
SENATE BILL 6518

State of Washington

56th Legislature

2000 Regular Session

By Senators Wojahn, Winsley and Thibaudeau; by request of Department of Health

Read first time . Referred to Committee on .

1 AN ACT Relating to in-home services; amending RCW 70.127.010,
2 70.127.020, 70.127.030, 70.127.040, 70.127.050, 70.127.080, 70.127.085,
3 70.127.090, 70.127.100, 70.127.120, 70.127.125, 70.127.140, 70.127.150,
4 70.127.170, 70.127.180, 70.127.190, 70.127.200, 70.127.210, and
5 70.38.025; adding new sections to chapter 70.127 RCW; adding a new
6 section to chapter 70.38 RCW; repealing RCW 70.127.060, 70.127.070,
7 70.127.110, 70.127.220, 70.127.230, 70.127.240, 70.127.250, 70.127.260,
8 and 70.127.270; prescribing penalties; and providing an effective date.

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

10 **Sec. 1.** RCW 70.127.010 and 1999 c 190 s 1 are each amended to read
11 as follows:

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

14 (1) "Administrator" means an individual responsible for managing
15 the operation of an agency.

16 (2) "Department" means the department of health.

17 ((+2+)) (3) "Director of clinical services" means an individual
18 responsible for nursing, therapy, nutritional, social, and related

1 services that support the plan of care provided in home health and
2 hospice agencies.

3 (4) "Family" means individuals who are important to, and designated
4 by, the patient or client and who need not be relatives.

5 (5) "Home care agency" means a ((private or public agency or
6 organization that administers or provides)) person administering or
7 providing home care services directly or through a contract arrangement
8 to ((ill, disabled, or infirm persons)) individuals in places of
9 temporary or permanent residence.

10 ((+3)) (6) "Home care services" means ((personal care services,
11 homemaker services, respite care services, or any other)) nonmedical
12 services and assistance provided to ill, disabled, ((or)) infirm
13 ((persons which services enable these persons to remain in their own
14 residences consistent with their desires, abilities, and safety)), or
15 vulnerable individuals that enable them to remain in their residences.
16 Home care services include, but are not limited to: Personal care such
17 as assistance with dressing, feeding, and personal hygiene to
18 facilitate self-care; homemaker assistance with household tasks, such
19 as housekeeping, shopping, meal planning and preparation, and
20 transportation; respite care assistance and support provided to the
21 family; or other nonmedical services.

22 ((+4)) (7) "Home health agency" means a ((private or public agency
23 or organization that administers or provides home health aide services
24 or two or more)) person administering or providing home health services
25 directly or through a contract arrangement to ((ill, disabled, or
26 infirm persons)) individuals in places of temporary or permanent
27 residence. ((A private or public agency or organization that
28 administers or provides nursing services only may elect to be
29 designated a home health agency for purposes of licensure.

30 (+5)) (8) "Home health services" means ((health or medical))
31 services provided to ill, disabled, ((or)) infirm ((persons)), or
32 vulnerable individuals. These services ((may be of an acute or
33 maintenance care nature, and)) include but are not limited to nursing
34 services, home health aide services, physical therapy services,
35 occupational therapy services, speech therapy services, respiratory
36 therapy services, nutritional services, medical social services,
37 ((and)) home medical supplies or equipment services, and home care
38 services.

1 ~~((6))~~ (9) "Home health aide services" means services provided by
2 a home health agency or a hospice agency under the supervision of a
3 registered nurse, physical therapist, occupational therapist, or speech
4 therapist who is employed by or under contract to a home health or
5 hospice agency. Such care includes ambulation and exercise, assistance
6 with self-administered medications, reporting changes in patients'
7 conditions and needs, completing appropriate records, and personal care
8 or homemaker services.

9 ~~((7))~~ "Homemaker services" means services that assist ill,
10 disabled, or infirm persons with household tasks essential to achieving
11 adequate household and family management.

12 (8)) (10) "Home medical supplies" or "equipment services" means
13 diagnostic, treatment, and monitoring equipment and supplies provided
14 for the direct care of individuals within a plan of care.

15 (11) "Hospice agency" means a ~~((private or public agency or~~
16 ~~organization))~~ person administering or providing hospice ~~((care))~~
17 services directly or through a contract arrangement to ~~((terminally ill~~
18 ~~persons))~~ individuals in places of temporary or permanent residence
19 ~~((by using))~~ under the direction of an interdisciplinary team composed
20 of at least ~~((nursing))~~ a nurse, social ~~((work))~~ worker, physician,
21 ~~((and pastoral or))~~ spiritual ~~((counseling))~~ counselor, and a
22 volunteer.

23 ~~((9))~~ (12) "Hospice care center" means a homelike,
24 noninstitutional facility where hospice services are provided, and that
25 meets the requirements for operation under section 21 of this act.

26 (13) "Hospice ~~((care))~~ services" means ~~((:—(a) Palliative care))~~
27 symptom and pain management provided to a terminally ill ~~((person))~~
28 individual, and emotional, spiritual, and bereavement support for the
29 individual and family in a place of temporary or permanent residence
30 ~~((that alleviates physical symptoms, including pain, as well as~~
31 ~~alleviates the emotional and spiritual discomfort associated with~~
32 ~~dying; and (b) bereavement care provided to the family of a terminally~~
33 ~~ill person that alleviates the emotional and spiritual discomfort~~
34 ~~associated with the death of a family member. Hospice care)), and~~ may
35 include the provision of home health and ~~((medical services and~~
36 ~~personal care, respite, or homemaker services. Family means~~
37 ~~individuals who are important to and designated by the patient, and who~~
38 ~~need not be relatives.~~

1 ~~(10) "Ill, disabled, or infirm persons" means persons who need home~~
2 ~~health, hospice, or home care services in order to maintain themselves~~
3 ~~in their places of temporary or permanent residence.~~

4 ~~(11) "Personal care services" means services that assist ill,~~
5 ~~disabled, or infirm persons with dressing, feeding, and personal~~
6 ~~hygiene to facilitate self-care.~~

7 ~~(12) "Public or private agency or organization" means an entity~~
8 ~~that employs or contracts with two or more persons who provide care in~~
9 ~~the home.~~

10 ~~(13) "Respite care services" means services that assist or support~~
11 ~~the primary care giver on a scheduled basis)) home care services for~~
12 ~~the terminally ill individual.~~

13 (14) "In-home services agency" means a person licensed to
14 administer or provide home health, home care, hospice services, or
15 hospice care center services directly or through a contract arrangement
16 to individuals in a place of temporary or permanent residence.

17 (15) "Person" means any individual, business, firm, partnership,
18 corporation, company, association, joint stock association, public or
19 private agency or organization, or the legal successor thereof that
20 employs or contracts with two or more individuals.

21 (16) "Plan of care" means a written document based on assessment of
22 individual needs that identifies services to meet these needs.

23 (17) "Quality improvement" means reviewing and evaluating
24 appropriateness and effectiveness of services provided under this
25 chapter.

26 (18) "Service area" means the geographic area in which the
27 department has given prior approval to a licensee to provide home
28 health, hospice, or home care services.

29 (19) "Survey" means an inspection conducted by the department to
30 evaluate and monitor an agency's compliance with this chapter.

31 **Sec. 2.** RCW 70.127.020 and 1988 c 245 s 3 are each amended to read
32 as follows:

33 (1) After July 1, 1990, ~~((no private or public agency or~~
34 ~~organization may)) a license is required for a person to advertise,~~
35 ~~operate, manage, conduct, open, or maintain ((a home health agency~~
36 ~~without first obtaining a home health agency license from the~~
37 ~~department)) an in-home services agency.~~

1 (2) (~~After July 1, 1990, no private or public agency or~~
2 ~~organization may advertise, operate, manage, conduct, open, or maintain~~
3 ~~a hospice agency without first obtaining a hospice agency license from~~
4 ~~the department.~~

5 (3) ~~After July 1, 1990, no public or private agency or organization~~
6 ~~may advertise, operate, manage, conduct, open, or maintain a home care~~
7 ~~agency without first obtaining a home care agency license from the~~
8 ~~department.)~~ An in-home services agency license is required for a
9 nursing home, hospital, or other person that functions as a home
10 health, hospice, hospice care center, or home care agency.

11 **Sec. 3.** RCW 70.127.030 and 1988 c 245 s 4 are each amended to read
12 as follows:

13 It is unlawful for any person to use the words:

14 (1) (~~No person may use the words~~) "Home health agency," "home
15 health care services," (~~or~~) "visiting nurse services," "home health,"
16 or "home health services" in its corporate or business name, or
17 advertise using such words unless licensed (~~as a home health agency~~)
18 to provide those services under this chapter(~~(-)~~);

19 (2) (~~No person may use the words~~) "Hospice agency," (~~or~~)
20 "hospice," "hospice services," "hospice care," or "hospice care center"
21 in its corporate or business name, or advertise using such words unless
22 licensed (~~as a hospice agency~~) to provide those services under this
23 chapter(~~(-)~~);

24 (3) (~~No person may use the words~~) "Home care agency," (~~or~~)
25 "home care services," or "home care" in its corporate or business name,
26 or advertise using such words unless licensed (~~as a home care agency~~)
27 to provide those services under this chapter(~~(-)~~); or

28 (4) "In-home services agency," "in-home services," or any similar
29 term to indicate that a person is a home health, home care, hospice
30 care center, or hospice agency in its corporate or business name, or
31 advertise using such words unless licensed to provide those services
32 under this chapter.

33 **Sec. 4.** RCW 70.127.040 and 1993 c 42 s 2 are each amended to read
34 as follows:

35 The following are not subject to regulation for the purposes of
36 this chapter:

1 (1) A family member providing home health, hospice, or home care
2 services;

3 (2) ~~((An organization that))~~ A person who provides only meal
4 services in ~~((a person's))~~ an individual's permanent or temporary
5 residence;

6 (3) ~~((Entities))~~ An individual providing home care through a direct
7 agreement with a recipient of care in an individual's permanent or
8 temporary residence;

9 (4) A person furnishing ~~((durable))~~ or delivering home medical
10 supplies or equipment that does not involve the ((delivery)) provision
11 of ((professional)) services beyond those necessary to deliver, set up,
12 and monitor the proper functioning of the equipment and educate the
13 user on its proper use;

14 ~~((+4))~~ (5) A person who provides services through a contract with
15 a licensed agency;

16 ~~((+5))~~ (6) An employee or volunteer of a licensed agency who
17 provides services only as an employee or volunteer;

18 ~~((+6))~~ (7) Facilities and institutions, including but not limited
19 to nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41
20 RCW, adult family homes under chapter 70.128 RCW, boarding homes under
21 chapter 18.20 RCW, developmental disability residential programs under
22 chapter 71.12 RCW, other entities licensed under chapter 71.12 RCW, or
23 other licensed facilities and institutions, only when providing
24 services to persons residing within the facility or institution ((if
25 the delivery of the services is regulated by the state;
26 ~~(7) Persons))~~;

27 (8) Local and combined city-county health departments providing
28 services under chapters 70.05 and 70.08 RCW;

29 (9) An individual providing care to ill, disabled ((persons)),
30 infirm, or vulnerable individuals through a contract with the
31 department of social and health services;

32 ~~((+8))~~ (10) Nursing homes, hospitals, or other institutions,
33 agencies, organizations, or persons that contract with licensed home
34 health, hospice, or home care agencies for the delivery of services;

35 ~~((+9))~~ (11) In-home assessments of an ill, disabled, vulnerable,
36 or infirm ((person's ability to adapt to the home environment))
37 individual that does not result in regular ongoing care at home;

38 ~~((+10))~~ (12) Services conducted by and for the adherents of a
39 church or religious denomination that rely upon spiritual means alone

1 through prayer for healing in accordance with the tenets and practices
2 of such church or religious denomination and the bona fide religious
3 beliefs genuinely held by such adherents;

4 ~~((11))~~ (13) A medicare-approved dialysis center operating a
5 medicare-approved home dialysis program;

6 ~~((12))~~ (14) A person providing case management services ~~((which~~
7 ~~do not include the direct delivery of home health, hospice, or home~~
8 ~~care services))~~. For the purposes of this subsection, "case
9 management" means the assessment, coordination, authorization,
10 planning, training, and monitoring of home health, hospice, and home
11 care, and does not include the direct provision of care to an
12 individual;

13 ~~((13))~~ (15) Pharmacies licensed under RCW 18.64.043 that deliver
14 prescription drugs and durable medical equipment that does not involve
15 the use of professional services beyond those authorized to be
16 performed by licensed pharmacists pursuant to chapter 18.64 RCW and
17 those necessary to set up and monitor the proper functioning of the
18 equipment and educate the person on its proper use;

19 (16) A volunteer hospice complying with the requirements of RCW
20 70.127.050; and

21 (17) A person who provides home care services without compensation.

22 **Sec. 5.** RCW 70.127.050 and 1993 c 42 s 3 are each amended to read
23 as follows:

24 (1) An entity that provides hospice care without receiving
25 compensation for delivery of any of its services is exempt from
26 licensure pursuant to RCW 70.127.020~~((2))~~ (1) if it notifies the
27 department, on forms provided by the department, of its name, address,
28 name of owner, and a statement affirming that it provides hospice care
29 without receiving compensation for delivery of any of its services.
30 This form must be filed with the department ~~((within sixty days after~~
31 ~~June 30, 1993, or))~~ within sixty days after being informed in writing
32 by the department of this requirement for obtaining exemption from
33 licensure under this chapter.

34 (2) For the purposes of this section, it is not relevant if the
35 entity compensates its staff. For the purposes of this section, the
36 word "compensation" does not include donations.

37 (3) Notwithstanding the provisions of RCW 70.127.030(2), an entity
38 that provides hospice care without receiving compensation for delivery

1 of any of its services is allowed to use the phrase "volunteer
2 hospice."

3 (4) Nothing in this chapter precludes an entity providing hospice
4 care without receiving compensation for delivery of any of its services
5 from obtaining a hospice license if it so chooses, but that entity
6 would be exempt from the requirements set forth in RCW 70.127.080(1)(d)
7 (~~and (e)~~).

8 **Sec. 6.** RCW 70.127.080 and 1999 c 190 s 2 are each amended to read
9 as follows:

10 (1) An applicant for (~~a home health, hospice, or home care~~) an
11 in-home services agency license shall:

12 (a) File a written application on a form provided by the
13 department;

14 (b) Demonstrate ability to comply with this chapter and the rules
15 adopted under this chapter;

16 (c) Cooperate with on-site (~~review~~) survey conducted by the
17 department (~~prior to licensure or renewal~~) except as provided in RCW
18 70.127.085;

19 (d) Provide evidence of and maintain professional liability, public
20 liability, and property damage insurance (~~in the amount of one hundred~~
21 ~~thousand dollars per occurrence or adequate self-insurance as approved~~
22 ~~by the department~~) in an amount established by the department, based
23 on industry standards. This subsection shall not apply to hospice
24 agency applicants that provide hospice care without receiving
25 compensation for delivery of services;

26 (~~Provide evidence of and maintain public liability and~~
27 ~~property damage insurance coverage in the sum of fifty thousand dollars~~
28 ~~for injury or damage to property per occurrence and fifty thousand~~
29 ~~dollars for injury or damage, including death, to any one person and~~
30 ~~one hundred thousand dollars for injury or damage, including death, to~~
31 ~~more than one person, or evidence of adequate self-insurance for public~~
32 ~~liability and property damage as approved by the department. This~~
33 ~~subsection shall not apply to hospice agency applicants that provide~~
34 ~~hospice care without receiving compensation for delivery of services;~~

35 (~~f~~)) Provide (~~such proof as the department may require~~
36 ~~concerning~~) documentation of an organizational structure, and the
37 identity of the applicant, officers, administrator, directors of

1 clinical services, partners, managing employees, or owners of ten
2 percent or more of the applicant's assets;

3 ~~((g))~~ (f) File with the department for approval a description of
4 the service area in which the applicant will operate and a description
5 of how the applicant intends to provide management and supervision of
6 services throughout the service area. The department shall adopt rules
7 necessary to establish criteria for approval that are related to
8 appropriate management and supervision of services throughout the
9 service area. In developing the rules, the department may not
10 establish criteria that:

11 (i) Limit the number or type of agencies in any service area; or

12 (ii) Limit the number of persons any agency may serve within its
13 service area unless the criteria are related to the need for trained
14 and available staff to provide services within the service area;

15 ~~((h))~~ (g) File with the department a list of the home health,
16 hospice, and home care services ~~((offered))~~ provided directly and under
17 contract;

18 ~~((i))~~ (h) Pay to the department a license fee as provided in RCW
19 70.127.090; ~~((and~~

20 ~~(j))~~ (i) Comply with RCW 43.43.830 through 43.43.842 for criminal
21 background checks; and

22 (j) Provide any other information that the department may
23 reasonably require.

24 (2) A certificate of need under chapter 70.38 RCW is not required
25 for licensure except for the operation of a hospice care center.

26 ~~((3) A license or renewal shall not be granted pursuant to this
27 chapter if the applicant, officers, directors, partners, managing
28 employees, or owners of ten percent or more of the applicant's assets,
29 within the last five years have been found in a civil or criminal
30 proceeding to have committed any act which reasonably relates to the
31 person's fitness to establish, maintain, or administer an agency or to
32 provide care in the home of another.))~~

33 **Sec. 7.** RCW 70.127.085 and 1993 c 42 s 11 are each amended to read
34 as follows:

35 (1) Notwithstanding the provisions of RCW 70.127.080(1)(c), ~~((a~~
36 ~~home health or hospice agency))~~ an in-home services agency that is
37 certified by the federal medicare program, or accredited by the
38 community health accreditation program, or the joint commission on

1 accreditation of health care organizations as a home health or hospice
2 agency (~~((shall be granted the applicable renewal license, without
3 necessity of))~~) is not subject to a state licensure (~~((on-site))~~) survey
4 if:

5 (a) The department determines that the applicable survey standards
6 of the certification or accreditation program are substantially
7 equivalent to those required by this chapter;

8 (b) An on-site survey has been conducted for the purposes of
9 certification or accreditation during the previous twenty-four months;
10 and

11 (c) The department receives directly from the certifying or
12 accrediting entity or from the licensee applicant copies of the initial
13 and subsequent survey reports and other relevant reports or findings
14 that indicate compliance with licensure requirements.

15 (2) Notwithstanding the provisions of RCW 70.127.080(1)(c), (~~((a
16 home care agency))~~) an in-home services agency providing services under
17 contract with the department of social and health services or area
18 agency on aging to provide home care services and that is monitored by
19 the department of social and health services or area agency on aging
20 (~~((shall be granted a renewal license, without necessity of an on-site))~~)
21 is not subject to a state licensure survey by the department of health
22 if:

23 (a) The department determines that the department of social and
24 health services or an area agency on aging monitoring standards are
25 substantially equivalent to those required by this chapter;

26 (b) An on-site monitoring has been conducted by the department of
27 social and health services or an area agency on aging during the
28 previous twenty-four months;

29 (c) The department of social and health services or an area agency
30 on aging includes in its monitoring a sample of private pay clients, if
31 applicable; and

32 (d) The department receives directly from the department of social
33 and health services copies of monitoring reports and other relevant
34 reports or findings that indicate compliance with licensure
35 requirements.

36 (3) The department retains authority to survey those services areas
37 not addressed by the national accrediting body, department of social
38 and health services, or an area agency on aging.

1 (4) In reviewing the federal, the joint commission on accreditation
2 of health care organizations, the community health accreditation
3 program, or the department of social and health services survey
4 standards for substantial equivalency to those set forth in this
5 chapter, the department is directed to provide the most liberal
6 interpretation consistent with the intent of this chapter. In the
7 event the department determines at any time that the survey standards
8 are not substantially equivalent to those required by this chapter, the
9 department is directed to notify the affected licensees. The
10 notification shall contain a detailed description of the deficiencies
11 in the alternative survey process, as well as an explanation concerning
12 the risk to the consumer. The determination of substantial equivalency
13 for alternative survey process and lack of substantial equivalency are
14 agency actions and subject to RCW 34.05.210 through 34.05.395 and
15 34.05.510 through ~~((34.05.680))~~ 34.05.675.

16 ~~((4) Agencies receiving a license without necessity of an on-site
17 survey by the department under this chapter shall pay the same
18 licensure or transfer fee as other agencies in their licensure
19 category. It is the intent of this section that the licensure fees for
20 all agencies will be lowered by the elimination of the duplication that
21 currently exists.))~~

22 (5) ~~((In order to avoid unnecessary costs,))~~ The department is
23 ~~((not))~~ authorized to perform a validation survey ~~((if it is also the
24 agency performing the certification or accreditation survey. Where
25 this is not the case,))~~ on in-home services agencies who previously
26 received a survey through accreditation or contracts with the
27 department of social and health services or an area agency on aging
28 under subsection (2) of this section. The department is authorized to
29 perform a validation survey on no greater than ~~((five))~~ ten percent of
30 each type of certification or accreditation survey.

31 (6) This section does not affect the department's enforcement
32 authority for licensed agencies.

33 **Sec. 8.** RCW 70.127.090 and 1999 c 190 s 3 are each amended to read
34 as follows:

35 (1) Application and renewal fee: An application for a license or
36 any renewal shall be accompanied by a fee as established by the
37 department under RCW 43.70.250. The department shall adopt by rule
38 licensure fees based on a sliding scale using such factors as the

1 number of agency full-time equivalents, geographic area served, number
2 of locations, or type and volume of services provided. For agencies
3 receiving a licensure survey that requires more than two on-site
4 ~~((reviews))~~ surveys by the department per licensure period, an
5 additional fee as determined by the department by rule shall be charged
6 for each additional on-site ~~((review))~~ survey. ~~((The department shall
7 charge a reasonable fee for processing changes in ownership.))~~ The
8 department may set different licensure fees for each licensure
9 category. Agencies receiving a license without necessity of an on-site
10 survey by the department under this chapter shall pay the same
11 licensure or transfer fee as other agencies in their licensure
12 category.

13 (2) Change of ownership fee: The department shall charge a
14 reasonable fee for processing changes in ownership. The fee for
15 transfer of ownership may not exceed fifty percent of the base
16 licensure fee.

17 (3) Late fee: The department may establish a late fee for failure
18 to apply for licensure or renewal as required by this chapter.

19 **Sec. 9.** RCW 70.127.100 and 1993 c 42 s 6 are each amended to read
20 as follows:

21 Upon receipt of an application under RCW 70.127.080 for a license
22 and the license fee, the department shall issue a license if the
23 applicant meets the requirements established under this chapter. A
24 license issued under this chapter shall not be transferred or assigned
25 without thirty days prior notice to the department and the department's
26 approval. A license, unless suspended or revoked, is effective for a
27 period of two years, however an initial license is only effective for
28 twelve months. The department shall conduct ~~((an on-site review))~~ a
29 survey within each licensure period~~((The department))~~ and may
30 conduct a licensure survey after ownership transfer. ~~((The fee for
31 this survey may not exceed fifty percent of the base licensure fee.
32 The department may establish penalty fees for failure to apply for
33 licensure or renewal as required by this chapter.))~~

34 **Sec. 10.** RCW 70.127.120 and 1993 c 42 s 8 are each amended to read
35 as follows:

36 The department shall adopt rules consistent with RCW 70.127.005
37 necessary to implement this chapter under chapter 34.05 RCW. In order

1 to ensure safe and adequate care, the rules shall address at a minimum
2 the following:

3 (1) Maintenance and preservation of all records relating directly
4 to the care and treatment of ~~((persons))~~ individuals by licensees;

5 (2) Establishment and implementation of a procedure for the
6 receipt, investigation, and disposition of complaints ~~((by the~~
7 ~~department))~~ regarding services provided ~~((by licensees))~~;

8 (3) Establishment and implementation of a plan for ~~((on-going))~~
9 ongoing care of ~~((persons))~~ individuals and preservation of records if
10 the licensee ceases operations;

11 (4) Supervision of services;

12 (5) ~~((Maintenance))~~ Establishment and implementation of written
13 policies regarding response to referrals and access to services ~~((at~~
14 ~~all times))~~;

15 (6) ~~((Maintenance))~~ Establishment and implementation of written
16 personnel policies ~~((and))~~, procedures and personnel records for paid
17 staff that provide for ~~((rehire))~~ prehire screening, minimum
18 qualifications, regular performance evaluations, including observation
19 in the home, participation in orientation and in-service training, and
20 involvement in quality ~~((assurance))~~ improvement activities. The
21 department may not establish experience or other qualifications for
22 agency personnel or contractors beyond that required by state law;

23 (7) ~~((Maintenance))~~ Establishment and implementation of written
24 policies and procedures for volunteers ~~((that))~~ who have direct
25 patient/client contact and that provide for background and health
26 screening, orientation, and supervision; ~~((and))~~

27 (8) ~~((Maintenance))~~ Establishment and implementation of written
28 policies ~~((on))~~ for obtaining regular reports on patient satisfaction;

29 (9) Establishment and implementation of a quality improvement
30 process; and

31 (10) Establishment and implementation of policies related to the
32 delivery of care including:

33 (a) Plan of care for each individual served;

34 (b) Periodic review of the plan of care;

35 (c) Supervision of care and clinical consultation as necessary;

36 (d) Care consistent with the plan;

37 (e) Admission, transfer, and discharge from care; and

38 (f) For hospice services:

- 1 (i) Availability of twenty-four hour seven days a week hospice
2 registered nurse consultation and in-home services as appropriate;
3 (ii) Interdisciplinary team communication as appropriate and
4 necessary; and
5 (iii) The use and availability of volunteers to provide family
6 support and respite care.

7 **Sec. 11.** RCW 70.127.125 and 1993 c 42 s 7 are each amended to read
8 as follows:

9 The department is directed to continue to develop, with opportunity
10 for comment from licensees, interpretive guidelines that are specific
11 to each type of ((license)) service and consistent with legislative
12 intent.

13 **Sec. 12.** RCW 70.127.140 and 1988 c 245 s 15 are each amended to
14 read as follows:

15 (1) ((A licensee)) An in-home services agency shall provide each
16 ((person)) individual or designated representative with a written bill
17 of rights affirming each ((person's)) individual's right to:

18 (a) A listing of the in-home services offered by the in-home
19 services agency and those being provided;

20 (b) The name of the ((person)) individual supervising the care and
21 the manner in which that ((person)) individual may be contacted;

22 (c) A description of the process for submitting and addressing
23 complaints;

24 (d) Submit complaints without retaliation and to have the complaint
25 addressed by the agency;

26 (e) Be informed of the state complaint hotline number;

27 (f) A statement advising the ((person)) individual or
28 representative of the right to ((participate)) ongoing participation in
29 the development of the plan of care;

30 ((+e)) (g) A statement providing that the ((person)) individual or
31 representative is entitled to information regarding access to the
32 department's ((registry)) listing of providers and to select any
33 licensee to provide care, subject to the ((patient's)) individual's
34 reimbursement mechanism or other relevant contractual obligations;

35 ((+f)) (h) Be treated with courtesy, respect, privacy, and freedom
36 from abuse and discrimination;

37 ((+g)) (i) Refuse treatment or services;

1 ~~((h) Have patient records be confidential; and~~
2 ~~(i) Have)) (j) Have property treated with respect;~~
3 ~~(k) Privacy of personal information and confidentiality of health~~
4 ~~care records;~~

5 ~~(l) Be cared for by properly trained staff ((and)) with~~
6 ~~coordination of services;~~

7 ~~(m) A fully itemized billing statement upon request, including the~~
8 ~~date of each service and the charge. Licensees providing services~~
9 ~~through a managed care plan shall not be required to provide itemized~~
10 ~~billing statements; and~~

11 ~~(n) Be informed about advanced directives and the agency's~~
12 ~~responsibility to implement them.~~

13 ~~(2) ((Upon request, a licensee shall provide each person or~~
14 ~~designated representative with a fully itemized billing statement at~~
15 ~~least monthly, including the date of each service and the charge.~~
16 ~~Licensees providing services through a managed care plan shall not be~~
17 ~~required to provide itemized billing statements.)) An in-home services~~
18 ~~agency shall ensure rights under this section are implemented and~~
19 ~~updated as appropriate.~~

20 **Sec. 13.** RCW 70.127.150 and 1988 c 245 s 16 are each amended to
21 read as follows:

22 No licensee, contractee, or employee may hold a durable power of
23 attorney on behalf of any ~~((person))~~ individual who is receiving care
24 from the licensee.

25 **Sec. 14.** RCW 70.127.170 and 1988 c 245 s 18 are each amended to
26 read as follows:

27 Pursuant to chapter 34.05 RCW and RCW 70.127.180(3), the department
28 may deny, restrict, condition, modify, suspend, or revoke a license
29 under this chapter or, in lieu thereof or in addition thereto, assess
30 monetary penalties of a civil nature not to exceed one thousand dollars
31 per violation, or require a refund of any amounts billed to, and
32 collected from, the consumer or third-party payor in any case in which
33 it finds that the licensee, or any applicant, officer, director,
34 partner, managing employee, or owner of ten percent or more of the
35 applicant's or licensee's assets:

36 (1) Failed or refused to comply with the requirements of this
37 chapter or the standards or rules adopted under this chapter;

1 (2) Was the holder of a license issued pursuant to this chapter
2 that was revoked for cause and never reissued by the department, or
3 that was suspended for cause and the terms of the suspension have not
4 been fulfilled and the licensee has continued to operate;

5 (3) Has knowingly or with reason to know made a misrepresentation
6 of, false statement of, or failed to disclose, a material fact to the
7 department in ((the)) an application for the license or any data
8 attached thereto or in any record required by this chapter or matter
9 under investigation by the department, or during a survey, or
10 concerning information requested by the department;

11 (4) Refused to allow representatives of the department to inspect
12 any book, record, or file required by this chapter to be maintained or
13 any portion of the licensee's premises;

14 (5) Willfully prevented, interfered with, or attempted to impede in
15 any way the work of any representative of the department and the lawful
16 enforcement of any provision of this chapter. This includes but is not
17 limited to: Willful misrepresentation of facts during a survey,
18 investigation, or administrative proceeding or any other legal action;
19 or use of threats or harassment against any patient, client, or
20 witness, or use of financial inducements to any patient, client, or
21 witness to prevent or attempt to prevent him or her from providing
22 evidence during a survey or investigation, in an administrative
23 proceeding, or any other legal action involving the department;

24 (6) Willfully prevented or interfered with any representative of
25 the department in the preservation of evidence of any violation of this
26 chapter or the rules adopted under this chapter;

27 (7) Failed to pay any civil monetary penalty assessed by the
28 department pursuant to this chapter within ten days after the
29 assessment becomes final;

30 (8) Used advertising that is false, fraudulent, or misleading;

31 (9) Has repeated incidents of personnel performing services beyond
32 their authorized scope of practice; ((or))

33 (10) Misrepresented or was fraudulent in any aspect of the conduct
34 of the licensee's business;

35 (11) Within the last five years, has been found in a civil or
36 criminal proceeding to have committed any act that reasonably relates
37 to the person's fitness to establish, maintain, or administer an agency
38 or to provide care in the home of another;

1 (12) Was the holder of a license to provide care or treatment to
2 ill, disabled, infirm, or vulnerable individuals that was denied,
3 restricted, not renewed, surrendered, suspended, or revoked by a
4 competent authority in any state, federal, or foreign jurisdiction. A
5 certified copy of the order, stipulation, or agreement is conclusive
6 evidence of the denial, restriction, nonrenewal, surrender, suspension,
7 or revocation;

8 (13) Violated any state or federal statute, or administrative rule
9 regulating the operation of the agency;

10 (14) Failed to comply with an order issued by the secretary or
11 designee;

12 (15) Aided or abetted the unlicensed operation of an in-home
13 services agency;

14 (16) Operated beyond the scope of the in-home services agency
15 license;

16 (17) Failed to adequately supervise staff to the extent that the
17 health or safety of a patient or client was at risk;

18 (18) Compromised the health or safety of a patient or client,
19 including, but not limited to, the individual performing services
20 beyond their authorized scope of practice;

21 (19) Continued to operate after license revocation, suspension, or
22 expiration, or operating outside the parameters of a modified,
23 conditioned, or restricted license;

24 (20) Failed or refused to comply with chapter 70.02 RCW;

25 (21) Abused, neglected, abandoned, or financially exploited a
26 patient or client as these terms are defined in RCW 74.34.020;

27 (22) Misappropriated the property of an individual;

28 (23) Is unqualified or unable to operate or direct the operation of
29 the agency according to this chapter and the rules adopted under this
30 chapter;

31 (24) Obtained or attempted to obtain a license by fraudulent means
32 or misrepresentation; or

33 (25) Failed to report abuse or neglect of a patient or client in
34 violation of chapter 74.34 RCW.

35 **Sec. 15.** RCW 70.127.180 and 1988 c 245 s 19 are each amended to
36 read as follows:

37 (1) The department may at any time conduct ((an on-site review)) a
38 survey of all records and operations of a licensee ((or conduct in-home

1 visits)) in order to determine compliance with this chapter. The
2 department may ~~((also examine and audit records necessary to determine
3 compliance with this chapter))~~ conduct in-home visits to observe
4 patient/client care and services. The right to conduct ~~((an on-site
5 review and audit and examination of records))~~ a survey shall extend to
6 any premises and records of persons whom the department has reason to
7 believe are providing home health, hospice, or home care services
8 without a license.

9 (2) Following ~~((an on-site review, in-home visit, or audit))~~ a
10 survey, the department shall give written notice of any violation of
11 this chapter or the rules adopted under this chapter. The notice shall
12 describe the reasons for noncompliance ~~((and inform the licensee that
13 it must comply within a specified reasonable time, not to exceed sixty
14 days. If the licensee fails to comply, the licensee is subject to
15 disciplinary action under RCW 70.127.170))~~.

16 (3) The licensee may be subject to formal enforcement action under
17 RCW 70.127.170 if the department determines: (a) The licensee has
18 previously been subject to a formal enforcement action for the same or
19 similar type of violation of the same statute or rule, or has been
20 given previous notice of the same or similar type of violation of the
21 same statute or rule; (b) the licensee failed to achieve compliance
22 with a statute, rule, or order by the date established in a previously
23 issued notice or order; (c) the violation resulted in actual serious
24 physical or emotional harm or immediate threat to the health, safety,
25 welfare, or rights of one or more individuals; or (d) the violation has
26 a potential for serious physical or emotional harm or immediate threat
27 to the health, safety, welfare, or rights of one or more individuals.

28 **Sec. 16.** RCW 70.127.190 and 1988 c 245 s 20 are each amended to
29 read as follows:

30 All information received by the department through filed reports,
31 ~~((audits, on-site reviews,))~~ surveys, and in-home visits~~((, or as~~
32 ~~otherwise authorized))~~ conducted under this chapter shall not be
33 disclosed publicly in any manner that would identify ~~((persons))~~
34 individuals receiving care under this chapter.

35 **Sec. 17.** RCW 70.127.200 and 1988 c 245 s 21 are each amended to
36 read as follows:

1 (1) Notwithstanding the existence or use of any other remedy, the
2 department may, in the manner provided by law and upon the advice of
3 the attorney general, who shall represent the department in the
4 proceedings, maintain an action in the name of the state for an
5 injunction or other process against any person to restrain or prevent
6 the advertising, operating, maintaining, managing, or opening of a home
7 health, hospice, hospice care center, or home care agency without ((a))
8 an in-home services agency license under this chapter.

9 (2) The injunction shall not relieve the person operating an in-
10 home services agency without a license from criminal prosecution, or
11 the imposition of a civil fine under section 19(2) of this act, but the
12 remedy by injunction shall be in addition to any criminal liability or
13 civil fine. A person that violates an injunction issued under this
14 chapter shall pay a civil penalty, as determined by the court, of not
15 more than twenty-five thousand dollars, which shall be deposited in the
16 department's local fee account. For the purpose of this section, the
17 superior court issuing any injunction shall retain jurisdiction and the
18 cause shall be continued, and in such cases the attorney general acting
19 in the name of the state may petition for the recovery of civil
20 penalties. All fines, forfeitures, and penalties collected or assessed
21 by a court because of a violation of RCW 70.127.020 shall be deposited
22 in the department's local fee account.

23 **Sec. 18.** RCW 70.127.210 and 1988 c 245 s 22 are each amended to
24 read as follows:

25 (1) Any person violating RCW 70.127.020 is guilty of a misdemeanor.
26 Each day of a continuing violation is a separate violation.

27 (2) If any corporation conducts any activity for which a license is
28 required by this chapter without the required license, it may be
29 punished by forfeiture of its corporate charter. All fines,
30 forfeitures, and penalties collected or assessed by a court because of
31 a violation of RCW 70.127.020 shall be deposited in the department's
32 local fee account.

33 NEW SECTION. **Sec. 19.** A new section is added to chapter 70.127
34 RCW to read as follows:

35 (1) The department may issue a notice of intention to issue a cease
36 and desist order to any person whom the department has reason to
37 believe is engaged in the unlicensed operation of an in-home services

1 agency. The person to whom the notice of intent is issued may request
2 an adjudicative proceeding to contest the charges. The request for
3 hearing must be filed within twenty days after service of the notice of
4 intent to issue a cease and desist order. The failure to request a
5 hearing constitutes a default, whereupon the department may enter a
6 permanent cease and desist order, which may include a civil fine. All
7 proceedings shall be conducted in accordance with chapter 34.05 RCW.

8 (2) If the department makes a final determination that a person has
9 engaged or is engaging in unlicensed operation of an in-home services
10 agency, the department may issue a cease and desist order. In
11 addition, the department may impose a civil fine in an amount not
12 exceeding one thousand dollars for each day upon which the person
13 engaged in unlicensed operation of an in-home services agency. The
14 proceeds of such fines shall be deposited in the department's local fee
15 account.

16 (3) If the department makes a written finding of fact that the
17 public interest will be irreparably harmed by delay in issuing an
18 order, the department may issue a temporary cease and desist order.
19 The person receiving a temporary cease and desist order shall be
20 provided an opportunity for a prompt hearing. The temporary cease and
21 desist order shall remain in effect until further order of the
22 department. The failure to request a prompt or regularly scheduled
23 hearing constitutes a default, whereupon the department may enter a
24 permanent cease and desist order, which may include a civil fine.

25 (4) Neither the issuance of a cease and desist order nor payment of
26 a civil fine shall relieve the person so operating an in-home services
27 agency without a license from criminal prosecution, but the remedy of
28 a cease and desist order or civil fine shall be in addition to any
29 criminal liability. The cease and desist order is conclusive proof of
30 unlicensed operation and may be enforced under RCW 7.21.060. This
31 method of enforcement of the cease and desist order or civil fine may
32 be used in addition to, or as an alternative to, any provisions for
33 enforcement of agency orders set out in chapter 34.05 RCW.

34 NEW SECTION. **Sec. 20.** A new section is added to chapter 70.127
35 RCW to read as follows:

36 The legislature finds that the operation of an in-home services
37 agency without a license in violation of this chapter is a matter
38 vitally affecting the public interest for the purpose of applying the

1 consumer protection act, chapter 19.86 RCW. Operation of an in-home
2 services agency without a license in violation of this chapter is not
3 reasonable in relation to the development and preservation of business.
4 Such a violation is an unfair or deceptive act in trade or commerce and
5 an unfair method of competition for the purpose of applying the
6 consumer protection act, chapter 19.86 RCW.

7 NEW SECTION. **Sec. 21.** A new section is added to chapter 70.127
8 RCW to read as follows:

9 (1) Applicants desiring to operate a hospice care center are
10 subject to the following:

11 (a) The application may only be made by a licensed hospice agency.
12 The agency shall list which of the following service categories will be
13 provided:

14 (i) General inpatient care;

15 (ii) Continuous home care;

16 (iii) Routine home care; or

17 (iv) Inpatient respite care;

18 (b) A certificate of need is required under chapter 70.38 RCW;

19 (c) A hospice agency may operate more than one hospice care center
20 in its service area;

21 (d) For hospice agencies that operate a hospice care center, no
22 more than forty-nine percent of patient care days, in the aggregate on
23 a biennial basis, may be provided in the hospice care center;

24 (e) The maximum number of beds in a hospice care center is twenty;

25 (f) The maximum number of individuals per room is one, unless the
26 individual requests a roommate;

27 (g) A hospice care center may either be owned or leased by a
28 hospice agency. If the agency leases space, all delivery of
29 interdisciplinary services, to include staffing and management, shall
30 be done by the hospice agency; and

31 (h) A hospice care center may either be freestanding or a separate
32 portion of another building.

33 (2) The department is authorized to develop rules to implement this
34 section. The rules shall be specific to each hospice care center
35 service category provided. The rules shall at least specifically
36 address the following:

37 (a) Adequate space for family members to visit, meet, cook, share
38 meals, and stay overnight with patients or clients;

1 (b) A separate external entrance, clearly identifiable to the
2 public when part of an existing structure;

3 (c) Construction, maintenance, and operation of a hospice care
4 center;

5 (d) Means to inform the public which hospice care center service
6 categories are provided; and

7 (e) A registered nurse present twenty-four hours a day, seven days
8 a week for hospice care centers delivering general inpatient services.

9 (3) Hospice agencies which as of January 1, 2000, operate the
10 functional equivalent of a hospice care center through licensure as a
11 hospital, under chapter 70.41 RCW, shall be exempt from the certificate
12 of need requirement for hospice care centers if they apply for and
13 receive a license as an in-home services agency to operate a hospice
14 home care center by July 1, 2002.

15 **Sec. 22.** RCW 70.38.025 and 1997 c 210 s 2 are each amended to read
16 as follows:

17 When used in this chapter, the terms defined in this section shall
18 have the meanings indicated.

19 (1) "Board of health" means the state board of health created
20 pursuant to chapter 43.20 RCW.

21 (2) "Capital expenditure" is an expenditure, including a force
22 account expenditure (i.e., an expenditure for a construction project
23 undertaken by a nursing home facility as its own contractor) which,
24 under generally accepted accounting principles, is not properly
25 chargeable as an expense of operation or maintenance. Where a person
26 makes an acquisition under lease or comparable arrangement, or through
27 donation, which would have required review if the acquisition had been
28 made by purchase, such expenditure shall be deemed a capital
29 expenditure. Capital expenditures include donations of equipment or
30 facilities to a nursing home facility which if acquired directly by
31 such facility would be subject to certificate of need review under the
32 provisions of this chapter and transfer of equipment or facilities for
33 less than fair market value if a transfer of the equipment or
34 facilities at fair market value would be subject to such review. The
35 cost of any studies, surveys, designs, plans, working drawings,
36 specifications, and other activities essential to the acquisition,
37 improvement, expansion, or replacement of any plant or equipment with

1 respect to which such expenditure is made shall be included in
2 determining the amount of the expenditure.

3 (3) "Continuing care retirement community" means an entity which
4 provides shelter and services under continuing care contracts with its
5 members and which sponsors or includes a health care facility or a
6 health service. A "continuing care contract" means a contract to
7 provide a person, for the duration of that person's life or for a term
8 in excess of one year, shelter along with nursing, medical, health-
9 related, or personal care services, which is conditioned upon the
10 transfer of property, the payment of an entrance fee to the provider of
11 such services, or the payment of periodic charges for the care and
12 services involved. A continuing care contract is not excluded from
13 this definition because the contract is mutually terminable or because
14 shelter and services are not provided at the same location.

15 (4) "Department" means the department of health.

16 (5) "Expenditure minimum" means, for the purposes of the
17 certificate of need program, one million dollars adjusted by the
18 department by rule to reflect changes in the United States department
19 of commerce composite construction cost index; or a lesser amount
20 required by federal law and established by the department by rule.

21 (6) "Health care facility" means hospices, hospice care centers,
22 hospitals, psychiatric hospitals, nursing homes, kidney disease
23 treatment centers, ambulatory surgical facilities, and home health
24 agencies, and includes such facilities when owned and operated by a
25 political subdivision or instrumentality of the state and such other
26 facilities as required by federal law and implementing regulations, but
27 does not include any health facility or institution conducted by and
28 for those who rely exclusively upon treatment by prayer or spiritual
29 means in accordance with the creed or tenets of any well-recognized
30 church or religious denomination, or any health facility or institution
31 operated for the exclusive care of members of a convent as defined in
32 RCW 84.36.800 or rectory, monastery, or other institution operated for
33 the care of members of the clergy. In addition, the term does not
34 include any nonprofit hospital: (a) Which is operated exclusively to
35 provide health care services for children; (b) which does not charge
36 fees for such services; and (c) if not contrary to federal law as
37 necessary to the receipt of federal funds by the state.

38 (7) "Health maintenance organization" means a public or private
39 organization, organized under the laws of the state, which:

1 (a) Is a qualified health maintenance organization under Title
2 XIII, section 1310(d) of the Public Health Services Act; or

3 (b)(i) Provides or otherwise makes available to enrolled
4 participants health care services, including at least the following
5 basic health care services: Usual physician services, hospitalization,
6 laboratory, x-ray, emergency, and preventive services, and out-of-area
7 coverage; (ii) is compensated (except for copayments) for the provision
8 of the basic health care services listed in (b)(i) to enrolled
9 participants by a payment which is paid on a periodic basis without
10 regard to the date the health care services are provided and which is
11 fixed without regard to the frequency, extent, or kind of health
12 service actually provided; and (iii) provides physicians' services
13 primarily (A) directly through physicians who are either employees or
14 partners of such organization, or (B) through arrangements with
15 individual physicians or one or more groups of physicians (organized on
16 a group practice or individual practice basis).

17 (8) "Health services" means clinically related (i.e., preventive,
18 diagnostic, curative, rehabilitative, or palliative) services and
19 includes alcoholism, drug abuse, and mental health services and as
20 defined in federal law.

21 (9) "Health service area" means a geographic region appropriate for
22 effective health planning which includes a broad range of health
23 services.

24 (10) "Person" means an individual, a trust or estate, a
25 partnership, a corporation (including associations, joint stock
26 companies, and insurance companies), the state, or a political
27 subdivision or instrumentality of the state, including a municipal
28 corporation or a hospital district.

29 (11) "Provider" generally means a health care professional or an
30 organization, institution, or other entity providing health care but
31 the precise definition for this term shall be established by rule of
32 the department, consistent with federal law.

33 (12) "Public health" means the level of well-being of the general
34 population; those actions in a community necessary to preserve,
35 protect, and promote the health of the people for which government is
36 responsible; and the governmental system developed to guarantee the
37 preservation of the health of the people.

38 (13) "Secretary" means the secretary of health or the secretary's
39 designee.

1 (14) "Tertiary health service" means a specialized service that
2 meets complicated medical needs of people and requires sufficient
3 patient volume to optimize provider effectiveness, quality of service,
4 and improved outcomes of care.

5 (15) "Hospital" means any health care institution which is required
6 to qualify for a license under RCW 70.41.020(2); or as a psychiatric
7 hospital under chapter 71.12 RCW.

8 NEW SECTION. **Sec. 23.** A new section is added to chapter 70.38 RCW
9 to read as follows:

10 All certificate of need applications submitted by hospice agencies
11 for the construction, development, or other establishment of a facility
12 to be licensed as either a hospital under chapter 70.41 RCW or as a
13 nursing home under chapter 18.51 RCW, for the purpose of operating the
14 functional equivalent of a hospice care center shall not require a
15 separate certificate of need for a hospice care center provided the
16 certificate of need application was declared complete prior to July 1,
17 2001, the applicant has been issued a certificate of need, and has
18 applied for and received an in-home services agency license by July 1,
19 2002.

20 NEW SECTION. **Sec. 24.** This act takes effect January 1, 2002.

21 NEW SECTION. **Sec. 25.** The following acts or parts of acts are
22 each repealed:

23 (1) RCW 70.127.060 (Nursing homes--Application of chapter) and 1988
24 c 245 s 7;

25 (2) RCW 70.127.070 (Hospitals--Application of chapter) and 1988 c
26 245 s 8;

27 (3) RCW 70.127.110 (Licenses--Combination--Rules--Fees) and 1999 c
28 190 s 4 & 1988 c 245 s 12;

29 (4) RCW 70.127.220 (Agency registry) and 1988 c 245 s 23;

30 (5) RCW 70.127.230 (Hospice agencies--Exemption for certain
31 activities) and 1988 c 245 s 24;

32 (6) RCW 70.127.240 (Home health or hospice agencies--Exemption for
33 certain activities) and 1988 c 245 s 27;

34 (7) RCW 70.127.250 (Home health agencies--Patient care and
35 treatment--Rules--Definitions) and 1994 sp.s. c 9 s 745, 1993 c 42 s
36 10, & 1988 c 245 s 25;

1 (8) RCW 70.127.260 (Hospice agencies--Rules) and 1988 c 245 s 26;
2 and
3 (9) RCW 70.127.270 (Home care agencies--Rules) and 1988 c 245 s 28.

--- END ---