

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1850**

55th Legislature  
1997 Regular Session

Passed by the House April 27, 1997  
Yeas 97 Nays 1

\_\_\_\_\_  
**Speaker of the  
House of Representatives**

Passed by the Senate April 27, 1997  
Yeas 48 Nays 0

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**President of the Senate**

Approved

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1850** as passed by the House of Representatives and the Senate on the dates hereon set forth.

\_\_\_\_\_  
**Chief Clerk**

FILED

**Secretary of State  
State of Washington**



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

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

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

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

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

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

32        (1) "Adult family home" means a home licensed under chapter 70.128  
33 RCW.

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

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

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

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

14 (6) "Department" means the department of social and health  
15 services.

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

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

32 (9) "Home and community services" means adult family homes, in-home  
33 services, and other services administered or provided by contract by  
34 the department directly or through contract with area agencies on aging  
35 or similar services provided by facilities and agencies licensed by the  
36 department.

37 (10) "Long-term care" is synonymous with chronic care and means  
38 care and supports delivered indefinitely, intermittently, or over a  
39 sustained time to persons of any age disabled by chronic mental or

1 physical illness, disease, chemical dependency, or a medical condition  
2 that is permanent, not reversible or curable, or is long-lasting and  
3 severely limits their mental or physical capacity for self-care. The  
4 use of this definition is not intended to expand the scope of services,  
5 care, or assistance by any individuals, groups, residential care  
6 settings, or professions unless otherwise expressed by law.

7 (11) "Nursing home" means a facility licensed under chapter 18.51  
8 RCW.

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

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

13 NEW SECTION. **Sec. 104.** JOINT LEGISLATIVE COMMITTEE ON LONG-TERM  
14 CARE OVERSIGHT. (1) There is created a joint legislative committee on  
15 long-term care oversight. The committee shall consist of: (a) Four  
16 members of the senate appointed by the president of the senate, two of  
17 whom shall be members of the majority party and two of whom shall be  
18 members of the minority party; and (b) four members of the house of  
19 representatives, two of whom shall be members of the majority party and  
20 two of whom shall be members of the minority party.

21 (2) The committee shall elect a chair and vice-chair. The chair  
22 shall be a member of the senate in even-numbered years and a member of  
23 the house of representatives in odd-numbered years. The vice-chair  
24 shall be a member of the senate in odd-numbered years and a member of  
25 the house of representatives in even-numbered years.

26 (3) The committee shall:

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

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

31 (c) In cooperation with the department of social and health  
32 services, develop suggestions to simplify, reduce, or eliminate  
33 unnecessary rules, procedures, and burdensome paperwork that prove to  
34 be barriers to providing effective coordination or high quality direct  
35 services;

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

1 (e) List all nonmeans tested programs and activities funded by the  
2 federal older Americans act and state funded senior citizens act or  
3 other such state funded programs and recommend how to integrate such  
4 services into existing long-term care programs for the functionally  
5 disabled;

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

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

11 (h) Describe current facilities and services that provide long-term  
12 care to all types of chronically disabled individuals in the state  
13 including Revised Code of Washington requirements, Washington  
14 Administrative Code rules, allowable occupancy, typical clientele,  
15 discharge practices, agency oversight, rates, eligibility requirements,  
16 entry process, social and health services and other services provided,  
17 staffing standards, and physical plant standards;

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

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

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

26 (l) Identify opportunities for consolidation between categories of  
27 care; and

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

30 **PART II**

31 **QUALITY STANDARDS AND COMPLAINT ENFORCEMENT**

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

34 (1) An employee who is a whistleblower and who as a result of being  
35 a whistleblower has been subjected to workplace reprisal or retaliatory  
36 action, has the remedies provided under chapter 49.60 RCW. RCW  
37 4.24.500 through 4.24.520, providing certain protection to persons who

1 communicate to government agencies, apply to complaints made under this  
2 section. The identity of a whistleblower who complains, in good faith,  
3 to the department about suspected abuse, neglect, financial  
4 exploitation, or abandonment by any person in a nursing home, state  
5 hospital, or adult family home may remain confidential if requested.  
6 The identity of the whistleblower shall subsequently remain  
7 confidential unless the department determines that the complaint was  
8 not made in good faith.

9 (2)(a) An attempt to discharge a resident from a nursing home,  
10 state hospital, adult family home, or any type of discriminatory  
11 treatment of a resident by whom, or upon whose behalf, a complaint  
12 substantiated by the department has been submitted to the department or  
13 any proceeding instituted under or related to this chapter within one  
14 year of the filing of the complaint or the institution of the action,  
15 raises a rebuttable presumption that the action was in retaliation for  
16 the filing of the complaint.

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

19 (c) The presumption is rebutted by a functional assessment  
20 conducted by the department that shows that the resident's needs cannot  
21 be met by the reasonable accommodations of the facility due to the  
22 increased needs of the resident.

23 (3) For the purposes of this section:

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

29 (b) "Workplace reprisal or retaliatory action" means, but is not  
30 limited to: Denial of adequate staff to perform duties; frequent staff  
31 changes; frequent and undesirable office changes; refusal to assign  
32 meaningful work; unwarranted and unsubstantiated report of misconduct  
33 under Title 18 RCW; letters of reprimand or unsatisfactory performance  
34 evaluations; demotion; denial of employment; or a supervisor or  
35 superior encouraging coworkers to behave in a hostile manner toward the  
36 whistleblower; and

37 (c) "Reasonable accommodation" by a facility to the needs of a  
38 prospective or current resident has the meaning given to this term  
39 under the federal Americans with disabilities act of 1990, 42 U.S.C.

1 Sec. 12101 et seq. and other applicable federal or state  
2 antidiscrimination laws and regulations.

3 (4) This section does not prohibit a nursing home, state hospital,  
4 or adult family home from exercising its authority to terminate,  
5 suspend, or discipline an employee who engages in workplace reprisal or  
6 retaliatory action against a whistleblower. The protections provided  
7 to whistleblowers under this chapter shall not prevent a nursing home,  
8 state hospital, or adult family home from: (a) Terminating,  
9 suspending, or disciplining a whistleblower for other lawful purposes;  
10 or (b) for facilities with six or fewer residents, reducing the hours  
11 of 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 where a whistleblower has  
14 been terminated or had hours of employment reduced due to the inability  
15 of a facility to meet payroll.

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

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

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

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

30 (1) An employee or contractor who is a whistleblower and who as a  
31 result of being a whistleblower has been subjected to workplace  
32 reprisal or retaliatory action, has the remedies provided under chapter  
33 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection  
34 to persons who communicate to government agencies, apply to complaints  
35 made under this section. The identity of a whistleblower who  
36 complains, in good faith, to the department about suspected abuse,  
37 neglect, exploitation, or abandonment by any person in a boarding home  
38 licensed or required to be licensed pursuant to chapter 18.20 RCW or a

1 veterans' home pursuant to chapter 72.36 RCW or care provided in a  
2 boarding home or a veterans' home by any person associated with a  
3 hospice, home care, or home health agency licensed under chapter 70.127  
4 RCW or other in-home provider may remain confidential if requested.  
5 The identity of the whistleblower shall subsequently remain  
6 confidential unless the department determines that the complaint was  
7 not made in good faith.

8 (2)(a) An attempt to expel a resident from a boarding home or  
9 veterans' home, or any type of discriminatory treatment of a resident  
10 who is a consumer of hospice, home health, home care services, or other  
11 in-home services by whom, or upon whose behalf, a complaint  
12 substantiated by the department or the department of health has been  
13 submitted to the department or any proceeding instituted under or  
14 related to this chapter within one year of the filing of the complaint  
15 or the institution of the action, raises a rebuttable presumption that  
16 the action was in retaliation for the filing of the complaint.

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

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

23 (3) For the purposes of this section:

24 (a) "Whistleblower" means a resident or a person with a mandatory  
25 duty to report under this chapter, or any person licensed under Title  
26 18 RCW, who in good faith reports alleged abuse, neglect, exploitation,  
27 or abandonment to the department, or the department of health, or to a  
28 law enforcement agency;

29 (b) "Workplace reprisal or retaliatory action" means, but is not  
30 limited to: Denial of adequate staff to perform duties; frequent staff  
31 changes; frequent and undesirable office changes; refusal to assign  
32 meaningful work; unwarranted and unsubstantiated report of misconduct  
33 under Title 18 RCW; letters of reprimand or unsatisfactory performance  
34 evaluations; demotion; denial of employment; or a supervisor or  
35 superior encouraging coworkers to behave in a hostile manner toward the  
36 whistleblower. The protections provided to whistleblowers under this  
37 chapter shall not prevent a nursing home, state hospital, boarding  
38 home, or adult family home from: (i) Terminating, suspending, or  
39 disciplining a whistleblower for other lawful purposes; or (ii) for

1 facilities licensed under chapter 70.128 RCW, reducing the hours of  
2 employment or terminating employment as a result of the demonstrated  
3 inability to meet payroll requirements. The department shall determine  
4 if the facility cannot meet payroll in cases in which a whistleblower  
5 has been terminated or had hours of employment reduced because of the  
6 inability of a facility to meet payroll; 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 boarding home or veterans'  
13 home from exercising its authority to terminate, suspend, or discipline  
14 any employee who engages in workplace reprisal or retaliatory action  
15 against a whistleblower.

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

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

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

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

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

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

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

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

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

4 (5) "Physical restraint" means a manual method, obstacle, or  
5 physical or mechanical device, material, or equipment attached or  
6 adjacent to the resident's body that restricts freedom of movement or  
7 access to his or her body((+7+))\_ is used for discipline or  
8 convenience((+7+))\_ and not required to treat the resident's medical  
9 symptoms.

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

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

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

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

21 (1) The facility must inform the resident both orally and in  
22 writing in a language that the resident understands of his or her  
23 rights and all rules and regulations governing resident conduct and  
24 responsibilities during the stay in the facility. The notification  
25 must be made prior to or upon admission. Receipt of the information  
26 must be acknowledged in writing.

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

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

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

35 (3) The facility shall only admit or retain individuals whose needs  
36 it can safely and appropriately serve in the facility with appropriate  
37 available staff or through the provision of reasonable accommodations  
38 as required by state or federal law. Except in cases of emergency,

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

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

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

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

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

1 (5) Notification of changes.

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

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

8 (ii) A significant change in the resident's physical, mental, or  
9 psychosocial status (i.e., a deterioration in health, mental, or  
10 psychosocial status in either life-threatening conditions or clinical  
11 complications).

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

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

16 (ii) A decision to transfer or discharge the resident from the  
17 facility.

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

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

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

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

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

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

31 (c) The health of individuals in the facility would otherwise be  
32 endangered;

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

35 (e) The facility ceases to operate.

36 (2) All long-term care facilities shall fully disclose to potential  
37 residents or their legal representative the service capabilities of the  
38 facility prior to admission to the facility. If the care needs of the

1 applicant who is medicaid eligible are in excess of the facility's  
2 service capabilities, the department shall identify other care settings  
3 or residential care options consistent with federal law.

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

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

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

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

13 ~~((e))~~ (d) Include in the notice the items described in subsection  
14 ~~((4))~~ (5) of this section.

15 ~~((3))~~ (4)(a) Except when specified in this subsection, the notice  
16 of transfer ~~((of {or}))~~ or discharge required under subsection ~~((2))~~  
17 (3) of this section must be made by the facility at least thirty days  
18 before the resident is transferred or discharged.

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

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

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

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

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

26 ~~((4))~~ (5) The written notice specified in subsection ~~((2))~~ (3)  
27 of this section must include the following:

28 (a) The reason for transfer or discharge;

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

30 (c) The location to which the resident is transferred or  
31 discharged;

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

34 (e) For residents with developmental disabilities, the mailing  
35 address and telephone number of the agency responsible for the  
36 protection and advocacy of developmentally disabled individuals  
37 established under part C of the developmental disabilities assistance  
38 and bill of rights act; and

1 (f) For residents who are mentally ill, the mailing address and  
2 telephone number of the agency responsible for the protection and  
3 advocacy of mentally ill individuals established under the protection  
4 and advocacy for mentally ill individuals act.

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

8 ~~((+6))~~ (7) A resident discharged in violation of this section has  
9 the right to be readmitted immediately upon the first availability of  
10 a gender-appropriate bed in the facility.

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

13 (1) Prior to admission, all long-term care facilities or nursing  
14 facilities licensed under chapter 18.51 RCW that require payment of an  
15 admissions fee, deposit, or a minimum stay fee, by or on behalf of a  
16 person seeking ~~((admissions [admission]))~~ admission to the long-term  
17 care facility or nursing facility, shall provide the resident, or his  
18 or her representative, full disclosure in writing ~~((of the long-term  
19 care facility or nursing facility's schedule of charges for items and  
20 services provided by the facility and))~~ in a language the resident or  
21 his or her representative understands, a statement of the amount of any  
22 admissions fees, deposits, prepaid charges, or minimum stay fees. The  
23 facility shall also disclose to the person, or his or her  
24 representative, the facility's advance notice or transfer requirements,  
25 prior to admission. In addition, the long-term care facility or  
26 nursing facility shall also fully disclose in writing prior to  
27 admission what portion of the deposits, admissions fees, prepaid  
28 charges, or minimum stay fees will be refunded to the resident or his  
29 or her representative if the resident leaves the long-term care  
30 facility or nursing facility. Receipt of the disclosures required  
31 under this subsection must be acknowledged in writing. If the facility  
32 does not provide these disclosures, the deposits, admissions fees,  
33 prepaid charges, or minimum stay fees may not be kept by the facility.  
34 If a resident ~~((, during the first thirty days of residence,))~~ dies or  
35 is hospitalized or is transferred to another facility for more  
36 appropriate care and does not return to the original facility, the  
37 facility shall refund any deposit or charges already paid less the  
38 facility's per diem rate for the days the resident actually resided or

1 reserved or retained a bed in the facility notwithstanding any minimum  
2 stay policy or discharge notice requirements, except that the facility  
3 may retain an additional amount to cover its reasonable, actual  
4 expenses incurred as a result of a private-pay resident's move, not to  
5 exceed five days' per diem charges, unless the resident has given  
6 advance notice in compliance with the admission agreement. All long-  
7 term care facilities or nursing facilities covered under this section  
8 are required to refund any and all refunds due the resident or  
9 (~~their~~) his or her representative within thirty days from the  
10 resident's date of discharge from the facility. Nothing in this  
11 section applies to provisions in contracts negotiated between a nursing  
12 facility or long-term care facility and a certified health plan, health  
13 or disability insurer, health maintenance organization, managed care  
14 organization, or similar entities.

15 (2) Where a long-term care facility or nursing facility requires  
16 the execution of an admission contract by or on behalf of an individual  
17 seeking admission to the facility, the terms of the contract shall be  
18 consistent with the requirements of this section, and the terms of an  
19 admission contract by a long-term care facility shall be consistent  
20 with the requirements of this chapter.

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

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

26 (2) In expanding home and community services, the department shall:  
27 (a) Take full advantage of federal funding available under Title XVIII  
28 and Title XIX of the federal social security act, including home  
29 health, adult day care, waiver options, and state plan services; and  
30 (b) be authorized to use funds available under its community options  
31 program entry system waiver granted under section 1915(c) of the  
32 federal social security act to expand the availability of in-home,  
33 adult residential care, adult family homes, enhanced adult residential  
34 care, and assisted living services. By June 30, 1997, the department  
35 shall undertake to reduce the nursing home medicaid census by at least  
36 one thousand six hundred by assisting individuals who would otherwise  
37 require nursing facility services to obtain services of their choice,  
38 including assisted living services, enhanced adult residential care,

1 and other home and community services. The department shall make  
2 reasonable efforts to contract for at least one hundred eighty state  
3 clients who would otherwise be served in nursing facilities or in  
4 assisted living to instead be served in enhanced adult residential care  
5 settings by June 30, 1999. If a resident, or his or her legal  
6 representative, objects to a discharge decision initiated by the  
7 department, the resident shall not be discharged if the resident has  
8 been assessed and determined to require nursing facility services. In  
9 contracting with nursing homes and boarding homes for enhanced adult  
10 residential care placements, neither the department nor the department  
11 of health shall ((not)) require, by contract or through other means,  
12 structural modifications to existing building construction.

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

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

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

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

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

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

16       (a) Are medicaid clients, medicaid applicants, or eligible for both  
17 medicare and medicaid; and

18       (b) Apply or are likely to apply for admission to a nursing  
19 facility.

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

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

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

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

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

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

1 (4) When the department finds, based on assessment, that the  
2 individual prefers and needs nursing facility care, the department  
3 shall:

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

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

8 (c) Describe the role of the department in providing nursing  
9 facility case management.

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

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

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

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

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

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

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

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

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

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

28 (8) No provider or staff, or prospective provider or staff, with a  
29 stipulated finding of fact, conclusion of law, an agreed order, or  
30 finding of fact, conclusion of law, or final order issued by a  
31 disciplining authority, a court of law, or entered into a state  
32 registry finding him or her guilty of abuse, neglect, exploitation, or  
33 abandonment of a minor or a vulnerable adult as defined in chapter  
34 74.34 RCW shall be employed in the care of and have unsupervised access  
35 to vulnerable adults.

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

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

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

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

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

35       (3) The aging and adult services administration shall investigate  
36 complaints if the subject of the complaint is within its authority  
37 unless the department determines that: (a) The complaint is intended  
38 to willfully harass a licensee or employee of the licensee; or (b)

1 there is no reasonable basis for investigation; or (c) corrective  
2 action has been taken as determined by the ombudsman or the department.

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

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

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

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

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

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

37 (e) In the best practices of total quality management and  
38 continuous quality improvement, after a department finding of a  
39 violation that is serious, recurring, or uncorrected following a

1 previous citation, the department shall make an on-site revisit of the  
2 facility to ensure correction of the violation, except for license or  
3 contract suspensions or 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.

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

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

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

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

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

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

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

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

35 The facility shall provide this information before admission, or at  
36 the time of admission in case of emergency, and as changes occur during  
37 the resident's stay. The resident and his or her representative must

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

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

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

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

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

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

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

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

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

35 (6) Prompt and specific enforcement remedies shall also be  
36 implemented without delay, consistent with RCW 18.20.190, for  
37 facilities found to have delivered care or failed to deliver care  
38 resulting in problems that are serious, recurring, or uncorrected, or

1 that create a hazard that is causing or likely to cause death or  
2 serious harm to one or more residents. These enforcement remedies may  
3 also include, when appropriate, reasonable conditions on a license. In  
4 the selection of remedies, the safety, health, and well-being of  
5 residents shall be of paramount importance.

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

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

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

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

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

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

37 (3) The department shall investigate complaints if the subject of  
38 the complaint is within its authority unless the department determines

1 that: (a) The complaint is intended to willfully harass a licensee or  
2 employee of the licensee; or (b) there is no reasonable basis for  
3 investigation; or (c) corrective action has been taken as determined by  
4 the ombudsman or the department.

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

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

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

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

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

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

38 (e) In the best practices of total quality management and  
39 continuous quality improvement, after a department finding of a

1 violation that is serious, recurring, or uncorrected following a  
2 previous citation, the department shall make an on-site revisit of the  
3 facility to ensure correction of the violation. This subsection does  
4 not prevent the department from enforcing license suspensions or  
5 revocations.

6 (f) Substantiated complaints of neglect, abuse, exploitation, or  
7 abandonment of residents, or suspected criminal violations, shall also  
8 be referred by the department to the appropriate law enforcement  
9 agencies, the attorney general, and appropriate professional  
10 disciplining authority.

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

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

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

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

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

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

37 (a) The facility;

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

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

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

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

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

30 (a) The reason for the discharge;

31 (b) A statement that the resident has the right to appeal the  
32 discharge; and

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

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



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 residential or commercial purposes, including areas zoned for single  
2 family dwellings.

3 NEW SECTION. **Sec. 402.** The department of social and health  
4 services shall implement a limited moratorium on the authorization of  
5 adult family home licenses until December 12, 1997, or until the  
6 secretary has determined that all adult family home and group home  
7 safety and quality of care standards have been reviewed by the  
8 department, determined by the secretary to reasonably protect the life,  
9 safety, and health of residents, and has notified all adult family home  
10 and group home operators of the standards of care or any modifications  
11 to the existing standards. This limited moratorium shall in no way  
12 prevent a person eligible to receive services from receiving the same  
13 or equivalent chronic long-term care services. In the event of a need  
14 for such services, the department shall develop a process for  
15 determining the availability of chronic long-term care residential  
16 services on a case-by-case basis to determine if an adult family home  
17 license should be granted to accommodate the needs of a particular  
18 geographical or ethnic community. The department may review the cost  
19 and feasibility of creating an adult family home advisory committee.  
20 The secretary shall make the final determination on individual case  
21 licensure until December 12, 1997, or until the moratorium has been  
22 removed and determine if an adult family home advisory committee should  
23 be developed.

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

27 **PART V**

28 **MISCELLANEOUS PROVISIONS**

29 NEW SECTION. **Sec. 501.** The department of health in cooperation  
30 with the department of social and health services may develop a plan  
31 for implementing a pilot program for accrediting boarding homes  
32 licensed under RCW 18.20.020 with a recognized national nongovernmental  
33 accreditation organization or an organization with experience in  
34 developing and implementing accreditation programs in at least two  
35 states. The pilot plan, if funded, shall be developed with the input

1 of residents, provider representatives, and other vested interest  
2 groups. If funded, the plan shall review the overall feasibility of  
3 implementation, cost or savings to the department of health, impact on  
4 client health and safety, and financial and other impacts to the  
5 boarding industry. If funded, the pilot boarding home accreditation  
6 plan shall be presented to the appropriate committees of the house of  
7 representatives and the senate by January 5, 1998.

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

35 NEW SECTION. **Sec. 503.** The department of social and health  
36 services may review the cost and feasibility of implementing  
37 developmental disabilities certification standards for community

1 residential alternatives to ensure that services are adequate for the  
2 health, safety, care, treatment, and support of persons with  
3 developmental disabilities. The community residential alternatives  
4 shall include, but not be limited to, entities that contract or  
5 directly provide services with the division of developmental  
6 disabilities such as group homes, agency alternative living, intensive  
7 and other tenant support services, adult family homes, or boarding  
8 homes. Certification standards shall review at a minimum the following  
9 areas. Administrative and financial capabilities of the provider,  
10 health and safety practices, the opportunities for the individuals  
11 served by the programs to have power and choice in their lives,  
12 opportunities to develop friendships and relationships, and  
13 opportunities to develop self-respect and to gain respect from others,  
14 to participate in the community, and to gain independent living skills.  
15 If the review is funded, the department shall also recommend whether  
16 adult family homes that choose to provide services only to persons with  
17 developmental disabilities should receive special certification or  
18 licensure apart from or in place of the existing adult family home  
19 license. The review may also recommend the type and amount of provider  
20 training necessary to appropriately support persons with developmental  
21 disabilities in community residential alternatives. The department may  
22 include the assistance of other departments, vested interest groups,  
23 and family members in the development of recommendations. If funded,  
24 the department shall report to the appropriate committees of the house  
25 of representatives and the senate by January 30, 1998.

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

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

3        The department of health, and the disciplining authorities as  
4    agents of the department of social and health services for purposes of  
5    this section in cooperation with the department of social and health  
6    services, shall implement a nursing home resident protection program in  
7    accordance with guidelines established by the federal health care  
8    financing administration. The department of social and health services  
9    shall retain authority to review and investigate all allegations of  
10   nursing home resident neglect, abuse, and misappropriation of resident  
11   property. If the department of social and health services makes a  
12   preliminary determination, based upon credible evidence and an  
13   investigation by the department, that a licensed, certified, or  
14   registered health care provider listed in RCW 18.130.040 and used by  
15   the nursing home to provide services to a resident, except for a  
16   certified or registered nursing assistant, has neglected or abused a  
17   resident or misappropriated a resident's property, the department of  
18   social and health services shall immediately refer its determination  
19   regarding the individual to the appropriate disciplining authority, as  
20   defined in chapter 18.130 RCW. The disciplining authority shall pursue  
21   administrative adjudicatory or disciplinary proceedings according to  
22   federal timelines and requirements, and consistent with the  
23   administrative procedure act, chapter 34.05 RCW. Meeting federal  
24   requirements for the resident protection program shall not compromise  
25   due process protections when state disciplining authorities take  
26   actions against health professionals regulated under the uniform  
27   disciplinary act, chapter 18.130 RCW. The secretary of social and  
28   health services shall have access to all information concerning any  
29   complaint referred under the resident protection program to the  
30   secretary of health and the other disciplining authorities. If the  
31   department of social and health services determines that the  
32   disciplining authority has failed to meet the applicable requirements  
33   of federal law for the resident protection program, jurisdiction on the  
34   individual case shall revert to the secretary of social and health  
35   services for actions under the federal law, which shall not interfere  
36   with the action under the uniform disciplinary act. The secretary of  
37   social and health services and the secretary of health shall enter into  
38   an interagency agreement to implement the provisions of this section.  
39   A finding of fact, stipulated finding of fact, agreed order, or final

1 order issued by the disciplining authority that finds the individual  
2 health care provider guilty of neglect, abuse, or misappropriation of  
3 resident property shall be promptly reported to the department of  
4 social and health services.

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

7 The department of social and health services shall retain authority  
8 to review and investigate all allegations of nursing home resident  
9 neglect, abuse, and misappropriation of resident property. The  
10 department of social and health services in cooperation with the  
11 department of health and disciplining authorities shall implement a  
12 nursing home resident protection program according to guidelines  
13 established by the federal health care financing administration. The  
14 department of social and health services, as the federally responsible  
15 state agency, shall conduct or coordinate the conduct of the most  
16 appropriate and timely review and investigation of all credible  
17 allegations of nursing home resident neglect, abuse, and  
18 misappropriation of resident property. If the department of social and  
19 health services makes a preliminary determination, based upon credible  
20 evidence and an investigation by the department, that a licensed,  
21 certified, or registered health care provider listed in RCW 18.130.040  
22 and used by the nursing home to provide services to a resident, except  
23 for a certified or registered nursing assistant, has neglected or  
24 abused a resident or misappropriated a resident's property, the  
25 department of social and health services shall immediately refer its  
26 determination regarding the individual to the department of health or  
27 disciplining authority, as defined in RCW 18.130.020. The disciplining  
28 authority shall pursue administrative adjudicatory or disciplinary  
29 proceedings according to federal timelines and requirements, and  
30 consistent with the administrative procedure act, chapter 34.05 RCW.  
31 When the department of social and health services determines such  
32 proceeding does not meet federal timelines and requirements, the  
33 department of social and health services shall have the authority to  
34 take federally required actions. Other individuals used by a nursing  
35 home, including certified and registered nursing assistants, with a  
36 preliminary determination of neglect, abuse, or misappropriation of  
37 resident property shall receive notice and the right to an  
38 administrative fair hearing from the department of social and health

1 services according to federal timelines and requirements. An  
2 individual with a finding of fact, stipulated finding of fact, agreed  
3 order, or final order issued by the department of social and health  
4 services or the disciplining authority that finds the individual guilty  
5 of neglect, abuse, or misappropriation of resident property shall not  
6 be employed in the care of and have unsupervised access to vulnerable  
7 adults, as defined in chapter 74.34 RCW. Upon receipt from the  
8 disciplining authority of a finding of fact, stipulated finding of  
9 fact, agreed order, or final order that finds the individual health  
10 care provider guilty of neglect, abuse, or misappropriation of resident  
11 property, the department of social and health services shall report  
12 this information to the nursing home where the incident occurred, the  
13 long-term care facility where the individual works, if different, and  
14 other entities serving vulnerable adults upon request by the entity.

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

17 The legislature finds that there is a significant need to protect  
18 children and dependent persons, including frail elder and vulnerable  
19 adults, from abuse and neglect by their parents, by persons entrusted  
20 with their physical custody, or by persons employed to provide them  
21 with the basic necessities of life. The legislature further finds that  
22 such abuse and neglect often takes the forms of either withholding from  
23 them the basic necessities of life, including food, water, shelter,  
24 clothing, and health care, or abandoning them, or both. Therefore, it  
25 is the intent of the legislature that criminal penalties be imposed on  
26 those guilty of such abuse or neglect. It is the intent of the  
27 legislature that a person who, in good faith, is furnished Christian  
28 Science treatment by a duly accredited Christian Science practitioner  
29 in lieu of medical care is not considered deprived of medically  
30 necessary health care or abandoned. Prosecutions under this chapter  
31 shall be consistent with the rules of evidence, including hearsay,  
32 under law.

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

35 As used in this chapter:

36 (1) "Basic necessities of life" means food, water, shelter,  
37 clothing, and medically necessary health care, including but not

1 limited to health-related treatment or activities, hygiene, oxygen, and  
2 medication.

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

5 (b) "Substantial bodily harm" means bodily injury which involves a  
6 temporary but substantial disfigurement, or which causes a temporary  
7 but substantial loss or impairment of the function of any bodily part  
8 or organ, or which causes a fracture of any bodily part;

9 (c) "Great bodily harm" means bodily injury which creates a high  
10 probability of death, or which causes serious permanent disfigurement,  
11 or which causes a permanent or protracted loss or impairment of the  
12 function of any bodily part or organ.

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

14 (4) "Dependent person" means a person who, because of physical or  
15 mental disability, or because of extreme advanced age, is dependent  
16 upon another person to provide the basic necessities of life. A  
17 resident of a nursing home, as defined in RCW 18.51.010, a resident of  
18 an adult family home, as defined in RCW 70.128.010, and a frail elder  
19 or vulnerable adult, as defined in RCW 74.34.020(8), is presumed to be  
20 a dependent person for purposes of this chapter.

21 (5) "Employed" means hired by a dependent person, another person  
22 acting on behalf of a dependent person, or by an organization or  
23 governmental entity, to provide to a dependent person any of the basic  
24 necessities of life. A person may be "employed" regardless of whether  
25 the person is paid for the services or, if paid, regardless of who pays  
26 for the person's services.

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

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

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

34 In any prosecution for criminal mistreatment, it shall be a defense  
35 that the withholding of the basic necessities of life is due to  
36 financial inability only if the person charged has made a reasonable  
37 effort to obtain adequate assistance. This defense is available to a

1 person employed to provide the basic necessities of life only when the  
2 agreed-upon payment has not been made.

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

5 (1) A parent of a child ((~~or~~)), the person entrusted with the  
6 physical custody of a child or dependent person, or a person employed  
7 to provide to the child or dependent person the basic necessities of  
8 life is guilty of criminal mistreatment in the first degree if he or  
9 she recklessly, as defined in RCW 9A.08.010, causes great bodily harm  
10 to a child or dependent person by withholding any of the basic  
11 necessities of life.

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

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

15 (1) A parent of a child ((~~or~~)), the person entrusted with the  
16 physical custody of a child or dependent person, or a person employed  
17 to provide to the child or dependent person the basic necessities of  
18 life is guilty of criminal mistreatment in the second degree if he or  
19 she recklessly, as defined in RCW 9A.08.010, either (a) creates an  
20 imminent and substantial risk of death or great bodily harm, or (b)  
21 causes substantial bodily harm by withholding any of the basic  
22 necessities of life.

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

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

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

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

33 As used in this chapter:

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

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

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

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

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

16 (4) "Mental incapacity" is that condition existing at the time of  
17 the offense which prevents a person from understanding the nature or  
18 consequences of the act of sexual intercourse whether that condition is  
19 produced by illness, defect, the influence of a substance or from some  
20 other cause.

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

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

28 (7) "Consent" means that at the time of the act of sexual  
29 intercourse or sexual contact there are actual words or conduct  
30 indicating freely given agreement to have sexual intercourse or sexual  
31 contact.

32 (8) "Significant relationship" means a situation in which the  
33 perpetrator is:

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

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

1       (c) A person who provides welfare, health or residential  
2 assistance, personal care, or organized recreational activities to  
3 frail elders or vulnerable adults, including a provider, employee,  
4 temporary employee, volunteer, or independent contractor who supplies  
5 services to long-term care facilities licensed or required to be  
6 licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home  
7 health, hospice, or home care agencies licensed or required to be  
8 licensed under chapter 70.127 RCW, but not including a consensual  
9 sexual partner.

10       (9) "Abuse of a supervisory position" means a direct or indirect  
11 threat or promise to use authority to the detriment or benefit of a  
12 minor.

13       (10) "Developmentally disabled," for purposes of RCW  
14 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a  
15 developmental disability as defined in RCW 71A.10.020.

16       (11) "Person with supervisory authority," for purposes of RCW  
17 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any  
18 proprietor or employee of any public or private care or treatment  
19 facility who directly supervises developmentally disabled, mentally  
20 disordered, or chemically dependent persons at the facility.

21       (12) "Mentally disordered person" for the purposes of RCW  
22 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental  
23 disorder" as defined in RCW 71.05.020(2).

24       (13) "Chemically dependent person" for purposes of RCW  
25 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically  
26 dependent" as defined in RCW 70.96A.020(4).

27       (14) "Health care provider" for purposes of RCW 9A.44.050 and  
28 9A.44.100 means a person who is, holds himself or herself out to be, or  
29 provides services as if he or she were: (a) A member of a health care  
30 profession under chapter 18.130 RCW; or (b) registered or certified  
31 under chapter 18.19 RCW, regardless of whether the health care provider  
32 is licensed, certified, or registered by the state.

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

37       (16) "Frail elder or vulnerable adult" means a person sixty years  
38 of age or older who has the functional, mental, or physical inability  
39 to care for himself or herself. "Frail elder or vulnerable adult" also

1 includes a person found incapacitated under chapter 11.88 RCW, a person  
2 over eighteen years of age who has a developmental disability under  
3 chapter 71A.10 RCW, a person admitted to a long-term care facility that  
4 is licensed or required to be licensed under chapter 18.20, 18.51,  
5 72.36, or 70.128 RCW, and a person receiving services from a home  
6 health, hospice, or home care agency licensed or required to be  
7 licensed under chapter 70.127 RCW.

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

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

13 (a) By forcible compulsion;

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

16 (c) When the victim is developmentally disabled and the perpetrator  
17 is a person who is not married to the victim and who has supervisory  
18 authority over the victim;

19 (d) When the perpetrator is a health care provider, the victim is  
20 a client or patient, and the sexual intercourse occurs during a  
21 treatment session, consultation, interview, or examination. It is an  
22 affirmative defense that the defendant must prove by a preponderance of  
23 the evidence that the client or patient consented to the sexual  
24 intercourse with the knowledge that the sexual intercourse was not for  
25 the purpose of treatment; ~~((or))~~

26 (e) When the victim is a resident of a facility for mentally  
27 disordered or chemically dependent persons and the perpetrator is a  
28 person who is not married to the victim and has supervisory authority  
29 over the victim; or

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

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

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

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

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

5 (b) When the other person is incapable of consent by reason of  
6 being mentally defective, mentally incapacitated, or physically  
7 helpless;

8 (c) When the victim is developmentally disabled and the perpetrator  
9 is a person who is not married to the victim and who has supervisory  
10 authority over the victim;

11 (d) When the perpetrator is a health care provider, the victim is  
12 a client or patient, and the sexual contact occurs during a treatment  
13 session, consultation, interview, or examination. It is an affirmative  
14 defense that the defendant must prove by a preponderance of the  
15 evidence that the client or patient consented to the sexual contact  
16 with the knowledge that the sexual contact was not for the purpose of  
17 treatment; ~~((or))~~

18 (e) When the victim is a resident of a facility for mentally  
19 disordered or chemically dependent persons and the perpetrator is a  
20 person who is not married to the victim and has supervisory authority  
21 over the victim; or

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

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

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

28 (1) This chapter applies only to the secretary and the boards and  
29 commissions having jurisdiction in relation to the professions licensed  
30 under the chapters specified in this section. This chapter does not  
31 apply to any business or profession not licensed under the chapters  
32 specified in this section.

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

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

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

37 (iii) Midwives licensed under chapter 18.50 RCW;

38 (iv) Ocularists licensed under chapter 18.55 RCW;

1 (v) Massage operators and businesses licensed under chapter 18.108  
2 RCW;

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

4 (vii) Acupuncturists licensed under chapter 18.06 RCW;

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

7 (ix) Respiratory care practitioners certified under chapter 18.89  
8 RCW;

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

10 (xi) Persons registered as nursing pool operators under chapter  
11 18.52C RCW;

12 (xii) Nursing assistants registered or certified under chapter  
13 (~~18.79~~) 18.88A RCW;

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

15 (xiv) Dietitians and nutritionists certified under chapter 18.138  
16 RCW;

17 (xv) Sex offender treatment providers certified under chapter  
18 18.155 RCW;

19 (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW  
20 18.71.205;

21 (xvii) Persons registered as adult family home providers and  
22 resident managers under RCW 18.48.020; and

23 (xviii) Denturists licensed under chapter 18.30 RCW.

24 (b) The boards and commissions having authority under this chapter  
25 are as follows:

26 (i) The podiatric medical board as established in chapter 18.22  
27 RCW;

28 (ii) The chiropractic quality assurance commission as established  
29 in chapter 18.25 RCW;

30 (iii) The dental quality assurance commission as established in  
31 chapter 18.32 RCW;

32 (iv) The board of hearing and speech as established in chapter  
33 18.35 RCW;

34 (v) The board of examiners for nursing home administrators as  
35 established in chapter 18.52 RCW;

36 (vi) The optometry board as established in chapter 18.54 RCW  
37 governing licenses issued under chapter 18.53 RCW;

1 (vii) The board of osteopathic medicine and surgery as established  
2 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and  
3 18.57A RCW;

4 (viii) The board of pharmacy as established in chapter 18.64 RCW  
5 governing licenses issued under chapters 18.64 and 18.64A RCW;

6 (ix) The medical quality assurance commission as established in  
7 chapter 18.71 RCW governing licenses and registrations issued under  
8 chapters 18.71 and 18.71A RCW;

9 (x) The board of physical therapy as established in chapter 18.74  
10 RCW;

11 (xi) The board of occupational therapy practice as established in  
12 chapter 18.59 RCW;

13 (xii) The nursing care quality assurance commission as established  
14 in chapter 18.79 RCW governing licenses issued under that chapter;

15 (xiii) The examining board of psychology and its disciplinary  
16 committee as established in chapter 18.83 RCW; and

17 (xiv) The veterinary board of governors as established in chapter  
18 18.92 RCW.

19 (3) In addition to the authority to discipline license holders, the  
20 disciplining authority has the authority to grant or deny licenses  
21 based on the conditions and criteria established in this chapter and  
22 the chapters specified in subsection (2) of this section. This chapter  
23 also governs any investigation, hearing, or proceeding relating to  
24 denial of licensure or issuance of a license conditioned on the  
25 applicant's compliance with an order entered pursuant to RCW 18.130.160  
26 by the disciplining authority.

27 (4) All disciplining authorities shall adopt procedures to ensure  
28 substantially consistent application of this chapter, the Uniform  
29 Disciplinary Act, among the disciplining authorities listed in  
30 subsection (2) of this section.

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

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

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

1       (1)(a) The secretary of social and health services and the  
2 secretary of health shall adopt additional requirements for the  
3 licensure or relicensure of agencies ~~((or))~~, facilities ~~((which))~~, and  
4 licensed individuals who provide care and treatment to vulnerable  
5 adults, including nursing pools registered under chapter 18.52C RCW.  
6 These additional requirements shall ensure that any person associated  
7 with a licensed agency or facility having ~~((direct—contact))~~  
8 unsupervised access with a vulnerable adult shall not have been:  
9 ~~((+a))~~ (i) Convicted of a crime against persons as defined in RCW  
10 43.43.830, except as provided in this section; ~~((+b))~~ (ii) convicted  
11 of crimes relating to financial exploitation as defined in RCW  
12 43.43.830, except as provided in this section; ~~((+c))~~ (iii) found in  
13 any disciplinary board final decision to have abused a vulnerable adult  
14 under RCW 43.43.830; or ~~((+d))~~ (iv) the subject in a protective  
15 proceeding under chapter 74.34 RCW.

16       (b) A person associated with a licensed agency or facility who has  
17 unsupervised access with a vulnerable adult shall make the disclosures  
18 specified in RCW 43.43.834(2). The person shall make the disclosures  
19 in writing, sign, and swear to the contents under penalty of perjury.  
20 The person shall, in the disclosures, specify all crimes against  
21 children or other persons, and all crimes relating to financial  
22 exploitation as defined in RCW 43.43.830, committed by the person.

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

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

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

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

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

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

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

8 (3) In consultation with law enforcement personnel, the secretary  
9 of social and health services and the secretary of health shall  
10 investigate, or cause to be investigated, the conviction record and the  
11 protection proceeding record information under this chapter (~~(43.43 RCW~~  
12 ~~of each agency or facility and its)) of the staff of each agency or  
13 facility under their respective jurisdictions seeking licensure or  
14 relicensure. An individual responding to a criminal background inquiry  
15 request from his or her employer or potential employer shall disclose  
16 the information about his or her criminal history under penalty of  
17 perjury. The secretaries shall use the information solely for the  
18 purpose of determining eligibility for licensure or relicensure.  
19 Criminal justice agencies shall provide the secretaries such  
20 information as they may have and that the secretaries may require for  
21 such purpose.~~

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

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

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

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

29 (3) "Practitioner of the healing arts" or "practitioner" means a  
30 person licensed by this state to practice podiatric medicine and  
31 surgery, optometry, pharmacy, physical therapy, chiropractic, nursing,  
32 dentistry, osteopathic medicine and surgery, or medicine and surgery.  
33 The term "practitioner" shall include a nurses aide, a nursing home  
34 administrator licensed under chapter 18.52 RCW, and a duly accredited  
35 Christian Science practitioner: PROVIDED, HOWEVER, That a nursing home  
36 patient who is being furnished Christian Science treatment by a duly  
37 accredited Christian Science practitioner shall not be considered, for

1 that reason alone, a neglected patient for the purposes of this  
2 chapter.

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

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

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

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

16 (8) "Pharmacist" means any registered pharmacist under chapter  
17 18.64 RCW, whether acting in an individual capacity or as an employee  
18 or agent of any public or private organization or institution.

19 (9) "Abuse or neglect" or "patient abuse or neglect" means the  
20 nonaccidental physical injury or condition, sexual abuse, or negligent  
21 treatment of a nursing home or state hospital patient under  
22 circumstances which indicate that the patient's health, welfare,  
23 ~~((and))~~ or safety is harmed thereby.

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

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

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

32 (1) Where a report is ~~((deemed warranted))~~ required under RCW  
33 70.124.030, an immediate oral report shall be made by telephone or  
34 otherwise to either a law enforcement agency or to the department and,  
35 upon request, shall be followed by a report in writing. The reports  
36 shall contain the following information, if known:

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

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

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

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

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

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

8 (g) Any evidence of previous injuries, including their nature and  
9 extent; and

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

13 (2) Each law enforcement agency receiving such a report shall, in  
14 addition to taking the action required by RCW 70.124.050, immediately  
15 relay the report to the department, and to other law enforcement  
16 agencies, including the medicaid fraud control unit of the office of  
17 the attorney general, as appropriate. For any report it receives, the  
18 department shall likewise take the required action and in addition  
19 relay the report to the appropriate law enforcement agency or agencies.  
20 The appropriate law enforcement agency or agencies shall receive  
21 immediate notification when the department, upon receipt of such  
22 report, has reasonable cause to believe that a criminal act has been  
23 committed.

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

26 A person who is required to make or to cause to be made a report  
27 pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to  
28 make such report or fails to cause such report to be made is guilty of  
29 a gross misdemeanor.

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

32 A person who is required to make or cause to be made a report under  
33 RCW 74.34.030 or 74.34.040 and who knowingly fails to make the report  
34 or fails to cause the report to be made is guilty of a gross  
35 misdemeanor.

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

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

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

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

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

15       (4) "Department" means the department of social and health  
16 services.

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

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

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

25       (8) "Frail elder or vulnerable adult" means a person sixty years of  
26 age or older who has the functional, mental, or physical inability to  
27 care for himself or herself. "Frail elder or vulnerable adult" shall  
28 include persons found incapacitated under chapter 11.88 RCW, or a  
29 person who has a developmental disability under chapter 71A.10 RCW, and  
30 persons admitted to any long-term care facility that is licensed or  
31 required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128  
32 RCW, or persons receiving services from home health, hospice, or home  
33 care agencies licensed or required to be licensed under chapter 70.127  
34 RCW.

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

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

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

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

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

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

37       (a) When considering persons for state positions directly  
38 responsible for the care, supervision, or treatment of children,  
39 developmentally disabled persons, or vulnerable adults (~~(or)~~)i

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

10 (c) When contracting with individuals or businesses or  
11 organizations for the care, supervision, or treatment of children,  
12 developmentally disabled persons, or vulnerable adults, including but  
13 not limited to services contracted for under chapter 18.20, 18.48,  
14 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW. ((However, when  
15 necessary))

16 (5) Whenever a state conviction record check is required by state  
17 law, persons may be employed or engaged as volunteers or independent  
18 contractors on a conditional basis pending completion of the state  
19 background investigation. Whenever a national criminal record check  
20 through the federal bureau of investigation is required by state law,  
21 a person may be employed or engaged as a volunteer or independent  
22 contractor on a conditional basis pending completion of the national  
23 check. The Washington personnel resources board shall adopt rules to  
24 accomplish the purposes of this subsection as it applies to state  
25 employees.

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

32 (b) Completed criminal background inquiry information may be shared  
33 by a willing health care facility only if the following conditions are  
34 satisfied: The licensed health care facility sharing the criminal  
35 background inquiry information is reasonably known to be the person's  
36 most recent employer, no more than twelve months has elapsed from the  
37 date the person was last employed at a licensed health care facility to  
38 the date of their current employment application, and the criminal  
39 background information is no more than two years old.

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

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

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

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

20 (g) For the purposes of this subsection, "health care facility"  
21 means a nursing home licensed under chapter 18.51 RCW, a boarding home  
22 licensed under chapter 18.20 RCW, or an adult family home licensed  
23 under chapter 70.128 RCW.

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

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

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

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

37 (2) The investigation may include an examination of state and  
38 national criminal identification data ~~((and the child abuse and neglect~~

1 ~~register established under chapter 26.44 RCW. The secretary shall~~  
2 ~~provide the results of the state background check on individual~~  
3 ~~providers to the individuals with physical disabilities, developmental~~  
4 ~~disabilities, mental illness, or mental impairment who hired them and~~  
5 ~~to their legal guardians, if any)). The secretary shall use the~~  
6 ~~information solely for the purpose of determining the character,~~  
7 ~~suitability, and competence of these applicants ((except that in the~~  
8 ~~case of individuals with physical disabilities, developmental~~  
9 ~~disabilities, mental illness, or mental impairment who employ~~  
10 ~~individual providers, the)).~~

11 (3) The secretary shall provide the results of the state background  
12 check on individual providers to the individuals with physical  
13 disabilities, developmental disabilities, mental illness, or mental  
14 impairment or to their legal guardians, if any, for their determination  
15 of the character, suitability, and competence of the applicants ((shall  
16 be made by the individual with a physical disability, developmental  
17 disability, mental illness, or mental impairment)). If an individual  
18 elects to hire or retain an individual provider after receiving notice  
19 from the department that the applicant has a conviction for an offense  
20 that would disqualify the applicant from employment with the  
21 department, then the secretary may deny payment for any subsequent  
22 services rendered by the disqualified individual provider.

23 (4) Criminal justice agencies shall provide the secretary such  
24 information as they may have and that the secretary may require for  
25 such purpose. ((If necessary, persons may be employed on a conditional  
26 basis pending completion of the background investigation.))

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

29 The legislature intends to protect the public's right to high  
30 quality health care by assuring that nursing pools employ, procure or  
31 refer competent and qualified ~~((nursing))~~ health care or long-term care  
32 personnel, and that such ((nursing)) personnel are provided to health  
33 care facilities, agencies, or individuals in a way to meet the needs of  
34 residents and patients.

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

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

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

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

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

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

17 (5) "Person" includes an individual, firm, corporation,  
18 partnership, or association.

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

21 (1) The nursing pool shall document that each temporary employee or  
22 referred independent contractor provided or referred to health care  
23 facilities currently meets the applicable minimum state credentialing  
24 requirements.

25 (2) The nursing pool shall not require, as a condition of  
26 employment or referral, that employees or independent contractors of  
27 the nursing pool recruit new employees or independent contractors for  
28 the nursing pool from among the permanent employees of the health care  
29 facility to which the nursing pool employee or independent contractor  
30 has been assigned or referred.

31 (3) The nursing pool shall carry professional and general liability  
32 insurance to insure against any loss or damage occurring, whether  
33 professional or otherwise, as the result of the negligence of its  
34 employees, agents or independent contractors for acts committed in the  
35 course of their employment with the nursing pool: PROVIDED, That a  
36 nursing pool that only refers self-employed, independent contractors to  
37 health care facilities shall carry professional and general liability  
38 insurance to cover its own liability as a nursing pool which refers

1 self-employed, independent contractors to health care facilities: AND  
2 PROVIDED FURTHER, That it shall require, as a condition of referral,  
3 that self-employed, independent contractors carry professional and  
4 general liability insurance to insure against loss or damage resulting  
5 from their own acts committed in the course of their own employment by  
6 a health care facility.

7 (4) The uniform disciplinary act, chapter 18.130 RCW, shall govern  
8 the issuance and denial of registration and the discipline of persons  
9 registered under this chapter. The secretary shall be the disciplinary  
10 authority under this chapter.

11 (5) The nursing pool shall conduct a criminal background check on  
12 all employees and independent contractors as required under RCW  
13 43.43.842 prior to employment or referral of the employee or  
14 independent contractor.

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

17 If information is released under this chapter by the state of  
18 Washington, the state and its employees: (1) Make no representation  
19 that the subject of the inquiry has no criminal record or adverse civil  
20 or administrative decisions; (2) make no determination that the subject  
21 of the inquiry is suitable for involvement with a business or  
22 organization; and (3) are not liable for defamation, invasion of  
23 privacy, negligence, or any other claim in connection with any lawful  
24 dissemination of information.

25 NEW SECTION. Sec. 530. The following acts or parts of acts are  
26 each repealed:

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

31 NEW SECTION. Sec. 531. Part headings and captions used in this  
32 act are not part of the law.

33 NEW SECTION. Sec. 532. Section 403 of this act is necessary for  
34 the immediate preservation of the public peace, health, or safety, or

1 support of the state government and its existing public institutions,  
2 and takes effect immediately.

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