new criminal background inquiry shall be  
28 requested pursuant to RCW 43.43.830 through 43.43.842.

29 (e) Health care facilities that share criminal background inquiry  
30 information shall be immune from any claim of defamation, invasion of  
31 privacy, negligence, or any other claim in connection with any  
32 dissemination of this information in accordance with this subsection.

33 (f) Health care facilities shall transmit and receive the criminal  
34 background inquiry information in a manner that reasonably protects the  
35 subject's rights to privacy and confidentiality.

36 (g) For the purposes of this subsection, "health care facility"  
37 means a nursing home licensed under chapter 18.51 RCW, a boarding home  
38 licensed under chapter 18.20 RCW, or an adult family home licensed  
39 under chapter 70.128 RCW.

1       **Sec. 525.** RCW 43.20A.710 and 1993 c 210 s 1 are each amended to  
2 read as follows:

3       (1) The secretary shall investigate the conviction records, pending  
4 charges or disciplinary board final decisions of:

5       ~~((1))~~ (a) Persons being considered for state employment in  
6 positions directly responsible for the supervision, care, or treatment  
7 of children or individuals with mental illness or developmental  
8 disabilities; and ~~((2))~~

9       (b) Individual providers who are paid by the state for in-home  
10 services and hired by individuals with physical disabilities,  
11 developmental disabilities, mental illness, or mental impairment,  
12 including but not limited to services provided under chapter 74.39A  
13 RCW.

14       (2) The investigation may include an examination of state and  
15 national criminal identification data ~~((and the child abuse and neglect~~  
16 ~~register established under chapter 26.44 RCW. The secretary shall~~  
17 ~~provide the results of the state background check on individual~~  
18 ~~providers to the individuals with physical disabilities, developmental~~  
19 ~~disabilities, mental illness, or mental impairment who hired them and~~  
20 ~~to their legal guardians, if any)). The secretary shall use the~~  
21 ~~information solely for the purpose of determining the character,~~  
22 ~~suitability, and competence of these applicants ((except that in the~~  
23 ~~case of individuals with physical disabilities, developmental~~  
24 ~~disabilities, mental illness, or mental impairment who employ~~  
25 ~~individual providers, the)).~~

26       (3) The secretary shall provide the results of the state background  
27 check on individual providers to the individuals with physical  
28 disabilities, developmental disabilities, mental illness, or mental  
29 impairment or to their legal guardians, if any, for their determination  
30 of the character, suitability, and competence of the applicants ((shall  
31 be made by the individual with a physical disability, developmental  
32 disability, mental illness, or mental impairment)). If an individual  
33 elects to hire or retain an individual provider after receiving notice  
34 from the department that the applicant has a conviction for an offense  
35 that would disqualify the applicant from employment with the  
36 department, then the secretary may deny payment for any subsequent  
37 services rendered by the disqualified individual provider.

38       (4) Criminal justice agencies shall provide the secretary such  
39 information as they may have and that the secretary may require for



1 such purpose. ((If necessary, persons may be employed on a conditional  
2 basis pending completion of the background investigation.))

3 **Sec. 526.** RCW 18.52C.010 and 1988 c 243 s 1 are each amended to  
4 read as follows:

5 The legislature intends to protect the public's right to high  
6 quality health care by assuring that nursing pools employ, procure or  
7 refer competent and qualified ((nursing)) health care or long-term care  
8 personnel, and that such ((nursing)) personnel are provided to health  
9 care facilities, agencies, or individuals in a way to meet the needs of  
10 residents and patients.

11 **Sec. 527.** RCW 18.52C.020 and 1991 c 3 s 130 are each amended to  
12 read as follows:

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

15 (1) "Secretary" means the secretary of the department of health.

16 (2) "Health care facility" means a nursing home, hospital, hospice  
17 care facility, home health care agency, hospice agency, boarding home,  
18 adult family home, group home, or other entity for the delivery of  
19 health care or long-term care services, including chore services  
20 provided under chapter 74.39A RCW.

21 (3) "Nursing home" means any nursing home facility licensed  
22 pursuant to chapter 18.52 RCW.

23 (4) "Nursing pool" means any person engaged in the business of  
24 providing, procuring, or referring health care or long-term care  
25 personnel for temporary employment in health care facilities, such as  
26 licensed nurses or practical nurses, ((and)) nursing assistants, and  
27 chore service providers. "Nursing pool" does not include an individual  
28 who only engages in providing his or her own services.

29 (5) "Person" includes an individual, firm, corporation,  
30 partnership, or association.

31 **Sec. 528.** RCW 18.52C.040 and 1991 c 3 s 132 are each amended to  
32 read as follows:

33 (1) The nursing pool shall document that each temporary employee or  
34 referred independent contractor provided or referred to health care  
35 facilities currently meets the applicable minimum state credentialing  
36 requirements.

1 (2) The nursing pool shall not require, as a condition of  
2 employment or referral, that employees or independent contractors of  
3 the nursing pool recruit new employees or independent contractors for  
4 the nursing pool from among the permanent employees of the health care  
5 facility to which the nursing pool employee or independent contractor  
6 has been assigned or referred.

7 (3) The nursing pool shall carry professional and general liability  
8 insurance to insure against any loss or damage occurring, whether  
9 professional or otherwise, as the result of the negligence of its  
10 employees, agents or independent contractors for acts committed in the  
11 course of their employment with the nursing pool: PROVIDED, That a  
12 nursing pool that only refers self-employed, independent contractors to  
13 health care facilities shall carry professional and general liability  
14 insurance to cover its own liability as a nursing pool which refers  
15 self-employed, independent contractors to health care facilities: AND  
16 PROVIDED FURTHER, That it shall require, as a condition of referral,  
17 that self-employed, independent contractors carry professional and  
18 general liability insurance to insure against loss or damage resulting  
19 from their own acts committed in the course of their own employment by  
20 a health care facility.

21 (4) The uniform disciplinary act, chapter 18.130 RCW, shall govern  
22 the issuance and denial of registration and the discipline of persons  
23 registered under this chapter. The secretary shall be the disciplinary  
24 authority under this chapter.

25 (5) The nursing pool shall conduct a criminal background check on  
26 all employees and independent contractors as required under RCW  
27 43.43.842 prior to employment or referral of the employee or  
28 independent contractor.

29 NEW SECTION. Sec. 529. A new section is added to chapter 43.43  
30 RCW to read as follows:

31 If information is released under this chapter by the state of  
32 Washington, the state and its employees: (1) Make no representation  
33 that the subject of the inquiry has no criminal record or adverse civil  
34 or administrative decisions; (2) make no determination that the subject  
35 of the inquiry is suitable for involvement with a business or  
36 organization; and (3) are not liable for defamation, invasion of  
37 privacy, negligence, or any other claim in connection with any lawful  
38 dissemination of information.

1 NEW SECTION. **Sec. 530.** The following acts or parts of acts are  
2 each repealed:

- 3 (1) RCW 74.39.030 and 1989 c 427 s 11;  
4 (2) RCW 74.39.040 and 1989 c 427 s 13;  
5 (3) RCW 74.39A.005 and 1993 c 508 s 1; and  
6 (4) RCW 74.39A.008 and 1995 1st sp.s. c 18 s 1.

7 NEW SECTION. **Sec. 531.** Part headings and captions used in this  
8 act are not part of the law.

9 NEW SECTION. **Sec. 532.** Section 403 of this act is necessary for  
10 the immediate preservation of the public peace, health, or safety, or  
11 support of the state government and its existing public institutions,  
12 and takes effect immediately."

13 **E2SHB 1850** - 2ND CONF REPT  
14 By Conference Committee

ADOPTED 4/27/97

15  
16 On page 1, line 2 of the title, after "act;" strike the remainder  
17 of the title and insert "amending RCW 70.129.010, 70.129.030,  
18 70.129.110, 70.129.150, 74.39A.030, 74.39A.040, 74.39A.050, 74.39A.060,  
19 70.129.105, 74.42.030, 74.42.450, 43.20B.080, 74.34.010, 74.39A.170,  
20 70.128.175, 9A.42.010, 9A.42.050, 9A.42.020, 9A.42.030, 9A.44.010,  
21 9A.44.050, 9A.44.100, 18.130.200, 43.43.842, 70.124.020, 70.124.040,  
22 70.124.070, 74.34.020, 43.43.832, 43.20A.710, 18.52C.010, 18.52C.020,  
23 and 18.52C.040; reenacting and amending RCW 18.130.040; adding a new  
24 section to chapter 74.39A RCW; adding a new section to chapter 70.124  
25 RCW; adding new sections to chapter 74.34 RCW; adding new sections to  
26 chapter 18.20 RCW; adding a new section to chapter 43.20B RCW; adding  
27 a new section to chapter 43.70 RCW; adding a new section to chapter  
28 18.51 RCW; adding new sections to chapter 9A.42 RCW; adding a new  
29 section to chapter 43.43 RCW; creating new sections; repealing RCW  
30 74.39.030, 74.39.040, 74.39A.005, and 74.39A.008; and declaring an  
31 emergency."

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