
ENGROSSED SUBSTITUTE SENATE BILL 6092

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators West and Deccio)

Read first time 04/07/97.

1 AN ACT Relating to abolishing the state health care policy board;
2 amending RCW 41.05.021, 43.70.054, 43.70.066, 43.70.068, 43.72.300, and
3 43.72.310; reenacting and amending RCW 42.17.310; adding a new section
4 to chapter 43.72 RCW; repealing RCW 43.72.320, 43.73.010, 43.73.020,
5 43.73.030, and 43.73.040; repealing 1996 c 281 s 2 (uncodified);
6 providing an effective date; and declaring an emergency.

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

8 **Sec. 1.** RCW 41.05.021 and 1995 1st sp.s. c 6 s 7 are each amended
9 to read as follows:

10 (1) The Washington state health care authority is created within
11 the executive branch. The authority shall have an administrator
12 appointed by the governor, with the consent of the senate. The
13 administrator shall serve at the pleasure of the governor. The
14 administrator may employ up to seven staff members, who shall be exempt
15 from chapter 41.06 RCW, and any additional staff members as are
16 necessary to administer this chapter. The administrator may delegate
17 any power or duty vested in him or her by this chapter, including
18 authority to make final decisions and enter final orders in hearings
19 conducted under chapter 34.05 RCW. The primary duties of the authority

1 shall be to: Administer state employees' insurance benefits and
2 retired or disabled school employees' insurance benefits; administer
3 the basic health plan pursuant to chapter 70.47 RCW; study state-
4 purchased health care programs in order to maximize cost containment in
5 these programs while ensuring access to quality health care; and
6 implement state initiatives, joint purchasing strategies, and
7 techniques for efficient administration that have potential application
8 to all state-purchased health services. The authority's duties
9 include, but are not limited to, the following:

10 (a) To administer health care benefit programs for employees and
11 retired or disabled school employees as specifically authorized in RCW
12 41.05.065 and in accordance with the methods described in RCW
13 41.05.075, 41.05.140, and other provisions of this chapter;

14 (b) To analyze state-purchased health care programs and to explore
15 options for cost containment and delivery alternatives for those
16 programs that are consistent with the purposes of those programs,
17 including, but not limited to:

18 (i) Creation of economic incentives for the persons for whom the
19 state purchases health care to appropriately utilize and purchase
20 health care services, including the development of flexible benefit
21 plans to offset increases in individual financial responsibility;

22 (ii) Utilization of provider arrangements that encourage cost
23 containment, including but not limited to prepaid delivery systems,
24 utilization review, and prospective payment methods, and that ensure
25 access to quality care, including assuring reasonable access to local
26 providers, especially for employees residing in rural areas;

27 (iii) Coordination of state agency efforts to purchase drugs
28 effectively as provided in RCW 70.14.050;

29 (iv) Development of recommendations and methods for purchasing
30 medical equipment and supporting services on a volume discount basis;
31 and

32 (v) Development of data systems to obtain utilization data from
33 state-purchased health care programs in order to identify cost centers,
34 utilization patterns, provider and hospital practice patterns, and
35 procedure costs, utilizing the information obtained pursuant to RCW
36 41.05.031;

37 (c) To analyze areas of public and private health care interaction;

38 (d) To provide information and technical and administrative
39 assistance to the board;

1 (e) To review and approve or deny applications from counties,
2 municipalities, and other political subdivisions of the state to
3 provide state-sponsored insurance or self-insurance programs to their
4 employees in accordance with the provisions of RCW 41.04.205, setting
5 the premium contribution for approved groups as outlined in RCW
6 41.05.050;

7 (f) To appoint a health care policy technical advisory committee as
8 required by RCW 41.05.150;

9 (g) To establish billing procedures and collect funds from school
10 districts and educational service districts under RCW 28A.400.400 in a
11 way that minimizes the administrative burden on districts; and

12 (h) To promulgate and adopt rules consistent with this chapter as
13 described in RCW 41.05.160.

14 (2) On and after January 1, 1996, the public employees' benefits
15 board may implement strategies to promote managed competition among
16 employee health benefit plans. Strategies may include but are not
17 limited to:

18 (a) Standardizing the benefit package;

19 (b) Soliciting competitive bids for the benefit package;

20 (c) Limiting the state's contribution to a percent of the lowest
21 priced qualified plan within a geographical area;

22 (d) Monitoring the impact of the approach under this subsection
23 with regards to: Efficiencies in health service delivery, cost shifts
24 to subscribers, access to and choice of managed care plans state-wide,
25 and quality of health services. The health care authority shall also
26 advise on the value of administering a benchmark employer-managed plan
27 to promote competition among managed care plans. The health care
28 authority shall report its findings and recommendations to the
29 legislature by January 1, 1997.

30 (3) The health care authority shall, no later than July 1, 1996,
31 submit to the appropriate committees of the legislature, proposed
32 methods whereby, through the use of a voucher-type process, state
33 employees may enroll with any health carrier to receive employee
34 benefits. Such methods shall include the employee option of
35 participating in a health care savings account, as set forth in Title
36 48 RCW.

37 ~~((4) The Washington health care policy board shall study the~~
38 ~~necessity and desirability of the health care authority continuing as~~

1 a self-insuring entity and make recommendations to the appropriate
2 committees of the legislature by December 1, 1996.)

3 **Sec. 2.** RCW 43.70.054 and 1995 c 267 s 2 are each amended to read
4 as follows:

5 (1) To promote the public interest consistent with chapter 267,
6 Laws of 1995, the department of health, in cooperation with the
7 (~~health care policy board and the~~) information services board
8 established under RCW 43.105.032, shall develop health care data
9 standards to be used by, and developed in collaboration with,
10 consumers, purchasers, health carriers, providers, and state government
11 as consistent with the intent of chapter 492, Laws of 1993 as amended
12 by chapter 267, Laws of 1995, to promote the delivery of quality health
13 services that improve health outcomes for state residents. The data
14 standards shall include content, coding, confidentiality, and
15 transmission standards for all health care data elements necessary to
16 support the intent of this section, and to improve administrative
17 efficiency and reduce cost. Purchasers, as allowed by federal law,
18 health carriers, health facilities and providers as defined in chapter
19 48.43 RCW, and state government shall utilize the data standards. The
20 information and data elements shall be reported as the department of
21 health directs by rule in accordance with data standards developed
22 under this section.

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

33 (3) The cost of retrieving data for state officials and agencies
34 shall be funded through state general appropriation. The cost of
35 retrieving data for individuals and organizations engaged in research
36 or private use of data or studies shall be funded by a fee schedule
37 developed by the department that reflects the direct cost of retrieving
38 the data or study in the requested form.

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

5 (5) The department shall submit developed health care data
6 standards to the appropriate committees of the legislature by December
7 31, 1995.

8 **Sec. 3.** RCW 43.70.066 and 1995 c 267 s 4 are each amended to read
9 as follows:

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

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

16 (b) Health carriers;

17 (c) Health care providers and facilities; and

18 (d) Consumers of health services.

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

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

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

29 (b) Health care facility credentialing and recredentialing;

30 (c) Staff ratios in health care facilities;

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

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

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

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

7 (h) Health plan fiscal performance standards;

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

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

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

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

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

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

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

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

35 **Sec. 4.** RCW 43.70.068 and 1995 c 267 s 5 are each amended to read
36 as follows:

37 (~~No later than July 1, 1995, the health care policy board together~~
38 ~~with~~) The department of health, the health care authority, the

1 department of social and health services, the office of the insurance
2 commissioner, and the department of labor and industries shall form an
3 interagency group for coordination and consultation on quality
4 assurance activities and collaboration on final recommendations for the
5 study required under RCW 43.70.066. (~~By December 31, 1996, the group~~
6 ~~shall review all state agency programs governing health service quality~~
7 ~~assurance, in light of legislative actions pursuant to RCW~~
8 ~~43.70.066(6), and shall recommend to the legislature, the~~
9 ~~consolidation, coordination, or elimination of rules and programs that~~
10 ~~would be made unnecessary pursuant to the development of a uniform~~
11 ~~quality assurance and improvement program.))~~

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.72 RCW
13 to read as follows:

14 As used in this chapter, "health carrier," "health care provider,"
15 "provider," "health plan," and "health care facility" have the same
16 meaning as provided in RCW 48.43.005.

17 **Sec. 6.** RCW 43.72.300 and 1993 c 492 s 447 are each amended to
18 read as follows:

19 (1) The legislature recognizes that competition among health care
20 providers, facilities, payers, and purchasers will yield the best
21 allocation of health care resources, the lowest prices for health care
22 services, and the highest quality of health care when there exists a
23 large number of buyers and sellers, easily comparable health ((care))
24 plans and services, minimal barriers to entry and exit into the health
25 care market, and adequate information for buyers and sellers to base
26 purchasing and production decisions. However, the legislature finds
27 that purchasers of health care services and health care coverage do not
28 have adequate information upon which to base purchasing decisions; that
29 health care facilities and providers of health care services face legal
30 and market disincentives to develop economies of scale or to provide
31 the most cost-efficient and efficacious service; that health insurers,
32 contractors, and health maintenance organizations face market
33 disincentives in providing health care coverage to those Washington
34 residents with the most need for health care coverage; and that
35 potential competitors in the provision of health care coverage bear
36 unequal burdens in entering the market for health care coverage.

1 (2) The legislature therefore intends to exempt from state anti-
2 trust laws, and to provide immunity from federal anti-trust laws
3 through the state action doctrine for activities approved under this
4 chapter that might otherwise be constrained by such laws and intends to
5 displace competition in the health care market: To contain the
6 aggregate cost of health care services; to promote the development of
7 comprehensive, integrated, and cost-effective health care delivery
8 systems through cooperative activities among health care providers and
9 facilities; to promote comparability of health care coverage; to
10 improve the cost-effectiveness in providing health care coverage
11 relative to health promotion, disease prevention, and the amelioration
12 or cure of illness; to assure universal access to a publicly
13 determined, uniform package of health care benefits; and to create
14 reasonable equity in the distribution of funds, treatment, and medical
15 risk among purchasers of health care coverage, payers of health care
16 services, providers of health care services, health care facilities,
17 and Washington residents. To these ends, any lawful action taken
18 pursuant to chapter 492, Laws of 1993 by any person or entity created
19 or regulated by chapter 492, Laws of 1993 are declared to be taken
20 pursuant to state statute and in furtherance of the public purposes of
21 the state of Washington.

22 (3) The legislature does not intend and unless explicitly permitted
23 in accordance with RCW 43.72.310 or under rules adopted pursuant to
24 chapter 492, Laws of 1993, does not authorize any person or entity to
25 engage in activities or to conspire to engage in activities that would
26 constitute per se violations of state and federal anti-trust laws
27 including but not limited to conspiracies or agreements:

28 (a) Among competing health care providers not to grant discounts,
29 not to provide services, or to fix the price of their services;

30 (b) Among ((certified)) health ((plans)) carriers as to the price
31 or level of reimbursement for health care services;

32 (c) Among ((certified)) health ((plans)) carriers to boycott a
33 group or class of health care service providers;

34 (d) Among purchasers of ((certified)) health plan coverage to
35 boycott a particular plan or class of plans;

36 (e) Among ((certified)) health ((plans)) carriers to divide the
37 market for health care coverage; or

38 (f) Among ((certified)) health ((plans)) carriers and purchasers to
39 attract or discourage enrollment of any Washington resident or groups

1 of residents in a ((certified)) health plan based upon the perceived or
2 actual risk of loss in including such resident or group of residents in
3 a ((certified)) health plan or purchasing group.

4 **Sec. 7.** RCW 43.72.310 and 1995 c 267 s 8 are each amended to read
5 as follows:

6 (1) (~~Until May 8, 1995, and after June 30, 1996, a certified~~) A
7 health ((plan)) carrier, health care facility, health care provider, or
8 other person involved in the development, delivery, or marketing of
9 health care or ((certified)) health plans may request, in writing, that
10 the ((commission)) department of health obtain an informal opinion from
11 the attorney general as to whether particular conduct is authorized by
12 chapter 492, Laws of 1993. Trade secret or proprietary information
13 contained in a request for informal opinion shall be identified as such
14 and shall not be disclosed other than to an authorized employee of the
15 ((commission)) department of health or attorney general without the
16 consent of the party making the request, except that information in
17 summary or aggregate form and market share data may be contained in the
18 informal opinion issued by the attorney general. The attorney general
19 shall issue such opinion within thirty days of receipt of a written
20 request for an opinion or within thirty days of receipt of any
21 additional information requested by the attorney general necessary for
22 rendering an opinion unless extended by the attorney general for good
23 cause shown. If the attorney general concludes that such conduct is
24 not authorized by chapter 492, Laws of 1993, the person or organization
25 making the request may petition the ((commission)) department of health
26 for review and approval of such conduct in accordance with subsection
27 (3) of this section.

28 (2) After obtaining the written opinion of the attorney general and
29 consistent with such opinion, the ((health services commission))
30 department of health:

31 (a) May authorize conduct by a ((certified)) health ((plan))
32 carrier, health care facility, health care provider, or any other
33 person that could tend to lessen competition in the relevant market
34 upon a strong showing that the conduct is likely to achieve the policy
35 goals of chapter 492, Laws of 1993 and a more competitive alternative
36 is impractical;

37 (b) Shall adopt rules governing conduct among providers, health
38 care facilities, and ((certified)) health ((plans)) carriers including

1 rules governing provider and facility contracts with ((certified))
2 health ((plans)) carriers, rules governing the use of "most favored
3 nation" clauses and exclusive dealing clauses in such contracts, and
4 rules providing that ((certified)) health ((plans)) carriers in rural
5 areas contract with a sufficient number and type of health care
6 providers and facilities to ensure consumer access to local health care
7 services;

8 (c) Shall adopt rules permitting health care providers within the
9 service area of a plan to collectively negotiate the terms and
10 conditions of contracts with a ((certified)) health ((plan)) carrier
11 including the ability of providers to meet and communicate for the
12 purposes of these negotiations; ((and))

13 (d) Shall adopt rules governing cooperative activities among health
14 care facilities and providers; and

15 (e) Effective July 1, 1997, in addition to the rule-making
16 authority granted to the department under this section, the department
17 shall have the authority to enforce and administer rules previously
18 adopted by the health services commission and the health care policy
19 board pursuant to RCW 43.72.310.

20 (3) ~~((Until May 8, 1995, and after June 30, 1996, a certified))~~ A
21 health ((plan)) carrier, health care facility, health care provider, or
22 any other person involved in the development, delivery, and marketing
23 of health care services or ((certified)) health plans may file a
24 written petition with the ((commission)) department of health
25 requesting approval of conduct that could tend to lessen competition in
26 the relevant market. Such petition shall be filed in a form and manner
27 prescribed by rule of the ((commission)) department of health.

28 The ((commission)) department of health shall issue a written
29 decision approving or denying a petition filed under this section
30 within ninety days of receipt of a properly completed written petition
31 unless extended by the ((commission)) department of health for good
32 cause shown. The decision shall set forth findings as to benefits and
33 disadvantages and conclusions as to whether the benefits outweigh the
34 disadvantages.

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

1 (a) Enhancement of the quality of health services to consumers;
2 (b) Gains in cost efficiency of health services;
3 (c) Improvements in utilization of health services and equipment;
4 (d) Avoidance of duplication of health services resources; or
5 (e) And as to (b) and (c) of this subsection: (i) Facilitates the
6 exchange of information relating to performance expectations; (ii)
7 simplifies the negotiation of delivery arrangements and relationships;
8 and (iii) reduces the transactions costs on the part of ((certified))
9 health ((plans)) carriers and providers in negotiating more cost-
10 effective delivery arrangements.

11 These benefits must outweigh disadvantages including and not
12 limited to:

13 (i) Reduced competition among ((certified)) health ((plans))
14 carriers, health care providers, or health care facilities;

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

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

19 (5) Conduct authorized by the ((commission)) department of health
20 shall be deemed taken pursuant to state statute and in the furtherance
21 of the public purposes of the state of Washington.

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

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

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

7 (8) (~~Only requests for informal opinions under subsection (1) of~~
8 ~~this section and petitions under subsection (3) of this section that~~
9 ~~were received prior to May 8, 1995, or after June 30, 1996, shall be~~
10 ~~considered.)) The secretary of health shall from time to time
11 establish fees to accompany the filing of a petition or a written
12 request to the department to obtain an opinion from the attorney
13 general under this section and for the active supervision of conduct
14 approved under this section. Such fees may vary according to the size
15 of the transaction proposed in the petition or under active
16 supervision. In setting such fees, the secretary shall consider that
17 consumers and the public benefit when activities meeting the standards
18 of this section are permitted to proceed; the importance of assuring
19 that persons sponsoring beneficial activities are not foreclosed from
20 filing a petition under this section because of the fee; and the
21 necessity to avoid a conflict, or the appearance of a conflict, between
22 the interests of the department and the public. The total fee for a
23 petition under this section, a written request to the department to
24 obtain an opinion from the attorney general, or a combination of both
25 regarding the same conduct shall not exceed the level that will defray
26 the reasonable costs the department and attorney general incur in
27 considering a petition and in no event shall be greater than twenty-
28 five thousand dollars. The fee for review of approved conduct shall
29 not exceed the level that will defray the reasonable costs the
30 department and attorney general incur in conducting such a review and
31 in no event shall be greater than ten thousand dollars per annum. The
32 fees shall be fixed by rule adopted in accordance with the provisions
33 of the administrative procedure act, chapter 34.05 RCW, and shall be
34 deposited in the health professions account established in accordance
35 with RCW 43.70.320.~~

36 **Sec. 8.** RCW 42.17.310 and 1996 c 305 s 2, 1996 c 253 s 302, 1996
37 c 191 s 88, and 1996 c 80 s 1 are each reenacted and amended to read as
38 follows:

1 (1) The following are exempt from public inspection and copying:

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

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

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

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

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

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

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

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

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

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

12 (k) Records, maps, or other information identifying the location of
13 archaeological sites in order to avoid the looting or depredation of
14 such sites.

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

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

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

27 (o) Financial and commercial information and records supplied by
28 private persons pertaining to export services provided pursuant to
29 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
30 export projects pursuant to RCW 43.23.035.

31 (p) Financial disclosures filed by private vocational schools under
32 chapters 28B.85 and 28C.10 RCW.

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

36 (r) Financial and commercial information and records supplied by
37 businesses or individuals during application for loans or program
38 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,

1 or during application for economic development loans or program
2 services provided by any local agency.

3 (s) Membership lists or lists of members or owners of interests of
4 units in timeshare projects, subdivisions, camping resorts,
5 condominiums, land developments, or common-interest communities
6 affiliated with such projects, regulated by the department of
7 licensing, in the files or possession of the department.

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

11 (u) The residential addresses and residential telephone numbers of
12 employees or volunteers of a public agency which are held by the agency
13 in personnel records, employment or volunteer rosters, or mailing lists
14 of employees or volunteers.

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

18 (w)(i) The federal social security number of individuals governed
19 under chapter 18.130 RCW maintained in the files of the department of
20 health, except this exemption does not apply to requests made directly
21 to the department from federal, state, and local agencies of
22 government, and national and state licensing, credentialing,
23 investigatory, disciplinary, and examination organizations; (ii) the
24 current residential address and current residential telephone number of
25 a health care provider governed under chapter 18.130 RCW maintained in
26 the files of the department, if the provider requests that this
27 information be withheld from public inspection and copying, and
28 provides to the department an accurate alternate or business address
29 and business telephone number. On or after January 1, 1995, the
30 current residential address and residential telephone number of a
31 health care provider governed under RCW 18.130.140 maintained in the
32 files of the department shall automatically be withheld from public
33 inspection and copying unless the provider specifically requests the
34 information be released, and except as provided for under RCW
35 42.17.260(9).

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

1 (y) Information obtained by the board of pharmacy or the department
2 of health and its representatives as provided in RCW 69.41.044,
3 69.41.280, and 18.64.420.

4 (z) Financial information, business plans, examination reports, and
5 any information produced or obtained in evaluating or examining a
6 business and industrial development corporation organized or seeking
7 certification under chapter 31.24 RCW.

8 (aa) Financial and commercial information supplied to the state
9 investment board by any person when the information relates to the
10 investment of public trust or retirement funds and when disclosure
11 would result in loss to such funds or in private loss to the providers
12 of this information.

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

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

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

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

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

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

33 (hh) Information and documents created specifically for, and
34 collected and maintained by a quality improvement committee pursuant to
35 RCW 43.70.510, regardless of which agency is in possession of the
36 information and documents.

37 (ii) Personal information in files maintained in a data base
38 created under RCW 43.07.360.

1 (jj) Proprietary financial and commercial information that the
2 submitting entity, with review by the department of health,
3 specifically identifies at the time it is submitted and that is
4 provided to or obtained by the department of health in connection with
5 an application for, or the supervision of, an antitrust exemption
6 sought by the submitting entity under RCW 43.72.310. If a request for
7 such information is received, the submitting entity must be notified of
8 the request. Within ten business days of receipt of the notice, the
9 submitting entity shall provide a written statement of the continuing
10 need for confidentiality, which shall be provided to the requester.
11 Upon receipt of such notice, the department of health shall continue to
12 treat information designated under this section as exempt from
13 disclosure. If the requester initiates an action to compel disclosure
14 under this chapter, the submitting entity must be joined as a party to
15 demonstrate the continuing need for confidentiality.

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

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

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

34 NEW SECTION. Sec. 9. The following acts or parts of acts are each
35 repealed:

- 36 (1) RCW 43.72.320 and 1995 c 267 s 10;
37 (2) RCW 43.73.010 and 1995 c 265 s 9;
38 (3) RCW 43.73.020 and 1995 c 265 s 10;

1 (4) RCW 43.73.030 and 1995 c 265 s 11;
2 (5) RCW 43.73.040 and 1995 c 265 s 12; and
3 (6) 1996 c 281 s 2 (uncodified).

4 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and takes effect
7 July 1, 1997.

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