
SENATE BILL 5733

State of Washington

58th Legislature

2003 Regular Session

By Senators Winsley, Thibaudeau and Kohl-Welles

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1 AN ACT Relating to fairness and protection in boarding homes and
2 adult family homes; amending RCW 18.20.020, 18.20.050, 18.20.110,
3 18.20.115, 18.20.120, 18.20.125, 18.20.185, 18.20.190, 18.20.195,
4 70.128.060, 70.128.080, 70.128.090, 70.128.160, 74.39A.009, 74.39A.050,
5 74.39A.060, and 74.39A.080; reenacting and amending RCW 18.20.010 and
6 70.128.010; and prescribing penalties.

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

8 **Sec. 1.** RCW 18.20.010 and 2000 c 171 s 3 and 2000 c 121 s 1 are
9 each reenacted and amended to read as follows:

10 The purpose of this chapter is to provide for the development,
11 establishment, and enforcement of standards for the maintenance and
12 operation of boarding homes, which, in the light of advancing
13 knowledge, will promote safe and adequate care of the individuals
14 therein. It is further the intent of the legislature that boarding
15 homes be available to meet the needs of those for whom they care by
16 recognizing the capabilities of individuals to direct their self-
17 medication or to use supervised self-medication techniques when ordered
18 and approved by a physician licensed under chapter 18.57 or 18.71 RCW
19 or a podiatric physician and surgeon licensed under chapter 18.22 RCW.

1 The legislature finds that many residents of community-based long-
2 term care facilities are vulnerable and their health and well-being are
3 dependent on their caregivers. The quality, skills, and knowledge of
4 their caregivers are often the key to good care. The legislature finds
5 that the need for well-trained caregivers is growing as the state's
6 population ages and residents' needs increase. The legislature intends
7 that current training standards be enhanced.

8 The legislature declares that the state of Washington has a
9 compelling interest in protecting and promoting the health, safety, and
10 well-being of the vulnerable adults residing in boarding homes. The
11 legislature recognizes that boarding homes are a vital part of the
12 state's long-term care system and offer a valued and desirable setting
13 for care and services. It is the intent of the legislature that
14 residents and the public be assured through trainings, technical
15 assistance, and appropriate oversight and enforcement by the department
16 that boarding homes are safe, well-regulated facilities providing a
17 high quality of life and care to residents.

18 **Sec. 2.** RCW 18.20.020 and 2000 c 47 s 1 are each amended to read
19 as follows:

20 (~~As used in this chapter:~~) The definitions in this section apply
21 throughout this chapter unless the context clearly requires otherwise.

22 (1) "Aged person" means a person of the age sixty-five years or
23 more, or a person of less than sixty-five years who by reason of
24 infirmity requires domiciliary care.

25 (2) "Boarding home" means any home or other institution, however
26 named, which is advertised, announced, or maintained for the express or
27 implied purpose of providing board and domiciliary care to seven or
28 more aged persons not related by blood or marriage to the operator.
29 However, a boarding home that is licensed to provide board and
30 domiciliary care to three to six persons on July 1, 2000, may maintain
31 its boarding home license as long as it is continually licensed as a
32 boarding home. "Boarding home" shall not include facilities certified
33 as group training homes pursuant to RCW 71A.22.040, nor any home,
34 institution or section thereof which is otherwise licensed and
35 regulated under the provisions of state law providing specifically for
36 the licensing and regulation of such home, institution or section
37 thereof. Nor shall it include any independent senior housing,

1 independent living units in continuing care retirement communities, or
2 other similar living situations including those subsidized by the
3 department of housing and urban development. However, independent
4 living units that are located within the boarding home premises may be
5 subject to inspection, as set forth in rule by the department, if the
6 department determines that conditions or activities from the unit or
7 units may detrimentally impact the health, safety, or well-being of
8 residents in the boarding home.

9 (3) "Person" means any individual, firm, partnership, corporation,
10 company, association, or joint stock association, and the legal
11 successor thereof.

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

13 (5) "Department" means the state department of social and health
14 services.

15 (6) "Harm" means a physical, mental, or emotional injury or damage
16 to a resident, including from neglect or a violation of a resident's
17 rights. Examples of harm include, but are not limited to: Shallow
18 bruising, lacerations, or other injuries that can be treated with first
19 aid; dehydration not requiring professional intervention; yelling or
20 ridicule of a resident that is not repeated or part of a pattern;
21 leaving a resident unassisted on the toilet for an unnecessary,
22 prolonged period of time; leaving a resident to lie in urine or feces;
23 failing to assist a resident needing help with eating; transferring a
24 resident within the facility without prior notice; or failing to
25 include a resident or the resident's representative in care planning.
26 Incidents that cause harm may, if repeated or prolonged, result in
27 substantial harm.

28 (7) "Substantial harm" means harm that causes significant physical,
29 mental, or emotional suffering to a resident, or is a significant
30 violation of a resident's rights. Examples of substantial harm
31 include, but are not limited to: Deep bruising; laceration requiring
32 sutures; fracture; burn; dehydration or malnutrition requiring the
33 intervention of a licensed health care professional; retaliation
34 against a resident for filing a complaint with the department or the
35 ombudsman, such as by withholding or reducing needed care, threatening
36 to discharge the resident, or threatening to cut off communication with
37 family or friends; bruising in areas not generally exposed to trauma,
38 such as the head, neck, inner thigh, and anal area; any sexual assault

1 or suspected sexual assault; any pattern of or repeated assault or
2 injury between the same residents or involving the same resident; or
3 any injury requiring close assessment or monitoring by a licensed
4 health care professional.

5 (8) "Serious violation" means a violation cited by the department
6 of this chapter, the rules adopted under this chapter, or other
7 applicable law, that causes substantial harm to a resident.

8 (9) "Uncorrected violation" means the department has cited the
9 boarding home for a violation of this chapter, the rules adopted under
10 this chapter, or other applicable law, and the violation is not
11 corrected at the time the department makes an on-site revisit,
12 inspection, or investigation to determine whether the violation has
13 been corrected.

14 (10) "Recurring problem" means the department has cited the
15 boarding home three times within a three-year period for the same or
16 substantially the same violation of this chapter, the rules adopted
17 under this chapter, or other applicable law.

18 **Sec. 3.** RCW 18.20.050 and 2001 c 193 s 10 are each amended to read
19 as follows:

20 Upon receipt of an application for license, if the applicant and
21 the boarding home facilities meet the requirements established under
22 this chapter, the department shall issue a license. If there is a
23 failure to comply with the provisions of this chapter or the standards
24 and rules adopted pursuant thereto, the department may in its
25 discretion issue to an applicant for a license, or for the renewal of
26 a license, a provisional license which will permit the operation of the
27 boarding home for a period to be determined by the department, but not
28 to exceed twelve months, which provisional license shall not be subject
29 to renewal. At the time of the application for or renewal of a license
30 or provisional license the licensee shall pay a license fee as
31 established by the department under RCW 43.20B.110. All licenses
32 issued under the provisions of this chapter shall expire on a date to
33 be set by the department, but no license issued pursuant to this
34 chapter shall exceed twelve months in duration. However, when the
35 annual license renewal date of a previously licensed boarding home is
36 set by the department on a date less than twelve months prior to the
37 expiration date of a license in effect at the time of reissuance, the

1 license fee shall be prorated on a monthly basis and a credit be
2 allowed at the first renewal of a license for any period of one month
3 or more covered by the previous license. All applications for renewal
4 of a license shall be made not later than thirty days prior to the date
5 of expiration of the license. Each license shall be issued only for
6 the premises and persons named in the application, and no license shall
7 be transferable or assignable. Licenses shall be posted in a
8 conspicuous place on the licensed premises.

9 A licensee who receives notification of the department's initiation
10 of a denial, suspension, nonrenewal, or revocation of a boarding home
11 license may, in lieu of appealing the department's action, surrender or
12 relinquish the license. The department shall not issue a new license
13 to or contract with the licensee, for the purposes of providing care to
14 vulnerable adults or children, for a period of twenty years following
15 the surrendering or relinquishment of the former license. The
16 licensing record shall indicate that the licensee relinquished or
17 surrendered the license, without admitting the violations, after
18 receiving notice of the department's initiation of a denial,
19 suspension, nonrenewal, or revocation of a license.

20 The department shall establish, by rule, the circumstances
21 requiring a change in licensee, which include, but are not limited to,
22 a change in ownership or control of the boarding home or licensee, a
23 change in the licensee's form of legal organization, such as from sole
24 proprietorship to partnership or corporation, and a dissolution or
25 merger of the licensed entity with another legal organization. The new
26 licensee is subject to the provisions of this chapter, the rules
27 adopted under this chapter, and other applicable law. In order to
28 ensure that the safety of residents is not compromised by a change in
29 licensee, the new licensee is responsible for correction of all
30 violations that may exist at the time of the new license, including
31 compliance with any plan of correction in effect immediately prior to
32 the change in licensee. If any person affiliated with the new licensee
33 was affiliated with a prior licensee at the same boarding home, then
34 the prior licensee's compliance and enforcement record becomes part of
35 the new licensee's record at the boarding home. A person is considered
36 affiliated with a licensee if the person is an applicant for the
37 boarding home license, or is listed on the license application as a

1 partner, officer, director, managerial employee, or owner of five
2 percent or more of the applying entity.

3 **Sec. 4.** RCW 18.20.110 and 2000 c 47 s 4 are each amended to read
4 as follows:

5 The department shall make or cause to be made at least a yearly
6 inspection and investigation of all boarding homes. Every inspection
7 shall focus primarily on actual or potential resident outcomes, and may
8 include an inspection of every part of the premises and an examination
9 of all records (other than financial records, which may be examined to
10 the extent relevant to verifying the ability to adequately care for
11 residents), methods of administration, the general and special dietary,
12 and the stores and methods of supply. Following such an inspection or
13 inspections, written notice of any violation of this law or the rules
14 adopted hereunder shall be given to the applicant or licensee and the
15 department. The department may prescribe by rule that any licensee or
16 applicant desiring to make specified types of alterations or additions
17 to its facilities or to construct new facilities shall, before
18 commencing such alteration, addition, or new construction, submit plans
19 and specifications therefor to the agencies responsible for plan
20 reviews for preliminary inspection and approval or recommendations with
21 respect to compliance with the rules and standards herein authorized.

22 **Sec. 5.** RCW 18.20.115 and 2001 c 85 s 1 are each amended to read
23 as follows:

24 The department shall, within available funding for this purpose,
25 develop and make available to boarding homes and residents a quality
26 improvement (~~(consultation)~~) information program using the following
27 principles:

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

31 (2) The goal of the system is continuous quality improvement of the
32 boarding home's care and services, with the focus on resident
33 satisfaction and positive outcomes for residents. The quality
34 improvement (~~(consultation)~~) information program shall be offered to
35 boarding homes and resident councils or similar groups of residents, on

1 a voluntary basis. Based on requests for the services of the quality
2 improvement (~~(consultation)~~) information program, the department may
3 establish a process for prioritizing service availability.

4 (3) Boarding homes should be supported in their efforts to improve
5 quality and address problems, as identified by the licensee, initially
6 through training, (~~(consultation)~~) information, and technical
7 assistance. At a minimum, the department may, within available
8 funding, at the request of the boarding home, conduct on-site visits
9 and provide information over the telephone (~~(consultations)~~).

10 (4) To facilitate collaboration and trust between the boarding
11 homes and the department's quality improvement (~~(consultation)~~)
12 information program staff, the (~~(consultation)~~) information program
13 staff shall not simultaneously serve as department licensors, complaint
14 investigators, or participate in any enforcement-related decisions,
15 within the region in which they perform (~~(consultation)~~) information
16 activities; except such staff may investigate on an emergency basis,
17 complaints anywhere in the state when the complaint indicates high risk
18 to resident health or safety. Any records or information gained as a
19 result of their work under the quality improvement (~~(consultation)~~)
20 information program shall not be disclosed to or shared with
21 nonmanagerial department licensing or complaint investigation staff,
22 unless necessary to carry out duties described under chapter 74.34 RCW.
23 The emphasis should be on problem prevention. Nothing in this section
24 shall limit or interfere with the (~~(consultant's)~~) information staff's
25 mandated reporting duties under chapter 74.34 RCW.

26 (5) The department shall develop with input from interested
27 stakeholders a component of the quality improvement information program
28 to be responsive to requests for information from boarding home
29 resident councils and similar groups, and to provide the department
30 with an opportunity to hear the general concerns and questions
31 residents and their representatives may have. The department
32 information may address such topics as how to better participate in the
33 care planning process, aging in place principles, and summaries of
34 licensing standards and regulations. The quality improvement
35 information program shall not replace the complaint investigation or
36 licensing inspection processes. The resident component of the quality
37 improvement information program shall be funded from a reasonable

1 portion of the funding available for the overall program and may be
2 offered initially on a pilot program basis.

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

9 **Sec. 6.** RCW 18.20.120 and 2000 c 47 s 5 are each amended to read
10 as follows:

11 All information received by the department through filed reports,
12 inspections, or as otherwise authorized under this chapter (~~(shall not~~
13 ~~be disclosed publicly in any manner as to identify individuals or~~
14 ~~boarding homes, except at the specific request of a member of the~~
15 ~~public and disclosure is consistent with RCW 42.17.260(1))~~), or used by
16 the department in connection with this chapter, is a public record and
17 is subject to disclosure except as prohibited by RCW 42.17.260(1).

18 **Sec. 7.** RCW 18.20.125 and 2001 c 85 s 2 are each amended to read
19 as follows:

20 (1) Monitoring (~~(should)~~) of boarding homes through license
21 inspections and complaint investigations shall be outcome based and
22 responsive to (~~(resident)~~) the concerns and complaints (~~(and)~~) of
23 residents, their family members, advocates, facility staff, and others.
24 The department's monitoring shall be based on a clear set of health,
25 quality of care, and safety standards that are easily understandable
26 and have been made available to (~~(facilities. This includes that)~~)
27 boarding homes, residents, and other interested parties. When
28 conducting (~~(licensing)~~) license inspections, the department shall
29 interview an appropriate percentage of residents, family members, and
30 advocates in addition to interviewing appropriate staff. During
31 license inspections, the department shall provide both the boarding
32 home and residents and their representatives the opportunity to provide
33 additional or clarifying information about concerns. The process
34 should be as even-handed and open as possible, with due regard for
35 confidentiality requirements. The department shall adopt rules setting

1 forth the monitoring and enforcement processes for license inspections
2 and complaint investigations.

3 ~~(2) ((Prompt and specific enforcement remedies shall also be~~
4 ~~implemented without delay, consistent with RCW 18.20.190, for~~
5 ~~facilities found to have delivered care or failed to deliver care~~
6 ~~resulting in problems that are serious, recurring, or uncorrected, or~~
7 ~~that create a hazard that is causing or likely to cause death or~~
8 ~~serious harm to one or more residents. These enforcement remedies may~~
9 ~~also include, when appropriate, reasonable conditions on a license. In~~
10 ~~the selection of remedies, the safety, health, and well being of~~
11 ~~residents shall be of paramount importance.~~

12 (3)) When the department finds in any inspection or investigation
13 that the boarding home has failed or refused to comply with the
14 requirements of this chapter, the rules adopted under this chapter, or
15 other applicable law, the department shall issue a written citation and
16 require the boarding home to correct the violation or violations. The
17 department may provide technical assistance and information to the
18 boarding home, residents, and their representatives. Consistent with
19 this chapter, the department may impose enforcement actions provided
20 for in RCW 18.20.190, and shall impose enforcement actions when
21 required by this chapter. The facility's plan of correction shall not
22 be considered an enforcement action. In the selection of remedies by
23 the department, the safety, health, and well-being of residents shall
24 be of paramount importance. The department shall take appropriate
25 steps to verify correction of violations, as set forth in RCW
26 18.20.190.

27 (3) Boarding homes cited by the department in any inspection or
28 investigation for a serious violation, uncorrected violation, or
29 recurring problem shall be sanctioned with one or more of the
30 enforcement actions set forth in RCW 18.20.190. Enforcement actions
31 required under this subsection shall be imposed promptly and corrective
32 action implemented without delay.

33 (4) To the extent funding is available, the licensee,
34 administrator, and their staff should be screened through background
35 checks in a uniform and timely manner to ensure that they do not have
36 a criminal history that would disqualify them from working with
37 vulnerable adults. Employees may be provisionally hired pending the

1 results of the background check if they have been given three positive
2 references.

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

11 **Sec. 8.** RCW 18.20.185 and 2001 c 193 s 2 are each amended to read
12 as follows:

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

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

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

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

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

34 (a) Upon receipt of a complaint, the department shall make a
35 preliminary review of the complaint, assess the severity of the
36 complaint, and assign an appropriate response time. Complaints
37 involving imminent danger to the health, safety, or well-being of a

1 resident must be responded to within two days. When appropriate, the
2 department shall make an on-site investigation within a reasonable time
3 after receipt of the complaint or otherwise ensure that complaints are
4 responded to.

5 (b) The complainant must be: Promptly contacted by the department,
6 unless anonymous or unavailable despite several attempts by the
7 department, and informed of the right to discuss alleged violations
8 with the inspector and to provide other information the complainant
9 believes will assist the inspector; informed of the department's course
10 of action; and informed of the right to receive a written copy of the
11 investigation report.

12 (c) In conducting the investigation, the department shall interview
13 the complainant, unless anonymous, and shall use its best efforts to
14 interview the resident or residents allegedly harmed by the violations,
15 and, in addition to facility staff, any available independent sources
16 of relevant information, including if appropriate the family members of
17 the resident. Prior to completing the investigation, the department
18 shall give the complainant the opportunity to provide additional or
19 clarifying information.

20 (d) Substantiated complaints involving harm to a resident, if an
21 applicable law or regulation has been violated, shall be subject to one
22 or more of the enforcement actions provided in RCW 18.20.190 (2) and
23 (3). Whenever appropriate, the department (~~shall~~) may also give
24 (~~consultation~~) information and technical assistance to the facility,
25 complainant, resident, and other interested parties, subject to
26 confidentiality restrictions.

27 (~~After a department finding of a violation for which a stop~~
28 ~~placement has been imposed, the department shall make an on-site~~
29 ~~revisit of the provider within fifteen working days from the request~~
30 ~~for revisit, to ensure correction of the violation. For violations~~
31 ~~that are serious or recurring or uncorrected following a previous~~
32 ~~citation, and create actual or threatened harm to one or more~~
33 ~~residents' well-being, including violations of residents' rights, the~~
34 ~~department shall make an on-site revisit as soon as appropriate to~~
35 ~~ensure correction of the violation. Verification of correction of all~~
36 ~~other violations may be made by either a department on-site revisit or~~
37 ~~by written or photographic documentation found by the department to be~~
38 ~~credible. This subsection does not prevent the department from~~

1 ~~enforcing license suspensions or revocations. Nothing in this~~
2 ~~subsection shall interfere with or diminish the department's authority~~
3 ~~and duty to ensure that the provider adequately cares for residents,~~
4 ~~including to make departmental on-site revisits as needed to ensure~~
5 ~~that the provider protects residents, and to enforce compliance with~~
6 ~~this chapter.~~

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

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

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

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

26 **Sec. 9.** RCW 18.20.190 and 2001 c 193 s 4 are each amended to read
27 as follows:

28 (1) When the department finds that the boarding home has failed or
29 refused to comply with the requirements of this chapter, the rules
30 adopted under this chapter, or other applicable law, the department
31 shall issue a written citation and require the boarding home to correct
32 the violation or violations. In addition, the department ((of social
33 and health services)) is authorized to take one or more of the
34 enforcement actions listed in subsections (2) and (3) of this section
35 in any case in which the department finds that a boarding home
36 ((provider)) has:

1 (a) Failed or refused to comply with the requirements of this
2 chapter or the rules adopted under this chapter;

3 (b) Operated a boarding home without a license or under a revoked
4 license;

5 (c) Knowingly, or with reason to know, made a false statement of
6 material fact on his or her application for license or any data
7 attached thereto, or in any matter under investigation by the
8 department; or

9 (d) Willfully prevented or interfered with any inspection or
10 investigation by the department.

11 (2) When authorized by subsection (1) of this section, and subject
12 to the further criteria in subsection (3) of this section, the
13 department may take one or more of the following enforcement actions:

14 (a) Refuse to issue a license;

15 (b) Impose reasonable conditions on a license, such as a directed
16 plan of correction within a specified time, training, and limits on the
17 type of clients the (~~provider~~) boarding home may admit or serve;

18 (c) Impose civil penalties of not more than one hundred dollars per
19 day per violation;

20 (d) Suspend, revoke, or refuse to renew a license; (~~or~~)

21 (e) Suspend admissions to the boarding home by imposing stop
22 placement; or

23 (f) Seek an injunction under RCW 18.20.150.

24 (3) The department shall adopt by rule criteria for the selection
25 of enforcement actions. The criteria shall include, but not be limited
26 to, the following requirements:

27 (a) A reasonable condition on a license may not be the sole
28 enforcement action imposed by the department for a serious violation,
29 or for an uncorrected violation or recurring problem that harmed a
30 resident;

31 (b) A civil penalty for a serious violation, or an uncorrected
32 violation or recurring problem that harmed a resident, shall be not
33 less than one thousand dollars; a civil penalty for a violation of RCW
34 18.20.185(7) may be up to three thousand dollars; and the initial day
35 of a civil penalty for violations involving harm to a resident may be
36 the first day harm occurred;

37 (c) A stop placement shall not be imposed unless there is a

1 reasonable probability that harm to more than one resident will occur
2 or reoccur as a result of the violation or violations;

3 (d) A summary suspension shall not be imposed unless there is an
4 imminent threat that substantial harm to more than one resident will
5 occur as a result of a violation or violations; and

6 (e) The department may revoke, deny, or refuse to renew a license
7 when there is cause to summarily suspend the license; when there is a
8 current violation and the boarding home has a history of significant
9 noncompliance; when there is a very serious current violation, such as
10 significant financial problems resulting in poor care and possible
11 business failure; or for other good cause.

12 (4) When the department orders stop placement, the ((facility))
13 boarding home shall not admit any new resident until the stop placement
14 order is terminated. The department may approve readmission of a
15 resident to the ((facility)) boarding home from a hospital or nursing
16 home during the stop placement. The department shall terminate the
17 stop placement when: (a) The violations necessitating the stop
18 placement have been corrected; and (b) the ((provider)) boarding home
19 exhibits the capacity to maintain correction of the violations
20 previously found deficient. However, if upon the revisit the
21 department finds new violations that the department reasonably believes
22 will result in a new stop placement, the previous stop placement shall
23 remain in effect until the new stop placement is imposed.

24 ~~((+4))~~ (5) The department shall take appropriate steps to verify
25 correction of violations:

26 (a) After a department finding of a violation for which a stop
27 placement has been imposed, the department shall make an on-site
28 revisit of the ((provider)) boarding home within fifteen working days
29 from the request for revisit, to ensure correction of the violation.
30 ~~((For violations that are serious or recurring or uncorrected following~~
31 ~~a previous citation, and create actual or threatened harm to one or~~
32 ~~more residents' well-being, including violations of residents' rights))~~

33 (b) After a department citation for a serious violation, or for an
34 uncorrected violation or recurring problem that harmed a resident, the
35 department shall make an on-site revisit to the boarding home as soon
36 as appropriate to ensure correction of the violation or problem.
37 Depending on the extent of the threatened or actual harm to residents,

1 the department's on-site revisit shall occur shortly after issuing the
2 citation or may be initiated more than fifteen working days from
3 notification of correction of the violation.

4 (c) Verification of correction of all other violations may be made
5 by either a department on-site revisit or by written or photographic
6 documentation found by the department to be credible.

7 (d) This (~~subsection~~) section does not prevent the department
8 from enforcing license suspensions or revocations. Nothing in this
9 (~~subsection~~) section shall interfere with or diminish the
10 department's authority and duty to ensure that the (~~provider~~)
11 boarding home adequately cares for residents, (~~including~~) to make
12 (~~departmental~~) on-site revisits as needed to ensure that the
13 (~~provider~~) boarding home protects residents, and to enforce
14 compliance with this chapter, the rules adopted under this chapter, and
15 other applicable law. The department shall adopt rules setting forth
16 the monitoring and enforcement processes for license inspections and
17 complaint investigations.

18 (~~(+5)~~) (6) RCW 43.20A.205 governs notice of a license denial,
19 revocation, suspension, or modification. Chapter 34.05 RCW applies to
20 department actions under this section, except that orders of the
21 department imposing license suspension, stop placement, or conditions
22 for continuation of a license are effective immediately upon notice and
23 shall continue pending any hearing.

24 **Sec. 10.** RCW 18.20.195 and 2001 c 193 s 7 are each amended to read
25 as follows:

26 (1) Within available resources, the licensee or its designee has
27 the right to an informal dispute resolution process to dispute any
28 violation found or enforcement remedy imposed by the department during
29 a licensing inspection or complaint investigation. The purpose of the
30 informal dispute resolution process is to provide an opportunity for an
31 exchange of information that may lead to the modification, deletion, or
32 removal of a violation, or parts of a violation, or enforcement remedy
33 imposed by the department. If the dispute concerns a complaint
34 investigation, the complainant has the right to provide the department
35 with additional or clarifying information before the department reaches
36 a decision in the informal dispute resolution process. If the dispute
37 concerns a licensing inspection, the resident council or other

1 representatives of the residents have the right to provide the
2 department with additional or clarifying information before the
3 department reaches a decision in the informal dispute resolution
4 process.

5 (2) The informal dispute resolution process provided by the
6 department shall include, but is not necessarily limited to, an
7 opportunity for review by a department employee who did not participate
8 in, or oversee, the determination of the violation or enforcement
9 remedy under dispute. The department shall develop, or further
10 develop, an informal dispute resolution process consistent with this
11 section.

12 (3) A request for an informal dispute resolution shall be made to
13 the department within ten working days from the receipt of a written
14 finding of a violation or enforcement remedy. The request shall
15 identify the violation or violations and enforcement remedy or remedies
16 being disputed. The department shall convene a meeting, when possible,
17 within ten working days of receipt of the request for informal dispute
18 resolution, unless by mutual agreement a later date is agreed upon.

19 (4) If the department determines that a violation or enforcement
20 remedy should not be cited or imposed, the department shall delete the
21 violation or immediately rescind or modify the enforcement remedy. If
22 the department determines that a violation should have been cited or an
23 enforcement remedy imposed, the department shall add the citation and
24 enforcement remedy. Upon request, the department shall issue a clean
25 copy of the revised report, statement of deficiencies, or notice of
26 enforcement action.

27 (5) The request for informal dispute resolution does not delay the
28 effective date of any enforcement remedy imposed by the department,
29 except that civil monetary fines are not payable until the exhaustion
30 of any formal hearing and appeal rights provided under this chapter.
31 The licensee shall submit to the department, within the time period
32 prescribed by the department, a plan of correction to address any
33 undisputed violations, and including any violations that still remain
34 following the informal dispute resolution.

35 **Sec. 11.** RCW 70.128.010 and 2001 c 319 s 6 and 2001 c 319 s 2 are
36 each reenacted and amended to read as follows:

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

3 (1) "Adult family home" means a residential home in which a person
4 or persons provide personal care((τ)) or special care((τ)) and
5 room((τ)) and board to more than one but not more than six adults who
6 are not related by blood or marriage to the person or persons providing
7 the services.

8 (2) "Provider" means any person who is licensed or required to be
9 licensed under this chapter to operate an adult family home. For the
10 purposes of this section, "person" means any individual, partnership,
11 corporation, association, or limited liability company.

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

14 (4) "Resident" means an adult in need of personal or special care
15 in an adult family home who is not related to the provider.

16 (5) "Adults" means persons who have attained the age of eighteen
17 years.

18 (6) "Home" means an adult family home.

19 (7) "Imminent danger" means serious physical harm to or death of a
20 resident has occurred, or there is a serious threat to resident life,
21 health, or safety.

22 (8) "Special care" means care beyond personal care as defined by
23 the department, in rule.

24 (9) "Capacity" means the maximum number of persons in need of
25 personal or special care permitted in an adult family home at a given
26 time. This number shall include related children or adults in the home
27 and who received special care.

28 (10) "Resident manager" means a person employed or designated by
29 the provider to manage the adult family home.

30 (11) "Harm" means a physical, mental, or emotional injury or damage
31 to a resident, including from neglect or a violation of a resident's
32 rights. Examples of harm include, but are not limited to: Shallow
33 bruising, lacerations, or other injuries that can be treated with first
34 aid; dehydration not requiring professional intervention; yelling or
35 ridicule of a resident that is not repeated or part of a pattern;
36 leaving a resident unassisted on the toilet for an unnecessary,
37 prolonged period of time; leaving a resident to lie in urine or feces;
38 failing to assist a resident needing help with eating; transferring a

1 resident within the facility without prior notice; or failing to
2 include a resident or the resident's representative in care planning.
3 Incidents that cause harm may, if repeated or prolonged, result in
4 substantial harm.

5 (12) "Substantial harm" means harm that causes significant
6 physical, mental, or emotional suffering to a resident, or is a
7 significant violation of a resident's rights. Examples of substantial
8 harm include, but are not limited to: Deep bruising; laceration
9 requiring sutures; fracture; burn; dehydration or malnutrition
10 requiring the intervention of a licensed health care professional;
11 retaliation against a resident for filing a complaint with the
12 department or the ombudsman, such as by withholding or reducing needed
13 care, threatening to discharge the resident, or threatening to cut off
14 communication with family or friends; bruising in areas not generally
15 exposed to trauma, such as the head, neck, inner thigh, and anal area;
16 any sexual assault or suspected sexual assault; any pattern of or
17 repeated assault or injury between the same residents or involving the
18 same resident; or any injury requiring close assessment or monitoring
19 by a licensed health care professional.

20 (13) "Serious violation" means a violation cited by the department
21 of this chapter, the rules adopted under this chapter, or other
22 applicable law, that causes substantial harm to a resident.

23 (14) "Uncorrected violation" means the department has cited the
24 adult family home for a violation of this chapter, the rules adopted
25 under this chapter, or other applicable law, and the violation is not
26 corrected at the time the department makes an on-site revisit,
27 inspection, or investigation to determine whether the violation has
28 been corrected.

29 (15) "Recurring problem" means the department has cited the adult
30 family home three times within a three-year period for the same or
31 substantially the same violation of this chapter, the rules adopted
32 under this chapter, or other applicable law.

33 **Sec. 12.** RCW 70.128.060 and 2001 c 193 s 9 are each amended to
34 read as follows:

35 (1) An application for license shall be made to the department upon
36 forms provided by it and shall contain such information as the
37 department reasonably requires.

1 (2) Subject to the provisions of this section, the department shall
2 issue a license to an adult family home if the department finds that
3 the applicant and the home are in compliance with this chapter and the
4 rules adopted under this chapter, unless (a) the applicant or a person
5 affiliated with the applicant has prior violations of this chapter
6 relating to the adult family home subject to the application or any
7 other adult family home, or of any other law regulating residential
8 care facilities within the past five years that resulted in revocation,
9 suspension, or nonrenewal of a license or contract with the department;
10 or (b) the applicant or a person affiliated with the applicant has a
11 history of significant noncompliance with federal, state, or local
12 laws, rules, or regulations relating to the provision of care or
13 services to vulnerable adults or to children. A person is considered
14 affiliated with an applicant if the person is listed on the license
15 application as a partner, officer, director, resident manager, or owner
16 of five percent or more of the applying entity.

17 (3) The license fee shall be submitted with the application.

18 (4) The department shall serve upon the applicant a copy of the
19 decision granting or denying an application for a license. An
20 applicant shall have the right to contest denial of his or her
21 application for a license as provided in chapter 34.05 RCW by
22 requesting a hearing in writing within twenty-eight days after receipt
23 of the notice of denial.

24 (5) The department shall not issue a license to a provider if the
25 department finds that the provider or any partner, officer, director,
26 managerial employee, or owner of five percent or more if the provider
27 has a history of significant noncompliance with federal or state
28 regulations, rules, or laws in providing care or services to vulnerable
29 adults or to children.

30 (6) The department shall license an adult family home for the
31 maximum level of care that the adult family home may provide. The
32 department shall define, in rule, license levels based upon the
33 education, training, and caregiving experience of the licensed provider
34 or staff.

35 (7) The department shall establish, by rule, standards used to
36 license nonresident providers and multiple facility operators.

37 (8) The department shall establish, by rule, for multiple facility

1 operators educational standards substantially equivalent to recognized
2 national certification standards for residential care administrators.

3 (9) The license fee shall be set at fifty dollars per year for each
4 home. A fifty dollar processing fee shall also be charged each home
5 when the home is initially licensed.

6 (10) A provider who receives notification of the department's
7 initiation of a denial, suspension, nonrenewal, or revocation of an
8 adult family home license may, in lieu of appealing the department's
9 action, surrender or relinquish the license. The department shall not
10 issue a new license to or contract with the provider, for the purposes
11 of providing care to vulnerable adults or children, for a period of
12 twenty years following the surrendering or relinquishment of the former
13 license. The licensing record shall indicate that the provider
14 relinquished or surrendered the license, without admitting the
15 violations, after receiving notice of the department's initiation of a
16 denial, suspension, nonrenewal, or revocation of a license.

17 (11) The department shall establish, by rule, the circumstances
18 requiring a change in the licensed provider, which include, but are not
19 limited to, a change in ownership or control of the adult family home
20 or provider, a change in the provider's form of legal organization,
21 such as from sole proprietorship to partnership or corporation, and a
22 dissolution or merger of the licensed entity with another legal
23 organization. The new provider is subject to the provisions of this
24 chapter, the rules adopted under this chapter, and other applicable
25 law. In order to ensure that the safety of residents is not
26 compromised by a change in provider, the new provider is responsible
27 for correction of all violations that may exist at the time of the new
28 license, including compliance with any plan of correction in effect
29 immediately prior to the change in provider. If any person affiliated
30 with the new provider was affiliated with a prior provider at the same
31 adult family home, then the prior provider's compliance and enforcement
32 record becomes part of the new provider's record at the adult family
33 home.

34 **Sec. 13.** RCW 70.128.080 and 1995 1st sp.s. c 18 s 23 are each
35 amended to read as follows:

36 An adult family home shall have readily available for review by the
37 department, residents, and the public:

- 1 (1) Its license to operate; and
- 2 (2) A copy of each inspection and investigation report received by
- 3 the home from the department for the past three years.

4 **Sec. 14.** RCW 70.128.090 and 2001 c 319 s 7 are each amended to
5 read as follows:

6 (1) During inspections of an adult family home, the department
7 shall have access and authority to examine areas and articles in the
8 home used to provide care or support to residents, including residents'
9 records, accounts, and the physical premises, including the buildings,
10 grounds, and equipment. The personal records of the provider are not
11 subject to department inspection nor is the separate bedroom of the
12 provider, not used in direct care of a client, subject to review. The
13 department may inspect all rooms during the initial licensing of the
14 home. However, during a complaint investigation, the department shall
15 have access to the entire premises and all pertinent records when
16 necessary to conduct official business. The department also shall have
17 the authority to interview the provider and residents of an adult
18 family home.

19 (2) Whenever an inspection or investigation is conducted, the
20 department shall prepare a written report that summarizes all
21 information obtained (~~((during the inspection))~~), and if the home is in
22 violation of this chapter, serve a copy of the inspection or
23 investigation report upon the provider at the same time as a notice of
24 violation. This notice shall be mailed to the provider within ten
25 working days of the completion of the inspection or investigation
26 process. If the home is not in violation of this chapter, a copy of
27 the (~~((inspection))~~) report shall be mailed to the provider within ten
28 calendar days of the inspection or investigation of the home. All
29 (~~((inspection))~~) reports shall be made available to the public at the
30 department during business hours.

31 (3) The provider shall develop corrective measures for any
32 violations found by the department's inspection or investigation.
33 Within available resources, the department shall upon request provide
34 consultation and technical assistance to assist the provider in
35 developing effective corrective measures. The department shall include
36 a statement of the provider's corrective measures in the department's
37 inspection report.

1 **Sec. 15.** RCW 70.128.160 and 2001 c 193 s 5 are each amended to
2 read as follows:

3 (1) When the department finds in any inspection or investigation
4 that the adult family home has failed or refused to comply with the
5 requirements of this chapter, the rules adopted under this chapter, or
6 other applicable law, the department shall issue a written citation and
7 require the adult family home to correct the violation or violations.
8 All written citations shall become part of the adult family home's
9 compliance and enforcement record. In addition, the department is
10 authorized to take one or more of the enforcement actions listed in
11 subsections (2) and (3) of this section in any case in which the
12 department finds that an adult family home (~~provider~~) has:

13 (a) Failed or refused to comply with the requirements of this
14 chapter or the rules adopted under this chapter;

15 (b) Operated an adult family home without a license or under a
16 revoked license;

17 (c) Knowingly or with reason to know made a false statement of
18 material fact on his or her application for license or any data
19 attached thereto, or in any matter under investigation by the
20 department; or

21 (d) Willfully prevented or interfered with any inspection or
22 investigation by the department.

23 (2) When authorized by subsection (1) of this section, and subject
24 to the further criteria in subsection (3) of this section, the
25 department may take one or more of the following actions:

26 (a) Refuse to issue a license;

27 (b) Impose reasonable conditions on a license, such as correction
28 within a specified time, training, and limits on the type of clients
29 the provider may admit or serve;

30 (c) Impose civil penalties of not more than one hundred dollars per
31 day per violation;

32 (d) Suspend, revoke, or refuse to renew a license; (~~or~~)

33 (e) Suspend admissions to the adult family home by imposing stop
34 placement; or

35 (f) Seek an injunction under RCW 70.128.105.

36 (3) The department shall adopt by rule criteria for the selection
37 of enforcement actions. The criteria shall include, but not be limited
38 to, the following requirements:

1 (a) A reasonable condition on a license may not be the sole
2 enforcement action imposed by the department for a serious violation,
3 or for an uncorrected violation or recurring problem that harmed a
4 resident;

5 (b) A civil penalty for a serious violation, or for an uncorrected
6 violation or recurring problem that harmed a resident, shall not be
7 less than one thousand dollars; a civil penalty for a violation of RCW
8 74.39A.060(7) may be up to three thousand dollars; a civil penalty for
9 a violation of RCW 70.128.150 may be up to one thousand dollars; and
10 the initial day of a civil penalty for violations involving harm to a
11 resident may be the first day harm occurred;

12 (c) A stop placement shall not be imposed unless there is a
13 reasonable probability that harm to more than one resident will occur
14 or reoccur as a result of a violation or violations;

15 (d) A summary suspension shall not be imposed unless there is an
16 imminent threat that substantial harm to more than one resident will
17 occur as a result of a violation or violations; and

18 (e) The department may revoke, deny, or refuse to renew a license
19 when there is cause to summarily suspend the license; when there is a
20 current violation and the adult family home has a history of
21 significant noncompliance; when there is a very serious current
22 violation, such as significant financial problems resulting in poor
23 care and possible business failure; or for other good cause.

24 (4) When the department orders stop placement, the ((facility))
25 adult family home shall not admit any person until the stop placement
26 order is terminated. The department may approve readmission of a
27 resident to the ((facility)) adult family home from a hospital or
28 nursing home during the stop placement. The department shall terminate
29 the stop placement when: (a) The violations necessitating the stop
30 placement have been corrected; and (b) the ((provider)) adult family
31 home exhibits the capacity to maintain correction of the violations
32 previously found deficient. However, if upon the revisit the
33 department finds new violations that the department reasonably believes
34 will result in a new stop placement, the previous stop placement shall
35 remain in effect until the new stop placement is imposed.

36 ((+4)) (5) The department shall take appropriate steps to verify
37 correction of violations:

1 (a) After a department finding of a violation for which a stop
2 placement has been imposed, the department shall make an on-site
3 revisit of the ~~((provider))~~ adult family home within fifteen working
4 days from the request for revisit, to ensure correction of the
5 violation. ~~((For violations that are serious or recurring or
6 uncorrected following a previous citation, and create actual or
7 threatened harm to one or more residents' well being, including
8 violations of residents' rights))~~

9 (b) After a department citation for a serious violation, or for an
10 uncorrected violation or recurring problem that harmed a resident, the
11 department shall make an on-site revisit to the adult family home as
12 soon as appropriate to ensure correction of the violation or problem.
13 Depending on the extent of the threatened or actual harm to residents,
14 the department's on-site revisit shall occur shortly after issuing the
15 citation or may be initiated more than fifteen working days from
16 notification of correction of the violation.

17 (c) Verification of correction of all other violations may be made
18 by either a department on-site revisit or by written or photographic
19 documentation found by the department to be credible.

20 (d) This ~~((subsection))~~ section does not prevent the department
21 from enforcing license suspensions or revocations. Nothing in this
22 ~~((subsection))~~ section shall interfere with or diminish the
23 department's authority and duty to ensure that the ~~((provider))~~ adult
24 family home adequately cares for residents, ~~((including))~~ to make
25 ~~((departmental))~~ on-site revisits as needed to ensure that the
26 ~~((provider))~~ adult family home protects residents, and to enforce
27 compliance with this chapter, the rules adopted under this chapter, and
28 other applicable law. The department shall adopt rules setting forth
29 the monitoring and enforcement processes for license inspections and
30 complaint investigations.

31 ~~((+5))~~ (6) Chapter 34.05 RCW applies to department actions under
32 this section, except that orders of the department imposing license
33 suspension, stop placement, or conditions for continuation of a license
34 are effective immediately upon notice and shall continue in effect
35 pending any hearing.

36 **Sec. 16.** RCW 74.39A.009 and 1997 c 392 s 103 are each amended to
37 read as follows:

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

3 (1) "Adult family home" means a home licensed under chapter 70.128
4 RCW.

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

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

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

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

21 (6) "Department" means the department of social and health
22 services.

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

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

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

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

15 (11) "Nursing home" means a facility licensed under chapter 18.51
16 RCW.

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

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

21 (14) "Harm" means a physical, mental, or emotional injury or damage
22 to a resident, including from neglect or a violation of a resident's
23 rights. Examples of harm include, but are not limited to: Shallow
24 bruising, lacerations, or other injuries that can be treated with first
25 aid; dehydration not requiring professional intervention; yelling or
26 ridicule of a resident that is not repeated or part of a pattern;
27 leaving a resident unassisted on the toilet for an unnecessary,
28 prolonged period of time; leaving a resident to lie in urine or feces;
29 failing to assist a resident needing help with eating; transferring a
30 resident within the facility without prior notice; or failing to
31 include a resident or the resident's representative in care planning.
32 Incidents that cause harm may, if repeated or prolonged, result in
33 substantial harm.

34 (15) "Substantial harm" means harm that causes significant
35 physical, mental, or emotional suffering to a resident, or is a
36 significant violation of a resident's rights. Examples of substantial
37 harm include, but are not limited to: Deep bruising; laceration
38 requiring sutures; fracture; burn; dehydration or malnutrition

1 requiring the intervention of a licensed health care professional;
2 retaliation against a resident for filing a complaint with the
3 department or the ombudsman, such as by withholding or reducing needed
4 care, threatening to discharge the resident, or threatening to cut off
5 communication with family or friends; bruising in areas not generally
6 exposed to trauma, such as the head, neck, inner thigh, and anal area;
7 any sexual assault or suspected sexual assault; any pattern of or
8 repeated assault or injury between the same residents or involving the
9 same resident; or any injury requiring close assessment or monitoring
10 by a licensed health care professional.

11 (16) "Serious violation" means a violation cited by the department
12 of this chapter, the rules adopted under this chapter, or other
13 applicable law, that causes substantial harm to a resident.

14 (17) "Uncorrected violation" means the department has cited a
15 provider of home and community services for a violation and the
16 violation is not corrected at the time the department makes an on-site
17 revisit, inspection, or investigation to determine whether the
18 violation has been corrected.

19 (18) "Recurring problem" means the department has cited the
20 provider of home and community services three times within a three-year
21 period for the same or substantially the same violation of this
22 chapter, the rules adopted under this chapter, or other applicable law.

23 **Sec. 17.** RCW 74.39A.050 and 2000 c 121 s 10 are each amended to
24 read as follows:

25 The department's system of monitoring, enforcement, and quality
26 improvement for long-term care services shall use the following
27 principles, consistent with applicable federal laws and regulations:

28 (1) The system shall be client-centered and promote privacy,
29 independence, dignity, choice, and a home or home-like environment for
30 residents and consumers consistent with chapter 392, Laws of 1997.

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

1 provide the provider and residents and their representatives the
2 opportunity to provide additional or clarifying information about their
3 concerns. The process shall be as even-handed as possible, with due
4 regard for confidentiality requirements.

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

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

10 (5) Monitoring should be outcome based and responsive to
11 ~~((consumer))~~ the concerns and complaints of residents, consumers, and
12 others and be based upon a clear set of health, quality of care, and
13 safety standards that are ((easily)) understandable and have been made
14 available to providers, residents, consumers, and other interested
15 parties.

16 ~~((Prompt and specific enforcement remedies shall also be~~
17 ~~implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160,~~
18 ~~chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have~~
19 ~~delivered care or failed to deliver care resulting in problems that are~~
20 ~~serious, recurring, or uncorrected, or that create a hazard that is~~
21 ~~causing or likely to cause death or serious harm to one or more~~
22 ~~residents. These enforcement remedies may also include, when~~
23 ~~appropriate, reasonable conditions on a contract or license. In the~~
24 ~~selection of remedies, the safety, health, and well being of residents~~
25 ~~shall be of paramount importance)) When the department finds in any
26 inspection or investigation that a long-term care facility has failed
27 or refused to comply with the requirements of this chapter, the rules
28 adopted under this chapter, the facility's licensing laws, or other
29 applicable laws, the department shall issue a written citation and
30 require the facility to correct the violation or violations. The
31 department may provide technical assistance and information to the
32 facility, residents, and their representatives. Adult family homes,
33 boarding homes, and nursing homes cited by the department for a serious
34 violation, uncorrected violation, or recurring problem shall be
35 sanctioned with one or more of the enforcement actions set forth in RCW
36 70.128.160, 74.39A.080, chapter 18.51 RCW, or chapter 74.42 RCW. The
37 facility's plan of correction shall not be considered an enforcement~~

1 action. In the selection of remedies by the department, the safety,
2 health, and well-being of residents shall be of paramount importance.

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

12 (8) No provider or staff, or prospective provider or staff, with a
13 stipulated finding of fact, conclusion of law, an agreed order, or
14 finding of fact, conclusion of law, or final order issued by a
15 disciplining authority, a court of law, or entered into a state
16 registry finding him or her guilty of abuse, neglect, exploitation, or
17 abandonment of a minor or a vulnerable adult as defined in chapter
18 74.34 RCW shall be employed in the care of and have unsupervised access
19 to vulnerable adults.

20 (9) The department shall establish, by rule, a state registry which
21 contains identifying information about personal care aides identified
22 under this chapter who have substantiated findings of abuse, neglect,
23 financial exploitation, or abandonment of a vulnerable adult as defined
24 in RCW 74.34.020. The rule must include disclosure, disposition of
25 findings, notification, findings of fact, appeal rights, and fair
26 hearing requirements. The department shall disclose, upon request,
27 substantiated findings of abuse, neglect, financial exploitation, or
28 abandonment to any person so requesting this information.

29 (10) The department shall by rule develop training requirements for
30 individual providers and home care agency providers. Effective March
31 1, 2002, individual providers and home care agency providers must
32 satisfactorily complete department-approved orientation, basic
33 training, and continuing education within the time period specified by
34 the department in rule. The department shall adopt rules by March 1,
35 2002, for the implementation of this section based on the
36 recommendations of the community long-term care training and education
37 steering committee established in RCW 74.39A.190. The department shall

1 deny payment to an individual provider or a home care provider who does
2 not complete the training requirements within the time limit specified
3 by the department by rule.

4 (11) In an effort to improve access to training and education and
5 reduce costs, especially for rural communities, the coordinated system
6 of long-term care training and education must include the use of
7 innovative types of learning strategies such as internet resources,
8 videotapes, and distance learning using satellite technology
9 coordinated through community colleges or other entities, as defined by
10 the department.

11 (12) The department shall create an approval system by March 1,
12 2002, for those seeking to conduct department-approved training. In
13 the rule-making process, the department shall adopt rules based on the
14 recommendations of the community long-term care training and education
15 steering committee established in RCW 74.39A.190.

16 (13) The department shall establish, by rule, training, background
17 checks, and other quality assurance requirements for personal aides who
18 provide in-home services funded by medicaid personal care as described
19 in RCW 74.09.520, community options program entry system waiver
20 services as described in RCW 74.39A.030, or chore services as described
21 in RCW 74.39A.110 that are equivalent to requirements for individual
22 providers.

23 (14) Under existing funds the department shall establish internally
24 a quality improvement standards committee to monitor the development of
25 standards and to suggest modifications.

26 (15) Within existing funds, the department shall design, develop,
27 and implement a long-term care training program that is flexible,
28 relevant, and qualifies towards the requirements for a nursing
29 assistant certificate as established under chapter 18.88A RCW. This
30 subsection does not require completion of the nursing assistant
31 certificate training program by providers or their staff. The long-
32 term care teaching curriculum must consist of a fundamental module, or
33 modules, and a range of other available relevant training modules that
34 provide the caregiver with appropriate options that assist in meeting
35 the resident's care needs. Some of the training modules may include,
36 but are not limited to, specific training on the special care needs of
37 persons with developmental disabilities, dementia, mental illness, and
38 the care needs of the elderly. No less than one training module must

1 be dedicated to workplace violence prevention. The nursing care
2 quality assurance commission shall work together with the department to
3 develop the curriculum modules. The nursing care quality assurance
4 commission shall direct the nursing assistant training programs to
5 accept some or all of the skills and competencies from the curriculum
6 modules towards meeting the requirements for a nursing assistant
7 certificate as defined in chapter 18.88A RCW. A process may be
8 developed to test persons completing modules from a caregiver's class
9 to verify that they have the transferable skills and competencies for
10 entry into a nursing assistant training program. The department may
11 review whether facilities can develop their own related long-term care
12 training programs. The department may develop a review process for
13 determining what previous experience and training may be used to waive
14 some or all of the mandatory training. The department of social and
15 health services and the nursing care quality assurance commission shall
16 work together to develop an implementation plan by December 12, 1998.

17 **Sec. 18.** RCW 74.39A.060 and 2001 c 193 s 1 are each amended to
18 read as follows:

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

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

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

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

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

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

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

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

21 (c) In conducting the investigation, the department shall interview
22 the complainant, unless anonymous, and shall use its best efforts to
23 interview the vulnerable adult or adults allegedly harmed, and,
24 consistent with the protection of the vulnerable adult shall interview
25 facility staff, any available independent sources of relevant
26 information, including if appropriate the family members of the
27 vulnerable adult. Prior to completing the investigation, the
28 department shall give the complainant the opportunity to provide
29 additional or clarifying information.

30 (d) Substantiated complaints involving harm to a resident, if an
31 applicable law or rule has been violated, shall be subject to one or
32 more of the enforcement actions provided in RCW 74.39A.080 or
33 70.128.160. Whenever appropriate, the department (~~shall~~) may also
34 give (~~consultation~~) information and technical assistance to the
35 provider, complainant, resident, or others, consistent with
36 confidentiality requirements.

37 (e) The department shall take appropriate steps to verify
38 correction of violations. After a department finding of a violation

1 for which a stop placement has been imposed, the department shall make
2 an on-site revisit of the provider within fifteen working days from the
3 request for revisit, to ensure correction of the violation. (~~For~~
4 ~~violations that are serious or recurring or uncorrected following a~~
5 ~~previous citation, and create actual or threatened harm to one or more~~
6 ~~residents' well being, including violations of residents' rights))
7 After a department citation for a serious violation, or for an
8 uncorrected violation or recurring problem that harmed a resident or
9 consumer, the department shall make an on-site revisit as soon as
10 appropriate to ensure correction of the violation. Verification of
11 correction of all other violations may be made by either a department
12 on-site revisit or by written or photographic documentation found by
13 the department to be credible. This subsection does not prevent the
14 department from enforcing license or contract suspensions or
15 revocations. Nothing in this subsection shall interfere with or
16 diminish the department's authority and duty to ensure that the
17 provider adequately cares for residents, (~~including~~) to make
18 (~~departmental~~) on-site revisits as needed to ensure that the provider
19 protects residents and to enforce compliance with this chapter and
20 other applicable law.~~

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

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

1 the complainant or any other person mentioned in the complaint if such
2 disclosure is requested in writing by the (~~complainant~~) person whose
3 identity is to be disclosed. Nothing in this subsection shall be
4 construed to interfere with the obligation of the long-term care
5 ombudsman program or department staff to monitor the department's
6 licensing, contract, and complaint investigation files for long-term
7 care facilities.

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

1 of this subsection. The department shall require the facility to
2 rectify to the extent possible the retaliatory treatment or other
3 violation of this subsection.

4 **Sec. 19.** RCW 74.39A.080 and 2001 c 193 s 3 are each amended to
5 read as follows:

6 (1) When the department finds in any inspection or investigation
7 that a facility providing assisted living services, adult residential
8 care services, or enhanced adult residential care services has failed
9 or refused to comply with the requirements of this chapter, the rules
10 adopted under this chapter, or other applicable law, the department
11 shall issue a written citation and require the facility to correct the
12 violation or violations. All written citations shall become part of
13 the facility's compliance and enforcement record. In addition, the
14 department is authorized to take one or more of the enforcement actions
15 listed in subsections (2) and (3) of this section in any case in which
16 the department finds that a (~~provider of~~) facility providing assisted
17 living services, adult residential care services, or enhanced adult
18 residential care services has:

19 (a) Failed or refused to comply with the requirements of this
20 chapter or the rules adopted under this chapter;

21 (b) Operated without a license or under a revoked license;

22 (c) Knowingly, or with reason to know, made a false statement of
23 material fact on his or her application for license or contract, or any
24 data attached thereto, or in any matter under investigation by the
25 department; or

26 (d) Willfully prevented or interfered with any inspection or
27 investigation by the department.

28 (2) When authorized by subsection (1) of this section, and subject
29 to the further criteria in subsection (3) of this section, the
30 department may take one or more of the following enforcement actions:

31 (a) Refuse to issue a contract;

32 (b) Impose reasonable conditions on a contract, such as a directed
33 plan of correction within a specified time, training, and limits on the
34 type of clients the (~~provider~~) facility may admit or serve;

35 (c) Impose civil penalties of not more than one hundred dollars per
36 day per violation;

37 (d) Suspend, revoke, or refuse to renew a contract; (~~or~~)

1 (e) Suspend admissions to the facility by imposing stop placement
2 on contracted services; or

3 (f) Seek an injunction under RCW 18.20.150.

4 (3) The department shall adopt by rule criteria for the selection
5 of enforcement actions. The criteria shall include, but not be limited
6 to, the following requirements:

7 (a) A reasonable condition on a contract may not be the sole
8 enforcement action imposed by the department for a serious violation,
9 or for an uncorrected violation or recurring problem that harmed a
10 resident;

11 (b) A civil penalty for a serious violation, or for an uncorrected
12 violation or recurring problem that harmed a resident, shall not be
13 less than one thousand dollars; a civil penalty for a violation of RCW
14 74.39A.060(7) may be up to three thousand dollars; and the initial day
15 of a civil penalty for violations involving harm to a resident shall be
16 the first day harm occurred;

17 (c) A stop placement shall not be imposed unless there is a
18 reasonable probability that harm to more than one resident will occur
19 or reoccur as a result of a violation or violations;

20 (d) A summary suspension shall not be imposed unless there is an
21 imminent threat that substantial harm to more than one resident will
22 occur as a result of a violation or violations; and

23 (e) The department may revoke, deny, or refuse to renew a contract
24 when there is cause to summarily suspend the contract; when there is a
25 current violation and the facility has a history of significant
26 noncompliance; when there is a very serious current violation, such as
27 significant financial problems resulting in poor care and possible
28 business failure; or for other good cause.

29 ~~((+3))~~ (4) When the department orders stop placement, the facility
30 shall not admit any person admitted by contract until the stop
31 placement order is terminated. The department may approve readmission
32 of a resident to the facility from a hospital or nursing home during
33 the stop placement. The department shall terminate the stop placement
34 when: (a) The violations necessitating the stop placement have been
35 corrected; and (b) the provider exhibits the capacity to maintain
36 correction of the violations previously found deficient. However, if
37 upon the revisit the department finds new violations that the

1 department reasonably believes will result in a new stop placement, the
2 previous stop placement shall remain in effect until the new stop
3 placement is imposed.

4 (5) The department shall take appropriate steps to verify
5 correction of violations:

6 (a) After a department finding of a violation for which a stop
7 placement has been imposed, the department shall make an on-site
8 revisit of the ((provider)) facility within fifteen working days from
9 the request for revisit, to ensure correction of the violation. ((For
10 violations that are serious or recurring or uncorrected following a
11 previous citation, and create actual or threatened harm to one or more
12 residents' well being, including violations of residents' rights,))

13 (b) After a department citation for a serious violation, or for an
14 uncorrected violation or recurring problem that harmed a resident, the
15 department shall make an on-site revisit to the facility as soon as
16 appropriate to ensure correction of the violation or problem.
17 Depending on the extent of the threatened or actual harm to residents,
18 the department's on-site revisit shall occur shortly after issuing the
19 citation or may be initiated more than fifteen working days from
20 notification of correction of the violation.

21 (c) Verification of correction of all other violations may be made
22 by either a department on-site revisit or by written or photographic
23 documentation found by the department to be credible.

24 (d) This ((subsection)) section does not prevent the department
25 from enforcing license suspensions or revocations. Nothing in this
26 ((subsection)) section shall interfere with or diminish the
27 department's authority and duty to ensure that the ((provider))
28 facility adequately cares for residents, ((including)) to make
29 ((departmental)) on-site revisits as needed to ensure that the
30 ((provider)) facility protects residents, and to enforce compliance
31 with this chapter, the rules adopted under this chapter, and other
32 applicable law. The department shall adopt rules setting forth the
33 monitoring and enforcement processes for license inspections and
34 complaint investigations.

35 ((+4)) (6) Chapter 34.05 RCW applies to department actions under
36 this section, except that orders of the department imposing contracts
37 suspension, stop placement, or conditions for continuation of a

1 contract are effective immediately upon notice and shall continue
2 pending any hearing.

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