
SECOND SUBSTITUTE HOUSE BILL 1850

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Dyer, Backlund, Skinner, Talcott, Schoesler, Mitchell and Cooke)

Read first time 04/05/97.

1 AN ACT Relating to the long-term care reorganization and standards
2 of care reform act; amending RCW 70.129.010, 70.129.030, 70.129.110,
3 70.129.150, 74.39A.030, 74.39A.040, 74.39A.050, 74.39A.060, 70.129.105,
4 74.42.030, 74.42.450, 43.20B.080, 74.34.010, 74.39A.170, and
5 70.128.175; adding a new section to chapter 74.39A RCW; adding a new
6 section to chapter 70.124 RCW; adding new sections to chapter 74.34
7 RCW; adding new sections to chapter 18.20 RCW; adding a new section to
8 chapter 43.20B RCW; adding a new section to chapter 43.70 RCW; creating
9 new sections; repealing RCW 74.39.030, 74.39.040, 74.39A.005, and
10 74.39A.008; and declaring an emergency.

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

12 **PART I**

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

15 NEW SECTION. **Sec. 102.** FINDINGS AND INTENT. The legislature
16 finds and declares that the state's current fragmented categorical
17 system for administering services to persons with disabilities and the

1 elderly is not client and family-centered and has created significant
2 organizational barriers to providing high quality, safe, and effective
3 care and support. The present fragmented system results in
4 uncoordinated enforcement of regulations designed to protect the health
5 and safety of disabled persons, lacks accountability due to the absence
6 of management information systems' client tracking data, and
7 perpetuates difficulty in matching client needs and services to
8 multiple categorical funding sources.

9 The legislature further finds that Washington's chronically
10 functionally disabled population of all ages is growing at a rapid pace
11 due to a population of the very old and increased incidence of
12 disability due in large measure to technological improvements in acute
13 care causing people to live longer. Further, to meet the significant
14 and growing long-term care needs into the near future, rapid,
15 fundamental changes must take place in the way we finance, organize,
16 and provide long-term care services to the chronically functionally
17 disabled.

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

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

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

27 (1) "Adult family home" means a home licensed under chapter 70.128
28 RCW.

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

32 (3) "Assisted living services" means services provided by a
33 boarding home that has a contract with the department under RCW
34 74.39A.010 and the resident is housed in a private apartment-like unit.

35 (4) "Boarding home" means a facility licensed under chapter 18.20
36 RCW.

37 (5) "Cost-effective care" means care provided in a setting of an
38 individual's choice that is necessary to promote the most appropriate

1 level of physical, mental, and psychosocial well-being consistent with
2 client choice, in an environment that is appropriate to the care and
3 safety needs of the individual, and such care cannot be provided at a
4 lower cost in any other setting. But this in no way precludes an
5 individual from choosing a different residential setting to achieve his
6 or her desired quality of life.

7 (6) "Department" means the department of social and health
8 services.

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

12 (8) "Functionally disabled person" is synonymous with chronic
13 functionally disabled and means a person who because of a recognized
14 chronic physical or mental condition or disease is impaired to the
15 extent of being dependent upon others for direct care, support,
16 supervision, or monitoring to perform activities of daily living.
17 "Activities of daily living", in this context, means self-care
18 abilities related to personal care such as bathing, eating, using the
19 toilet, dressing, and transfer. Instrumental activities of daily
20 living may also be used to assess a person's functional abilities as
21 they are related to the mental capacity to perform activities in the
22 home and the community such as cooking, shopping, house cleaning, doing
23 laundry, working, and managing personal finances.

24 (9) "Home and community services" means adult family homes, in-home
25 services, and other services administered or provided by contract by
26 the department directly or through contract with area agencies on aging
27 or similar services provided by facilities and agencies licensed by the
28 department.

29 (10) "Long-term care" is synonymous with chronic care and means
30 care and supports delivered indefinitely, intermittently, or over a
31 sustained time to persons of any age disabled by chronic mental or
32 physical illness, disease, or a medical condition that is permanent,
33 not reversible or curable, or is long-lasting and severely limits their
34 mental or physical capacity for self-care. The use of this definition
35 is not intended to expand the scope of services, care, or assistance by
36 any individuals, groups, residential care settings, or professions
37 unless otherwise expressed by law.

38 (11) "Nursing home" means a facility licensed under chapter 18.51
39 RCW.

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

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

5 NEW SECTION. **Sec. 104.** JOINT LEGISLATIVE COMMITTEE ON LONG-TERM
6 CARE OVERSIGHT. (1) There is created a joint legislative committee on
7 long-term care oversight. The committee shall consist of: (a) Four
8 members of the senate appointed by the president of the senate, two of
9 whom shall be members of the majority party and two of whom shall be
10 members of the minority party; and (b) four members of the house of
11 representatives, two of whom shall be members of the majority party and
12 two of whom shall be members of the minority party.

13 (2) The committee shall elect a chair and vice-chair. The chair
14 shall be a member of the senate in even-numbered years and a member of
15 the house of representatives in odd-numbered years. The vice-chair
16 shall be a member of the senate in odd-numbered years and a member of
17 the house of representatives in even-numbered years.

18 (3) The committee shall:

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

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

23 (c) In cooperation with the department of social and health
24 services, develop suggestions to simplify, reduce, or eliminate
25 unnecessary rules, procedures, and burdensome paperwork that prove to
26 be barriers to providing effective coordination or high quality direct
27 services;

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

30 (e) List all nonmeans tested programs and activities funded by the
31 federal older Americans act and state funded senior citizens act or
32 other such state funded programs and recommend how to integrate such
33 services into existing long-term care programs for the functionally
34 disabled;

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

1 (g) Evaluate the need for long-term care training and review all
2 long-term care training and education programs conducted by the
3 department and suggest modifications to improve the training system.

4 **PART II**

5 **QUALITY STANDARDS AND COMPLAINT ENFORCEMENT**

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

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

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

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

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

34 (3) For the purposes of this section:

35 (a) "Whistleblower" means a resident or employee of a nursing home,
36 state hospital, or adult family home, or any person licensed under
37 Title 18 RCW, who in good faith reports alleged abuse, neglect,

1 exploitation, or abandonment to the department or to a law enforcement
2 agency;

3 (b) "Workplace reprisal or retaliatory action" means, but is not
4 limited to: Denial of adequate staff to perform duties; frequent staff
5 changes; frequent and undesirable office changes; refusal to assign
6 meaningful work; unwarranted and unsubstantiated report of misconduct
7 under Title 18 RCW; letters of reprimand or unsatisfactory performance
8 evaluations; demotion; denial of employment; or a supervisor or
9 superior encouraging coworkers to behave in a hostile manner toward the
10 whistleblower; and

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

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

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

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

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

3 NEW SECTION. **Sec. 202.** A new section is added to chapter 74.34
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, exploitation, or
12 abandonment by any person in a boarding home licensed or required to be
13 licensed pursuant to chapter 18.20 RCW or a veterans' home pursuant to
14 chapter 72.36 RCW or by any person associated with a hospice, home
15 care, or home health agency licensed under chapter 70.127 RCW may
16 remain confidential if requested. The identity of the whistleblower
17 shall subsequently remain confidential unless the department determines
18 that the complaint was not made in good faith.

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

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

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

34 (3) For the purposes of this section:

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

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

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

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

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

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

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

1 items, or activities may be changed upon fourteen days advance written
2 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, within the
21 scope of its license or contract, to avoid the transfer or discharge,
22 unless agreed to by the resident;

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

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

28 ~~((e))~~ (d) Include in the notice the items described in subsection
29 ~~((4))~~ (5) of this section.

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

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

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

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

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

1 (iv) A resident has not resided in the facility for thirty days.
2 ~~((+4))~~ (5) The written notice specified in subsection ~~((+2))~~ (3)
3 of this section must include the following:

4 (a) The reason for transfer or discharge;

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (2) In expanding home and community services, the department shall:

5 (a) Take full advantage of federal funding available under Title XVIII
6 and Title XIX of the federal social security act, including home
7 health, adult day care, waiver options, and state plan services; and

8 (b) be authorized to use funds available under its community options
9 program entry system waiver granted under section 1915(c) of the
10 federal social security act to expand the availability of in-home,
11 adult residential care, adult family homes, enhanced adult residential
12 care, and assisted living services. By June 30, 1997, the department
13 shall undertake to reduce the nursing home medicaid census by at least
14 one thousand six hundred by assisting individuals who would otherwise
15 require nursing facility services to obtain services of their choice,
16 including assisted living services, enhanced adult residential care,
17 and other home and community services. If a resident, or his or her
18 legal representative, objects to a discharge decision initiated by the
19 department, the resident shall not be discharged if the resident has
20 been assessed and determined to require nursing facility services. In
21 contracting with nursing homes and boarding homes for enhanced adult
22 residential care placements, neither the department nor the department
23 of health shall ~~((not))~~ require, by contract or through other means,
24 structural modifications to existing building construction.

25 (3)(a) The department shall by rule establish payment rates for
26 home and community services that support the provision of cost-
27 effective care.

28 (b) The department may authorize an enhanced adult residential care
29 rate for nursing homes that temporarily or permanently convert their
30 bed use for the purpose of providing enhanced adult residential care
31 under chapter 70.38 RCW, when the department determines that payment of
32 an enhanced rate is cost-effective and necessary to foster expansion of
33 contracted enhanced adult residential care services. As an incentive
34 for nursing homes to permanently convert a portion of its nursing home
35 bed capacity for the purpose of providing enhanced adult residential
36 care, the department may authorize a supplemental add-on to the
37 enhanced adult residential care rate.

38 (c) The department may authorize a supplemental assisted living
39 services or an enhanced adult residential care services rate for up to

1 four years for facilities that convert from nursing home use and do not
2 retain rights to the converted nursing home beds under chapter 70.38
3 RCW, if the department determines that payment of a supplemental rate
4 is cost-effective and necessary to foster expansion of contracted
5 assisted living or enhanced adult residential care services.

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

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

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

21 (a) Are medicaid clients, medicaid applicants, or eligible for both
22 medicare and medicaid; and

23 (b) Apply or are likely to apply for admission to a nursing
24 facility.

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

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

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

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

37 (c) Inform the individual regarding the availability of services
38 that could meet the applicant's needs as set forth in the community

1 service plan and explain the cost to the applicant of the available in-
2 home and community services relative to nursing facility care; and

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

5 (4) When the department finds, based on assessment, that the
6 individual prefers and needs nursing facility care, the department
7 shall:

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

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

12 (c) Describe the role of the department in providing nursing
13 facility case management.

14 (5) All hospitals who choose to not participate with the department
15 according to subsections (1) through (4) of this section shall provide
16 their own hospital long-term care discharge services for patients
17 needing long-term care information or services consistent with
18 subsections (3) and (4) of this section.

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

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

24 (1) The system shall be ~~((consumer))~~ client-centered and promote
25 privacy, independence, dignity, choice, and a home or home-like
26 environment for consumers consistent with chapter . . . , Laws of 1997
27 (this act).

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

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

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

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

5 (~~Providers generally should be assisted in addressing~~
6 ~~identified problems initially through consultation and technical~~
7 ~~assistance.)) Prompt and specific enforcement remedies shall also be
8 (available)) implemented without delay, pursuant to RCW 74.39A.080,
9 RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers
10 found to have delivered care or failed to deliver care resulting in
11 problems that are serious, recurring, or ((that have been))
12 uncorrected, or that create a hazard that is causing or likely to cause
13 death or serious harm to one or more residents. These enforcement
14 remedies may also include, when appropriate, reasonable conditions on
15 a contract or license. In the selection of remedies, the safety,
16 health, and well-being of residents shall be of paramount importance.~~

17 (7) To the extent funding is available, providers at all levels and
18 their staff should be screened through background checks in a uniform
19 and timely manner to ensure that they do not have a criminal history
20 that would disqualify them from working with vulnerable adults.
21 Employees may be provisionally hired pending the results of the
22 background check, which must be requested by the employer within
23 seventy-two hours, if they have been given three positive references.

24 (8) No provider or staff, or prospective provider or staff, with a
25 stipulated finding of fact, conclusion of law, an agreed order, or
26 finding of fact, conclusion of law, or final order issued by a
27 disciplining authority, a court of law, or entered into a state
28 registry finding him or her guilty of abuse, neglect, exploitation, or
29 abandonment of a minor or a vulnerable adult as defined in chapter
30 74.34 RCW shall be employed in the care of and have unsupervised access
31 to vulnerable adults.

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

35 (10) Within existing funds, the department shall design, develop,
36 and implement a long-term care training program that is flexible,
37 relevant, and qualifies towards the requirements for a nursing
38 assistant certificate as established under chapter 18.88A RCW. This
39 subsection does not require completion of the nursing assistant

1 certificate training program by providers or their staff. The long-
2 term care teaching curriculum must consist of a fundamental module, or
3 modules, and a range of other available relevant training modules that
4 provide the caregiver with appropriate options that assist in meeting
5 the resident's care needs. Some of the training modules may include,
6 but are not limited to, specific training on the special care needs of
7 persons with developmental disabilities, dementia, mental illness, and
8 the care needs of the elderly. No less than one training module must
9 be dedicated to workplace violence prevention. The nursing care
10 quality assurance commission shall work together with the department to
11 develop the curriculum modules and accept some or all of the curriculum
12 modules hour for hour towards meeting the requirements for a nursing
13 assistant certificate as defined in chapter 18.88A RCW. The department
14 may review whether facilities can develop their own related long-term
15 care training programs. The department may develop a review process
16 for determining what previous experience and training may be used to
17 waive some or all of the mandatory training.

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

20 (1) The aging and adult services administration of the department
21 shall establish and maintain a toll-free telephone number for receiving
22 complaints regarding a facility that the administration licenses or
23 with which it contracts for long-term care services.

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

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

36 (4) The aging and adult services administration shall refer
37 complaints to appropriate state agencies, law enforcement agencies, the
38 attorney general, the long-term care ombudsman, or other entities if

1 the department lacks authority to investigate or if its investigation
2 reveals that a follow-up referral to one or more of these entities is
3 appropriate.

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

6 (a) Upon receipt of a complaint, the department shall make a
7 preliminary review of the complaint, assess the severity of the
8 complaint, and assign an appropriate response time. Complaints
9 involving imminent danger to the health, safety, or well-being of a
10 resident must be responded to within two days. When appropriate, the
11 department shall make an on-site investigation within a reasonable time
12 after receipt of the complaint or otherwise ensure that complaints are
13 responded to.

14 (b) The complainant must be: Promptly contacted by the department,
15 unless anonymous or unavailable despite several attempts by the
16 department, and informed of the right to discuss the alleged violations
17 with the inspector and to provide other information the complainant
18 believes will assist the inspector; informed of the department's course
19 of action; and informed of the right to receive a written copy of the
20 investigation report.

21 (c) In conducting the investigation, the department shall interview
22 the complainant, unless anonymous, and shall use its best efforts to
23 interview the resident or residents allegedly harmed by the violations,
24 and, in addition to facility staff, any available independent sources
25 of relevant information, including if appropriate the family members of
26 the resident.

27 (d) Substantiated complaints involving harm to a resident, if an
28 applicable law or regulation has been violated, are subject to one or
29 more of the actions provided in RCW 74.39A.080 or 70.128.160. Whenever
30 appropriate, the department shall also give consultation and technical
31 assistance to the provider.

32 (e) In the best practices of total quality management and
33 continuous quality improvement, after a department finding of a
34 violation that is serious, recurring, or uncorrected following a
35 previous citation, the department shall make an on-site revisit of the
36 facility to ensure correction of the violation, except for license or
37 contract suspensions or revocations.

38 (f) Substantiated complaints of neglect, abuse, exploitation, or
39 abandonment of residents, or suspected criminal violations, shall also

1 be referred by the department to the appropriate law enforcement
2 agencies, the attorney general, and appropriate professional
3 disciplining authority. The disciplining authorities listed under RCW
4 18.130.040 have exclusive authority to discipline health care
5 practitioners regulated under Title 18 RCW pursuant to the procedures
6 and sanctions of chapter 18.130 RCW.

7 (6) The department may ((not)) provide the substance of the
8 complaint to the licensee or contractor before the completion of the
9 investigation by the department unless such disclosure would reveal the
10 identity of a complainant, witness, or resident who chooses to remain
11 anonymous. Neither the substance of the complaint provided to the
12 licensee or contractor nor any copy of the complaint or related report
13 published, released, or made otherwise available shall disclose, or
14 reasonably lead to the disclosure of, the name, title, or identity of
15 any complainant, or other person mentioned in the complaint, except
16 that the name of the provider and the name or names of any officer,
17 employee, or agent of the department conducting the investigation shall
18 be disclosed after the investigation has been closed and the complaint
19 has been substantiated. The department may disclose the identity of
20 the complainant if such disclosure is requested in writing by the
21 complainant. Nothing in this subsection shall be construed to
22 interfere with the obligation of the long-term care ombudsman program
23 or department staff to monitor the department's licensing, contract,
24 and complaint investigation files for long-term care facilities.

25 ((+6)) (7) The resident has the right to be free of interference,
26 coercion, discrimination, and reprisal from a facility in exercising
27 his or her rights, including the right to voice grievances about
28 treatment furnished or not furnished. A facility that provides long-
29 term care services shall not discriminate or retaliate in any manner
30 against a resident, employee, or any other person on the basis or for
31 the reason that such resident or any other person made a complaint to
32 the department, the attorney general, law enforcement agencies, or the
33 long-term care ombudsman, provided information, or otherwise cooperated
34 with the investigation of such a complaint. Any attempt to discharge
35 a resident against the resident's wishes, or any type of retaliatory
36 treatment of a resident by whom or upon whose behalf a complaint
37 substantiated by the department has been made to the department, the
38 attorney general, law enforcement agencies, or the long-term care
39 ombudsman, within one year of the filing of the complaint, raises a

1 rebuttable presumption that such action was in retaliation for the
2 filing of the complaint. "Retaliatory treatment" means, but is not
3 limited to, monitoring a resident's phone, mail, or visits; involuntary
4 seclusion or isolation; transferring a resident to a different room
5 unless requested or based upon legitimate management reasons;
6 withholding or threatening to withhold food or treatment unless
7 authorized by a terminally ill resident or his or her representative
8 pursuant to law; or persistently delaying responses to a resident's
9 request for service or assistance. A facility that provides long-term
10 care services shall not willfully interfere with the performance of
11 official duties by a long-term care ombudsman. The department shall
12 sanction and may impose a civil penalty of not more than three thousand
13 dollars for a violation of this subsection ((and require the facility
14 to mitigate any damages incurred by the resident)).

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

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

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

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

- 27 (1) The resident's rights and responsibilities in the facility;
28 (2) Rules governing resident conduct;
29 (3) Services, items, and activities available in the facility; and
30 (4) Charges for services, items, and activities, including those
31 not included in the facility's basic daily rate or not paid by
32 medicaid.

33 The facility shall provide this information before admission, or at
34 the time of admission in case of emergency, and as changes occur during
35 the resident's stay. The resident and his or her representative must
36 be informed in writing in advance of changes in the availability or
37 charges for services, items, or activities, or of changes in the

1 facility's rules. Except in unusual circumstances, thirty days'
2 advance notice must be given prior to the change. The resident or
3 legal guardian or representative shall acknowledge in writing receipt
4 of this information ((and any changes in the information)).

5 The written information provided by the facility pursuant to this
6 section, and the terms of any admission contract executed between the
7 facility and an individual seeking admission to the facility, must be
8 consistent with the requirements of this chapter and chapter 18.51 RCW
9 and, for facilities certified under medicaid or medicare, with the
10 applicable federal requirements.

11 NEW SECTION. Sec. 213. A new section is added to chapter 18.20
12 RCW to read as follows:

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

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

19 (2) The goal of the system is continuous quality improvement with
20 the focus on resident satisfaction and outcomes for residents. This
21 includes that when conducting licensing inspections, the department
22 shall interview an appropriate percentage of residents, family members,
23 and advocates in addition to interviewing appropriate staff.

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

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

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

33 (6) Prompt and specific enforcement remedies shall also be
34 implemented without delay, consistent with RCW 18.20.160, for
35 facilities found to have delivered care or failed to deliver care
36 resulting in problems that are serious, recurring, or uncorrected, or
37 that create a hazard that is causing or likely to cause death or
38 serious harm to one or more residents. These enforcement remedies may

1 also include, when appropriate, reasonable conditions on a license. In
2 the selection of remedies, the safety, health, and well-being of
3 residents shall be of paramount importance.

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

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

17 (9) No licensee, administrator, or staff, or prospective licensee,
18 administrator, or staff, with a stipulated finding of fact, conclusion
19 of law, and agreed order, or finding of fact, conclusion of law, or
20 final order issued by a disciplining authority, a court of law, or
21 entered into the state registry finding him or her guilty of abuse,
22 neglect, exploitation, or abandonment of a minor or a vulnerable adult
23 as defined in chapter 74.34 RCW shall be employed in the care of and
24 have unsupervised access to vulnerable adults.

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

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

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

35 (3) The department shall investigate complaints if the subject of
36 the complaint is within its authority unless the department determines
37 that: (a) The complaint is intended to willfully harass a licensee or
38 employee of the licensee; or (b) there is no reasonable basis for

1 investigation; or (c) corrective action has been taken as determined by
2 the ombudsman or the department.

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

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

10 (a) Upon receipt of a complaint, the department shall make a
11 preliminary review of the complaint, assess the severity of the
12 complaint, and assign an appropriate response time. Complaints
13 involving imminent danger to the health, safety, or well-being of a
14 resident must be responded to within two days. When appropriate, the
15 department shall make an on-site investigation within a reasonable time
16 after receipt of the complaint or otherwise ensure that complaints are
17 responded to.

18 (b) The complainant must be: Promptly contacted by the department,
19 unless anonymous or unavailable despite several attempts by the
20 department, and informed of the right to discuss alleged violations
21 with the inspector and to provide other information the complainant
22 believes will assist the inspector; informed of the department's course
23 of action; and informed of the right to receive a written copy of the
24 investigation report.

25 (c) In conducting the investigation, the department shall interview
26 the complainant, unless anonymous, and shall use its best efforts to
27 interview the resident or residents allegedly harmed by the violations,
28 and, in addition to facility staff, any available independent sources
29 of relevant information, including if appropriate the family members of
30 the resident.

31 (d) Substantiated complaints involving harm to a resident, if an
32 applicable law or regulation has been violated, are subject to one or
33 more of the actions provided in RCW 18.20.190. Whenever appropriate,
34 the department shall also give consultation and technical assistance to
35 the facility.

36 (e) In the best practices of total quality management and
37 continuous quality improvement, after a department finding of a
38 violation that is serious, recurring, or uncorrected following a
39 previous citation, the department shall make an on-site revisit of the

1 facility to ensure correction of the violation. This subsection does
2 not prevent the department from enforcing license suspensions or
3 revocations.

4 (f) Substantiated complaints of neglect, abuse, exploitation, or
5 abandonment of residents, or suspected criminal violations, shall also
6 be referred by the department to the appropriate law enforcement
7 agencies, the attorney general, and appropriate professional
8 disciplining authority. The disciplining authorities listed under RCW
9 18.130.040 have exclusive authority to discipline health care
10 practitioners regulated under Title 18 RCW pursuant to the procedures
11 and sanctions of chapter 18.130 RCW.

12 (6) The department may provide the substance of the complaint to
13 the licensee before the completion of the investigation by the
14 department unless such disclosure would reveal the identity of a
15 complainant, witness, or resident who chooses to remain anonymous.
16 Neither the substance of the complaint provided to the licensee or
17 contractor nor any copy of the complaint or related report published,
18 released, or made otherwise available shall disclose, or reasonably
19 lead to the disclosure of, the name, title, or identity of any
20 complainant, or other person mentioned in the complaint, except that
21 the name of the provider and the name or names of any officer,
22 employee, or agent of the department conducting the investigation shall
23 be disclosed after the investigation has been closed and the complaint
24 has been substantiated. The department may disclose the identity of
25 the complainant if such disclosure is requested in writing by the
26 complainant. Nothing in this subsection shall be construed to
27 interfere with the obligation of the long-term care ombudsman program
28 to monitor the department's licensing, contract, and complaint
29 investigation files for long-term care facilities.

30 (7) The resident has the right to be free of interference,
31 coercion, discrimination, and reprisal from a facility in exercising
32 his or her rights, including the right to voice grievances about
33 treatment furnished or not furnished. A facility licensed under this
34 chapter shall not discriminate or retaliate in any manner against a
35 resident, employee, or any other person on the basis or for the reason
36 that such resident or any other person made a complaint to the
37 department, the attorney general, law enforcement agencies, or the
38 long-term care ombudsman, provided information, or otherwise cooperated
39 with the investigation of such a complaint. Any attempt to discharge

1 a resident against the resident's wishes, or any type of retaliatory
2 treatment of a resident by whom or upon whose behalf a complaint
3 substantiated by the department has been made to the department, the
4 attorney general, law enforcement agencies, or the long-term care
5 ombudsman, within one year of the filing of the complaint, raises a
6 rebuttable presumption that such action was in retaliation for the
7 filing of the complaint. "Retaliatory treatment" means, but is not
8 limited to, monitoring a resident's phone, mail, or visits; involuntary
9 seclusion or isolation; transferring a resident to a different room
10 unless requested or based upon legitimate management reasons;
11 withholding or threatening to withhold food or treatment unless
12 authorized by a terminally ill resident or his or her representative
13 pursuant to law; or persistently delaying responses to a resident's
14 request for service or assistance. A facility licensed under this
15 chapter shall not willfully interfere with the performance of official
16 duties by a long-term care ombudsman. The department shall sanction
17 and may impose a civil penalty of not more than three thousand dollars
18 for a violation of this subsection.

19 NEW SECTION. **Sec. 215.** Within existing funds, the long-term care
20 ombudsman shall conduct a follow-up review of the department of
21 health's licensing inspections and complaint investigations of boarding
22 homes and of the department of social and health services' monitoring
23 of boarding homes with contracts under chapter 74.39A RCW. The review
24 must include, but is not limited to, an examination of the enforcement
25 of resident rights and care standards in boarding homes, the timeliness
26 of complaint investigations, and compliance by the departments with the
27 standards set forth in this act. The long-term care ombudsman shall
28 consult with the departments of health and social and health services,
29 long-term care facility organizations, resident groups, and senior and
30 disabled citizen organizations and report to appropriate committees of
31 the house of representatives and the senate concerning its review of
32 the departments' enforcement activities and any applicable
33 recommendations by January 5, 1998.

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

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

- 1 (a) The facility;
2 (b) The facility cooperating with community resources; or
3 (c) The facility cooperating with other providers of care
4 affiliated or under contract with the facility.

5 (2) The facility shall transfer a resident to a hospital or other
6 appropriate facility when a change occurs in the resident's physical or
7 mental condition that requires care or service that the facility cannot
8 provide. The resident, the resident's guardian, if any, the resident's
9 next of kin, the attending physician, and the department shall be
10 consulted at least fifteen days before a transfer or discharge unless
11 the resident is transferred under emergency circumstances. The
12 department shall use casework services or other means to insure that
13 adequate arrangements are made to meet the resident's needs.

14 (3) A resident shall be transferred or discharged only for medical
15 reasons, the resident's welfare or request, the welfare of other
16 residents, or nonpayment. A resident may not be discharged for
17 nonpayment if the discharge would be prohibited by the medicaid
18 program.

19 (4) If a resident chooses to remain in the nursing facility, the
20 department shall respect that choice, provided that if the resident is
21 a medicaid recipient, the resident continues to require a nursing
22 facility level of care.

23 (5) If the department determines that a resident no longer requires
24 a nursing facility level of care, the resident shall not be discharged
25 from the nursing facility until at least thirty days after written
26 notice is given to the resident, the resident's surrogate decision
27 maker and, if appropriate, a family member or the resident's
28 representative. A form for requesting a hearing to appeal the
29 discharge decision shall be attached to the written notice. The
30 written notice shall include at least the following:

- 31 (a) The reason for the discharge;
32 (b) A statement that the resident has the right to appeal the
33 discharge; and
34 (c) The name, address, and telephone number of the state long-term
35 care ombudsman.

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

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

11 **PART III**

12 **ESTATE RECOVERY CONSUMER DISCLOSURE**

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

15 (1) It is the intent of the legislature to ensure that needy
16 individuals have access to basic long-term care without requiring them
17 to sell their homes. In the face of rising medical costs and limited
18 funding for social welfare programs, however, the state's medicaid and
19 state-funded long-term care programs have placed an increasing
20 financial burden on the state. By balancing the interests of
21 individuals with immediate and future unmet medical care needs,
22 surviving spouses and dependent children, adult nondependent children,
23 more distant heirs, and the state, the estate recovery provisions of
24 RCW 43.20B.080 and 74.39A.170 provide an equitable and reasonable
25 method of easing the state's financial burden while ensuring the
26 continued viability of the medicaid and state-funded long-term care
27 programs.

28 (2) It is further the intent of the legislature to confirm that
29 chapter 21, Laws of 1994, effective July 1, 1994, repealed and
30 substantially reenacted the state's medicaid estate recovery laws and
31 did not eliminate the department's authority to recover the cost of
32 medical assistance paid prior to October 1, 1993, from the estates of
33 deceased recipients regardless of whether they died before, on, or
34 after July 1, 1994.

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

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

5 (2) Liens may be adjusted by foreclosure in accordance with chapter
6 61.12 RCW.

7 (3) In the case of an individual who was fifty-five years of age or
8 older when the individual received medical assistance, the department
9 shall seek adjustment or recovery from the individual's estate, and
10 from nonprobate assets of the individual as defined by RCW 11.02.005
11 (~~except property passing through a community property agreement~~), but
12 only for medical assistance consisting of nursing facility services,
13 home and community-based services, other services that the department
14 determines to be appropriate, and related hospital and prescription
15 drug services. Recovery from the individual's estate, including
16 foreclosure of liens imposed under this section, shall be undertaken as
17 soon as practicable, consistent with (~~the requirements of~~) 42 U.S.C.
18 Sec. 1396p.

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

23 (5)(a) The department shall establish procedures consistent with
24 standards established by the federal department of health and human
25 services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when
26 such recovery would work an undue hardship.

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

31 (~~(5)~~) (6) A lien authorized under subsections (1) through (5) of
32 this section relates back to attach to any real property that the
33 decedent had an ownership interest in immediately before death and is
34 effective as of that date.

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

38 (8) The office of financial management shall review the cost and
39 feasibility of the department of social and health services collecting

1 the client copayment for long-term care consistent with the terms and
2 conditions of RCW 74.39A.120, and the cost impact to community
3 providers under the current system for collecting the client's
4 copayment in addition to the amount charged to the client for estate
5 recovery, and report to the legislature by December 12, 1997.

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

8 The legislature finds that frail elders and vulnerable adults may
9 be subjected to abuse, neglect, exploitation, or abandonment. The
10 legislature finds that there are a number of adults sixty years of age
11 or older who lack the ability to perform or obtain those services
12 necessary to maintain or establish their well-being. The legislature
13 finds that many frail elders and vulnerable adults have health problems
14 that place them in a dependent position. The legislature further finds
15 that a significant number of frail elders and vulnerable adults have
16 mental and verbal limitations that leave them vulnerable and incapable
17 of asking for help and protection.

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

22 It is the intent of the legislature to assist frail elders and
23 vulnerable adults by providing these persons with the protection of the
24 courts and with the least-restrictive services, such as home care, and
25 by preventing or reducing inappropriate institutional care. The
26 legislature finds that it is in the interests of the public health,
27 safety, and welfare of the people of the state to provide a procedure
28 for identifying these vulnerable persons and providing the services and
29 remedies necessary for their well-being.

30 It is further the intent of the legislature that the cost of
31 protective services rendered to a frail elder or vulnerable adult under
32 this chapter that are paid with state funds only not be subject to
33 recovery from the recipient or the recipient's estate, whether by lien,
34 adjustment, or any other means of recovery, regardless of the income or
35 assets of the recipient of the services. In making this exemption the
36 legislature recognizes that receipt of such services is voluntary and
37 incentives to decline services or delay permission must be kept to a
38 minimum. There may be a need to act or intervene quickly to protect

1 the assets, health, or well-being of a frail elder or vulnerable adult;
2 to prevent or halt the exploitation, neglect, abandonment, or abuse of
3 the person or assets of a frail elder or vulnerable adult; or to
4 prevent or limit inappropriate placement or retention in an institution
5 providing long-term care. The delivery of such services is less likely
6 to be impeded, and consent to such services will be more readily
7 obtained, if the cost of these services is not subject to recovery.
8 The legislature recognizes that there will be a cost in not seeking
9 financial recovery for such services, but that this cost may be offset
10 by preventing costly and inappropriate institutional placement.

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

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

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

20 (1) All payments made in state-funded long-term care shall be
21 recoverable as if they were medical assistance payments subject to
22 recovery under 42 U.S.C. Sec. 1396p and chapter 43.20B RCW(~~(, but)~~)
23 without regard to the recipient's age, except the cost of state-funded
24 adult protective services provided under chapter 74.34 RCW to frail
25 elders and vulnerable adults.

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

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

1 (4) In disclosing estate recovery costs to potential clients and
2 their family members, the department shall provide a written
3 description of the community service options. The description must
4 include, to the extent the department can estimate or itemize,
5 supervision, wages, and the full direct costs associated with each care
6 option offered and an estimate of the indirect costs, noting that the
7 indirect costs may not be charged to the client.

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

13 **PART IV**
14 **ADULT FAMILY HOMES**

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

17 (1) Unless the context clearly requires otherwise, these
18 definitions shall apply throughout this section and RCW 35.63.140,
19 35A.63.149, 36.70.755, 35.22.680, and 36.32.560:

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

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

28 (c) "Department" means the department of social and health
29 services.

30 (2) An adult family home shall be considered a residential use of
31 property for zoning and public and private utility rate purposes.
32 Adult family homes shall be a permitted use in all areas zoned for
33 residential or commercial purposes, including areas zoned for single
34 family dwellings.

35 NEW SECTION. **Sec. 402.** The department of social and health
36 services shall implement a limited moratorium on the authorization of

1 adult family home licenses until December 12, 1997, or until the
2 secretary has determined that all adult family home and group home
3 safety and quality of care standards have been reviewed by the
4 department, determined by the secretary to reasonably protect the life,
5 safety, and health of residents, and has notified all adult family home
6 and group home operators of the standards of care or any modifications
7 to the existing standards. This limited moratorium shall in no way
8 prevent a person eligible to receive services from receiving the same
9 or equivalent chronic long-term care services. In the event of a need
10 for such services, the department shall develop a process for
11 determining the availability of chronic long-term care residential
12 services on a case-by-case basis to determine if an adult family home
13 license should be granted to accommodate the needs of a particular
14 geographical or ethnic community. The department may review the cost
15 and feasibility of creating an adult family home advisory committee.
16 The secretary shall make the final determination on individual case
17 licensure until December 12, 1997, or until the moratorium has been
18 removed and determine if an adult family home advisory committee should
19 be developed.

20 NEW SECTION. **Sec. 403.** The department of social and health
21 services is authorized to adopt rules for implementing the provisions
22 of section 402 of this act.

23 **PART V**

24 **MISCELLANEOUS PROVISIONS**

25 NEW SECTION. **Sec. 501.** The department of health in cooperation
26 with the department of social and health services may develop a plan
27 for implementing a pilot program for accrediting boarding homes
28 licensed under RCW 18.20.020 with a recognized national nongovernmental
29 accreditation organization or an organization with experience in
30 developing and implementing accreditation programs in at least two
31 states. The pilot plan, if funded, shall be developed with the input
32 of residents, provider representatives, and other vested interest
33 groups. If funded, the plan shall review the overall feasibility of
34 implementation, cost or savings to the department of health, impact on
35 client health and safety, and financial and other impacts to the
36 boarding industry. If funded, the pilot boarding home accreditation

1 plan shall be presented to the appropriate committees of the house of
2 representatives and the senate by January 5, 1998.

3 NEW SECTION. **Sec. 502.** The department of community, trade, and
4 economic development, in collaboration with the organizations
5 designated by state or federal law to provide protection and advocacy
6 and ombuds services for older Americans and people with disabilities
7 using publicly funded long-term care residential services, may conduct
8 a study, make recommendations, and draft legislation necessary to
9 implement changes that will result in a single coordinating umbrella
10 for ombuds and advocacy services that maximizes efficiency, minimizes
11 duplication, and allows for specialization in target populations such
12 as developmental disabilities, older Americans, and mental illness, and
13 assures that the providers of ombuds services have sufficient expertise
14 and experience with target populations and the systems that serve them.
15 The study, if funded, shall include review of all relevant federal and
16 state laws and regulations, including but not limited to the older
17 Americans act, 42 U.S.C. 3001 as amended, the developmental
18 disabilities assistance and bill of rights act as amended, 42 U.S.C.
19 6000, the protection and advocacy for persons with mental illness act
20 as amended, 42 U.S.C. 10801, the rehabilitation act of 1973 as amended,
21 29 U.S.C. 701, the long-term care ombudsman statute chapter 43.190 RCW,
22 developmental disabilities statute, Title 71A RCW, and the community
23 mental health services regulations, chapter 275-57 WAC. If funded, the
24 study shall identify the gaps in current ombuds and advocacy services,
25 and develop a cost assessment for implementation of a comprehensive
26 umbrella of ombuds and advocacy services. If funded, the department of
27 community, trade, and economic development shall report to the
28 appropriate committees of the house of representatives and the senate
29 by January 10, 1998.

30 NEW SECTION. **Sec. 503.** The department of social and health
31 services may review the cost and feasibility of implementing
32 developmental disabilities certification standards for community
33 residential alternatives to ensure that services are adequate for the
34 health, safety, care, treatment, and support of persons with
35 developmental disabilities. The community residential alternatives
36 shall include, but not be limited to, entities that contract or
37 directly provide services with the division of developmental

1 disabilities such as group homes, agency alternative living, intensive
2 and other tenant support services, adult family homes, or boarding
3 homes. Certification standards shall review at a minimum the following
4 areas. Administrative and financial capabilities of the provider,
5 health and safety practices, the opportunities for the individuals
6 served by the programs to have power and choice in their lives,
7 opportunities to develop friendships and relationships, and
8 opportunities to develop self-respect and to gain respect from others,
9 to participate in the community, and to gain independent living skills.
10 If the review is funded, the department shall also recommend whether
11 adult family homes that choose to provide services only to persons with
12 developmental disabilities should receive special certification or
13 licensure apart from or in place of the existing adult family home
14 license. The review may also recommend the type and amount of provider
15 training necessary to appropriately support persons with developmental
16 disabilities in community residential alternatives. The department may
17 include the assistance of other departments, vested interest groups,
18 and family members in the development of recommendations. If funded,
19 the department shall report to the appropriate committees of the house
20 of representatives and the senate by January 30, 1998.

21 NEW SECTION. **Sec. 504.** Any section or provision of this act that
22 may be susceptible to more than one construction shall be interpreted
23 in favor of the construction most likely to comply with federal laws
24 entitling this state to receive federal funds for the various programs
25 of the department of health or the department of social and health
26 services. If any section of this act is found to be in conflict with
27 federal requirements that are a prescribed condition of the allocation
28 of federal funds to the state, or to any departments or agencies
29 thereof, the conflicting part is declared to be inoperative solely to
30 the extent of the conflict. The rules issued under this act shall meet
31 federal requirements that are a necessary condition to the receipt of
32 federal funds by the state.

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

35 The department of health shall implement a nursing home resident
36 protection program according to guidelines established by the federal
37 health care financing administration.

1 NEW SECTION. **Sec. 506.** 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. 507.** Part headings and captions used in this
8 act are not part of the law.

9 NEW SECTION. **Sec. 508.** 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.

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