

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2490

61st Legislature
2010 Regular Session

Passed by the House February 5, 2010
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate February 27, 2010
Yeas 42 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2490** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2490

Passed Legislature - 2010 Regular Session

State of Washington

61st Legislature

2010 Regular Session

By Representative Angel; by request of Statute Law Committee

Prefiled 12/22/09. Read first time 01/11/10. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to persons with intellectual disabilities; amending
2 RCW 44.04.280, 10.95.030, 10.95.070, 10.95.130, 26.26.220, 28B.20.410,
3 28B.20.414, 39.32.010, 41.05.095, 43.20B.080, 43.190.020, 48.01.035,
4 70.10.010, 70.10.030, 70.41.020, 70.83.020, 70.83.040, 71.34.020,
5 71A.10.020, 74.09.035, 74.09.120, 74.09.510, 74.09.700, 74.29.010,
6 74.42.010, 74.42.490, 74.46.020, 82.65A.020, 82.65A.030, and 72.29.010;
7 amending 1965 c 11 s 1 (uncodified); reenacting and amending RCW
8 13.34.030; and creating a new section.

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

10 NEW SECTION. **Sec. 1.** The purpose of this act is to move toward
11 fulfillment of the goals stated in RCW 44.04.280, to remove demeaning
12 language from the Revised Code of Washington and to use respectful
13 language when referring to individuals with disabilities. It is not
14 the intent of the legislature to expand or contract the scope or
15 application of any provision of this code. Nothing in this act may be
16 construed to change the application of any provision of this code to
17 any person.

1 **Sec. 2.** RCW 44.04.280 and 2009 c 377 s 1 are each amended to read
2 as follows:

3 (1) The legislature recognizes that language used in reference to
4 individuals with disabilities shapes and reflects society's attitudes
5 towards people with disabilities. Many of the terms currently used
6 diminish the humanity and natural condition of having a disability.
7 Certain terms are demeaning and create an invisible barrier to
8 inclusion as equal community members. The legislature finds it
9 necessary to clarify preferred language for new and revised laws by
10 requiring the use of terminology that puts the person before the
11 disability.

12 (2)(a) The code reviser is directed to avoid all references to:
13 Disabled, developmentally disabled, mentally disabled, mentally ill,
14 mentally retarded, handicapped, cripple, and crippled, in any new
15 statute, memorial, or resolution, and to change such references in any
16 existing statute, memorial, or resolution as sections including these
17 references are otherwise amended by law.

18 (b) The code reviser is directed to replace terms referenced in (a)
19 of this subsection as appropriate with the following revised
20 terminology: "Individuals with disabilities," "individuals with
21 developmental disabilities," "individuals with mental illness," and
22 "individuals with intellectual disabilities."

23 (3) No statute, memorial, or resolution is invalid because it does
24 not comply with this section.

25 (4) The replacement of outmoded terminology with more appropriate
26 references may not be construed as changing the application of any
27 provision of this code to any person.

28 **Sec. 3.** RCW 10.95.030 and 1993 c 479 s 1 are each amended to read
29 as follows:

30 (1) Except as provided in subsection (2) of this section, any
31 person convicted of the crime of aggravated first degree murder shall
32 be sentenced to life imprisonment without possibility of release or
33 parole. A person sentenced to life imprisonment under this section
34 shall not have that sentence suspended, deferred, or commuted by any
35 judicial officer and the indeterminate sentence review board or its
36 successor may not parole such prisoner nor reduce the period of
37 confinement in any manner whatsoever including but not limited to any

1 sort of good-time calculation. The department of social and health
2 services or its successor or any executive official may not permit such
3 prisoner to participate in any sort of release or furlough program.

4 (2) If, pursuant to a special sentencing proceeding held under RCW
5 10.95.050, the trier of fact finds that there are not sufficient
6 mitigating circumstances to merit leniency, the sentence shall be
7 death. In no case, however, shall a person be sentenced to death if
8 the person (~~((was mentally retarded))~~) had an intellectual disability at
9 the time the crime was committed, under the definition of (~~((mental
10 retardation))~~) intellectual disability set forth in (a) of this
11 subsection. A diagnosis of (~~((mental retardation))~~) intellectual
12 disability shall be documented by a licensed psychiatrist or licensed
13 psychologist designated by the court, who is an expert in the diagnosis
14 and evaluation of (~~((mental retardation))~~) intellectual disabilities.
15 The defense must establish (~~((mental retardation))~~) an intellectual
16 disability by a preponderance of the evidence and the court must make
17 a finding as to the existence of (~~((mental retardation))~~) an intellectual
18 disability.

19 (a) (~~(("Mentally retarded"))~~) "Intellectual disability" means the
20 individual has: (i) Significantly subaverage general intellectual
21 functioning; (ii) existing concurrently with deficits in adaptive
22 behavior; and (iii) both significantly subaverage general intellectual
23 functioning and deficits in adaptive behavior were manifested during
24 the developmental period.

25 (b) "General intellectual functioning" means the results obtained
26 by assessment with one or more of the individually administered general
27 intelligence tests developed for the purpose of assessing intellectual
28 functioning.

29 (c) "Significantly subaverage general intellectual functioning"
30 means intelligence quotient seventy or below.

31 (d) "Adaptive behavior" means the effectiveness or degree with
32 which individuals meet the standards of personal independence and
33 social responsibility expected for his or her age.

34 (e) "Developmental period" means the period of time between
35 conception and the eighteenth birthday.

36 **Sec. 4.** RCW 10.95.070 and 1993 c 479 s 2 are each amended to read
37 as follows:

1 In deciding the question posed by RCW 10.95.060(4), the jury, or
2 the court if a jury is waived, may consider any relevant factors,
3 including but not limited to the following:

4 (1) Whether the defendant has or does not have a significant
5 history, either as a juvenile or an adult, of prior criminal activity;

6 (2) Whether the murder was committed while the defendant was under
7 the influence of extreme mental disturbance;

8 (3) Whether the victim consented to the act of murder;

9 (4) Whether the defendant was an accomplice to a murder committed
10 by another person where the defendant's participation in the murder was
11 relatively minor;

12 (5) Whether the defendant acted under duress or domination of
13 another person;

14 (6) Whether, at the time of the murder, the capacity of the
15 defendant to appreciate the wrongfulness of his or her conduct or to
16 conform his or her conduct to the requirements of law was substantially
17 impaired as a result of mental disease or defect. However, a person
18 found to (~~be mentally retarded~~) have an intellectual disability under
19 RCW 10.95.030(2) may in no case be sentenced to death;

20 (7) Whether the age of the defendant at the time of the crime calls
21 for leniency; and

22 (8) Whether there is a likelihood that the defendant will pose a
23 danger to others in the future.

24 **Sec. 5.** RCW 10.95.130 and 1993 c 479 s 3 are each amended to read
25 as follows:

26 (1) The sentence review required by RCW 10.95.100 shall be in
27 addition to any appeal. The sentence review and an appeal shall be
28 consolidated for consideration. The defendant and the prosecuting
29 attorney may submit briefs within the time prescribed by the court and
30 present oral argument to the court.

31 (2) With regard to the sentence review required by chapter 138,
32 Laws of 1981, the supreme court of Washington shall determine:

33 (a) Whether there was sufficient evidence to justify the
34 affirmative finding to the question posed by RCW 10.95.060(4); and

35 (b) Whether the sentence of death is excessive or disproportionate
36 to the penalty imposed in similar cases, considering both the crime and
37 the defendant. For the purposes of this subsection, "similar cases"

1 means cases reported in the Washington Reports or Washington Appellate
2 Reports since January 1, 1965, in which the judge or jury considered
3 the imposition of capital punishment regardless of whether it was
4 imposed or executed, and cases in which reports have been filed with
5 the supreme court under RCW 10.95.120;

6 (c) Whether the sentence of death was brought about through passion
7 or prejudice; and

8 (d) Whether the defendant (~~(was mentally retarded)~~) had an
9 intellectual disability within the meaning of RCW 10.95.030(2).

10 **Sec. 6.** RCW 13.34.030 and 2009 c 520 s 21 and 2009 c 397 s 1 are
11 each reenacted and amended to read as follows:

12 For purposes of this chapter:

13 (1) "Abandoned" means when the child's parent, guardian, or other
14 custodian has expressed, either by statement or conduct, an intent to
15 forego, for an extended period, parental rights or responsibilities
16 despite an ability to exercise such rights and responsibilities. If
17 the court finds that the petitioner has exercised due diligence in
18 attempting to locate the parent, no contact between the child and the
19 child's parent, guardian, or other custodian for a period of three
20 months creates a rebuttable presumption of abandonment, even if there
21 is no expressed intent to abandon.

22 (2) "Child" and "juvenile" means any individual under the age of
23 eighteen years.

24 (3) "Current placement episode" means the period of time that
25 begins with the most recent date that the child was removed from the
26 home of the parent, guardian, or legal custodian for purposes of
27 placement in out-of-home care and continues until: (a) The child
28 returns home; (b) an adoption decree, a permanent custody order, or
29 guardianship order is entered; or (c) the dependency is dismissed,
30 whichever occurs first.

31 (4) "Department" means the department of social and health
32 services.

33 (5) "Dependency guardian" means the person, nonprofit corporation,
34 or Indian tribe appointed by the court pursuant to this chapter for the
35 limited purpose of assisting the court in the supervision of the
36 dependency.

37 (6) "Dependent child" means any child who:

1 (a) Has been abandoned;

2 (b) Is abused or neglected as defined in chapter 26.44 RCW by a
3 person legally responsible for the care of the child; or

4 (c) Has no parent, guardian, or custodian capable of adequately
5 caring for the child, such that the child is in circumstances which
6 constitute a danger of substantial damage to the child's psychological
7 or physical development.

8 (7) "Developmental disability" means a disability attributable to
9 (~~mental-retardation~~) intellectual disability, cerebral palsy,
10 epilepsy, autism, or another neurological or other condition of an
11 individual found by the secretary to be closely related to (~~mental~~
12 ~~retardation~~) an intellectual disability or to require treatment
13 similar to that required for individuals with (~~mental-retardation~~)
14 intellectual disabilities, which disability originates before the
15 individual attains age eighteen, which has continued or can be expected
16 to continue indefinitely, and which constitutes a substantial
17 (~~handicap~~) limitation to the individual.

18 (8) "Guardian" means the person or agency that: (a) Has been
19 appointed as the guardian of a child in a legal proceeding other than
20 a proceeding under this chapter; and (b) has the legal right to custody
21 of the child pursuant to such appointment. The term "guardian" shall
22 not include a "dependency guardian" appointed pursuant to a proceeding
23 under this chapter.

24 (9) "Guardian ad litem" means a person, appointed by the court to
25 represent the best interests of a child in a proceeding under this
26 chapter, or in any matter which may be consolidated with a proceeding
27 under this chapter. A "court-appointed special advocate" appointed by
28 the court to be the guardian ad litem for the child, or to perform
29 substantially the same duties and functions as a guardian ad litem,
30 shall be deemed to be guardian ad litem for all purposes and uses of
31 this chapter.

32 (10) "Guardian ad litem program" means a court-authorized volunteer
33 program, which is or may be established by the superior court of the
34 county in which such proceeding is filed, to manage all aspects of
35 volunteer guardian ad litem representation for children alleged or
36 found to be dependent. Such management shall include but is not
37 limited to: Recruitment, screening, training, supervision, assignment,
38 and discharge of volunteers.

1 (11) "Housing assistance" means appropriate referrals by the
2 department or other supervising agencies to federal, state, local, or
3 private agencies or organizations, assistance with forms, applications,
4 or financial subsidies or other monetary assistance for housing. For
5 purposes of this chapter, "housing assistance" is not a remedial
6 service or time-limited family reunification service as described in
7 RCW 13.34.025(2).

8 (12) "Indigent" means a person who, at any stage of a court
9 proceeding, is:

10 (a) Receiving one of the following types of public assistance:
11 Temporary assistance for needy families, general assistance, poverty-
12 related veterans' benefits, food stamps or food stamp benefits
13 transferred electronically, refugee resettlement benefits, medicaid, or
14 supplemental security income; or

15 (b) Involuntarily committed to a public mental health facility; or

16 (c) Receiving an annual income, after taxes, of one hundred twenty-
17 five percent or less of the federally established poverty level; or

18 (d) Unable to pay the anticipated cost of counsel for the matter
19 before the court because his or her available funds are insufficient to
20 pay any amount for the retention of counsel.

21 (13) "Out-of-home care" means placement in a foster family home or
22 group care facility licensed pursuant to chapter 74.15 RCW or placement
23 in a home, other than that of the child's parent, guardian, or legal
24 custodian, not required to be licensed pursuant to chapter 74.15 RCW.

25 (14) "Preventive services" means preservation services, as defined
26 in chapter 74.14C RCW, and other reasonably available services,
27 including housing assistance, capable of preventing the need for out-
28 of-home placement while protecting the child.

29 (15) "Shelter care" means temporary physical care in a facility
30 licensed pursuant to RCW 74.15.030 or in a home not required to be
31 licensed pursuant to RCW 74.15.030.

32 (16) "Sibling" means a child's birth brother, birth sister,
33 adoptive brother, adoptive sister, half-brother, or half-sister, or as
34 defined by the law or custom of the Indian child's tribe for an Indian
35 child as defined in 25 U.S.C. Sec. 1903(4).

36 (17) "Social study" means a written evaluation of matters relevant
37 to the disposition of the case and shall contain the following
38 information:

1 (a) A statement of the specific harm or harms to the child that
2 intervention is designed to alleviate;

3 (b) A description of the specific services and activities, for both
4 the parents and child, that are needed in order to prevent serious harm
5 to the child; the reasons why such services and activities are likely
6 to be useful; the availability of any proposed services; and the
7 agency's overall plan for ensuring that the services will be delivered.
8 The description shall identify the services chosen and approved by the
9 parent;

10 (c) If removal is recommended, a full description of the reasons
11 why the child cannot be protected adequately in the home, including a
12 description of any previous efforts to work with the parents and the
13 child in the home; the in-home treatment programs that have been
14 considered and rejected; the preventive services, including housing
15 assistance, that have been offered or provided and have failed to
16 prevent the need for out-of-home placement, unless the health, safety,
17 and welfare of the child cannot be protected adequately in the home;
18 and the parents' attitude toward placement of the child;

19 (d) A statement of the likely harms the child will suffer as a
20 result of removal;

21 (e) A description of the steps that will be taken to minimize the
22 harm to the child that may result if separation occurs including an
23 assessment of the child's relationship and emotional bond with any
24 siblings, and the agency's plan to provide ongoing contact between the
25 child and the child's siblings if appropriate; and

26 (f) Behavior that will be expected before determination that
27 supervision of the family or placement is no longer necessary.

28 (18) "Supervising agency" means an agency licensed by the state
29 under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 with whom
30 the department has entered into a performance-based contract to provide
31 child welfare services as defined in RCW 74.13.020.

32 **Sec. 7.** RCW 26.26.220 and 1989 c 404 s 2 are each amended to read
33 as follows:

34 A person shall not enter into, induce, arrange, procure, or
35 otherwise assist in the formation of a surrogate parentage contract
36 under which an unemancipated minor female or a female diagnosed as

1 ((being mentally retarded or as)) having an intellectual disability, a
2 mental illness, or developmental disability is the surrogate mother.

3 **Sec. 8.** RCW 28B.20.410 and 1969 ex.s. c 223 s 28B.20.410 are each
4 amended to read as follows:

5 There is hereby established at the University of Washington a
6 ((children's)) center for research and training in ((~~mental retardation~~
7 ~~and other handicapping conditions~~)) intellectual and developmental
8 disabilities.

9 **Sec. 9.** RCW 28B.20.414 and 1969 ex.s. c 223 s 28B.20.414 are each
10 amended to read as follows:

11 The general purposes of the center shall be:

12 (1) To provide clinical and laboratory facilities for research on
13 the causes, diagnosis, prevention, and treatment of ((~~mental~~
14 ~~retardation and other handicapping conditions in children~~))
15 intellectual and developmental disabilities;

16 (2) To develop improved professional and in-service training
17 programs in the various disciplines concerned with ((~~handicapped~~
18 ~~children~~)) persons with disabilities;

19 (3) To provide diagnostic and consultative services to various
20 state programs and to regional and local centers, to an extent
21 compatible with the primary research and teaching objectives of the
22 center.

23 **Sec. 10.** RCW 39.32.010 and 1995 c 137 s 2 are each amended to read
24 as follows:

25 For the purposes of RCW 39.32.010 through 39.32.060:

26 The term "eligible donee" means any public agency carrying out or
27 promoting for the residents of a given political area one or more
28 public purposes, such as conservation, economic development, education,
29 parks and recreation, public health, and public safety; or nonprofit
30 educational or public health institutions or organizations, such as
31 medical institutions, hospitals, clinics, health centers, schools,
32 colleges, universities, schools for ((~~the mentally retarded~~)) persons
33 with intellectual disabilities, schools for ((~~the physically~~
34 ~~handicapped~~)) persons with physical disabilities, child care centers,
35 radio and television stations licensed by the federal communications

1 commission as educational radio or educational television stations,
2 museums attended by the public, and public libraries serving all
3 residents of a community, district, state, or region, and which are
4 exempt from taxation under Section 501 of the Internal Revenue Code of
5 1954, for purposes of education or public health, including research
6 for any such purpose.

7 The term "public agency" means the state or any subdivision
8 thereof, including any unit of local government, economic development
9 district, emergency services organization, or any instrumentality
10 created by compact or other agreement between the state and a political
11 subdivision, or any Indian tribe, band, group, or community located on
12 a state reservation.

13 The term "surplus property" means any property, title to which is
14 in the federal, state, or local government or any department or agency
15 thereof, and which property is to be disposed of as surplus under any
16 act of congress or the legislature or local statute, heretofore or
17 hereafter enacted providing for such disposition.

18 **Sec. 11.** RCW 41.05.095 and 2007 c 259 s 18 are each amended to
19 read as follows:

20 (1) Any plan offered to employees under this chapter must offer
21 each employee the option of covering any unmarried dependent of the
22 employee under the age of twenty-five.

23 (2) Any employee choosing under subsection (1) of this section to
24 cover a dependent who is: (a) Age twenty through twenty-three and not
25 a registered student at an accredited secondary school, college,
26 university, vocational school, or school of nursing; or (b) age twenty-
27 four, shall be required to pay the full cost of such coverage.

28 (3) Any employee choosing under subsection (1) of this section to
29 cover a dependent with disabilities, (~~developmental disabilities,~~)
30 mental illness, or (~~mental retardation~~) intellectual or other
31 developmental disabilities, who is incapable of self-support, may
32 continue covering that dependent under the same premium and payment
33 structure as for dependents under the age of twenty, irrespective of
34 age.

35 **Sec. 12.** RCW 43.20B.080 and 2008 c 6 s 302 are each amended to
36 read as follows:

1 (1) The department shall file liens, seek adjustment, or otherwise
2 effect recovery for medical assistance correctly paid on behalf of an
3 individual consistent with 42 U.S.C. Sec. 1396p. The department shall
4 adopt a rule providing for prior notice and hearing rights to the
5 record title holder or purchaser under a land sale contract.

6 (2) Liens may be adjusted by foreclosure in accordance with chapter
7 61.12 RCW.

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

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

23 (5)(a) The department shall establish procedures consistent with
24 standards established by the federal department of health and human
25 services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when
26 such recovery would work an undue hardship. The department shall
27 recognize an undue hardship for a surviving domestic partner whenever
28 recovery would not have been permitted if he or she had been a
29 surviving spouse. The department is not authorized to pursue recovery
30 under such circumstances.

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

35 (6) A lien authorized under this section relates back to attach to
36 any real property that the decedent had an ownership interest in
37 immediately before death and is effective as of that date or date of
38 recording, whichever is earlier.

1 (7) The department may enforce a lien authorized under this section
2 against a decedent's life estate or joint tenancy interest in real
3 property held by the decedent immediately prior to his or her death.
4 Such a lien enforced under this subsection shall not end and shall
5 continue as provided in this subsection until the department's lien has
6 been satisfied.

7 (a) The value of the life estate subject to the lien shall be the
8 value of the decedent's interest in the property subject to the life
9 estate immediately prior to the decedent's death.

10 (b) The value of the joint tenancy interest subject to the lien
11 shall be the value of the decedent's fractional interest the recipient
12 would have owned in the jointly held interest in the property had the
13 recipient and the surviving joint tenants held title to the property as
14 tenants in common on the date of the recipient's death.

15 (c) The department may not enforce the lien provided by this
16 subsection against a bona fide purchaser or encumbrancer that obtains
17 an interest in the property after the death of the recipient and before
18 the department records either its lien or the request for notice of
19 transfer or encumbrance as provided by RCW 43.20B.750.

20 (d) The department may not enforce a lien provided by this
21 subsection against any property right that vested prior to July 1,
22 2005.

23 (8)(a) Subject to the requirements of 42 U.S.C. Sec. 1396p(a) and
24 the conditions of this subsection (8), the department is authorized to
25 file a lien against the property of an individual prior to his or her
26 death, and to seek adjustment and recovery from the individual's estate
27 or sale of the property subject to the lien, if:

28 (i) The individual is an inpatient in a nursing facility,
29 intermediate care facility for (~~individuals with mental retardation~~)
30 persons with intellectual disabilities, or other medical institution;
31 and

32 (ii) The department has determined after notice and opportunity for
33 a hearing that the individual cannot reasonably be expected to be
34 discharged from the medical institution and to return home.

35 (b) If the individual is discharged from the medical facility and
36 returns home, the department shall dissolve the lien.

37 (9) The department is authorized to adopt rules to effect recovery

1 under this section. The department may adopt by rule later enactments
2 of the federal laws referenced in this section.

3 (10) It is the responsibility of the department to fully disclose
4 in advance verbally and in writing, in easy to understand language, the
5 terms and conditions of estate recovery to all persons offered long-
6 term care services subject to recovery of payments.

7 (11) In disclosing estate recovery costs to potential clients, and
8 to family members at the consent of the client, the department shall
9 provide a written description of the community service options.

10 **Sec. 13.** RCW 43.190.020 and 1995 1st sp.s. c 18 s 32 are each
11 amended to read as follows:

12 As used in this chapter, "long-term care facility" means any of the
13 following:

14 (1) A facility which:

15 (a) Maintains and operates twenty-four hour skilled nursing
16 services for the care and treatment of chronically ill or convalescent
17 patients, including mental, emotional, or behavioral problems, (~~mental~~
18 ~~retardation~~) intellectual disabilities, or alcoholism;

19 (b) Provides supportive, restorative, and preventive health
20 services in conjunction with a socially oriented program to its
21 residents, and which maintains and operates twenty-four hour services
22 including board, room, personal care, and intermittent nursing care.
23 "Long-term health care facility" includes nursing homes and nursing
24 facilities, but does not include acute care hospital or other licensed
25 facilities except for that distinct part of the hospital or facility
26 which provides nursing facility services.

27 (2) Any family home, group care facility, or similar facility
28 determined by the secretary, for twenty-four hour nonmedical care of
29 persons in need of personal services, supervision, or assistance
30 essential for sustaining the activities of daily living or for the
31 protection of the individual.

32 (3) Any swing bed in an acute care facility.

33 **Sec. 14.** RCW 48.01.035 and 1985 c 264 s 1 are each amended to read
34 as follows:

35 The term "developmental disability" as used in this title means a
36 disability attributable to (~~mental—retardation~~) intellectual

1 disability, cerebral palsy, epilepsy, autism, or another neurological
2 condition closely related to (~~(mental retardation)~~) an intellectual
3 disability or to require treatment similar to that required for
4 (~~(mentally retarded individuals)~~) persons with intellectual
5 disabilities, which disability originates before such individual
6 attains age eighteen, which has continued or can be expected to
7 continue indefinitely, and which constitutes a substantial (~~(handicap)~~)
8 limitation to such individual.

9 **Sec. 15.** RCW 70.10.010 and 1967 ex.s. c 4 s 1 are each amended to
10 read as follows:

11 It is declared to be the policy of the legislature of the state of
12 Washington that, wherever feasible, community health(~~(, mental health~~
13 ~~and mental retardation)~~) services and services for persons with mental
14 illness or intellectual disabilities shall be combined within single
15 facilities in order to provide maximum utilization of available funds
16 and personnel, and to assure the greatest possible coordination of such
17 services for the benefit of those requiring them. It is further
18 declared to be the policy of the legislature to authorize the state to
19 cooperate with counties, cities, and other municipal corporations in
20 order to encourage them to take such steps as may be necessary to
21 construct comprehensive community health centers in communities
22 throughout the state.

23 **Sec. 16.** RCW 70.10.030 and 1967 ex.s. c 4 s 3 are each amended to
24 read as follows:

25 The several agencies of the state authorized to administer within
26 the state the various federal acts providing federal moneys to assist
27 in the cost of establishing facilities for community health(~~(,)~~) and
28 mental health(~~(,)~~) and (~~(mental retardation)~~) facilities for persons
29 with intellectual disabilities, are authorized to apply for and
30 disburse federal grants, matching funds, or other funds, including
31 gifts or donations from any source, available for use by counties,
32 cities, other municipal corporations or nonprofit corporations. Upon
33 application, these agencies shall also be authorized to distribute such
34 state funds as may be appropriated by the legislature for such local
35 construction projects: PROVIDED, That where state funds have been
36 appropriated to assist in covering the cost of constructing a

1 comprehensive community health center, or a facility for community
2 health((~~τ~~)) and mental health((~~τ~~)) or ((~~mental-retardation~~)) a facility
3 for persons with intellectual disabilities, and where any county, city,
4 other municipal corporation or nonprofit corporation has submitted an
5 approved application for such state funds, then, after any applicable
6 federal grant has been deducted from the total cost of construction,
7 the state agency or agencies in charge of each program may allocate to
8 such applicant an amount not to exceed fifty percent of that particular
9 program's contribution toward the balance of remaining construction
10 costs.

11 **Sec. 17.** RCW 70.41.020 and 2002 c 116 s 2 are each amended to read
12 as follows:

13 Unless the context clearly indicates otherwise, the following
14 terms, whenever used in this chapter, shall be deemed to have the
15 following meanings:

- 16 (1) "Department" means the Washington state department of health.
- 17 (2) "Emergency care to victims of sexual assault" means medical
18 examinations, procedures, and services provided by a hospital emergency
19 room to a victim of sexual assault following an alleged sexual assault.
- 20 (3) "Emergency contraception" means any health care treatment
21 approved by the food and drug administration that prevents pregnancy,
22 including but not limited to administering two increased doses of
23 certain oral contraceptive pills within seventy-two hours of sexual
24 contact.
- 25 (4) "Hospital" means any institution, place, building, or agency
26 which provides accommodations, facilities and services over a
27 continuous period of twenty-four hours or more, for observation,
28 diagnosis, or care, of two or more individuals not related to the
29 operator who are suffering from illness, injury, deformity, or
30 abnormality, or from any other condition for which obstetrical,
31 medical, or surgical services would be appropriate for care or
32 diagnosis. "Hospital" as used in this chapter does not include hotels,
33 or similar places furnishing only food and lodging, or simply
34 domiciliary care; nor does it include clinics, or physician's offices
35 where patients are not regularly kept as bed patients for twenty-four
36 hours or more; nor does it include nursing homes, as defined and which
37 come within the scope of chapter 18.51 RCW; nor does it include

1 birthing centers, which come within the scope of chapter 18.46 RCW; nor
2 does it include psychiatric hospitals, which come within the scope of
3 chapter 71.12 RCW; nor any other hospital, or institution specifically
4 intended for use in the diagnosis and care of those suffering from
5 mental illness, (~~mental retardation~~) intellectual disability,
6 convulsive disorders, or other abnormal mental condition. Furthermore,
7 nothing in this chapter or the rules adopted pursuant thereto shall be
8 construed as authorizing the supervision, regulation, or control of the
9 remedial care or treatment of residents or patients in any hospital
10 conducted for those who rely primarily upon treatment by prayer or
11 spiritual means in accordance with the creed or tenets of any well
12 recognized church or religious denominations.

13 (5) "Person" means any individual, firm, partnership, corporation,
14 company, association, or joint stock association, and the legal
15 successor thereof.

16 (6) "Secretary" means the secretary of health.

17 (7) "Sexual assault" has the same meaning as in RCW 70.125.030.

18 (8) "Victim of sexual assault" means a person who alleges or is
19 alleged to have been sexually assaulted and who presents as a patient.

20 **Sec. 18.** RCW 70.83.020 and 1991 c 3 s 348 are each amended to read
21 as follows:

22 It shall be the duty of the department of health to require
23 screening tests of all newborn infants before they are discharged from
24 the hospital for the detection of phenylketonuria and other heritable
25 or metabolic disorders leading to (~~mental retardation~~) intellectual
26 disabilities or physical defects as defined by the state board of
27 health: PROVIDED, That no such tests shall be given to any newborn
28 infant whose parents or guardian object thereto on the grounds that
29 such tests conflict with their religious tenets and practices.

30 **Sec. 19.** RCW 70.83.040 and 2007 c 259 s 7 are each amended to read
31 as follows:

32 When notified of positive screening tests, the state department of
33 health shall offer the use of its services and facilities, designed to
34 prevent (~~mental retardation~~) intellectual disabilities or physical
35 defects in such children, to the attending physician, or the parents of
36 the newborn child if no attending physician can be identified.

1 The services and facilities of the department, and other state and
2 local agencies cooperating with the department in carrying out programs
3 of detection and prevention of (~~mental retardation~~) intellectual
4 disabilities and physical defects shall be made available to the family
5 and physician to the extent required in order to carry out the intent
6 of this chapter and within the availability of funds.

7 **Sec. 20.** RCW 71.34.020 and 2006 c 93 s 2 are each amended to read
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Child psychiatrist" means a person having a license as a
12 physician and surgeon in this state, who has had graduate training in
13 child psychiatry in a program approved by the American Medical
14 Association or the American Osteopathic Association, and who is board
15 eligible or board certified in child psychiatry.

16 (2) "Children's mental health specialist" means:

17 (a) A mental health professional who has completed a minimum of one
18 hundred actual hours, not quarter or semester hours, of specialized
19 training devoted to the study of child development and the treatment of
20 children; and

21 (b) A mental health professional who has the equivalent of one year
22 of full-time experience in the treatment of children under the
23 supervision of a children's mental health specialist.

24 (3) "Commitment" means a determination by a judge or court
25 commissioner, made after a commitment hearing, that the minor is in
26 need of inpatient diagnosis, evaluation, or treatment or that the minor
27 is in need of less restrictive alternative treatment.

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

30 (5) "Designated mental health professional" means a mental health
31 professional designated by one or more counties to perform the
32 functions of a designated mental health professional described in this
33 chapter.

34 (~~(5) "Department" means the department of social and health~~
35 ~~services.))~~

36 (6) "Evaluation and treatment facility" means a public or private
37 facility or unit that is certified by the department to provide

1 emergency, inpatient, residential, or outpatient mental health
2 evaluation and treatment services for minors. A physically separate
3 and separately-operated portion of a state hospital may be designated
4 as an evaluation and treatment facility for minors. A facility which
5 is part of or operated by the department or federal agency does not
6 require certification. No correctional institution or facility,
7 juvenile court detention facility, or jail may be an evaluation and
8 treatment facility within the meaning of this chapter.

9 (7) "Evaluation and treatment program" means the total system of
10 services and facilities coordinated and approved by a county or
11 combination of counties for the evaluation and treatment of minors
12 under this chapter.

13 (8) "Gravely disabled minor" means a minor who, as a result of a
14 mental disorder, is in danger of serious physical harm resulting from
15 a failure to provide for his or her essential human needs of health or
16 safety, or manifests severe deterioration in routine functioning
17 evidenced by repeated and escalating loss of cognitive or volitional
18 control over his or her actions and is not receiving such care as is
19 essential for his or her health or safety.

20 (9) "Inpatient treatment" means twenty-four-hour-per-day mental
21 health care provided within a general hospital, psychiatric hospital,
22 or residential treatment facility certified by the department as an
23 evaluation and treatment facility for minors.

24 (10) "Less restrictive alternative" or "less restrictive setting"
25 means outpatient treatment provided to a minor who is not residing in
26 a facility providing inpatient treatment as defined in this chapter.

27 (11) "Likelihood of serious harm" means either: (a) A substantial
28 risk that physical harm will be inflicted by an individual upon his or
29 her own person, as evidenced by threats or attempts to commit suicide
30 or inflict physical harm on oneself; (b) a substantial risk that
31 physical harm will be inflicted by an individual upon another, as
32 evidenced by behavior which has caused such harm or which places
33 another person or persons in reasonable fear of sustaining such harm;
34 or (c) a substantial risk that physical harm will be inflicted by an
35 individual upon the property of others, as evidenced by behavior which
36 has caused substantial loss or damage to the property of others.

37 (12) "Medical necessity" for inpatient care means a requested
38 service which is reasonably calculated to: (a) Diagnose, correct,

1 cure, or alleviate a mental disorder; or (b) prevent the worsening of
2 mental conditions that endanger life or cause suffering and pain, or
3 result in illness or infirmity or threaten to cause or aggravate a
4 handicap, or cause physical deformity or malfunction, and there is no
5 adequate less restrictive alternative available.

6 (13) "Mental disorder" means any organic, mental, or emotional
7 impairment that has substantial adverse effects on an individual's
8 cognitive or volitional functions. The presence of alcohol abuse, drug
9 abuse, juvenile criminal history, antisocial behavior, or (~~mental~~
10 ~~retardation~~) intellectual disabilities alone is insufficient to
11 justify a finding of "mental disorder" within the meaning of this
12 section.

13 (14) "Mental health professional" means a psychiatrist,
14 psychologist, psychiatric nurse, or social worker, and such other
15 mental health professionals as may be defined by rules adopted by the
16 secretary under this chapter.

17 (15) "Minor" means any person under the age of eighteen years.

18 (16) "Outpatient treatment" means any of the nonresidential
19 services mandated under chapter 71.24 RCW and provided by licensed
20 services providers as identified by RCW 71.24.025.

21 (17) "Parent" means:

22 (a) A biological or adoptive parent who has legal custody of the
23 child, including either parent if custody is shared under a joint
24 custody agreement; or

25 (b) A person or agency judicially appointed as legal guardian or
26 custodian of the child.

27 (18) "Professional person in charge" or "professional person" means
28 a physician or other mental health professional empowered by an
29 evaluation and treatment facility with authority to make admission and
30 discharge decisions on behalf of that facility.

31 (19) "Psychiatric nurse" means a registered nurse who has a
32 bachelor's degree from an accredited college or university, and who has
33 had, in addition, at least two years' experience in the direct
34 treatment of (~~mentally ill or emotionally disturbed~~) persons who have
35 a mental illness or who are emotionally disturbed, such experience
36 gained under the supervision of a mental health professional.
37 "Psychiatric nurse" shall also mean any other registered nurse who has
38 three years of such experience.

1 (20) "Psychiatrist" means a person having a license as a physician
2 in this state who has completed residency training in psychiatry in a
3 program approved by the American Medical Association or the American
4 Osteopathic Association, and is board eligible or board certified in
5 psychiatry.

6 (21) "Psychologist" means a person licensed as a psychologist under
7 chapter 18.83 RCW.

8 (22) "Responsible other" means the minor, the minor's parent or
9 estate, or any other person legally responsible for support of the
10 minor.

11 (23) "Secretary" means the secretary of the department or
12 secretary's designee.

13 (24) "Start of initial detention" means the time of arrival of the
14 minor at the first evaluation and treatment facility offering inpatient
15 treatment if the minor is being involuntarily detained at the time.
16 With regard to voluntary patients, "start of initial detention" means
17 the time at which the minor gives notice of intent to leave under the
18 provisions of this chapter.

19 **Sec. 21.** RCW 71A.10.020 and 1998 c 216 s 2 are each amended to
20 read as follows:

21 As used in this title, the following terms have the meanings
22 indicated unless the context clearly requires otherwise.

23 (1) "Community residential support services," or "community support
24 services," and "in-home services" means one or more of the services
25 listed in RCW 71A.12.040.

26 (2) "Department" means the department of social and health
27 services.

28 (3) "Developmental disability" means a disability attributable to
29 (~~mental retardation~~) intellectual disability, cerebral palsy,
30 epilepsy, autism, or another neurological or other condition of an
31 individual found by the secretary to be closely related to (~~mental~~
32 ~~retardation~~) an intellectual disability or to require treatment
33 similar to that required for individuals with (~~mental retardation~~)
34 intellectual disabilities, which disability originates before the
35 individual attains age eighteen, which has continued or can be expected
36 to continue indefinitely, and which constitutes a substantial
37 (~~handicap~~) limitation to the individual. By January 1, 1989, the

1 department shall promulgate rules which define neurological or other
2 conditions in a way that is not limited to intelligence quotient scores
3 as the sole determinant of these conditions, and notify the legislature
4 of this action.

5 (4) "Eligible person" means a person who has been found by the
6 secretary under RCW 71A.16.040 to be eligible for services.

7 (5) "Habilitative services" means those services provided by
8 program personnel to assist persons in acquiring and maintaining life
9 skills and to raise their levels of physical, mental, social, and
10 vocational functioning. Habilitative services include education,
11 training for employment, and therapy.

12 (6) "Legal representative" means a parent of a person who is under
13 eighteen years of age, a person's legal guardian, a person's limited
14 guardian when the subject matter is within the scope of the limited
15 guardianship, a person's attorney-at-law, a person's attorney-in-fact,
16 or any other person who is authorized by law to act for another person.

17 (7) "Notice" or "notification" of an action of the secretary means
18 notice in compliance with RCW 71A.10.060.

19 (8) "Residential habilitation center" means a state-operated
20 facility for persons with developmental disabilities governed by
21 chapter 71A.20 RCW.

22 (9) "Secretary" means the secretary of social and health services
23 or the secretary's designee.

24 (10) "Service" or "services" means services provided by state or
25 local government to carry out this title.

26 (11) "Vacancy" means an opening at a residential habilitation
27 center, which when filled, would not require the center to exceed its
28 (~~biannually~~ ~~[biennially]~~) biennially budgeted capacity.

29 **Sec. 22.** RCW 74.09.035 and 1987 c 406 s 12 are each amended to
30 read as follows:

31 (1) To the extent of available funds, medical care services may be
32 provided to recipients of general assistance, and recipients of alcohol
33 and drug addiction services provided under chapter 74.50 RCW, in
34 accordance with medical eligibility requirements established by the
35 department.

36 (2) Determination of the amount, scope, and duration of medical
37 care services shall be limited to coverage as defined by the

1 department, except that adult dental, and routine foot care shall not
2 be included unless there is a specific appropriation for these
3 services.

4 (3) The department shall establish standards of assistance and
5 resource and income exemptions, which may include deductibles and co-
6 insurance provisions. In addition, the department may include a
7 prohibition against the voluntary assignment of property or cash for
8 the purpose of qualifying for assistance.

9 (4) Residents of skilled nursing homes, intermediate care
10 facilities, and intermediate care facilities for (~~the mentally~~
11 ~~retarded~~) persons with intellectual disabilities who are eligible for
12 medical care services shall be provided medical services to the same
13 extent as provided to those persons eligible under the medical
14 assistance program.

15 (5) Payments made by the department under this program shall be the
16 limit of expenditures for medical care services solely from state
17 funds.

18 (6) Eligibility for medical care services shall commence with the
19 date of certification for general assistance or the date of eligibility
20 for alcohol and drug addiction services provided under chapter 74.50
21 RCW.

22 **Sec. 23.** RCW 74.09.120 and 1998 c 322 s 45 are each amended to
23 read as follows:

24 The department shall purchase necessary physician and dentist
25 services by contract or "fee for service." The department shall
26 purchase nursing home care by contract and payment for the care shall
27 be in accordance with the provisions of chapter 74.46 RCW and rules
28 adopted by the department under the authority of RCW 74.46.800. No
29 payment shall be made to a nursing home which does not permit
30 inspection by the department of social and health services of every
31 part of its premises and an examination of all records, including
32 financial records, methods of administration, general and special
33 dietary programs, the disbursement of drugs and methods of supply, and
34 any other records the department deems relevant to the regulation of
35 nursing home operations, enforcement of standards for resident care,
36 and payment for nursing home services.

1 The department may purchase nursing home care by contract in
2 veterans' homes operated by the state department of veterans affairs
3 and payment for the care shall be in accordance with the provisions of
4 chapter 74.46 RCW and rules adopted by the department under the
5 authority of RCW 74.46.800.

6 The department may purchase care in institutions for (~~the mentally~~
7 ~~retarded~~) persons with intellectual disabilities, also known as
8 intermediate care facilities for (~~the mentally retarded~~) persons with
9 intellectual disabilities. The department shall establish rules for
10 reasonable accounting and reimbursement systems for such care.
11 Institutions for (~~the mentally retarded~~) persons with intellectual
12 disabilities include licensed nursing homes, public institutions,
13 licensed boarding homes with fifteen beds or less, and hospital
14 facilities certified as intermediate care facilities for (~~the mentally~~
15 ~~retarded~~) persons with intellectual disabilities under the federal
16 medicaid program to provide health, habilitative, or rehabilitative
17 services and twenty-four hour supervision for (~~mentally retarded~~
18 ~~individuals or persons with~~) persons with intellectual disabilities or
19 related conditions and includes in the program "active treatment" as
20 federally defined.

21 The department may purchase care in institutions for mental
22 diseases by contract. The department shall establish rules for
23 reasonable accounting and reimbursement systems for such care.
24 Institutions for mental diseases are certified under the federal
25 medicaid program and primarily engaged in providing diagnosis,
26 treatment, or care to persons with mental diseases, including medical
27 attention, nursing care, and related services.

28 The department may purchase all other services provided under this
29 chapter by contract or at rates established by the department.

30 **Sec. 24.** RCW 74.09.510 and 2007 c 315 s 1 are each amended to read
31 as follows:

32 Medical assistance may be provided in accordance with eligibility
33 requirements established by the department, as defined in the social
34 security Title XIX state plan for mandatory categorically needy persons
35 and:

36 (1) Individuals who would be eligible for cash assistance except
37 for their institutional status;

1 (2) Individuals who are under twenty-one years of age, who would be
2 eligible for medicaid, but do not qualify as dependent children and who
3 are in (a) foster care, (b) subsidized adoption, (c) a nursing facility
4 or an intermediate care facility for persons (~~who are mentally~~
5 ~~retarded~~) with intellectual disabilities, or (d) inpatient psychiatric
6 facilities;

7 (3) Individuals who:

8 (a) Are under twenty-one years of age;

9 (b) On or after July 22, 2007, were in foster care under the legal
10 responsibility of the department or a federally recognized tribe
11 located within the state; and

12 (c) On their eighteenth birthday, were in foster care under the
13 legal responsibility of the department or a federally recognized tribe
14 located within the state;

15 (4) Persons who are aged, blind, or disabled who: (a) Receive only
16 a state supplement, or (b) would not be eligible for cash assistance if
17 they were not institutionalized;

18 (5) Categorically eligible individuals who meet the income and
19 resource requirements of the cash assistance programs;

20 (6) Individuals who are enrolled in managed health care systems,
21 who have otherwise lost eligibility for medical assistance, but who
22 have not completed a current six-month enrollment in a managed health
23 care system, and who are eligible for federal financial participation
24 under Title XIX of the social security act;

25 (7) Children and pregnant women allowed by federal statute for whom
26 funding is appropriated;

27 (8) Working individuals with disabilities authorized under section
28 1902(a)(10)(A)(ii) of the social security act for whom funding is
29 appropriated;

30 (9) Other individuals eligible for medical services under RCW
31 74.09.035 and 74.09.700 for whom federal financial participation is
32 available under Title XIX of the social security act;

33 (10) Persons allowed by section 1931 of the social security act for
34 whom funding is appropriated; and

35 (11) Women who: (a) Are under sixty-five years of age; (b) have
36 been screened for breast and cervical cancer under the national breast
37 and cervical cancer early detection program administered by the
38 department of health or tribal entity and have been identified as

1 needing treatment for breast or cervical cancer; and (c) are not
2 otherwise covered by health insurance. Medical assistance provided
3 under this subsection is limited to the period during which the woman
4 requires treatment for breast or cervical cancer, and is subject to any
5 conditions or limitations specified in the omnibus appropriations act.

6 **Sec. 25.** RCW 74.09.700 and 2001 c 269 s 1 are each amended to read
7 as follows:

8 (1) To the extent of available funds and subject to any conditions
9 placed on appropriations made for this purpose, medical care may be
10 provided under the limited casualty program to persons not otherwise
11 eligible for medical assistance or medical care services who are
12 medically needy as defined in the social security Title XIX state plan
13 and medical indigents in accordance with eligibility requirements
14 established by the department. The eligibility requirements may
15 include minimum levels of incurred medical expenses. This includes
16 residents of nursing facilities, residents of intermediate care
17 facilities for (~~the mentally retarded~~) persons with intellectual
18 disabilities, and individuals who are otherwise eligible for section
19 1915(c) of the federal social security act home and community-based
20 waiver services, administered by the department of social and health
21 services aging and adult services administration, who are aged, blind,
22 or disabled as defined in Title XVI of the federal social security act
23 and whose income exceeds three hundred percent of the federal
24 supplement security income benefit level.

25 (2) Determination of the amount, scope, and duration of medical
26 coverage under the limited casualty program shall be the responsibility
27 of the department, subject to the following:

28 (a) Only the following services may be covered:

29 (i) For persons who are medically needy as defined in the social
30 security Title XIX state plan: Inpatient and outpatient hospital
31 services, and home and community-based waiver services;

32 (ii) For persons who are medically needy as defined in the social
33 security Title XIX state plan, and for persons who are medical
34 indigents under the eligibility requirements established by the
35 department: Rural health clinic services; physicians' and clinic
36 services; prescribed drugs, dentures, prosthetic devices, and
37 eyeglasses; nursing facility services; and intermediate care facility

1 services for (~~the mentally retarded~~) persons with intellectual
2 disabilities; home health services; hospice services; other laboratory
3 and X-ray services; rehabilitative services, including occupational
4 therapy; medically necessary transportation; and other services for
5 which funds are specifically provided in the omnibus appropriations
6 act;

7 (b) Medical care services provided to the medically indigent and
8 received no more than seven days prior to the date of application shall
9 be retroactively certified and approved for payment on behalf of a
10 person who was otherwise eligible at the time the medical services were
11 furnished: PROVIDED, That eligible persons who fail to apply within
12 the seven-day time period for medical reasons or other good cause may
13 be retroactively certified and approved for payment.

14 (3) The department shall establish standards of assistance and
15 resource and income exemptions. All nonexempt income and resources of
16 limited casualty program recipients shall be applied against the cost
17 of their medical care services.

18 **Sec. 26.** RCW 74.29.010 and 1993 c 213 s 2 are each amended to read
19 as follows:

20 (1) "Individual with disabilities" means an individual:

21 (a) Who has a physical, mental, or sensory disability, which
22 requires vocational rehabilitation services to prepare for, enter into,
23 engage in, retain, or engage in and retain gainful employment
24 consistent with his or her capacities and abilities; or

25 (b) Who has a physical, mental, or sensory impairment whose ability
26 to function independently in the family or community or whose ability
27 to obtain, maintain, or advance in employment is substantially limited
28 and for whom the delivery of vocational rehabilitation or independent
29 living services will improve the ability to function, continue
30 functioning, or move towards functioning independently in the family or
31 community or to continue in employment.

32 (2) "Individual with severe disabilities" means an individual with
33 disabilities:

34 (a) Who has a physical, mental, or sensory impairment that
35 seriously limits one or more functional capacities, such as mobility,
36 communication, self-care, self-direction, interpersonal skills, work

1 tolerance, or work skills, in terms of employment outcome, and/or
2 independence and participation in family or community life;

3 (b) Whose rehabilitation can be expected to require multiple
4 rehabilitation services over an extended period of time; and

5 (c) Who has one or more physical, mental, or sensory disabilities
6 resulting from amputation, arthritis, autism, blindness, burn injury,
7 cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart
8 disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction,
9 (~~mental retardation~~) intellectual disability, mental illness,
10 multiple sclerosis, muscular dystrophy, musculoskeletal disorders,
11 neurological disorders (including stroke and epilepsy), paraplegia,
12 quadriplegia, other spinal cord conditions, sickle cell anemia,
13 specific learning disability, end-stage renal disease, or another
14 disability or combination of disabilities determined on the basis of an
15 assessment for determining eligibility and rehabilitation needs to
16 cause comparable substantial functional limitation.

17 (3) "Physical, mental, or sensory disability" means a physical,
18 mental, or sensory condition which materially limits, contributes to
19 limiting or, if not corrected or accommodated, will probably result in
20 limiting an individual's activities or functioning.

21 (4) "Rehabilitation services" means goods or services provided to:
22 (a) Determine eligibility and rehabilitation needs of individuals with
23 disabilities, and/or (b) enable individuals with disabilities to attain
24 or retain employment and/or independence, and/or (c) contribute
25 substantially to the rehabilitation of a group of individuals with
26 disabilities. To the extent federal funds are available, goods and
27 services may include, but are not limited to, the establishment,
28 construction, development, operation and maintenance of community
29 rehabilitation programs and independent living centers, as well as
30 special demonstration projects.

31 (5) "Independence" means a reasonable degree of restoration from
32 dependency upon others to self-direction and greater control over
33 circumstances of one's life for personal needs and care and includes
34 but is not limited to the ability to live in one's home.

35 (6) "Job support services" means ongoing goods and services
36 provided after vocational rehabilitation, subject to available funds,
37 that support an individual with severe disabilities in employment.

1 Such services include, but are not limited to, extraordinary
2 supervision or job coaching.

3 (7) "State agency" means the department of social and health
4 services.

5 **Sec. 27.** RCW 74.42.010 and 1994 sp.s. c 9 s 750 are each amended
6 to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Department" means the department of social and health services
10 and the department's employees.

11 (2) "Facility" refers to a nursing home as defined in RCW
12 18.51.010.

13 (3) "Licensed practical nurse" means a person licensed to practice
14 practical nursing under chapter 18.79 RCW.

15 (4) "Medicaid" means Title XIX of the Social Security Act enacted
16 by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79
17 Stat. 343), as amended.

18 (5) "Nursing care" means that care provided by a registered nurse,
19 an advanced registered nurse practitioner, a licensed practical nurse,
20 or a nursing assistant in the regular performance of their duties.

21 (6) "Qualified therapist" means:

22 (a) An activities specialist who has specialized education,
23 training, or experience specified by the department.

24 (b) An audiologist who is eligible for a certificate of clinical
25 competence in audiology or who has the equivalent education and
26 clinical experience.

27 (c) A mental health professional as defined in chapter 71.05 RCW.

28 (d) (~~(A mental retardation)~~) An intellectual disabilities
29 professional who is a qualified therapist or a therapist approved by
30 the department and has specialized training or one year experience in
31 treating or working with (~~(the mentally retarded or developmentally~~
32 ~~disabled)~~) persons with intellectual or developmental disabilities.

33 (e) An occupational therapist who is a graduate of a program in
34 occupational therapy or who has equivalent education or training.

35 (f) A physical therapist as defined in chapter 18.74 RCW.

36 (g) A social worker who is a graduate of a school of social work.

1 (h) A speech pathologist who is eligible for a certificate of
2 clinical competence in speech pathology or who has equivalent education
3 and clinical experience.

4 (7) "Registered nurse" means a person licensed to practice
5 registered nursing under chapter 18.79 RCW.

6 (8) "Resident" means an individual residing in a nursing home, as
7 defined in RCW 18.51.010.

8 (9) "Physician assistant" means a person practicing pursuant to
9 chapters 18.57A and 18.71A RCW.

10 (10) "Nurse practitioner" means a person licensed to practice
11 advanced registered nursing under chapter 18.79 RCW.

12 **Sec. 28.** RCW 74.42.490 and 1980 c 184 s 13 are each amended to
13 read as follows:

14 Each resident's room shall:

15 (1) Be equipped with or conveniently located near toilet and
16 bathing facilities;

17 (2) Be at or above grade level;

18 (3) Contain a suitable bed for each resident and other appropriate
19 furniture;

20 (4) Have closet space that provides security and privacy for
21 clothing and personal belongings;

22 (5) Contain no more than four beds;

23 (6) Have adequate space for each resident; and

24 (7) Be equipped with a device for calling the staff member on duty.

25 The department may waive the space, occupancy, and certain
26 equipment requirements of this section for an existing building
27 constructed prior to January 1, 1980, or space and certain equipment
28 for new intermediate care facilities for (~~the mentally retarded~~)
29 persons with intellectual disabilities for as long as the department
30 considers appropriate if the department finds that the requirements
31 would result in unreasonable hardship on the facility, the waiver
32 serves the particular needs of the residents, and the waiver does not
33 adversely affect the health and safety of the residents.

34 **Sec. 29.** RCW 74.46.020 and 2007 c 508 s 7 are each amended to read
35 as follows:

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

3 (1) "Accrual method of accounting" means a method of accounting in
4 which revenues are reported in the period when they are earned,
5 regardless of when they are collected, and expenses are reported in the
6 period in which they are incurred, regardless of when they are paid.

7 (2) "Appraisal" means the process of estimating the fair market
8 value or reconstructing the historical cost of an asset acquired in a
9 past period as performed by a professionally designated real estate
10 appraiser with no pecuniary interest in the property to be appraised.
11 It includes a systematic, analytic determination and the recording and
12 analyzing of property facts, rights, investments, and values based on
13 a personal inspection and inventory of the property.

14 (3) "Arm's-length transaction" means a transaction resulting from
15 good-faith bargaining between a buyer and seller who are not related
16 organizations and have adverse positions in the market place. Sales or
17 exchanges of nursing home facilities among two or more parties in which
18 all parties subsequently continue to own one or more of the facilities
19 involved in the transactions shall not be considered as arm's-length
20 transactions for purposes of this chapter. Sale of a nursing home
21 facility which is subsequently leased back to the seller within five
22 years of the date of sale shall not be considered as an arm's-length
23 transaction for purposes of this chapter.

24 (4) "Assets" means economic resources of the contractor, recognized
25 and measured in conformity with generally accepted accounting
26 principles.

27 (5) "Audit" or "department audit" means an examination of the
28 records of a nursing facility participating in the medicaid payment
29 system, including but not limited to: The contractor's financial and
30 statistical records, cost reports and all supporting documentation and
31 schedules, receivables, and resident trust funds, to be performed as
32 deemed necessary by the department and according to department rule.

33 (6) "Bad debts" means amounts considered to be uncollectible from
34 accounts and notes receivable.

35 (7) "Beneficial owner" means:

36 (a) Any person who, directly or indirectly, through any contract,
37 arrangement, understanding, relationship, or otherwise has or shares:

1 (i) Voting power which includes the power to vote, or to direct the
2 voting of such ownership interest; and/or

3 (ii) Investment power which includes the power to dispose, or to
4 direct the disposition of such ownership interest;

5 (b) Any person who, directly or indirectly, creates or uses a
6 trust, proxy, power of attorney, pooling arrangement, or any other
7 contract, arrangement, or device with the purpose or effect of
8 divesting himself or herself of beneficial ownership of an ownership
9 interest or preventing the vesting of such beneficial ownership as part
10 of a plan or scheme to evade the reporting requirements of this
11 chapter;

12 (c) Any person who, subject to (b) of this subsection, has the
13 right to acquire beneficial ownership of such ownership interest within
14 sixty days, including but not limited to any right to acquire:

15 (i) Through the exercise of any option, warrant, or right;

16 (ii) Through the conversion of an ownership interest;

17 (iii) Pursuant to the power to revoke a trust, discretionary
18 account, or similar arrangement; or

19 (iv) Pursuant to the automatic termination of a trust,
20 discretionary account, or similar arrangement;

21 except that, any person who acquires an ownership interest or power
22 specified in (c)(i), (ii), or (iii) of this subsection with the purpose
23 or effect of changing or influencing the control of the contractor, or
24 in connection with or as a participant in any transaction having such
25 purpose or effect, immediately upon such acquisition shall be deemed to
26 be the beneficial owner of the ownership interest which may be acquired
27 through the exercise or conversion of such ownership interest or power;

28 (d) Any person who in the ordinary course of business is a pledgee
29 of ownership interest under a written pledge agreement shall not be
30 deemed to be the beneficial owner of such pledged ownership interest
31 until the pledgee has taken all formal steps necessary which are
32 required to declare a default and determines that the power to vote or
33 to direct the vote or to dispose or to direct the disposition of such
34 pledged ownership interest will be exercised; except that:

35 (i) The pledgee agreement is bona fide and was not entered into
36 with the purpose nor with the effect of changing or influencing the
37 control of the contractor, nor in connection with any transaction

1 having such purpose or effect, including persons meeting the conditions
2 set forth in (b) of this subsection; and
3 (ii) The pledgee agreement, prior to default, does not grant to the
4 pledgee:
5 (A) The power to vote or to direct the vote of the pledged
6 ownership interest; or
7 (B) The power to dispose or direct the disposition of the pledged
8 ownership interest, other than the grant of such power(s) pursuant to
9 a pledge agreement under which credit is extended and in which the
10 pledgee is a broker or dealer.
11 (8) "Capitalization" means the recording of an expenditure as an
12 asset.
13 (9) "Case mix" means a measure of the intensity of care and
14 services needed by the residents of a nursing facility or a group of
15 residents in the facility.
16 (10) "Case mix index" means a number representing the average case
17 mix of a nursing facility.
18 (11) "Case mix weight" means a numeric score that identifies the
19 relative resources used by a particular group of a nursing facility's
20 residents.
21 (12) "Certificate of capital authorization" means a certification
22 from the department for an allocation from the biennial capital
23 financing authorization for all new or replacement building
24 construction, or for major renovation projects, receiving a certificate
25 of need or a certificate of need exemption under chapter 70.38 RCW
26 after July 1, 2001.
27 (13) "Contractor" means a person or entity licensed under chapter
28 18.51 RCW to operate a medicare and medicaid certified nursing
29 facility, responsible for operational decisions, and contracting with
30 the department to provide services to medicaid recipients residing in
31 the facility.
32 (14) "Default case" means no initial assessment has been completed
33 for a resident and transmitted to the department by the cut-off date,
34 or an assessment is otherwise past due for the resident, under state
35 and federal requirements.
36 (15) "Department" means the department of social and health
37 services (DSHS) and its employees.

1 (16) "Depreciation" means the systematic distribution of the cost
2 or other basis of tangible assets, less salvage, over the estimated
3 useful life of the assets.

4 (17) "Direct care" means nursing care and related care provided to
5 nursing facility residents. Therapy care shall not be considered part
6 of direct care.

7 (18) "Direct care supplies" means medical, pharmaceutical, and
8 other supplies required for the direct care of a nursing facility's
9 residents.

10 (19) "Entity" means an individual, partnership, corporation,
11 limited liability company, or any other association of individuals
12 capable of entering enforceable contracts.

13 (20) "Equity" means the net book value of all tangible and
14 intangible assets less the recorded value of all liabilities, as
15 recognized and measured in conformity with generally accepted
16 accounting principles.

17 (21) "Essential community provider" means a facility which is the
18 only nursing facility within a commuting distance radius of at least
19 forty minutes duration, traveling by automobile.

20 (22) "Facility" or "nursing facility" means a nursing home licensed
21 in accordance with chapter 18.51 RCW, excepting nursing homes certified
22 as institutions for mental diseases, or that portion of a multiservice
23 facility licensed as a nursing home, or that portion of a hospital
24 licensed in accordance with chapter 70.41 RCW which operates as a
25 nursing home.

26 (23) "Fair market value" means the replacement cost of an asset
27 less observed physical depreciation on the date for which the market
28 value is being determined.

29 (24) "Financial statements" means statements prepared and presented
30 in conformity with generally accepted accounting principles including,
31 but not limited to, balance sheet, statement of operations, statement
32 of changes in financial position, and related notes.

33 (25) "Generally accepted accounting principles" means accounting
34 principles approved by the financial accounting standards board (FASB).

35 (26) "Goodwill" means the excess of the price paid for a nursing
36 facility business over the fair market value of all net identifiable
37 tangible and intangible assets acquired, as measured in accordance with
38 generally accepted accounting principles.

1 (27) "Grouper" means a computer software product that groups
2 individual nursing facility residents into case mix classification
3 groups based on specific resident assessment data and computer logic.

4 (28) "High labor-cost county" means an urban county in which the
5 median allowable facility cost per case mix unit is more than ten
6 percent higher than the median allowable facility cost per case mix
7 unit among all other urban counties, excluding that county.

8 (29) "Historical cost" means the actual cost incurred in acquiring
9 and preparing an asset for use, including feasibility studies,
10 architect's fees, and engineering studies.

11 (30) "Home and central office costs" means costs that are incurred
12 in the support and operation of a home and central office. Home and
13 central office costs include centralized services that are performed in
14 support of a nursing facility. The department may exclude from this
15 definition costs that are nonduplicative, documented, ordinary,
16 necessary, and related to the provision of care services to authorized
17 patients.

18 (31) "Imprest fund" means a fund which is regularly replenished in
19 exactly the amount expended from it.

20 (32) "Joint facility costs" means any costs which represent
21 resources which benefit more than one facility, or one facility and any
22 other entity.

23 (33) "Lease agreement" means a contract between two parties for the
24 possession and use of real or personal property or assets for a
25 specified period of time in exchange for specified periodic payments.
26 Elimination (due to any cause other than death or divorce) or addition
27 of any party to the contract, expiration, or modification of any lease
28 term in effect on January 1, 1980, or termination of the lease by
29 either party by any means shall constitute a termination of the lease
30 agreement. An extension or renewal of a lease agreement, whether or
31 not pursuant to a renewal provision in the lease agreement, shall be
32 considered a new lease agreement. A strictly formal change in the
33 lease agreement which modifies the method, frequency, or manner in
34 which the lease payments are made, but does not increase the total
35 lease payment obligation of the lessee, shall not be considered
36 modification of a lease term.

37 (34) "Medical care program" or "medicaid program" means medical

1 assistance, including nursing care, provided under RCW 74.09.500 or
2 authorized state medical care services.

3 (35) "Medical care recipient," "medicaid recipient," or "recipient"
4 means an individual determined eligible by the department for the
5 services provided under chapter 74.09 RCW.

6 (36) "Minimum data set" means the overall data component of the
7 resident assessment instrument, indicating the strengths, needs, and
8 preferences of an individual nursing facility resident.

9 (37) "Net book value" means the historical cost of an asset less
10 accumulated depreciation.

11 (38) "Net invested funds" means the net book value of tangible
12 fixed assets employed by a contractor to provide services under the
13 medical care program, including land, buildings, and equipment as
14 recognized and measured in conformity with generally accepted
15 accounting principles.

16 (39) "Nonurban county" means a county which is not located in a
17 metropolitan statistical area as determined and defined by the United
18 States office of management and budget or other appropriate agency or
19 office of the federal government.

20 (40) "Operating lease" means a lease under which rental or lease
21 expenses are included in current expenses in accordance with generally
22 accepted accounting principles.

23 (41) "Owner" means a sole proprietor, general or limited partners,
24 members of a limited liability company, and beneficial interest holders
25 of five percent or more of a corporation's outstanding stock.

26 (42) "Ownership interest" means all interests beneficially owned by
27 a person, calculated in the aggregate, regardless of the form which
28 such beneficial ownership takes.

29 (43) "Patient day" or "resident day" means a calendar day of care
30 provided to a nursing facility resident, regardless of payment source,
31 which will include the day of admission and exclude the day of
32 discharge; except that, when admission and discharge occur on the same
33 day, one day of care shall be deemed to exist. A "medicaid day" or
34 "recipient day" means a calendar day of care provided to a medicaid
35 recipient determined eligible by the department for services provided
36 under chapter 74.09 RCW, subject to the same conditions regarding
37 admission and discharge applicable to a patient day or resident day of
38 care.

1 (44) "Professionally designated real estate appraiser" means an
2 individual who is regularly engaged in the business of providing real
3 estate valuation services for a fee, and who is deemed qualified by a
4 nationally recognized real estate appraisal educational organization on
5 the basis of extensive practical appraisal experience, including the
6 writing of real estate valuation reports as well as the passing of
7 written examinations on valuation practice and theory, and who by
8 virtue of membership in such organization is required to subscribe and
9 adhere to certain standards of professional practice as such
10 organization prescribes.

11 (45) "Qualified therapist" means:

12 (a) A mental health professional as defined by chapter 71.05 RCW;

13 (b) (~~(A mental retardation)~~) An intellectual disabilities
14 professional who is a therapist approved by the department who has had
15 specialized training or one year's experience in treating or working
16 with (~~(the mentally retarded or developmentally disabled)~~) persons with
17 intellectual or developmental disabilities;

18 (c) A speech pathologist who is eligible for a certificate of
19 clinical competence in speech pathology or who has the equivalent
20 education and clinical experience;

21 (d) A physical therapist as defined by chapter 18.74 RCW;

22 (e) An occupational therapist who is a graduate of a program in
23 occupational therapy, or who has the equivalent of such education or
24 training; and

25 (f) A respiratory care practitioner certified under chapter 18.89
26 RCW.

27 (46) "Rate" or "rate allocation" means the medicaid per-patient-day
28 payment amount for medicaid patients calculated in accordance with the
29 allocation methodology set forth in part E of this chapter.

30 (47) "Real property," whether leased or owned by the contractor,
31 means the building, allowable land, land improvements, and building
32 improvements associated with a nursing facility.

33 (48) "Rebased rate" or "cost-rebased rate" means a facility-
34 specific component rate assigned to a nursing facility for a particular
35 rate period established on desk-reviewed, adjusted costs reported for
36 that facility covering at least six months of a prior calendar year
37 designated as a year to be used for cost-rebasing payment rate
38 allocations under the provisions of this chapter.

1 (49) "Records" means those data supporting all financial statements
2 and cost reports including, but not limited to, all general and
3 subsidiary ledgers, books of original entry, and transaction
4 documentation, however such data are maintained.

5 (50) "Related organization" means an entity which is under common
6 ownership and/or control with, or has control of, or is controlled by,
7 the contractor.

8 (a) "Common ownership" exists when an entity is the beneficial
9 owner of five percent or more ownership interest in the contractor and
10 any other entity.

11 (b) "Control" exists where an entity has the power, directly or
12 indirectly, significantly to influence or direct the actions or
13 policies of an organization or institution, whether or not it is
14 legally enforceable and however it is exercisable or exercised.

15 (51) "Related care" means only those services that are directly
16 related to providing direct care to nursing facility residents. These
17 services include, but are not limited to, nursing direction and
18 supervision, medical direction, medical records, pharmacy services,
19 activities, and social services.

20 (52) "Resident assessment instrument," including federally approved
21 modifications for use in this state, means a federally mandated,
22 comprehensive nursing facility resident care planning and assessment
23 tool, consisting of the minimum data set and resident assessment
24 protocols.

25 (53) "Resident assessment protocols" means those components of the
26 resident assessment instrument that use the minimum data set to trigger
27 or flag a resident's potential problems and risk areas.

28 (54) "Resource utilization groups" means a case mix classification
29 system that identifies relative resources needed to care for an
30 individual nursing facility resident.

31 (55) "Restricted fund" means those funds the principal and/or
32 income of which is limited by agreement with or direction of the donor
33 to a specific purpose.

34 (56) "Secretary" means the secretary of the department of social
35 and health services.

36 (57) "Support services" means food, food preparation, dietary,
37 housekeeping, and laundry services provided to nursing facility
38 residents.

1 (58) "Therapy care" means those services required by a nursing
2 facility resident's comprehensive assessment and plan of care, that are
3 provided by qualified therapists, or support personnel under their
4 supervision, including related costs as designated by the department.

5 (59) "Title XIX" or "medicaid" means the 1965 amendments to the
6 social security act, P.L. 89-07, as amended and the medicaid program
7 administered by the department.

8 (60) "Urban county" means a county which is located in a
9 metropolitan statistical area as determined and defined by the United
10 States office of management and budget or other appropriate agency or
11 office of the federal government.

12 (61) "Vital local provider" means a facility that meets the
13 following qualifications:

14 (a) It reports a home office with an address located in Washington
15 state; and

16 (b) The sum of medicaid days for all Washington facilities
17 reporting that home office as their home office was greater than two
18 hundred fifteen thousand in 2003; and

19 (c) The facility was recognized as a "vital local provider" by the
20 department as of April 1, 2007.

21 The definition of "vital local provider" shall expire, and have no
22 force or effect, after June 30, 2007. After that date, no facility's
23 payments under this chapter shall in any way be affected by its prior
24 determination or recognition as a vital local provider.

25 **Sec. 30.** RCW 82.65A.020 and 1992 c 80 s 2 are each amended to read
26 as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

29 (1) "Gross income" means all income from whatever source derived,
30 including but not limited to gross income of the business as defined in
31 RCW 82.04.080 and moneys received from state appropriations.

32 (2) "Intermediate care facility for (~~the mentally retarded~~)
33 persons with intellectual disabilities" means an intermediate care
34 facility for the mentally retarded, as described by federal law, that
35 is certified by the department of social and health services and the
36 federal department of health and human services to provide residential
37 care under 42 U.S.C. Sec. 1396d(d).

1 **Sec. 31.** RCW 82.65A.030 and 1993 c 276 s 1 are each amended to
2 read as follows:

3 In addition to any other tax, a tax is imposed on every
4 intermediate care facility for (~~the mentally retarded~~) persons with
5 developmental disabilities for the act or privilege of engaging in
6 business within this state. The tax is equal to the gross income
7 attributable to services for the (~~mentally retarded~~) persons with
8 developmental disabilities, multiplied by the rate of six percent.

9 **Sec. 32.** RCW 72.29.010 and 1977 ex.s. c 80 s 52 are each amended
10 to read as follows:

11 After the acquisition of Harrison Memorial Hospital, the department
12 of social and health services is authorized to enter into contracts for
13 the repair or remodeling of the hospital to the extent they are
14 necessary and reasonable, in order to establish a multi-use facility
15 for (~~the mentally or physically handicapped or the mentally ill~~)
16 persons with mental or physical disabilities or mental illness. The
17 secretary of the department of social and health services is authorized
18 to determine the most feasible and desirable use of the facility and to
19 operate the facility in the manner he or she deems most beneficial to
20 (~~the mentally and physically handicapped, or the mentally ill~~)
21 persons with mental or physical disabilities or mental illness, and is
22 authorized, but not limited to programs for out-patient, diagnostic and
23 referral, day care, vocational and educational services to the
24 community which he or she determines are in the best interest of the
25 state.

26 **Sec. 33.** 1965 c 11 s 1 (uncodified) is amended to read as follows:

27 The state facilities to provide community services to (~~the~~
28 ~~mentally and physically deficient and the mentally ill~~) persons with
29 mental or physical disabilities or mental illness are inadequate to
30 meet the present demand. Great savings to the taxpayers can be
31 achieved while helping to meet these worthwhile needs. It is therefore
32 the purpose of this act to provide for acquisition or lease of Harrison
33 Memorial Hospital property and facilities and the operation thereof as
34 a multi-use facility for (~~the mentally and physically deficient and~~

1 ~~the mentally ill~~) persons with mental or physical disabilities or
2 mental illness.

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