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**SENATE BILL 5271**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Cleveland, Robinson, Kuderer, Nobles, Wellman, and C. Wilson; by request of Department of Health

Read first time 01/11/23. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to protecting patients in facilities regulated by  
2 the department of health by establishing uniform enforcement tools;  
3 amending RCW 18.46.010, 18.46.050, 18.46.130, 70.42.010, 70.42.130,  
4 70.42.180, 70.127.010, 70.127.170, 70.127.213, 70.230.010,  
5 70.230.070, 71.12.710, 71.12.500, 70.38.025, 70.38.111, 70.38.260,  
6 70.170.020, 18.64.005, 18.64.011, 18.64.047, 18.64.165, 18.64A.020,  
7 18.64A.060, 69.45.080, 69.43.100, 69.43.140, 69.50.302, 69.50.303,  
8 69.50.304, 69.50.310, 69.50.320, and 69.41.080; reenacting and  
9 amending RCW 71.12.455, 71.24.025, and 71.24.037; adding a new  
10 section to chapter 18.46 RCW; adding new sections to chapter 70.42  
11 RCW; adding new sections to chapter 70.127 RCW; adding a new section  
12 to chapter 70.230 RCW; adding a new section to chapter 71.12 RCW;  
13 adding a new section to chapter 71.24 RCW; adding new sections to  
14 chapter 18.64 RCW; adding a new section to chapter 69.38 RCW; adding  
15 a new section to chapter 69.45 RCW; repealing RCW 18.64.200,  
16 18.64.390, and 69.50.305; and prescribing penalties.

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

18 **Sec. 1.** RCW 18.46.010 and 2000 c 93 s 30 are each amended to  
19 read as follows:

20 (1) "Birthing center" or "childbirth center" means any health  
21 facility, not part of a hospital or in a hospital, that provides

1 facilities and staff to support a birth service to low-risk maternity  
2 clients: PROVIDED, HOWEVER, That this chapter shall not apply to any  
3 hospital approved by the American College of Surgeons, American  
4 Osteopathic Association, or its successor.

5 (2) "Department" means the state department of health.

6 (3) "Immediate jeopardy" means a situation in which the birthing  
7 center's noncompliance with one or more statutory or regulatory  
8 requirements has placed the health and safety of patients in its care  
9 at risk for serious injury, serious harm, serious impairment, or  
10 death.

11 (4) "Low-risk" means normal, uncomplicated prenatal course as  
12 determined by adequate prenatal care and prospects for a normal  
13 uncomplicated birth as defined by reasonable and generally accepted  
14 criteria of maternal and fetal health.

15 ((4)) (5) "Person" means any individual, firm, partnership,  
16 corporation, company, association, or joint stock association, and  
17 the legal successor thereof.

18 **Sec. 2.** RCW 18.46.050 and 1997 c 58 s 823 are each amended to  
19 read as follows:

20 (1) ~~((The department may deny, suspend, or revoke a license in~~  
21 ~~any case in which it finds that there has been failure or refusal to~~  
22 ~~comply with the requirements established under this chapter or the~~  
23 ~~rules adopted under it.~~

24 ~~(2) The department shall immediately suspend the license of a~~  
25 ~~person who has been certified pursuant to RCW 74.20A.320 by the~~  
26 ~~department of social and health services as a person who is not in~~  
27 ~~compliance with a support order or a residential or visitation order.~~  
28 ~~If the person has continued to meet all other requirements for~~  
29 ~~reinstatement during the suspension, reissuance of the license shall~~  
30 ~~be automatic upon the department's receipt of a release issued by the~~  
31 ~~department of social and health services stating that the person is~~  
32 ~~in compliance with the order.~~

33 ~~RCW 43.70.115 governs notice of a license denial, revocation,~~  
34 ~~suspension, or modification and provides the right to an adjudicative~~  
35 ~~proceeding but shall not apply to actions taken under subsection (2)~~  
36 ~~of this section)) In any case in which the department finds that a  
37 birthing center has failed or refused to comply with the requirements  
38 of this chapter, the standards or rules adopted under this chapter,  
39 or other applicable state or federal statutes or rules regulating~~

1 birthing centers, the department may take one or more of the actions  
2 identified in this section, except as otherwise limited in this  
3 section.

4 (a) When the department determines the birthing center has  
5 previously been subject to an enforcement action for the same or  
6 similar type of violation of the same statute or rule, or has been  
7 given any previous statement of deficiency that included the same or  
8 similar type of violation of the same or similar statute or rule, or  
9 when the birthing center failed to correct noncompliance with a  
10 statute or rule by a date established or agreed to by the department,  
11 the department may impose reasonable conditions on a license.  
12 Conditions may include correction within a specified amount of time,  
13 training, or hiring a department-approved consultant if the birthing  
14 center cannot demonstrate to the department that it has access to  
15 sufficient internal expertise. If the department determines that the  
16 violations constitute immediate jeopardy, the conditions may be  
17 imposed immediately in accordance with subsection (2) of this  
18 section.

19 (b) In accordance with the authority the department has under RCW  
20 43.70.095, the department may assess a civil fine of up to \$3,000 per  
21 violation on a birthing center licensed under this chapter when the  
22 department determines the birthing center has previously been subject  
23 to an enforcement action for the same or similar type of violation of  
24 the same statute or rule, or has been given any previous statement of  
25 deficiency that included the same or similar type of violation of the  
26 same or similar statute or rule, or when the birthing center failed  
27 to correct noncompliance with a statute or rule by a date established  
28 or agreed to by the department.

29 (i) Proceeds from these fines may only be used by the department  
30 to offset costs associated with licensing and enforcement of birthing  
31 centers.

32 (ii) The department shall adopt in rules under this chapter  
33 specific fine amounts in relation to the severity of the  
34 noncompliance and at an adequate level to be a deterrent to future  
35 noncompliance.

36 (iii) If a birthing center is aggrieved by the department's  
37 action of assessing civil fines, the licensee has the right to appeal  
38 under RCW 43.70.095.

39 (c) The department may suspend a specific category or categories  
40 of services or care or birthing rooms within the birthing center as

1 related to the violation by imposing a limited stop service. This may  
2 only be done if the department finds that noncompliance results in  
3 immediate jeopardy.

4 (i) Prior to imposing a limited stop service, the department  
5 shall provide a birthing center written notification upon identifying  
6 deficient practices or conditions that constitute an immediate  
7 jeopardy. The birthing center shall have 24 hours from notification  
8 to develop and implement a department-approved plan to correct the  
9 deficient practices or conditions that constitute an immediate  
10 jeopardy. If the deficient practices or conditions that constitute  
11 immediate jeopardy are not verified by the department as having been  
12 corrected within the same 24-hour period, the department may issue  
13 the limited stop service.

14 (ii) When the department imposes a limited stop service, the  
15 birthing center may not provide the services in the category or  
16 categories subject to the limited stop service to any new or existing  
17 patients, unless otherwise allowed by the department, until the  
18 limited stop service is terminated.

19 (iii) The department shall conduct a follow-up inspection within  
20 five business days or within the time period requested by the  
21 birthing center if more than five business days is needed to verify  
22 the violation necessitating the limited stop service has been  
23 corrected.

24 (iv) The limited stop service shall be terminated when:

25 (A) The department verifies the violation necessitating the  
26 limited stop service has been corrected or the department determines  
27 that the birthing center has taken intermediate action to address the  
28 immediate jeopardy; and

29 (B) The birthing center establishes the ability to maintain  
30 correction of the violation previously found deficient.

31 (d) The department may suspend new admissions to the birthing  
32 center by imposing a stop placement. This may only be done if the  
33 department finds that noncompliance results in immediate jeopardy and  
34 is not confined to a specific category or categories of patients or a  
35 specific area of the birthing center.

36 (i) Prior to imposing a stop placement, the department shall  
37 provide a birthing center written notification upon identifying  
38 deficient practices or conditions that constitute an immediate  
39 jeopardy. The birthing center shall have 24 hours from notification  
40 to develop and implement a department-approved plan to correct the

1 deficient practices or conditions that constitute an immediate  
2 jeopardy. If the deficient practices or conditions that constitute  
3 immediate jeopardy are not verified by the department as having been  
4 corrected within the same 24-hour period, the department may issue  
5 the stop placement.

6 (ii) When the department imposes a stop placement, the birthing  
7 center may not admit any new patients until the stop placement is  
8 terminated.

9 (iii) The department shall conduct a follow-up inspection within  
10 five business days or within the time period requested by the  
11 birthing center if more than five business days is needed to verify  
12 the violation necessitating the stop placement has been corrected.

13 (iv) The stop placement shall be terminated when:

14 (A) The department verifies the violation necessitating the stop  
15 placement has been corrected or the department determines that the  
16 birthing center has taken intermediate action to address the  
17 immediate jeopardy; and

18 (B) The birthing center establishes the ability to maintain  
19 correction of the violation previously found deficient.

20 (e) The department may deny an application for a license or  
21 suspend, revoke, or refuse to renew a license.

22 (2) Except as otherwise provided, RCW 43.70.115 governs notice of  
23 actions taken by the department under subsection (1) of this section  
24 and provides the right to an adjudicative proceeding. Adjudicative  
25 proceedings and hearings under this section are governed by the  
26 administrative procedure act, chapter 34.05 RCW. The application for  
27 an adjudicative proceeding must be in writing, state the basis for  
28 contesting the adverse action, include a copy of the department's  
29 notice, be served on and received by the department within 28 days of  
30 the birthing center's receipt of the adverse notice, and be served in  
31 a manner that shows proof of receipt.

32 (3) When the department determines a licensee's noncompliance  
33 results in immediate jeopardy, the department may make the imposition  
34 of conditions on a licensee, a limited stop service, stop placement,  
35 or the suspension of a license effective immediately upon receipt of  
36 the notice by the licensee, pending any adjudicative proceeding.

37 (a) When the department makes the suspension of a license or  
38 imposition of conditions on a license effective immediately, a  
39 licensee is entitled to a show cause hearing before a presiding  
40 officer within 14 days of making the request. The licensee must

1 request the show cause hearing within 28 days of receipt of the  
2 notice of immediate suspension or immediate imposition of conditions.  
3 At the show cause hearing the department has the burden of  
4 demonstrating that more probably than not there is an immediate  
5 jeopardy.

6 (b) At the show cause hearing, the presiding officer may consider  
7 the notice and documents supporting the immediate suspension or  
8 immediate imposition of conditions and the licensee's response and  
9 shall provide the parties with an opportunity to provide documentary  
10 evidence and written testimony, and to be represented by counsel.  
11 Prior to the show cause hearing, the department shall provide the  
12 licensee with all documentation that supports the department's  
13 immediate suspension or imposition of conditions.

14 (c) If the presiding officer determines there is no immediate  
15 jeopardy, the presiding officer may overturn the immediate suspension  
16 or immediate imposition of conditions.

17 (d) If the presiding officer determines there is immediate  
18 jeopardy, the immediate suspension or immediate imposition of  
19 conditions shall remain in effect pending a full hearing.

20 (e) If the presiding officer sustains the immediate suspension or  
21 immediate imposition of conditions, the licensee may request an  
22 expedited full hearing on the merits of the department's action. A  
23 full hearing must be provided within 90 days of the licensee's  
24 request.

25 (4) When the department determines an alleged violation, if true,  
26 would constitute an immediate jeopardy, and the licensee fails to  
27 cooperate with the department's investigation of such an alleged  
28 violation, the department may impose an immediate stop placement,  
29 immediate limited stop service, immediate imposition of conditions,  
30 or immediate suspension.

31 (a) When the department imposes an immediate stop placement,  
32 immediate limited stop service, immediate imposition of conditions,  
33 or immediate suspension for failure to cooperate, a licensee is  
34 entitled to a show cause hearing before a presiding officer within 14  
35 days of making the request. The licensee must request the show cause  
36 hearing within 28 days of receipt of the notice of an immediate stop  
37 placement, immediate limited stop service, immediate imposition of  
38 conditions, or immediate suspension for failure to cooperate. At the  
39 show cause hearing the department has the burden of demonstrating  
40 that more probably than not the alleged violation, if true, would

1 constitute an immediate jeopardy and the licensee failed to cooperate  
2 with the department's investigation.

3 (b) At the show cause hearing, the presiding officer may consider  
4 the notice and documents supporting the immediate stop placement,  
5 immediate limited stop service, immediate imposition of conditions,  
6 or immediate suspension for failure to cooperate, and the licensee's  
7 response and shall provide the parties with an opportunity to provide  
8 documentary evidence and written testimony, and to be represented by  
9 counsel. Prior to the show cause hearing, the department shall  
10 provide the licensee with all documentation that supports the  
11 department's immediate action for failure to cooperate.

12 (c) If the presiding officer determines the alleged violation, if  
13 true, does not constitute an immediate jeopardy or determines that  
14 the licensee cooperated with the department's investigation, the  
15 presiding officer may overturn the immediate action for failure to  
16 cooperate.

17 (d) If the presiding officer determines the allegation, if true,  
18 would constitute an immediate jeopardy and the licensee failed to  
19 cooperate with the department's investigation, the immediate action  
20 for failure to cooperate shall remain in effect pending a full  
21 hearing.

22 (e) If the presiding officer sustains the immediate action for  
23 failure to cooperate, the licensee may request an expedited full  
24 hearing on the merits of the department's action. A full hearing must  
25 be provided within 90 days of the licensee's request.

26 NEW SECTION. Sec. 3. A new section is added to chapter 18.46  
27 RCW to read as follows:

28 (1) The department may give written notice to cease and desist to  
29 any person whom the department has reason to believe is engaged in  
30 the unlicensed operation of a birthing center.

31 (2) (a) Except as otherwise provided in this section, the  
32 requirement to cease and desist unlicensed operation is effective 20  
33 days after the person receives the notice.

34 (b) The department may make the date the action is effective  
35 sooner than 20 days after receipt when necessary to protect the  
36 public health, safety, or welfare. When the department does so, it  
37 shall state the effective date and the reasons supporting the  
38 effective date in the written notice to cease and desist.

1 (3) The person to whom the notice to cease and desist is issued  
2 may request an adjudicative proceeding to contest the notice. The  
3 adjudicative proceeding is governed by the administrative procedure  
4 act, chapter 34.05 RCW. The request for an adjudicative proceeding  
5 must be in writing, state the basis for contesting the notice,  
6 include a copy of the notice, and be served on and received by the  
7 department within 20 days from the date the person receives the  
8 notice to cease and desist.

9 (4) (a) If the department gives a person 20 days' notice to cease  
10 and desist and the person requests an adjudicative proceeding before  
11 its effective date, the department shall not implement the notice  
12 until the final order has been entered. The presiding or reviewing  
13 officer may permit the department to implement part or all of the  
14 notice while the proceedings are pending if the respondent causes an  
15 unreasonable delay in the proceeding, if the circumstances change so  
16 that implementation is in the public interest, or for other good  
17 cause.

18 (b) If the department gives a licensee less than 20 days' notice  
19 to cease and desist and the respondent timely files a request for an  
20 adjudicative proceeding, the department may implement the cease and  
21 desist on the effective date stated in the notice. The presiding or  
22 reviewing officer may order the department to stay implementation of  
23 part or all of the adverse action while the proceedings are pending  
24 if staying implementation is in the public interest or for other good  
25 cause.

26 (5) The department may assess a civil fine not exceeding \$5,000  
27 for each day a person operates a birthing center without a valid  
28 license.

29 (a) The department shall give written notice to the person  
30 against whom it assesses a civil fine.

31 (b) Except as otherwise provided in (c) and (d) of this  
32 subsection, the civil fine is due and payable 20 days after receipt.

33 (c) The person against whom the department assesses a civil fine  
34 has the right to request an adjudicative proceeding. The proceeding  
35 is governed by the administrative procedure act, chapter 34.05 RCW.  
36 The request must be in writing, state the basis for contesting the  
37 fine, include a copy of the notice, be served on and received by the  
38 department within 20 days of the person receiving the notice of civil  
39 fine, and be served in a manner which shows proof of receipt.



1 (d) If the person files a timely and sufficient request for  
2 adjudicative proceeding, the department shall not implement the fine  
3 until the final order has been served.

4 (6) Neither the issuance of a cease and desist order nor payment  
5 of a civil fine shall relieve the person so operating a birthing  
6 center without a license from criminal prosecution, but the remedy of  
7 a cease and desist order or civil fine shall be in addition to any  
8 criminal liability. A final notice to cease and desist is conclusive  
9 proof of unlicensed operation and may be enforced under RCW 7.21.060.  
10 This method of enforcement of the final notice to cease and desist or  
11 civil fine may be used in addition to, or as an alternative to, any  
12 provisions for enforcement of agency orders set out in chapter 34.05  
13 RCW.

14 **Sec. 4.** RCW 18.46.130 and 2000 c 93 s 39 are each amended to  
15 read as follows:

16 (1) Notwithstanding the existence or use of any other remedy, the  
17 department may in the manner provided by law, upon the advice of the  
18 attorney general who shall represent the department in all  
19 proceedings, maintain an action in the name of the state for an  
20 injunction or other process against any person to restrain or prevent  
21 the ~~advertisement~~, operation ((~~o~~)), maintenance, management, or  
22 opening of a birthing center not licensed under this chapter.

23 (2) The injunction shall not relieve the person operating a birth  
24 center without a license from criminal prosecution, or the imposition  
25 of a civil fine under section 3 of this act, but the remedy by  
26 injunction shall be in addition to any criminal liability or civil  
27 fine. A person that violates an injunction issued under this chapter  
28 shall pay a civil penalty, as determined by the court, of not more  
29 than \$25,000, which shall be deposited in the department's local fee  
30 account. For the purpose of this section, the superior court issuing  
31 any injunction shall retain jurisdiction and the cause shall be  
32 continued, and in such cases the attorney general acting in the name  
33 of the state may petition for the recovery of civil penalties. All  
34 finances, forfeitures, and penalties collected or assessed by a court  
35 because of a violation of RCW 18.46.020 shall be deposited in the  
36 department's local fee account.

37 **Sec. 5.** RCW 70.42.010 and 1989 c 386 s 2 are each amended to  
38 read as follows:

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

3 (1) "Department" means the department of health (~~if enacted,~~  
4 ~~otherwise the department of social and health services~~).

5 (2) "Designated test site supervisor" means the available  
6 individual who is responsible for the technical functions of the test  
7 site and who meets the department's qualifications set out in rule by  
8 the department.

9 (3) "Immediate jeopardy" means a situation in which the medical  
10 test site's noncompliance with one or more statutory or regulatory  
11 requirements has placed the health and safety of patients in its care  
12 at risk for serious injury, serious harm, serious impairment, or  
13 death.

14 (4) "Person" means any individual, or any public or private  
15 organization, agent, agency, corporation, firm, association,  
16 partnership, or business.

17 ~~((4))~~ (5) "Proficiency testing program" means an external  
18 service approved by the department which provides samples to evaluate  
19 the accuracy, reliability and performance of the tests at each test  
20 site.

21 ~~((5))~~ (6) "Quality assurance" means a comprehensive set of  
22 policies, procedures, and practices to assure that a test site's  
23 results are accurate and reliable. Quality assurance means a total  
24 program of internal and external quality control, equipment  
25 preventative maintenance, calibration, recordkeeping, and proficiency  
26 testing evaluation, including a written quality assurance plan.

27 ~~((6))~~ (7) "Quality control" means internal written procedures  
28 and day-to-day analysis of laboratory reference materials at each  
29 test site to insure precision and accuracy of test methodology,  
30 equipment, and results.

31 ~~((7))~~ (8) "Test" means any examination or procedure conducted  
32 on a sample taken from the human body, including screening.

33 ~~((8))~~ (9) "Test site" means any facility or site, public or  
34 private, which analyzes materials derived from the human body for the  
35 purposes of health care, treatment, or screening. A test site does  
36 not mean a facility or site, including a residence, where a test  
37 approved for home use by the federal food and drug administration is  
38 used by an individual to test himself or herself without direct  
39 supervision or guidance by another and where this test is not part of  
40 a commercial transaction.

1       **Sec. 6.** RCW 70.42.130 and 1989 c 386 s 14 are each amended to  
2 read as follows:

3       Under this chapter, and chapter 34.05 RCW, the department may  
4 place conditions on a license which limit or cancel a test site's  
5 authority to conduct any of the tests or groups of tests of any  
6 licensee who:

7       (1) Fails or refuses to comply with the requirements of this  
8 chapter (~~(or)~~), the rules or standards adopted under this chapter, or  
9 other applicable state or federal statutes or rules regulating  
10 medical test sites;

11       (2) Has knowingly or with reason to know made a false statement  
12 of a material fact in the application for a license or in any data  
13 attached thereto or in any record required by the department;

14       (3) Refuses to allow representatives of the department to examine  
15 any book, record, or file required by this chapter to be maintained;

16       (4) Willfully prevented, interfered with, or attempted to impede  
17 in any way the work of a representative of the department;

18       (5) Willfully prevented or interfered with preservation of  
19 evidence of a known violation of this chapter or the rules adopted  
20 under this chapter; or

21       (6) Misrepresented, or was fraudulent in, any aspect of the  
22 licensee's business.

23       NEW SECTION. **Sec. 7.** A new section is added to chapter 70.42  
24 RCW to read as follows:

25       (1) The department may prohibit a specific category or categories  
26 of services within the medical test site as related to noncompliance  
27 with the requirements of this chapter or the standards or rules  
28 adopted under this chapter by imposing a limited stop service. This  
29 may only be done if the department finds that noncompliance results  
30 in immediate jeopardy.

31       (2) Prior to imposing a limited stop service, the department  
32 shall provide the medical test site a written notification upon  
33 identifying deficient practices or conditions that constitute an  
34 immediate jeopardy. The medical test site shall have 24 hours from  
35 notification to develop and implement a department-approved plan to  
36 correct the deficient practices or conditions that constitute an  
37 immediate jeopardy. If the deficient practices or conditions that  
38 constitute immediate jeopardy are not verified by the department as

1 having been corrected within the same 24-hour period, the department  
2 may issue the limited stop service.

3 (3) When the department imposes a limited stop service, the  
4 medical test site may not perform any new testing in the category or  
5 categories subject to the limited stop service until the limited stop  
6 service is terminated.

7 (4) The department shall conduct a follow-up inspection within  
8 five business days or within the time period requested by the medical  
9 test site if more than five business days is needed to verify the  
10 violation necessitating the limited stop service has been corrected.

11 (5) The limited stop service shall be terminated when:

12 (a) The department verifies the violation necessitating the  
13 limited stop service has been corrected or the department determines  
14 that the medical test site has taken intermediate action to address  
15 the immediate jeopardy; and

16 (b) The medical test site establishes the ability to maintain  
17 correction of the violation previously found deficient.

18 (6) Except as otherwise provided, RCW 43.70.115 governs notice of  
19 actions taken by the department under subsection (1) of this section  
20 and provides the right to an adjudicative proceeding. Adjudicative  
21 proceedings and hearings under this section are governed by the  
22 administrative procedure act, chapter 34.05 RCW. The application for  
23 an adjudicative proceeding must be in writing, state the basis for  
24 contesting the adverse action, include a copy of the department's  
25 notice, be served on and received by the department within 28 days of  
26 the medical test site's receipt of the adverse notice, and be served  
27 in a manner that shows proof of receipt.

28 (7) When the department determines a licensee's noncompliance  
29 results in immediate jeopardy, the department may make the imposition  
30 of conditions on a licensee, a limited stop service, or the  
31 suspension of a license effective immediately upon receipt of the  
32 notice by the licensee, pending any adjudicative proceeding.

33 (a) When the department makes the suspension of a license or  
34 imposition of conditions on a license effective immediately, a  
35 licensee is entitled to a show cause hearing before a presiding  
36 officer within 14 days of making the request. The licensee must  
37 request the show cause hearing within 28 days of receipt of the  
38 notice of immediate suspension or immediate imposition of conditions.  
39 At the show cause hearing the department has the burden of

1 demonstrating that more probably than not there is an immediate  
2 jeopardy.

3 (b) At the show cause hearing, the presiding officer may consider  
4 the notice and documents supporting the immediate suspension or  
5 immediate imposition of conditions and the licensee's response and  
6 shall provide the parties with an opportunity to provide documentary  
7 evidence and written testimony, and to be represented by counsel.  
8 Prior to the show cause hearing, the department shall provide the  
9 licensee with all documentation that supports the department's  
10 immediate suspension or imposition of conditions.

11 (c) If the presiding officer determines there is no immediate  
12 jeopardy, the presiding officer may overturn the immediate suspension  
13 or immediate imposition of conditions.

14 (d) If the presiding officer determines there is immediate  
15 jeopardy, the immediate suspension or immediate imposition of  
16 conditions shall remain in effect pending a full hearing.

17 (e) If the presiding officer sustains the immediate suspension or  
18 immediate imposition of conditions, the licensee may request an  
19 expedited full hearing on the merits of the department's action. A  
20 full hearing must be provided within 90 days of the licensee's  
21 request.

22 (8) When the department determines an alleged violation, if true,  
23 would constitute an immediate jeopardy, and the licensee fails to  
24 cooperate with the department's investigation of such an alleged  
25 violation, the department may impose an immediate limited stop  
26 service, immediate suspension, or immediate imposition of conditions.

27 (a) When the department imposes an immediate limited stop  
28 service, immediate suspension, or immediate imposition of conditions  
29 for failure to cooperate, a licensee is entitled to a show cause  
30 hearing before a presiding officer within 14 days of making the  
31 request. The licensee must request the show cause hearing within 28  
32 days of receipt of the notice of an immediate limited stop service,  
33 immediate suspension, or immediate imposition of conditions for  
34 failure to cooperate. At the show cause hearing the department has  
35 the burden of demonstrating that more probably than not the alleged  
36 violation, if true, would constitute an immediate jeopardy and the  
37 licensee failed to cooperate with the department's investigation.

38 (b) At the show cause hearing, the presiding officer may consider  
39 the notice and documents supporting the immediate limited stop  
40 service, immediate suspension, or immediate imposition of conditions

1 for failure to cooperate, and the licensee's response and shall  
2 provide the parties with an opportunity to provide documentary  
3 evidence and written testimony, and to be represented by counsel.  
4 Prior to the show cause hearing, the department shall provide the  
5 licensee with all documentation that supports the department's  
6 immediate action for failure to cooperate.

7 (c) If the presiding officer determines the alleged violation, if  
8 true, does not constitute an immediate jeopardy or determines that  
9 the licensee cooperated with the department's investigation, the  
10 presiding officer may overturn the immediate action for failure to  
11 cooperate.

12 (d) If the presiding officer determines the allegation, if true,  
13 would constitute an immediate jeopardy and the licensee failed to  
14 cooperate with the department's investigation, the immediate action  
15 for failure to cooperate shall remain in effect pending a full  
16 hearing.

17 (e) If the presiding officer sustains the immediate action for  
18 failure to cooperate, the licensee may request an expedited full  
19 hearing on the merits of the department's action. A full hearing must  
20 be provided within 90 days of the licensee's request.

21 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.42  
22 RCW to read as follows:

23 (1) The department may give written notice to cease and desist to  
24 any person whom the department has reason to believe is engaged in  
25 the unlicensed operation of a medical test site.

26 (2)(a) Except as otherwise provided in this section, the  
27 requirement to cease and desist unlicensed operation is effective 20  
28 days after the person receives the notice.

29 (b) The department may make the date the action is effective  
30 sooner than 20 days after receipt when necessary to protect the  
31 public health, safety, or welfare. When the department does so, it  
32 shall state the effective date and the reasons supporting the  
33 effective date in the written notice to cease and desist.

34 (3) The person to whom the notice to cease and desist is issued  
35 may request an adjudicative proceeding to contest the notice. The  
36 adjudicative proceeding is governed by the administrative procedure  
37 act, chapter 34.05 RCW. The request for an adjudicative proceeding  
38 must be in writing, state the basis for contesting the notice,  
39 include a copy of the notice, and be served on and received by the

1 department within 20 days from the date the person receives the  
2 notice to cease and desist.

3 (4) (a) If the department gives a person 20 days' notice to cease  
4 and desist and the person requests an adjudicative proceeding before  
5 its effective date, the department shall not implement the notice  
6 until the final order has been entered. The presiding or reviewing  
7 officer may permit the department to implement part or all of the  
8 notice while the proceedings are pending if the respondent causes an  
9 unreasonable delay in the proceeding, if the circumstances change so  
10 that implementation is in the public interest, or for other good  
11 cause.

12 (b) If the department gives a licensee less than 20 days' notice  
13 to cease and desist and the respondent timely files a request for an  
14 adjudicative proceeding, the department may implement the cease and  
15 desist on the effective date stated in the notice. The presiding or  
16 reviewing officer may order the department to stay implementation of  
17 part or all of the adverse action while the proceedings are pending  
18 if staying implementation is in the public interest or for other good  
19 cause.

20 (5) The department may assess a civil fine not exceeding \$5,000  
21 for each day a person operates a medical test site without a valid  
22 license.

23 (a) The department shall give written notice to the person  
24 against whom it assesses a civil fine.

25 (b) Except as otherwise provided in (c) and (d) of this  
26 subsection, the civil fine is due and payable 20 days after receipt.

27 (c) The person against whom the department assesses a civil fine  
28 has the right to request an adjudicative proceeding. The proceeding  
29 is governed by the administrative procedure act, chapter 34.05 RCW.  
30 The request must be in writing, state the basis for contesting the  
31 fine, include a copy of the notice, be served on and received by the  
32 department within 20 days of the person receiving the notice of civil  
33 fine, and be served in a manner which shows proof of receipt.

34 (d) If the person files a timely and sufficient request for  
35 adjudicative proceeding, the department shall not implement the fine  
36 until the final order has been served.

37 (6) Neither the issuance of a cease and desist order nor payment  
38 of a civil fine shall relieve the person so operating a medical test  
39 site without a license from criminal prosecution, but the remedy of a  
40 cease and desist order or civil fine shall be in addition to any

1 criminal liability. A final notice to cease and desist is conclusive  
2 proof of unlicensed operation and may be enforced under RCW 7.21.060.  
3 This method of enforcement of the final notice to cease and desist or  
4 civil fine may be used in addition to, or as an alternative to, any  
5 provisions for enforcement of agency orders set out in chapter 34.05  
6 RCW.

7 **Sec. 9.** RCW 70.42.180 and 1989 c 386 s 19 are each amended to  
8 read as follows:

9 (1) Notwithstanding the existence or use of any other remedy, the  
10 department may, in the manner provided by law and upon the advice of  
11 the attorney general, who shall represent the department in the  
12 proceedings, maintain an action in the name of the state for an  
13 injunction or other process against any person to restrain or prevent  
14 the advertising, operating, maintaining, managing, or opening of a  
15 test site without a license under this chapter. It is a misdemeanor  
16 to own, operate, or maintain a test site without a license.

17 (2) The injunction shall not relieve the person operating a  
18 medical test site without a license from criminal prosecution, or the  
19 imposition of a civil fine under section 8 of this act, but the  
20 remedy by injunction shall be in addition to any criminal liability  
21 or civil fine. A person that violates an injunction issued under this  
22 chapter shall pay a civil penalty, as determined by the court, of not  
23 more than \$25,000, which shall be deposited in the department's local  
24 fee account. For the purpose of this section, the superior court  
25 issuing any injunction shall retain jurisdiction and the cause shall  
26 be continued, and in such cases the attorney general acting in the  
27 name of the state may petition for the recovery of civil penalties.  
28 All fines, forfeitures, and penalties collected or assessed by a  
29 court because of a violation of RCW 70.42.020 shall be deposited in  
30 the department's local fee account.

31 **Sec. 10.** RCW 70.127.010 and 2011 c 89 s 13 are each amended to  
32 read as follows:

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

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

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



1 (3) "Director of clinical services" means an individual  
2 responsible for nursing, therapy, nutritional, social, and related  
3 services that support the plan of care provided by in-home health and  
4 hospice agencies.

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

7 (5) "Home care agency" means a person administering or providing  
8 home care services directly or through a contract arrangement to  
9 individuals in places of temporary or permanent residence. A home  
10 care agency that provides delegated tasks of nursing under RCW  
11 18.79.260(3)(e) is not considered a home health agency for the  
12 purposes of this chapter.

13 (6) "Home care services" means nonmedical services and assistance  
14 provided to ill, disabled, or vulnerable individuals that enable them  
15 to remain in their residences. Home care services include, but are  
16 not limited to: Personal care such as assistance with dressing,  
17 feeding, and personal hygiene to facilitate self-care; homemaker  
18 assistance with household tasks, such as housekeeping, shopping, meal  
19 planning and preparation, and transportation; respite care assistance  
20 and support provided to the family; or other nonmedical services or  
21 delegated tasks of nursing under RCW 18.79.260(3)(e).

22 (7) "Home health agency" means a person administering or  
23 providing two or more home health services directly or through a  
24 contract arrangement to individuals in places of temporary or  
25 permanent residence. A person administering or providing nursing  
26 services only may elect to be designated a home health agency for  
27 purposes of licensure.

28 (8) "Home health services" means services provided to ill,  
29 disabled, or vulnerable individuals. These services include but are  
30 not limited to nursing services, home health aide services, physical  
31 therapy services, occupational therapy services, speech therapy  
32 services, respiratory therapy services, nutritional services, medical  
33 social services, and home medical supplies or equipment services.

34 (9) "Home health aide services" means services provided by a home  
35 health agency or a hospice agency under the supervision of a  
36 registered nurse, physical therapist, occupational therapist, or  
37 speech therapist who is employed by or under contract to a home  
38 health or hospice agency. Such care includes ambulation and exercise,  
39 assistance with self-administered medications, reporting changes in

1 patients' conditions and needs, completing appropriate records, and  
2 personal care or homemaker services.

3 (10) "Home medical supplies" or "equipment services" means  
4 diagnostic, treatment, and monitoring equipment and supplies provided  
5 for the direct care of individuals within a plan of care.

6 (11) "Hospice agency" means a person administering or providing  
7 hospice services directly or through a contract arrangement to  
8 individuals in places of temporary or permanent residence under the  
9 direction of an interdisciplinary team composed of at least a nurse,  
10 social worker, physician, spiritual counselor, and a volunteer.

11 (12) "Hospice care center" means a homelike, noninstitutional  
12 facility where hospice services are provided, and that meets the  
13 requirements for operation under RCW 70.127.280.

14 (13) "Hospice services" means symptom and pain management  
15 provided to a terminally ill individual, and emotional, spiritual,  
16 and bereavement support for the individual and family in a place of  
17 temporary or permanent residence, and may include the provision of  
18 home health and home care services for the terminally ill individual.

19 (14) "Immediate jeopardy" means a situation in which the in-home  
20 services agency's noncompliance with one or more statutory or  
21 regulatory requirements has placed the health and safety of patients  
22 in its care at risk for serious injury, serious harm, serious  
23 impairment, or death.

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

29 ((~~15~~)) (16) "Person" means any individual, business, firm,  
30 partnership, corporation, company, association, joint stock  
31 association, public or private agency or organization, or the legal  
32 successor thereof that employs or contracts with two or more  
33 individuals.

34 ((~~16~~)) (17) "Plan of care" means a written document based on  
35 assessment of individual needs that identifies services to meet these  
36 needs.

37 ((~~17~~)) (18) "Quality improvement" means reviewing and  
38 evaluating appropriateness and effectiveness of services provided  
39 under this chapter.

1        ~~((18))~~ (19) "Service area" means the geographic area in which  
2 the department has given prior approval to a licensee to provide home  
3 health, hospice, or home care services.

4        ~~((19))~~ (20) "Social worker" means a person with a degree from a  
5 social work educational program accredited and approved as provided  
6 in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R.  
7 Sec. 418.114 as it existed on January 1, 2012.

8        ~~((20))~~ (21) "Survey" means an inspection conducted by the  
9 department to evaluate and monitor an agency's compliance with this  
10 chapter.

11        **Sec. 11.** RCW 70.127.170 and 2003 c 140 s 10 are each amended to  
12 read as follows:

13        ~~((Pursuant to chapter 34.05 RCW and RCW 70.127.180(3), the  
14 department may deny, restrict, condition, modify, suspend, or revoke  
15 a license under this chapter or, in lieu thereof or in addition  
16 thereto, assess monetary penalties of a civil nature not to exceed  
17 one thousand dollars per violation, or require a refund of any  
18 amounts billed to, and collected from, the consumer or third-party  
19 payor in any case in which it finds that the licensee, or any  
20 applicant, officer, director, partner, managing employee, or owner of  
21 ten percent or more of the applicant's or licensee's assets)) The  
22 department is authorized to take any of the actions identified in  
23 section 12 of this act against an in-home services agency's license  
24 in any case in which it finds that the licensee:~~

25        (1) Failed or refused to comply with the requirements of this  
26 chapter ~~((or the))~~, standards or rules adopted under this chapter, or  
27 other applicable state or federal statutes or rules regulating the  
28 facility or agency;

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

33        (3) Has knowingly or with reason to know made a misrepresentation  
34 of, false statement of, or failed to disclose, a material fact to the  
35 department in an application for the license or any data attached  
36 thereto or in any record required by this chapter or matter under  
37 investigation by the department, or during a survey, or concerning  
38 information requested by the department;

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

4 (5) Willfully prevented, interfered with, or attempted to impede  
5 in any way the work of any representative of the department and the  
6 lawful enforcement of any provision of this chapter. This includes  
7 but is not limited to: Willful misrepresentation of facts during a  
8 survey, investigation, or administrative proceeding or any other  
9 legal action; or use of threats or harassment against any patient,  
10 client, or witness, or use of financial inducements to any patient,  
11 client, or witness to prevent or attempt to prevent him or her from  
12 providing evidence during a survey or investigation, in an  
13 administrative proceeding, or any other legal action involving the  
14 department;

15 (6) Willfully prevented or interfered with any representative of  
16 the department in the preservation of evidence of any violation of  
17 this chapter or the rules adopted under this chapter;

18 (7) Failed to pay any civil monetary penalty assessed by the  
19 department pursuant to this chapter within (~~ten~~) 10 days after the  
20 assessment becomes final;

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

22 (9) Has repeated incidents of personnel performing services  
23 beyond their authorized scope of practice;

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

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

30 (12) Was the holder of a license to provide care or treatment to  
31 ill individuals, (~~(disabled, or)~~) vulnerable individuals, or  
32 individuals with disabilities that was denied, restricted, not  
33 renewed, surrendered, suspended, or revoked by a competent authority  
34 in any state, federal, or foreign jurisdiction. A certified copy of  
35 the order, stipulation, or agreement is conclusive evidence of the  
36 denial, restriction, nonrenewal, surrender, suspension, or  
37 revocation;

38 (~~Violated any state or federal statute, or administrative~~  
39 ~~rule regulating the operation of the agency;~~

- 1       ~~(14)~~) Failed to comply with an order issued by the secretary or  
2       designee;
- 3       ~~((15))~~ (14) Aided or abetted the unlicensed operation of an in-  
4       home services agency;
- 5       ~~((16))~~ (15) Operated beyond the scope of the in-home services  
6       agency license;
- 7       ~~((17))~~ (16) Failed to adequately supervise staff to the extent  
8       that the health or safety of a patient or client was at risk;
- 9       ~~((18))~~ (17) Compromised the health or safety of a patient or  
10      client, including, but not limited to, the individual performing  
11      services beyond their authorized scope of practice;
- 12      ~~((19))~~ (18) Continued to operate after license revocation,  
13      suspension, or expiration, or operating outside the parameters of a  
14      modified, conditioned, or restricted license;
- 15      ~~((20))~~ (19) Failed or refused to comply with chapter 70.02 RCW;
- 16      ~~((21))~~ (20) Abused, neglected, abandoned, or financially  
17      exploited a patient or client as these terms are defined in RCW  
18      74.34.020;
- 19      ~~((22))~~ (21) Misappropriated the property of an individual;
- 20      ~~((23))~~ (22) Is unqualified or unable to operate or direct the  
21      operation of the agency according to this chapter and the rules  
22      adopted under this chapter;
- 23      ~~((24))~~ (23) Obtained or attempted to obtain a license by  
24      fraudulent means or misrepresentation; or
- 25      ~~((25))~~ (24) Failed to report abuse or neglect of a patient or  
26      client in violation of chapter 74.34 RCW.

27       NEW SECTION.   **Sec. 12.**   A new section is added to chapter 70.127  
28       RCW to read as follows:

29       (1) When the department determines the in-home services agency  
30       has previously been subject to an enforcement action for the same or  
31       similar type of violation of the same statute or rule, or has been  
32       given any previous statement of deficiency that included the same or  
33       similar type of violation of the same or similar statute or rule, or  
34       when the in-home services agency failed to correct noncompliance with  
35       a statute or rule by a date established or agreed to by the  
36       department, the department may impose reasonable conditions on a  
37       license. Conditions may include correction within a specified amount  
38       of time, training, or hiring a department-approved consultant if the  
39       in-home services agency cannot demonstrate to the department that it

1 has access to sufficient internal expertise. If the department  
2 determines that the violations constitute immediate jeopardy, the  
3 conditions may be imposed immediately in accordance with subsection  
4 (5) of this section.

5 (2) (a) In accordance with the authority the department has under  
6 RCW 43.70.095, the department may assess a civil fine of up to \$3,000  
7 per violation on an in-home services agency licensed under this  
8 chapter when the department determines the in-home services agency  
9 has previously been subject to an enforcement action for the same or  
10 similar type of violation of the same statute or rule, or has been  
11 given any previous statement of deficiency that included the same or  
12 similar type of violation of the same or similar statute or rule, or  
13 when the in-home services agency failed to correct noncompliance with  
14 a statute or rule by a date established or agreed to by the  
15 department.

16 (b) Proceeds from these fines may only be used by the department  
17 to offset costs associated with licensing and enforcement of in-home  
18 services agencies.

19 (c) The department shall adopt in rules under this chapter  
20 specific fine amounts in relation to the severity of the  
21 noncompliance and at an adequate level to be a deterrent to future  
22 noncompliance.

23 (d) If a licensee is aggrieved by the department's action of  
24 assessing civil fines, the licensee has the right to appeal under RCW  
25 43.70.095.

26 (3) The department may suspend a specific category or categories  
27 of services or care that the in-home services agency provides as  
28 related to the violation by imposing a limited stop service. This may  
29 only be done if the department finds that noncompliance results in  
30 immediate jeopardy.

31 (a) Prior to imposing a limited stop service, the department  
32 shall provide an in-home services agency written notification upon  
33 identifying deficient practices or conditions that constitute an  
34 immediate jeopardy. The in-home services agency shall have 24 hours  
35 from notification to develop and implement a department-approved plan  
36 to correct the deficient practices or conditions that constitute an  
37 immediate jeopardy. If the deficient practices or conditions that  
38 constitute immediate jeopardy are not verified by the department as  
39 having been corrected within the same 24-hour period, the department  
40 may issue the limited stop service.

1 (b) When the department imposes a limited stop service, the in-  
2 home services agency may not provide the services in the category or  
3 categories subject to the limited stop service to any new or existing  
4 individuals until the limited stop service is terminated.

5 (c) The department shall conduct a follow-up inspection within  
6 five business days or within the time period requested by the in-home  
7 services agency if more than five business days is needed to verify  
8 the violation necessitating the limited stop service has been  
9 corrected.

10 (d) The limited stop service shall be terminated when:

11 (i) The department verifies the violation necessitating the  
12 limited stop service has been corrected or the department determines  
13 that the in-home services agency has taken intermediate action to  
14 address the immediate jeopardy; and

15 (ii) The in-home services agency establishes the ability to  
16 maintain correction of the violation previously found deficient.

17 (4) The department may suspend new admissions to an in-home  
18 services agency that qualifies as a hospice care center by imposing a  
19 stop placement. This may only be done if the department finds that  
20 noncompliance results in immediate jeopardy and is not confined to a  
21 specific category or categories of services or care that the hospice  
22 care center provides.

23 (a) Prior to imposing a stop placement, the department shall  
24 provide an in-home services agency that qualifies as a hospice care  
25 center written notification upon identifying deficient practices or  
26 conditions that constitute an immediate jeopardy. The hospice care  
27 center shall have 24 hours from notification to develop and implement  
28 a department-approved plan to correct the deficient practices or  
29 conditions that constitute an immediate jeopardy. If the deficient  
30 practices or conditions that constitute immediate jeopardy are not  
31 verified by the department as having been corrected within the same  
32 24-hour period, the department may issue the stop placement.

33 (b) When the department imposes a stop placement, the hospice  
34 care center may not admit any new patients until the stop placement  
35 is terminated.

36 (c) The department shall conduct a follow-up inspection within  
37 five business days or within the time period requested by the hospice  
38 care center if more than five business days is needed to verify the  
39 violation necessitating the stop placement has been corrected.

40 (d) The stop placement shall be terminated when:

1 (i) The department verifies the violation necessitating the stop  
2 placement has been corrected or the department determines that the  
3 hospice care center has taken intermediate action to address the  
4 immediate jeopardy; and

5 (ii) The hospice care center establishes the ability to maintain  
6 correction of the violation previously found deficient.

7 (5) The department may deny an application for a license or  
8 suspend, revoke, or refuse to renew a license.

9 NEW SECTION. **Sec. 13.** A new section is added to chapter 70.127  
10 RCW to read as follows:

11 (1) Except as otherwise provided, RCW 43.70.115 governs notice of  
12 the imposition of conditions on a license, a limited stop service,  
13 stop placement, or the suspension, revocation, or refusal to renew a  
14 license and provides the right to an adjudicative proceeding.  
15 Adjudicative proceedings and hearings under this section are governed  
16 by the administrative procedure act, chapter 34.05 RCW. The  
17 application for an adjudicative proceeding must be in writing, state  
18 the basis for contesting the adverse action, include a copy of the  
19 department's notice, be served on and received by the department  
20 within 28 days of the licensee's receipt of the adverse notice, and  
21 be served in a manner that shows proof of receipt.

22 (2) When the department determines a licensee's noncompliance  
23 results in immediate jeopardy, the department may make the imposition  
24 of conditions on a licensee, a limited stop service, stop placement,  
25 or the suspension of a license effective immediately upon receipt of  
26 the notice by the licensee, pending any adjudicative proceeding.

27 (a) When the department makes the suspension of a license or  
28 imposition of conditions on a license effective immediately, a  
29 licensee is entitled to a show cause hearing before a presiding  
30 officer within 14 days of making the request. The licensee must  
31 request the show cause hearing within 28 days of receipt of the  
32 notice of immediate suspension or immediate imposition of conditions.  
33 At the show cause hearing the department has the burden of  
34 demonstrating that more probably than not there is immediate  
35 jeopardy.

36 (b) At the show cause hearing, the presiding officer may consider  
37 the notice and documents supporting the immediate suspension or  
38 immediate imposition of conditions and the licensee's response and  
39 shall provide the parties with an opportunity to provide documentary



1 evidence and written testimony, and to be represented by counsel.  
2 Prior to the show cause hearing, the department shall provide the  
3 licensee with all documentation that supports the department's  
4 immediate suspension or imposition of conditions.

5 (c) If the presiding officer determines there is no immediate  
6 jeopardy, the presiding officer may overturn the immediate suspension  
7 or immediate imposition of conditions.

8 (d) If the presiding officer determines there is immediate  
9 jeopardy, the immediate suspension or immediate imposition of  
10 conditions shall remain in effect pending a full hearing.

11 (e) If the presiding officer sustains the immediate suspension or  
12 immediate imposition of conditions, the licensee may request an  
13 expedited full hearing on the merits of the department's action. A  
14 full hearing must be provided within 90 days of the licensee's  
15 request.

16 (3) When the department determines an alleged violation, if true,  
17 would constitute an immediate jeopardy, and the licensee fails to  
18 cooperate with the department's investigation of such an alleged  
19 violation, the department may impose an immediate stop placement,  
20 immediate limited stop service, immediate imposition of conditions,  
21 or immediate suspension.

22 (a) When the department imposes an immediate stop placement,  
23 immediate limited stop service, immediate imposition of conditions,  
24 or immediate suspension for failure to cooperate, a licensee is  
25 entitled to a show cause hearing before a presiding officer within 14  
26 days of making the request. The licensee must request the show cause  
27 hearing within 28 days of receipt of the notice of an immediate stop  
28 placement, immediate limited stop service, immediate imposition of  
29 conditions, or immediate suspension for failure to cooperate. At the  
30 show cause hearing the department has the burden of demonstrating  
31 that more probably than not the alleged violation, if true, would  
32 constitute an immediate jeopardy and the licensee failed to cooperate  
33 with the department's investigation.

34 (b) At the show cause hearing, the presiding officer may consider  
35 the notice and documents supporting the immediate stop placement,  
36 immediate limited stop service, immediate imposition of conditions,  
37 or immediate suspension for failure to cooperate, and the licensee's  
38 response and shall provide the parties with an opportunity to provide  
39 documentary evidence and written testimony, and to be represented by  
40 counsel. Prior to the show cause hearing, the department shall

1 provide the licensee with all documentation that supports the  
2 department's immediate action for failure to cooperate.

3 (c) If the presiding officer determines the alleged violation, if  
4 true, does not constitute an immediate jeopardy or determines that  
5 the licensee cooperated with the department's investigation, the  
6 presiding officer may overturn the immediate action for failure to  
7 cooperate.

8 (d) If the presiding officer determines the allegation, if true,  
9 would constitute an immediate jeopardy and the licensee failed to  
10 cooperate with the department's investigation, the immediate action  
11 for failure to cooperate shall remain in effect pending a full  
12 hearing.

13 (e) If the presiding officer sustains the immediate action for  
14 failure to cooperate, the licensee may request an expedited full  
15 hearing on the merits of the department's action. A full hearing must  
16 be provided within 90 days of the licensee's request.

17 **Sec. 14.** RCW 70.127.213 and 2000 c 175 s 19 are each amended to  
18 read as follows:

19 (1) The department may (~~issue a notice of intention to issue a~~)  
20 give written notice to cease and desist (~~order~~) to any person whom  
21 the department has reason to believe is engaged in the unlicensed  
22 operation of an in-home services agency. (~~The person to whom the~~  
23 ~~notice of intent is issued may request an adjudicative proceeding to~~  
24 ~~contest the charges. The request for hearing must be filed within~~  
25 ~~twenty days after service of the notice of intent to issue a cease~~  
26 ~~and desist order. The failure to request a hearing constitutes a~~  
27 ~~default, whereupon the department may enter a permanent cease and~~  
28 ~~desist order, which may include a civil fine. All proceedings shall~~  
29 ~~be conducted in accordance with chapter 34.05 RCW.~~

30 ~~(2) If the department makes a final determination that a person~~  
31 ~~has engaged or is engaging in unlicensed operation of an in-home~~  
32 ~~services agency, the department may issue a cease and desist order.~~  
33 ~~In addition, the department may impose a civil fine in an amount not~~  
34 ~~exceeding one thousand dollars for each day upon which the person~~  
35 ~~engaged in unlicensed operation of an in-home services agency. The~~  
36 ~~proceeds of such fines shall be deposited in the department's local~~  
37 ~~fee account.~~

38 ~~(3) If the department makes a written finding of fact that the~~  
39 ~~public interest will be irreparably harmed by delay in issuing an~~

1 order, the department may issue a temporary cease and desist order.  
2 The person receiving a temporary cease and desist order shall be  
3 provided an opportunity for a prompt hearing. The temporary cease and  
4 desist order shall remain in effect until further order of the  
5 department. The failure to request a prompt or regularly scheduled  
6 hearing constitutes a default, whereupon the department may enter a  
7 permanent cease and desist order, which may include a civil fine.

8 (4) Neither the issuance of a cease and desist order nor payment  
9 of a civil fine shall relieve the person so operating an in-home  
10 services agency without a license from criminal prosecution, but the  
11 remedy of a cease and desist order or civil fine shall be in addition  
12 to any criminal liability. The cease and desist order is conclusive  
13 proof of unlicensed operation and may be enforced under RCW 7.21.060.  
14 This method of enforcement of the cease and desist order or civil  
15 fine may be used in addition to, or as an alternative to, any  
16 provisions for enforcement of agency orders set out in chapter 34.05  
17 RCW.)

18 (2) (a) Except as otherwise provided in this section, the  
19 requirement to cease and desist unlicensed operation is effective 20  
20 days after the person receives the notice.

21 (b) The department may make the date the action is effective  
22 sooner than 20 days after receipt when necessary to protect the  
23 public health, safety, or welfare. When the department does so, it  
24 shall state the effective date and the reasons supporting the  
25 effective date in the written notice to cease and desist.

26 (3) The person to whom the notice to cease and desist is issued  
27 may request an adjudicative proceeding to contest the notice. The  
28 adjudicative proceeding is governed by the administrative procedure  
29 act, chapter 34.05 RCW. The request for an adjudicative proceeding  
30 must be in writing, state the basis for contesting the notice,  
31 include a copy of the notice, and be served on and received by the  
32 department within 20 days from the date the person receives the  
33 notice to cease and desist.

34 (4) (a) If the department gives a person 20 days' notice to cease  
35 and desist and the person requests an adjudicative proceeding before  
36 its effective date, the department shall not implement the notice  
37 until the final order has been entered. The presiding or reviewing  
38 officer may permit the department to implement part or all of the  
39 notice while the proceedings are pending if the respondent causes an  
40 unreasonable delay in the proceeding, if the circumstances change so

1 that implementation is in the public interest, or for other good  
2 cause.

3 (b) If the department gives a licensee less than 20 days' notice  
4 to cease and desist and the respondent timely files a request for an  
5 adjudicative proceeding, the department may implement the cease and  
6 desist on the effective date stated in the notice. The presiding or  
7 reviewing officer may order the department to stay implementation of  
8 part or all of the adverse action while the proceedings are pending  
9 if staying implementation is in the public interest or for other good  
10 cause.

11 (5) The department may assess a civil fine not exceeding \$5,000  
12 for each day a person operates an in-home services agency without a  
13 valid license.

14 (a) The department shall give written notice to the person  
15 against whom it assesses a civil fine.

16 (b) Except as otherwise provided in (c) and (d) of this  
17 subsection, the civil fine is due and payable 20 days after receipt.

18 (c) The person against whom the department assesses a civil fine  
19 has the right to request an adjudicative proceeding. The proceeding  
20 is governed by the administrative procedure act, chapter 34.05 RCW.  
21 The request must be in writing, state the basis for contesting the  
22 fine, include a copy of the notice, be served on and received by the  
23 department within 20 days of the person receiving the notice of civil  
24 fine, and be served in a manner which shows proof of receipt.

25 (d) If the person files a timely and sufficient request for  
26 adjudicative proceeding, the department shall not implement the fine  
27 until the final order has been served.

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

38 **Sec. 15.** RCW 70.230.010 and 2011 c 76 s 1 are each amended to  
39 read as follows:

1 The definitions in this section apply throughout this chapter  
2 unless the context clearly requires otherwise.

3 (1) "Ambulatory surgical facility" means any distinct entity that  
4 operates for the primary purpose of providing specialty or  
5 multispecialty outpatient surgical services in which patients are  
6 admitted to and discharged from the facility within (~~twenty-four~~)  
7 24 hours and do not require inpatient hospitalization, whether or not  
8 the facility is certified under Title XVIII of the federal social  
9 security act. An ambulatory surgical facility includes one or more  
10 surgical suites that are adjacent to and within the same building as,  
11 but not in, the office of a practitioner in an individual or group  
12 practice, if the primary purpose of the one or more surgical suites  
13 is to provide specialty or multispecialty outpatient surgical  
14 services, irrespective of the type of anesthesia administered in the  
15 one or more surgical suites. An ambulatory surgical facility that is  
16 adjacent to and within the same building as the office of a  
17 practitioner in an individual or group practice may include a  
18 surgical suite that shares a reception area, restroom, waiting room,  
19 or wall with the office of the practitioner in an individual or group  
20 practice.

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

22 (3) "General anesthesia" means a state of unconsciousness  
23 intentionally produced by anesthetic agents, with absence of pain  
24 sensation over the entire body, in which the patient is without  
25 protective reflexes and is unable to maintain an airway.

26 (4) "Immediate jeopardy" means a situation in which the  
27 ambulatory surgical facility's noncompliance with one or more  
28 statutory or regulatory requirements has placed the health and safety  
29 of patients in its care at risk for serious injury, serious harm,  
30 serious impairment, or death.

31 (5) "Person" means an individual, firm, partnership, corporation,  
32 company, association, joint stock association, and the legal  
33 successor thereof.

34 (~~(5)~~) (6) "Practitioner" means any physician or surgeon  
35 licensed under chapter 18.71 RCW, an osteopathic physician or surgeon  
36 licensed under chapter 18.57 RCW, or a podiatric physician or surgeon  
37 licensed under chapter 18.22 RCW.

38 (~~(6)~~) (7) "Secretary" means the secretary of health.

39 (~~(7)~~) (8) "Surgical services" means invasive medical procedures  
40 that:

- 1 (a) Utilize a knife, laser, cautery, cryogenics, or chemicals;  
2 and  
3 (b) Remove, correct, or facilitate the diagnosis or cure of a  
4 disease, process, or injury through that branch of medicine that  
5 treats diseases, injuries, and deformities by manual or operative  
6 methods by a practitioner.

7 **Sec. 16.** RCW 70.230.070 and 2007 c 273 s 8 are each amended to  
8 read as follows:

9 ~~(1) ((The secretary may deny, suspend, or revoke the license of  
10 any ambulatory surgical facility in any case in which he or she finds  
11 the applicant or registered entity knowingly made a false statement  
12 of material fact in the application for the license or any supporting  
13 data in any record required by this chapter or matter under  
14 investigation by the department.~~

15 ~~(2) The secretary shall investigate complaints concerning  
16 operation of an ambulatory surgical facility without a license. The  
17 secretary may issue a notice of intention to issue a cease and desist  
18 order to any person whom the secretary has reason to believe is  
19 engaged in the unlicensed operation of an ambulatory surgical  
20 facility. If the secretary makes a written finding of fact that the  
21 public interest will be irreparably harmed by delay in issuing an  
22 order, the secretary may issue a temporary cease and desist order.  
23 The person receiving a temporary cease and desist order shall be  
24 provided an opportunity for a prompt hearing. The temporary cease and  
25 desist order shall remain in effect until further order of the  
26 secretary. Any person operating an ambulatory surgical facility under  
27 this chapter without a license is guilty of a misdemeanor, and each  
28 day of operation of an unlicensed ambulatory surgical facility  
29 constitutes a separate offense.~~

30 ~~(3) The secretary is authorized to deny, suspend, revoke, or  
31 modify a license or provisional license in any case in which it finds  
32 that there has been a failure or refusal to comply with the  
33 requirements of this chapter or the standards or rules adopted under  
34 this chapter. RCW 43.70.115 governs notice of a license denial,  
35 revocation, suspension, or modification and provides the right to an  
36 adjudicative proceeding.~~

37 ~~(4) Pursuant to chapter 34.05 RCW, the secretary may assess  
38 monetary penalties of a civil nature not to exceed one thousand  
39 dollars per violation.)) The department is authorized to take any of~~

1 the actions identified in this section against an ambulatory surgical  
2 facility's license or provisional license in any case in which it  
3 finds that there has been a failure or refusal to comply with the  
4 requirements of this chapter or the standards or rules adopted under  
5 this chapter.

6 (a) When the department determines the ambulatory surgical  
7 facility has previously been subject to an enforcement action for the  
8 same or similar type of violation of the same statute or rule, or has  
9 been given any previous statement of deficiency that included the  
10 same or similar type of violation of the same or similar statute or  
11 rule, or when the ambulatory surgical facility failed to correct  
12 noncompliance with a statute or rule by a date established or agreed  
13 to by the department, the department may impose reasonable conditions  
14 on a license. Conditions may include correction within a specified  
15 amount of time, training, or hiring a department-approved consultant  
16 if the ambulatory surgical facility cannot demonstrate to the  
17 department that it has access to sufficient internal expertise.

18 (b) (i) In accordance with the authority the department has under  
19 RCW 43.70.095, the department may assess a civil fine of up to \$7,500  
20 per violation on an ambulatory surgical facility licensed under this  
21 chapter when the department determines the ambulatory surgical  
22 facility has previously been subject to an enforcement action for the  
23 same or similar type of violation of the same statute or rule, or has  
24 been given any previous statement of deficiency that included the  
25 same or similar type of violation of the same or similar statute or  
26 rule, or when the ambulatory surgical facility failed to correct  
27 noncompliance with a statute or rule by a date established or agreed  
28 to by the department.

29 (ii) Proceeds from these fines may only be used by the department  
30 to offset costs associated with licensing and enforcement of  
31 ambulatory surgical facilities.

32 (iii) The department shall adopt in rules under this chapter  
33 specific fine amounts in relation to the severity of the  
34 noncompliance and at an adequate level to be a deterrent to future  
35 noncompliance.

36 (iv) If a licensee is aggrieved by the department's action of  
37 assessing civil fines, the licensee has the right to appeal under RCW  
38 43.70.095.

39 (c) The department may suspend a specific category or categories  
40 of services or care or operating rooms or recovery rooms within the

1 ambulatory surgical facility as related to the violation by imposing  
2 a limited stop service. This may only be done if the department finds  
3 that noncompliance results in immediate jeopardy.

4 (i) Prior to imposing a limited stop service, the department  
5 shall provide an ambulatory surgical facility written notification  
6 upon identifying deficient practices or conditions that constitute an  
7 immediate jeopardy. The ambulatory surgical facility shall have 24  
8 hours from notification to develop and implement a department-  
9 approved plan to correct the deficient practices or conditions that  
10 constitute an immediate jeopardy. If the deficient practices or  
11 conditions that constitute immediate jeopardy are not verified by the  
12 department as having been corrected within the same 24-hour period,  
13 the department may issue the limited stop service.

14 (ii) When the department imposes a limited stop service, the  
15 ambulatory surgical facility may not provide the services in the  
16 category or categories subject to the limited stop service to any new  
17 or existing individuals, unless otherwise allowed by the department,  
18 until the limited stop service is terminated.

19 (iii) The department shall conduct a follow-up inspection within  
20 five business days or within the time period requested by the  
21 ambulatory surgical facility if more than five business days is  
22 needed to verify the violation necessitating the limited stop service  
23 has been corrected.

24 (iv) The limited stop service shall be terminated when:

25 (A) The department verifies the violation necessitating the  
26 limited stop service has been corrected or the department determines  
27 that the ambulatory surgical facility has taken intermediate action  
28 to address the immediate jeopardy; and

29 (B) The ambulatory surgical facility establishes the ability to  
30 maintain correction of the violation previously found deficient.

31 (d) The department may suspend new admissions to the ambulatory  
32 surgical facility by imposing a stop placement. This may only be done  
33 if the department finds that noncompliance results in immediate  
34 jeopardy and is not confined to a specific category or categories of  
35 patients or a specific area of the ambulatory surgical facility.

36 (i) Prior to imposing a stop placement, the department shall  
37 provide an ambulatory surgical facility written notification upon  
38 identifying deficient practices or conditions that constitute an  
39 immediate jeopardy. The ambulatory surgical facility shall have 24  
40 hours from notification to develop and implement a department-



1 approved plan to correct the deficient practices or conditions that  
2 constitute an immediate jeopardy. If the deficient practices or  
3 conditions that constitute immediate jeopardy are not verified by the  
4 department as having been corrected within the same 24-hour period,  
5 the department may issue the stop placement.

6 (ii) When the department imposes a stop placement, the ambulatory  
7 surgical facility may not admit any new patients until the stop  
8 placement is terminated.

9 (iii) The department shall conduct a follow-up inspection within  
10 five business days or within the time period requested by the  
11 ambulatory surgical facility if more than five business days is  
12 needed to verify the violation necessitating the stop placement has  
13 been corrected.

14 (iv) The stop placement shall be terminated when:

15 (A) The department verifies the violation necessitating the stop  
16 placement has been corrected or the department determines that the  
17 ambulatory surgical facility has taken intermediate action to address  
18 the immediate jeopardy; and

19 (B) The ambulatory surgical facility establishes the ability to  
20 maintain correction of the violation previously found deficient.

21 (e) The department may deny an application for a license or  
22 suspend, revoke, or refuse to renew a license.

23 (2) The secretary may deny, suspend, or revoke the license of any  
24 ambulatory surgical facility in any case in which he or she finds the  
25 applicant or registered entity knowingly made a false statement of  
26 material fact in the application for the license or any supporting  
27 data in any record required by this chapter or matter under  
28 investigation by the department.

29 (3) Except as otherwise provided, RCW 43.70.115 governs notice of  
30 actions taken by the department under this section and provides the  
31 right to an adjudicative proceeding. Adjudicative proceedings and  
32 hearings under this section are governed by the administrative  
33 procedure act, chapter 34.05 RCW. The application for an adjudicative  
34 proceeding must be in writing, state the basis for contesting the  
35 adverse action, include a copy of the department's notice, be served  
36 on and received by the department within 28 days of the licensee's  
37 receipt of the adverse notice, and be served in a manner that shows  
38 proof of receipt.

39 (a) When the department determines a licensee's noncompliance  
40 results in immediate jeopardy, the department may make the imposition

1 of conditions on a licensee, a limited stop service, stop placement,  
2 or the suspension of a license effective immediately upon receipt of  
3 the notice by the licensee, pending any adjudicative proceeding.

4 (b) When the department makes the suspension of a license or  
5 imposition of conditions on a license effective immediately, a  
6 licensee is entitled to a show cause hearing before a presiding  
7 officer within 14 days of making the request. The licensee must  
8 request the show cause hearing within 28 days of receipt of the  
9 notice of immediate suspension or immediate imposition of conditions.  
10 At the show cause hearing the department has the burden of  
11 demonstrating that more probably than not there is an immediate  
12 jeopardy.

13 (c) At the show cause hearing, the presiding officer may consider  
14 the notice and documents supporting the immediate suspension or  
15 immediate imposition of conditions and the licensee's response and  
16 shall provide the parties with an opportunity to provide documentary  
17 evidence and written testimony, and to be represented by counsel.  
18 Prior to the show cause hearing, the department shall provide the  
19 licensee with all documentation that supports the department's  
20 immediate suspension or imposition of conditions.

21 (d) If the presiding officer determines there is no immediate  
22 jeopardy, the presiding officer may overturn the immediate suspension  
23 or immediate imposition of conditions.

24 (e) If the presiding officer determines there is immediate  
25 jeopardy, the immediate suspension or immediate imposition of  
26 conditions shall remain in effect pending a full hearing.

27 (f) If the presiding officer sustains the immediate suspension or  
28 immediate imposition of conditions, the licensee may request an  
29 expedited full hearing on the merits of the department's action. A  
30 full hearing must be provided within 90 days of the licensee's  
31 request.

32 (4) When the department determines an alleged violation, if true,  
33 would constitute an immediate jeopardy, and the licensee fails to  
34 cooperate with the department's investigation of such an alleged  
35 violation, the department may impose an immediate stop placement,  
36 immediate limited stop service, immediate imposition of conditions,  
37 or immediate suspension.

38 (a) When the department imposes an immediate stop placement,  
39 immediate limited stop service, immediate imposition of conditions,  
40 or immediate suspension for failure to cooperate, a licensee is

1 entitled to a show cause hearing before a presiding officer within 14  
2 days of making the request. The licensee must request the show cause  
3 hearing within 28 days of receipt of the notice of an immediate stop  
4 placement, immediate limited stop service, immediate imposition of  
5 conditions, or immediate suspension for failure to cooperate.

6 (b) At the show cause hearing the department has the burden of  
7 demonstrating that more probably than not the alleged violation, if  
8 true, would constitute an immediate jeopardy and the licensee failed  
9 to cooperate with the department's investigation.

10 (c) At the show cause hearing, the presiding officer may consider  
11 the notice and documents supporting the immediate stop placement,  
12 immediate limited stop service, immediate imposition of conditions,  
13 or immediate suspension for failure to cooperate, and the licensee's  
14 response and shall provide the parties with an opportunity to provide  
15 documentary evidence and written testimony, and to be represented by  
16 counsel. Prior to the show cause hearing, the department shall  
17 provide the licensee with all documentation that supports the  
18 department's immediate action for failure to cooperate.

19 (d) If the presiding officer determines the alleged violation, if  
20 true, does not constitute an immediate jeopardy or determines that  
21 the licensee cooperated with the department's investigation, the  
22 presiding officer may overturn the immediate action for failure to  
23 cooperate.

24 (e) If the presiding officer determines the allegation, if true,  
25 would constitute an immediate jeopardy and the licensee failed to  
26 cooperate with the department's investigation, the immediate action  
27 for failure to cooperate shall remain in effect pending a full  
28 hearing.

29 (f) If the presiding officer sustains the immediate action for  
30 failure to cooperate, the licensee may request an expedited full  
31 hearing on the merits of the department's action. A full hearing must  
32 be provided within 90 days of the licensee's request.

33 NEW SECTION. Sec. 17. A new section is added to chapter 70.230  
34 RCW to read as follows:

35 (1) The department may give written notice to cease and desist to  
36 any person whom the department has reason to believe is engaged in  
37 the unlicensed operation of an ambulatory surgical facility.

1 (2) (a) Except as otherwise provided in this section, the  
2 requirement to cease and desist unlicensed operation is effective 20  
3 days after the person receives the notice.

4 (b) The department may make the date the action is effective  
5 sooner than 20 days after receipt when necessary to protect the  
6 public health, safety, or welfare. When the department does so, it  
7 shall state the effective date and the reasons supporting the  
8 effective date in the written notice to cease and desist.

9 (3) The person to whom the notice to cease and desist is issued  
10 may request an adjudicative proceeding to contest the notice. The  
11 adjudicative proceeding is governed by the administrative procedure  
12 act, chapter 34.05 RCW. The request for an adjudicative proceeding  
13 must be in writing, state the basis for contesting the notice,  
14 include a copy of the notice, and be served on and received by the  
15 department within 20 days from the date the person receives the  
16 notice to cease and desist.

17 (4) (a) If the department gives a person 20 days' notice to cease  
18 and desist and the person requests an adjudicative proceeding before  
19 its effective date, the department shall not implement the notice  
20 until the final order has been entered. The presiding or reviewing  
21 officer may permit the department to implement part or all of the  
22 notice while the proceedings are pending if the respondent causes an  
23 unreasonable delay in the proceeding, if the circumstances change so  
24 that implementation is in the public interest, or for other good  
25 cause.

26 (b) If the department gives a licensee less than 20 days' notice  
27 to cease and desist and the respondent timely files a request for an  
28 adjudicative proceeding, the department may implement the cease and  
29 desist on the effective date stated in the notice. The presiding or  
30 reviewing officer may order the department to stay implementation of  
31 part or all of the adverse action while the proceedings are pending  
32 if staying implementation is in the public interest or for other good  
33 cause.

34 (5) The department may assess a civil fine not exceeding \$5,000  
35 for each day a person operates an ambulatory surgical facility  
36 without a valid license.

37 (a) The department shall give written notice to the person  
38 against whom it assesses a civil fine.

39 (b) Except as otherwise provided in (c) and (d) of this  
40 subsection, the civil fine is due and payable 20 days after receipt.

1 (c) The person against whom the department assesses a civil fine  
2 has the right to request an adjudicative proceeding. The proceeding  
3 is governed by the administrative procedure act, chapter 34.05 RCW.  
4 The request must be in writing, state the basis for contesting the  
5 fine, include a copy of the notice, be served on and received by the  
6 department within 20 days of the person receiving the notice of civil  
7 fine, and be served in a manner which shows proof of receipt.

8 (d) If the person files a timely and sufficient request for  
9 adjudicative proceeding, the department shall not implement the fine  
10 until the final order has been served.

11 (6) Neither the issuance of a cease and desist order nor payment  
12 of a civil fine shall relieve the person so operating an ambulatory  
13 surgical facility without a license from criminal prosecution, but  
14 the remedy of a cease and desist order or civil fine shall be in  
15 addition to any criminal liability. A final notice to cease and  
16 desist is conclusive proof of unlicensed operation and may be  
17 enforced under RCW 7.21.060. This method of enforcement of the final  
18 notice to cease and desist or civil fine may be used in addition to,  
19 or as an alternative to, any provisions for enforcement of agency  
20 orders set out in chapter 34.05 RCW.

21 **Sec. 18.** RCW 71.12.710 and 2020 c 115 s 3 are each amended to  
22 read as follows:

23 (1) In any case in which the department finds that a (~~licensed~~  
24 ~~psychiatric hospital~~) private establishment has failed or refused to  
25 comply with (~~applicable state~~) the requirements of this chapter,  
26 the standards or rules adopted under this chapter, or other  
27 applicable state or federal statutes or (~~regulations~~) rules, the  
28 department may take one or more of the actions identified in this  
29 section, except as otherwise limited in this section.

30 (a) When the department determines the (~~psychiatric hospital~~)  
31 private establishment has previously been subject to an enforcement  
32 action for the same or similar type of violation of the same statute  
33 or rule, or has been given any previous statement of deficiency that  
34 included the same or similar type of violation of the same or similar  
35 statute or rule, or when the (~~psychiatric hospital~~) private  
36 establishment failed to correct noncompliance with a statute or rule  
37 by a date established or agreed to by the department, the department  
38 may impose reasonable conditions on a license. Conditions may include  
39 correction within a specified amount of time, training, or hiring a

1 department-approved consultant if the ~~((hospital))~~ private  
2 establishment cannot demonstrate to the department that it has access  
3 to sufficient internal expertise.

4 (b) (i) In accordance with the authority the department has under  
5 RCW 43.70.095, the department may assess a civil fine of up to ~~((ten~~  
6 ~~thousand dollars))~~ \$10,000 per violation, not to exceed a total fine  
7 of ~~((one million dollars))~~ \$1,000,000, on a ~~((hospital))~~ private  
8 establishment licensed under this chapter when the department  
9 determines the ~~((psychiatric hospital))~~ private establishment has  
10 previously been subject to an enforcement action for the same or  
11 similar type of violation of the same statute or rule, or has been  
12 given any previous statement of deficiency that included the same or  
13 similar type of violation of the same or similar statute or rule, or  
14 when the ~~((psychiatric hospital))~~ private establishment failed to  
15 correct noncompliance with a statute or rule by a date established or  
16 agreed to by the department.

17 (ii) Proceeds from these fines may only be used by the department  
18 to provide training or technical assistance to ~~((psychiatric~~  
19 ~~hospitals and))~~ private establishments or to offset costs associated  
20 with licensing ~~((psychiatric hospitals))~~ private establishments.

21 (iii) The department shall adopt in rules under this chapter  
22 specific fine amounts in relation to the severity of the  
23 noncompliance.

24 (iv) If a licensee is aggrieved by the department's action of  
25 assessing civil fines, the licensee has the right to appeal under RCW  
26 43.70.095.

27 (c) ~~((In accordance with RCW 43.70.095, the department may impose~~  
28 ~~civil fines of up to ten thousand dollars for each day a person~~  
29 ~~operates a psychiatric hospital without a valid license. Proceeds~~  
30 ~~from these fines may only be used by the department to provide~~  
31 ~~training or technical assistance to psychiatric hospitals and to~~  
32 ~~offset costs associated with licensing psychiatric hospitals.~~

33 ~~(d))~~ The department may suspend new admissions of a specific  
34 category or categories of patients as related to the violation by  
35 imposing a limited stop placement. This may only be done if the  
36 department finds that noncompliance results in immediate jeopardy.

37 (i) Prior to imposing a limited stop placement, the department  
38 shall provide a ~~((psychiatric hospital))~~ private establishment  
39 written notification upon identifying deficient practices or  
40 conditions that constitute an immediate jeopardy, and the

1 ((~~psychiatric hospital~~)) private establishment shall have ((~~twenty-~~  
2 ~~four~~)) 24 hours from notification to develop and implement a  
3 department-approved plan to correct the deficient practices or  
4 conditions that constitute an immediate jeopardy. If the deficient  
5 practices or conditions that constitute immediate jeopardy are not  
6 verified by the department as having been corrected within the same  
7 ((~~twenty-four~~)) 24-hour period, the department may issue the limited  
8 stop placement.

9 (ii) When the department imposes a limited stop placement, the  
10 ((~~psychiatric hospital~~)) private establishment may not ((~~admit any~~  
11 ~~new patients~~)) accept any new admissions in the category or  
12 categories subject to the limited stop placement until the limited  
13 stop placement order is terminated.

14 (iii) The department shall conduct a follow-up inspection within  
15 five business days or within the time period requested by the  
16 ((~~psychiatric hospital~~)) private establishment if more than five  
17 business days is needed to verify the violation necessitating the  
18 limited stop placement has been corrected.

19 (iv) The limited stop placement shall be terminated when:

20 (A) The department verifies the violation necessitating the  
21 limited stop placement has been corrected or the department  
22 determines that the ((~~psychiatric hospital~~)) private establishment  
23 has taken intermediate action to address the immediate jeopardy; and

24 (B) The ((~~psychiatric hospital~~)) private establishment  
25 establishes the ability to maintain correction of the violation  
26 previously found deficient.

27 ((~~e~~)) (d) The department may suspend all new admissions to the  
28 ((~~psychiatric hospital~~)) private establishment by imposing a stop  
29 placement. This may only be done if the department finds that  
30 noncompliance results in immediate jeopardy and is not confined to a  
31 specific category or categories of patients or a specific area of the  
32 ((~~psychiatric hospital~~)) private establishment.

33 (i) Prior to imposing a stop placement, the department shall  
34 provide a ((~~psychiatric hospital~~)) private establishment written  
35 notification upon identifying deficient practices or conditions that  
36 constitute an immediate jeopardy, and the ((~~psychiatric hospital~~))  
37 private establishment shall have ((~~twenty-four~~)) 24 hours from  
38 notification to develop and implement a department-approved plan to  
39 correct the deficient practices or conditions that constitute an  
40 immediate jeopardy. If the deficient practices or conditions that

1 constitute immediate jeopardy are not verified by the department as  
2 having been corrected within the same (~~twenty-four~~) 24-hour period,  
3 the department may issue the stop placement.

4 (ii) When the department imposes a stop placement, the  
5 (~~psychiatric hospital~~) private establishment may not (~~admit any~~  
6 ~~new patients~~) accept any new admissions until the stop placement  
7 order is terminated.

8 (iii) The department shall conduct a follow-up inspection within  
9 five business days or within the time period requested by the  
10 (~~psychiatric hospital~~) private establishment if more than five  
11 business days is needed to verify the violation necessitating the  
12 stop placement has been corrected.

13 (iv) The stop placement order shall be terminated when:

14 (A) The department verifies the violation necessitating the stop  
15 placement has been corrected or the department determines that the  
16 (~~psychiatric hospital~~) private establishment has taken intermediate  
17 action to address the immediate jeopardy; and

18 (B) The (~~psychiatric hospital~~) private establishment  
19 establishes the ability to maintain correction of the violation  
20 previously found deficient.

21 (~~(f)~~) (e) The department may suspend a specific category or  
22 categories of services within the private establishment as related to  
23 the violation by imposing a limited stop service. This may only be  
24 done if the department finds that noncompliance results in immediate  
25 jeopardy.

26 (i) Prior to imposing a limited stop service, the department  
27 shall provide a private establishment written notification upon  
28 identifying deficient practices or conditions that constitute an  
29 immediate jeopardy. The private establishment shall have 24 hours  
30 from notification to develop and implement a department-approved plan  
31 to correct the deficient practices or conditions that constitute an  
32 immediate jeopardy. If the deficient practices or conditions that  
33 constitute immediate jeopardy are not verified by the department as  
34 having been corrected within the same 24-hour period, the department  
35 may issue the limited stop service.

36 (ii) When the department imposes a limited stop service, the  
37 private establishment may not provide the services in the category or  
38 categories subject to the limited stop service to any new or existing  
39 individuals, unless otherwise allowed by the department, until the  
40 limited stop service is terminated.



1        (iii) The department shall conduct a follow-up inspection within  
2 five business days or within the time period requested by the private  
3 establishment if more than five business days is needed to verify the  
4 violation necessitating the limited stop service has been corrected.

5        (iv) The limited stop service shall be terminated when:

6        (A) The department verifies the violation necessitating the  
7 limited stop service has been corrected or the department determines  
8 that the private establishment has taken intermediate action to  
9 address the immediate jeopardy; and

10       (B) The private establishment establishes the ability to maintain  
11 correction of the violation previously found deficient.

12       (f) The department may suspend, revoke, or refuse to renew a  
13 license.

14       (2) (a) Except as otherwise provided, RCW 43.70.115 governs notice  
15 of the imposition of conditions on a license, a limited stop  
16 placement, stop placement, limited stop service, or the suspension,  
17 revocation, or refusal to renew a license and provides the right to  
18 an adjudicative proceeding. Adjudicative proceedings and hearings  
19 under this section are governed by the administrative procedure act,  
20 chapter 34.05 RCW. The application for an adjudicative proceeding  
21 must be in writing, state the basis for contesting the adverse  
22 action, including a copy of the department's notice, be served on and  
23 received by the department within (~~twenty-eight~~) 28 days of the  
24 licensee's receipt of the adverse notice, and be served in a manner  
25 that shows proof of receipt.

26       (b) When the department determines a licensee's noncompliance  
27 results in immediate jeopardy, the department may make the imposition  
28 of conditions on a licensee, a limited stop placement, stop  
29 placement, limited stop service, or the suspension of a license  
30 effective immediately upon receipt of the notice by the licensee,  
31 pending any adjudicative proceeding.

32       (i) When the department makes the suspension of a license or  
33 imposition of conditions on a license effective immediately, a  
34 licensee is entitled to a show cause hearing before a presiding  
35 officer within (~~fourteen~~) 14 days of making the request. The  
36 licensee must request the show cause hearing within (~~twenty-eight~~)  
37 28 days of receipt of the notice of immediate suspension or immediate  
38 imposition of conditions. At the show cause hearing the department  
39 has the burden of demonstrating that more probably than not there is  
40 an immediate jeopardy.

1 (ii) At the show cause hearing, the presiding officer may  
2 consider the notice and documents supporting the immediate suspension  
3 or immediate imposition of conditions and the licensee's response and  
4 must provide the parties with an opportunity to provide documentary  
5 evidence and written testimony, and to be represented by counsel.  
6 Prior to the show cause hearing, the department must provide the  
7 licensee with all documentation that supports the department's  
8 immediate suspension or immediate imposition of conditions.

9 (iii) If the presiding officer determines there is no immediate  
10 jeopardy, the presiding officer may overturn the immediate suspension  
11 or immediate imposition of conditions.

12 (iv) If the presiding officer determines there is immediate  
13 jeopardy, the immediate suspension or immediate imposition of  
14 conditions shall remain in effect pending a full hearing.

15 (v) If the secretary sustains the immediate suspension or  
16 immediate imposition of conditions, the licensee may request an  
17 expedited full hearing on the merits of the department's action. A  
18 full hearing must be provided within (~~ninety~~) 90 days of the  
19 licensee's request.

20 (3) When the department determines an alleged violation, if true,  
21 would constitute an immediate jeopardy, and the licensee fails to  
22 cooperate with the department's investigation of such an alleged  
23 violation, the department may impose an immediate stop placement,  
24 immediate limited stop placement, immediate limited stop service,  
25 immediate imposition of conditions, or immediate suspension.

26 (a) When the department imposes an immediate stop placement,  
27 immediate limited stop placement, immediate limited stop service,  
28 immediate imposition of conditions, or immediate suspension for  
29 failure to cooperate, a licensee is entitled to a show cause hearing  
30 before a presiding officer within 14 days of making the request. The  
31 licensee must request the show cause hearing within 28 days of  
32 receipt of the notice of an immediate stop placement, immediate  
33 limited stop placement, immediate limited stop service, immediate  
34 imposition of conditions, or immediate suspension for failure to  
35 cooperate. At the show cause hearing the department has the burden of  
36 demonstrating that more probably than not the alleged violation, if  
37 true, would constitute an immediate jeopardy and the licensee failed  
38 to cooperate with the department's investigation.

39 (b) At the show cause hearing, the presiding officer may consider  
40 the notice and documents supporting the immediate stop placement,

1 immediate limited stop placement, immediate limited stop service,  
2 immediate imposition of conditions, or immediate suspension for  
3 failure to cooperate, and the licensee's response and shall provide  
4 the parties with an opportunity to provide documentary evidence and  
5 written testimony, and to be represented by counsel. Prior to the  
6 show cause hearing, the department shall provide the licensee with  
7 all documentation that supports the department's immediate action for  
8 failure to cooperate.

9 (c) If the presiding officer determines the alleged violation, if  
10 true, does not constitute an immediate jeopardy or determines that  
11 the licensee cooperated with the department's investigation, the  
12 presiding officer may overturn the immediate action for failure to  
13 cooperate.

14 (d) If the presiding officer determines the allegation, if true,  
15 would constitute an immediate jeopardy and the licensee failed to  
16 cooperate with the department's investigation, the immediate action  
17 for failure to cooperate shall remain in effect pending a full  
18 hearing.

19 (e) If the presiding officer sustains the immediate action for  
20 failure to cooperate, the licensee may request an expedited full  
21 hearing on the merits of the department's action. A full hearing must  
22 be provided within 90 days of the licensee's request.

23 **Sec. 19.** RCW 71.12.455 and 2020 c 115 s 6 are each reenacted and  
24 amended to read as follows:

25 The definitions in this section apply throughout this chapter  
26 unless the context clearly requires otherwise.

27 (1) "Department" means the department of health.

28 (2) "Elopement" means any situation in which an admitted patient  
29 of a ~~((psychiatric hospital))~~ private establishment who is  
30 cognitively, physically, mentally, emotionally, and/or chemically  
31 impaired wanders, walks, runs away, escapes, or otherwise leaves a  
32 ~~((psychiatric hospital))~~ private establishment or the grounds of a  
33 ~~((psychiatric hospital))~~ private establishment prior to the patient's  
34 scheduled discharge unsupervised, unnoticed, and without the staff's  
35 knowledge.

36 (3) "~~((Establishment))~~ Private establishment," "establishment,"  
37 and "institution" mean:

38 (a) Every private or county or municipal hospital, including  
39 public hospital districts, ~~((sanitariums,))~~ homes, ~~((psychiatric))~~

1 behavioral health hospitals, residential treatment facilities, or  
2 other places receiving or caring for any person with (~~mental~~  
3 ~~illness, mentally incompetent person, or chemically dependent~~  
4 ~~person~~) a behavioral health or substance use disorder; and

5 (b) Beginning January 1, 2019, facilities providing pediatric  
6 transitional care services.

7 (4) "Immediate jeopardy" means a situation in which the  
8 (~~psychiatric hospital's~~) private establishment's noncompliance with  
9 one or more statutory or regulatory requirements has placed the  
10 health and safety of patients in its care at risk for serious injury,  
11 serious harm, serious impairment, or death.

12 (5) "Pediatric transitional care services" means short-term,  
13 temporary, health and comfort services for drug exposed infants  
14 according to the requirements of this chapter and provided in an  
15 establishment licensed by the department (~~of health~~).

16 (6) "~~(Psychiatric)~~ Behavioral health hospital" means an  
17 establishment caring for any person with mental illness or substance  
18 use disorder excluding acute care hospitals licensed under chapter  
19 70.41 RCW, state psychiatric hospitals established under chapter  
20 72.23 RCW, and residential treatment facilities as defined in this  
21 section.

22 (7) "Residential treatment facility" means an establishment in  
23 which (~~twenty-four~~) 24-hour on-site care is provided for the  
24 evaluation, stabilization, or treatment of residents for substance  
25 use, mental health, co-occurring disorders, or for drug exposed  
26 infants.

27 (8) "Secretary" means the secretary of the department of health.

28 (9) "Technical assistance" means the provision of information on  
29 the state laws and rules applicable to the regulation of  
30 (~~psychiatric~~) behavioral health hospitals, the process to apply for  
31 a license, and methods and resources to avoid or address compliance  
32 problems. Technical assistance does not include assistance provided  
33 under chapter 43.05 RCW.

34 (10) "Trained caregiver" means a noncredentialed, unlicensed  
35 person trained by the establishment providing pediatric transitional  
36 care services to provide hands-on care to drug exposed infants.  
37 Caregivers may not provide medical care to infants and may only work  
38 under the supervision of an appropriate health care professional.

1       **Sec. 20.** RCW 71.12.500 and 2000 c 93 s 25 are each amended to  
2 read as follows:

3       The department (~~(of health)~~) may at any time examine (~~(and~~  
4 ~~ascertain how far)~~) a licensed private establishment (~~(is conducted~~  
5 ~~in compliance with this chapter, the rules adopted under this~~  
6 ~~chapter, and the requirements of the license therefor. If the~~  
7 ~~interests of the patients of the establishment so demand, the~~  
8 ~~department may, for just and reasonable cause, suspend, modify, or~~  
9 ~~revoke any such license. RCW 43.70.115 governs notice of a license~~  
10 ~~denial, revocation, suspension, or modification and provides the~~  
11 ~~right to an adjudicative proceeding.)) to determine whether it has~~  
12 ~~failed or refused to comply with the requirements of this chapter,~~  
13 ~~the standards or rules adopted under this chapter, or other~~  
14 ~~applicable state or federal statutes or rules regulating private~~  
15 ~~establishments.~~

16       NEW SECTION.   **Sec. 21.** A new section is added to chapter 71.12  
17 RCW to read as follows:

18       (1) The department may give written notice to cease and desist to  
19 any person whom the department has reason to believe is engaged in  
20 the unlicensed operation of a private establishment.

21       (2)(a) Except as otherwise provided in this section, the  
22 requirement to cease and desist unlicensed operation is effective 20  
23 days after the person receives the notice.

24       (b) The department may make the date the action is effective  
25 sooner than 20 days after receipt when necessary to protect the  
26 public health, safety, or welfare. When the department does so, it  
27 shall state the effective date and the reasons supporting the  
28 effective date in the written notice to cease and desist.

29       (3) The person to whom the notice to cease and desist is issued  
30 may request an adjudicative proceeding to contest the notice. The  
31 adjudicative proceeding is governed by the administrative procedure  
32 act, chapter 34.05 RCW. The request for an adjudicative proceeding  
33 must be in writing, state the basis for contesting the notice,  
34 include a copy of the notice, and be served on and received by the  
35 department within 20 days from the date the person receives the  
36 notice to cease and desist.

37       (4)(a) If the department gives a person 20 days' notice to cease  
38 and desist and the person requests an adjudicative proceeding before  
39 its effective date, the department shall not implement the notice

1 until the final order has been entered. The presiding or reviewing  
2 officer may permit the department to implement part or all of the  
3 notice while the proceedings are pending if the respondent causes an  
4 unreasonable delay in the proceeding, if the circumstances change so  
5 that implementation is in the public interest, or for other good  
6 cause.

7 (b) If the department gives a licensee less than 20 days' notice  
8 to cease and desist and the respondent timely files a request for an  
9 adjudicative proceeding, the department may implement the cease and  
10 desist on the effective date stated in the notice. The presiding or  
11 reviewing officer may order the department to stay implementation of  
12 part or all of the adverse action while the proceedings are pending  
13 if staying implementation is in the public interest or for other good  
14 cause.

15 (5) The department may assess a civil fine not exceeding \$5,000  
16 for each day a person operates a private establishment without a  
17 valid license.

18 (a) The department shall give written notice to the person  
19 against whom it assesses a civil fine.

20 (b) Except as otherwise provided in (c) and (d) of this  
21 subsection, the civil fine is due and payable 20 days after receipt.

22 (c) The person against whom the department assesses a civil fine  
23 has the right to request an adjudicative proceeding. The proceeding  
24 is governed by the administrative procedure act, chapter 34.05 RCW.  
25 The request must be in writing, state the basis for contesting the  
26 fine, include a copy of the notice, be served on and received by the  
27 department within 20 days of the person receiving the notice of civil  
28 fine, and be served in a manner which shows proof of receipt.

29 (d) If the person files a timely and sufficient request for  
30 adjudicative proceeding, the department shall not implement the fine  
31 until the final order has been served.

32 (6) Neither the issuance of a cease and desist order nor payment  
33 of a civil fine shall relieve the person so operating a private  
34 establishment without a license from criminal prosecution, but the  
35 remedy of a cease and desist order or civil fine shall be in addition  
36 to any criminal liability. A final notice to cease and desist is  
37 conclusive proof of unlicensed operation and may be enforced under  
38 RCW 7.21.060. This method of enforcement of the final notice to cease  
39 and desist or civil fine may be used in addition to, or as an

1 alternative to, any provisions for enforcement of agency orders set  
2 out in chapter 34.05 RCW.

3 **Sec. 22.** RCW 70.38.025 and 2000 c 175 s 22 are each amended to  
4 read as follows:

5 When used in this chapter, the terms defined in this section  
6 shall have the meanings indicated.

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

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

28 (3) "Continuing care retirement community" means an entity which  
29 provides shelter and services under continuing care contracts with  
30 its members and which sponsors or includes a health care facility or  
31 a health service. A "continuing care contract" means a contract to  
32 provide a person, for the duration of that person's life or for a  
33 term in excess of one year, shelter along with nursing, medical,  
34 health-related, or personal care services, which is conditioned upon  
35 the transfer of property, the payment of an entrance fee to the  
36 provider of such services, or the payment of periodic charges for the  
37 care and services involved. A continuing care contract is not  
38 excluded from this definition because the contract is mutually

1 terminable or because shelter and services are not provided at the  
2 same location.

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

4 (5) "Expenditure minimum" means, for the purposes of the  
5 certificate of need program, (~~one million dollars~~) \$1,000,000  
6 adjusted by the department by rule to reflect changes in the United  
7 States department of commerce composite construction cost index; or a  
8 lesser amount required by federal law and established by the  
9 department by rule.

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

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

30 (a) Is a qualified health maintenance organization under Title  
31 XIII, section 1310(d) of the Public Health (~~Services~~ ~~[Service]~~)  
32 Service Act; or

33 (b) (i) Provides or otherwise makes available to enrolled  
34 participants health care services, including at least the following  
35 basic health care services: Usual physician services,  
36 hospitalization, laboratory, X-ray, emergency, and preventive  
37 services, and out-of-area coverage; (ii) is compensated (except for  
38 copayments) for the provision of the basic health care services  
39 listed in (b) (i) to enrolled participants by a payment which is paid  
40 on a periodic basis without regard to the date the health care



1 services are provided and which is fixed without regard to the  
2 frequency, extent, or kind of health service actually provided; and  
3 (iii) provides physicians' services primarily (A) directly through  
4 physicians who are either employees or partners of such organization,  
5 or (B) through arrangements with individual physicians or one or more  
6 groups of physicians (organized on a group practice or individual  
7 practice basis).

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

12 (9) "Health service area" means a geographic region appropriate  
13 for effective health planning which includes a broad range of health  
14 services.

15 (10) "Person" means an individual, a trust or estate, a  
16 partnership, a corporation (including associations, joint stock  
17 companies, and insurance companies), the state, or a political  
18 subdivision or instrumentality of the state, including a municipal  
19 corporation or a hospital district.

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

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

29 (13) "Secretary" means the secretary of health or the secretary's  
30 designee.

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

35 (15) "Hospital" means any health care institution which is  
36 required to qualify for a license under RCW 70.41.020(~~(+2)~~) (8); or  
37 as a (~~psychiatric~~) behavioral health hospital under chapter 71.12  
38 RCW.

1       **Sec. 23.** RCW 70.38.111 and 2021 c 277 s 1 are each amended to  
2 read as follows:

3       (1) The department shall not require a certificate of need for  
4 the offering of an inpatient tertiary health service by:

5       (a) A health maintenance organization or a combination of health  
6 maintenance organizations if (i) the organization or combination of  
7 organizations has, in the service area of the organization or the  
8 service areas of the organizations in the combination, an enrollment  
9 of at least (~~(fifty thousand)~~) 50,000 individuals, (ii) the facility  
10 in which the service will be provided is or will be geographically  
11 located so that the service will be reasonably accessible to such  
12 enrolled individuals, and (iii) at least (~~(seventy-five)~~) 75 percent  
13 of the patients who can reasonably be expected to receive the  
14 tertiary health service will be individuals enrolled with such  
15 organization or organizations in the combination;

16       (b) A health care facility if (i) the facility primarily provides  
17 or will provide inpatient health services, (ii) the facility is or  
18 will be controlled, directly or indirectly, by a health maintenance  
19 organization or a combination of health maintenance organizations  
20 which has, in the service area of the organization or service areas  
21 of the organizations in the combination, an enrollment of at least  
22 (~~(fifty thousand)~~) 50,000 individuals, (iii) the facility is or will  
23 be geographically located so that the service will be reasonably  
24 accessible to such enrolled individuals, and (iv) at least (~~(seventy-~~  
25 ~~five)~~) 75 percent of the patients who can reasonably be expected to  
26 receive the tertiary health service will be individuals enrolled with  
27 such organization or organizations in the combination; or

28       (c) A health care facility (or portion thereof) if (i) the  
29 facility is or will be leased by a health maintenance organization or  
30 combination of health maintenance organizations which has, in the  
31 service area of the organization or the service areas of the  
32 organizations in the combination, an enrollment of at least (~~(fifty~~  
33 ~~thousand)~~) 50,000 individuals and, on the date the application is  
34 submitted under subsection (2) of this section, at least (~~(fifteen)~~)  
35 15 years remain in the term of the lease, (ii) the facility is or  
36 will be geographically located so that the service will be reasonably  
37 accessible to such enrolled individuals, and (iii) at least  
38 (~~(seventy-five)~~) 75 percent of the patients who can reasonably be  
39 expected to receive the tertiary health service will be individuals  
40 enrolled with such organization;

1 if, with respect to such offering or obligation by a nursing home,  
2 the department has, upon application under subsection (2) of this  
3 section, granted an exemption from such requirement to the  
4 organization, combination of organizations, or facility.

5 (2) A health maintenance organization, combination of health  
6 maintenance organizations, or health care facility shall not be  
7 exempt under subsection (1) of this section from obtaining a  
8 certificate of need before offering a tertiary health service unless:

9 (a) It has submitted at least (~~thirty~~) 30 days prior to the  
10 offering of services reviewable under RCW 70.38.105(4)(d) an  
11 application for such exemption; and

12 (b) The application contains such information respecting the  
13 organization, combination, or facility and the proposed offering or  
14 obligation by a nursing home as the department may require to  
15 determine if the organization or combination meets the requirements  
16 of subsection (1) of this section or the facility meets or will meet  
17 such requirements; and

18 (c) The department approves such application. The department  
19 shall approve or disapprove an application for exemption within  
20 (~~thirty~~) 30 days of receipt of a completed application. In the case  
21 of a proposed health care facility (or portion thereof) which has not  
22 begun to provide tertiary health services on the date an application  
23 is submitted under this subsection with respect to such facility (or  
24 portion), the facility (or portion) shall meet the applicable  
25 requirements of subsection (1) of this section when the facility  
26 first provides such services. The department shall approve an  
27 application submitted under this subsection if it determines that the  
28 applicable requirements of subsection (1) of this section are met.

29 (3) A health care facility (or any part thereof) with respect to  
30 which an exemption was granted under subsection (1) of this section  
31 may not be sold or leased and a controlling interest in such facility  
32 or in a lease of such facility may not be acquired and a health care  
33 facility described in (1)(c) which was granted an exemption under  
34 subsection (1) of this section may not be used by any person other  
35 than the lessee described in (1)(c) unless:

36 (a) The department issues a certificate of need approving the  
37 sale, lease, acquisition, or use; or

38 (b) The department determines, upon application, that (i) the  
39 entity to which the facility is proposed to be sold or leased, which  
40 intends to acquire the controlling interest, or which intends to use

1 the facility is a health maintenance organization or a combination of  
2 health maintenance organizations which meets the requirements of  
3 (1)(a)(i), and (ii) with respect to such facility, meets the  
4 requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i)  
5 and (ii).

6 (4) In the case of a health maintenance organization, an  
7 ambulatory care facility, or a health care facility, which ambulatory  
8 or health care facility is controlled, directly or indirectly, by a  
9 health maintenance organization or a combination of health  
10 maintenance organizations, the department may under the program apply  
11 its certificate of need requirements to the offering of inpatient  
12 tertiary health services to the extent that such offering is not  
13 exempt under the provisions of this section or RCW 70.38.105(7).

14 (5)(a) The department shall not require a certificate of need for  
15 the construction, development, or other establishment of a nursing  
16 home, or the addition of beds to an existing nursing home, that is  
17 owned and operated by a continuing care retirement community that:

18 (i) Offers services only to contractual members;

19 (ii) Provides its members a contractually guaranteed range of  
20 services from independent living through skilled nursing, including  
21 some assistance with daily living activities;

22 (iii) Contractually assumes responsibility for the cost of  
23 services exceeding the member's financial responsibility under the  
24 contract, so that no third party, with the exception of insurance  
25 purchased by the retirement community or its members, but including  
26 the medicaid program, is liable for costs of care even if the member  
27 depletes his or her personal resources;

28 (iv) Has offered continuing care contracts and operated a nursing  
29 home continuously since January 1, 1988, or has obtained a  
30 certificate of need to establish a nursing home;

31 (v) Maintains a binding agreement with the state assuring that  
32 financial liability for services to members, including nursing home  
33 services, will not fall upon the state;

34 (vi) Does not operate, and has not undertaken a project that  
35 would result in a number of nursing home beds in excess of one for  
36 every four living units operated by the continuing care retirement  
37 community, exclusive of nursing home beds; and

38 (vii) Has obtained a professional review of pricing and long-term  
39 solvency within the prior five years which was fully disclosed to  
40 members.

1 (b) A continuing care retirement community shall not be exempt  
2 under this subsection from obtaining a certificate of need unless:

3 (i) It has submitted an application for exemption at least  
4 (~~thirty~~) 30 days prior to commencing construction of, is submitting  
5 an application for the licensure of, or is commencing operation of a  
6 nursing home, whichever comes first; and

7 (ii) The application documents to the department that the  
8 continuing care retirement community qualifies for exemption.

9 (c) The sale, lease, acquisition, or use of part or all of a  
10 continuing care retirement community nursing home that qualifies for  
11 exemption under this subsection shall require prior certificate of  
12 need approval to qualify for licensure as a nursing home unless the  
13 department determines such sale, lease, acquisition, or use is by a  
14 continuing care retirement community that meets the conditions of (a)  
15 of this subsection.

16 (6) A rural hospital, as defined by the department, reducing the  
17 number of licensed beds to become a rural primary care hospital under  
18 the provisions of Part A Title XVIII of the Social Security Act  
19 Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the  
20 reduction of beds licensed under chapter 70.41 RCW, increase the  
21 number of licensed beds to no more than the previously licensed  
22 number without being subject to the provisions of this chapter.

23 (7) A rural health care facility licensed under RCW 70.175.100  
24 formerly licensed as a hospital under chapter 70.41 RCW may, within  
25 three years of the effective date of the rural health care facility  
26 license, apply to the department for a hospital license and not be  
27 subject to the requirements of RCW 70.38.105(4)(a) as the  
28 construction, development, or other establishment of a new hospital,  
29 provided there is no increase in the number of beds previously  
30 licensed under chapter 70.41 RCW and there is no redistribution in  
31 the number of beds used for acute care or long-term care, the rural  
32 health care facility has been in continuous operation, and the rural  
33 health care facility has not been purchased or leased.

34 (8) A rural hospital determined to no longer meet critical access  
35 hospital status for state law purposes as a result of participation  
36 in the Washington rural health access preservation pilot identified  
37 by the state office of rural health and formerly licensed as a  
38 hospital under chapter 70.41 RCW may apply to the department to renew  
39 its hospital license and not be subject to the requirements of RCW  
40 70.38.105(4)(a) as the construction, development, or other

1 establishment of a new hospital, provided there is no increase in the  
2 number of beds previously licensed under chapter 70.41 RCW. If all or  
3 part of a formerly licensed rural hospital is sold, purchased, or  
4 leased during the period the rural hospital does not meet critical  
5 access hospital status as a result of participation in the Washington  
6 rural health access preservation pilot and the new owner or lessor  
7 applies to renew the rural hospital's license, then the sale,  
8 purchase, or lease of part or all of the rural hospital is subject to  
9 the provisions of this chapter.

10 (9) (a) A nursing home that voluntarily reduces the number of its  
11 licensed beds to provide assisted living, licensed assisted living  
12 facility care, adult day care, adult day health, respite care,  
13 hospice, outpatient therapy services, congregate meals, home health,  
14 or senior wellness clinic, or to reduce to one or two the number of  
15 beds per room or to otherwise enhance the quality of life for  
16 residents in the nursing home, may convert the original facility or  
17 portion of the facility back, and thereby increase the number of  
18 nursing home beds to no more than the previously licensed number of  
19 nursing home beds without obtaining a certificate of need under this  
20 chapter, provided the facility has been in continuous operation and  
21 has not been purchased or leased. Any conversion to the original  
22 licensed bed capacity, or to any portion thereof, shall comply with  
23 the same life and safety code requirements as existed at the time the  
24 nursing home voluntarily reduced its licensed beds; unless waivers  
25 from such requirements were issued, in which case the converted beds  
26 shall reflect the conditions or standards that then existed pursuant  
27 to the approved waivers.

28 (b) To convert beds back to nursing home beds under this  
29 subsection, the nursing home must:

30 (i) Give notice of its intent to preserve conversion options to  
31 the department of health no later than (~~(thirty)~~) 30 days after the  
32 effective date of the license reduction; and

33 (ii) Give notice to the department of health and to the  
34 department of social and health services of the intent to convert  
35 beds back. If construction is required for the conversion of beds  
36 back, the notice of intent to convert beds back must be given, at a  
37 minimum, one year prior to the effective date of license modification  
38 reflecting the restored beds; otherwise, the notice must be given a  
39 minimum of (~~(ninety)~~) 90 days prior to the effective date of license  
40 modification reflecting the restored beds. Prior to any license

1 modification to convert beds back to nursing home beds under this  
2 section, the licensee must demonstrate that the nursing home meets  
3 the certificate of need exemption requirements of this section.

4 The term "construction," as used in (b)(ii) of this subsection,  
5 is limited to those projects that are expected to equal or exceed the  
6 expenditure minimum amount, as determined under this chapter.

7 (c) Conversion of beds back under this subsection must be  
8 completed no later than four years after the effective date of the  
9 license reduction. However, for good cause shown, the four-year  
10 period for conversion may be extended by the department of health for  
11 one additional four-year period.

12 (d) Nursing home beds that have been voluntarily reduced under  
13 this section shall be counted as available nursing home beds for the  
14 purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long  
15 as the facility retains the ability to convert them back to nursing  
16 home use under the terms of this section.

17 (e) When a building owner has secured an interest in the nursing  
18 home beds, which are intended to be voluntarily reduced by the  
19 licensee under (a) of this subsection, the applicant shall provide  
20 the department with a written statement indicating the building  
21 owner's approval of the bed reduction.

22 (10)(a) The department shall not require a certificate of need  
23 for a hospice agency if:

24 (i) The hospice agency is designed to serve the unique religious  
25 or cultural needs of a religious group or an ethnic minority and  
26 commits to furnishing hospice services in a manner specifically aimed  
27 at meeting the unique religious or cultural needs of the religious  
28 group or ethnic minority;

29 (ii) The hospice agency is operated by an organization that:

30 (A) Operates a facility, or group of facilities, that offers a  
31 comprehensive continuum of long-term care services, including, at a  
32 minimum, a licensed, medicare-certified nursing home, assisted  
33 living, independent living, day health, and various community-based  
34 support services, designed to meet the unique social, cultural, and  
35 religious needs of a specific cultural and ethnic minority group;

36 (B) Has operated the facility or group of facilities for at least  
37 (~~ten~~) 10 continuous years prior to the establishment of the hospice  
38 agency;

39 (iii) The hospice agency commits to coordinating with existing  
40 hospice programs in its community when appropriate;

1 (iv) The hospice agency has a census of no more than (~~forty~~) 40  
2 patients;

3 (v) The hospice agency commits to obtaining and maintaining  
4 medicare certification;

5 (vi) The hospice agency only serves patients located in the same  
6 county as the majority of the long-term care services offered by the  
7 organization that operates the agency; and

8 (vii) The hospice agency is not sold or transferred to another  
9 agency.

10 (b) The department shall include the patient census for an agency  
11 exempted under this subsection (10) in its calculations for future  
12 certificate of need applications.

13 (11) To alleviate the need to board psychiatric patients in  
14 emergency departments and increase capacity of hospitals to serve  
15 individuals on (~~ninety~~) 90-day or (~~one hundred eighty~~) 180-day  
16 commitment orders, for the period of time from May 5, 2017, through  
17 June 30, 2023:

18 (a) The department shall suspend the certificate of need  
19 requirement for a hospital licensed under chapter 70.41 RCW that  
20 changes the use of licensed beds to increase the number of beds to  
21 provide psychiatric services, including involuntary treatment  
22 services. A certificate of need exemption under this subsection  
23 (11)(a) shall be valid for two years.

24 (b) The department may not require a certificate of need for:

25 (i) The addition of beds as described in RCW 70.38.260 (2) and  
26 (3); or

27 (ii) The construction, development, or establishment of a  
28 (~~psychiatric~~) behavioral health hospital licensed as an  
29 establishment under chapter 71.12 RCW that will have no more than  
30 (~~sixteen~~) 16 beds and provide treatment to adults on (~~ninety~~) 90  
31 or (~~one hundred eighty~~) 180-day involuntary commitment orders, as  
32 described in RCW 70.38.260(4).

33 (12)(a) An ambulatory surgical facility is exempt from all  
34 certificate of need requirements if the facility:

35 (i) Is an individual or group practice and, if the facility is a  
36 group practice, the privilege of using the facility is not extended  
37 to physicians outside the group practice;

38 (ii) Operated or received approval to operate, prior to January  
39 19, 2018; and



1 (iii) Was exempt from certificate of need requirements prior to  
2 January 19, 2018, because the facility either:

3 (A) Was determined to be exempt from certificate of need  
4 requirements pursuant to a determination of reviewability issued by  
5 the department; or

6 (B) Was a single-specialty endoscopy center in existence prior to  
7 January 14, 2003, when the department determined that endoscopy  
8 procedures were surgeries for purposes of certificate of need.

9 (b) The exemption under this subsection:

10 (i) Applies regardless of future changes of ownership, corporate  
11 structure, or affiliations of the individual or group practice as  
12 long as the use of the facility remains limited to physicians in the  
13 group practice; and

14 (ii) Does not apply to changes in services, specialties, or  
15 number of operating rooms.

16 (13) A rural health clinic providing health services in a home  
17 health shortage area as declared by the department pursuant to 42  
18 C.F.R. Sec. 405.2416 is not subject to certificate of need review  
19 under this chapter.

20 **Sec. 24.** RCW 70.38.260 and 2021 c 277 s 2 are each amended to  
21 read as follows:

22 (1) For a grant awarded during fiscal years 2018 and 2019 by the  
23 department of commerce under this section, hospitals licensed under  
24 chapter 70.41 RCW and (~~psychiatric~~) behavioral health hospitals  
25 licensed as establishments under chapter 71.12 RCW are not subject to  
26 certificate of need requirements for the addition of the number of  
27 new psychiatric beds indicated in the grant. The department of  
28 commerce may not make a prior approval of a certificate of need  
29 application a condition for a grant application under this  
30 section. The period during which an approved hospital or  
31 (~~psychiatric~~) behavioral health hospital project qualifies for a  
32 certificate of need exemption under this section is two years from  
33 the date of the grant award.

34 (2)(a) Until June 30, 2023, a hospital licensed under chapter  
35 70.41 RCW is exempt from certificate of need requirements for the  
36 addition of new psychiatric beds.

37 (b) A hospital that adds new psychiatric beds under this  
38 subsection (2) must:

1 (i) Notify the department of the addition of new psychiatric  
2 beds. The department shall provide the hospital with a notice of  
3 exemption within (~~thirty~~) 30 days; and

4 (ii) Commence the project within two years of the date of receipt  
5 of the notice of exemption.

6 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must  
7 remain psychiatric beds unless a certificate of need is granted to  
8 change their use or the hospital voluntarily reduces its licensed  
9 capacity.

10 (3)(a) Until June 30, 2023, a (~~psychiatric~~) behavioral health  
11 hospital licensed as an establishment under chapter 71.12 RCW is  
12 exempt from certificate of need requirements for the one-time  
13 addition of up to 30 new psychiatric beds devoted solely for 90-day  
14 and 180-day civil commitment services and for the one-time addition  
15 of up to 30 new voluntary psychiatric beds or involuntary psychiatric  
16 beds for patients on a 120 hour detention or 14-day civil commitment  
17 order, if the hospital makes a commitment to maintain a payer mix of  
18 at least (~~fifty~~) 50 percent medicare and medicaid based on a  
19 calculation using patient days for a period of five consecutive years  
20 after the beds are made available for use by patients, if it  
21 demonstrates to the satisfaction of the department:

22 (i) That its most recent two years of publicly available fiscal  
23 year-end report data as required under RCW 70.170.100 and 43.70.050  
24 reported to the department by the (~~psychiatric~~) behavioral health  
25 hospital, show a payer mix of a minimum of (~~fifty~~) 50 percent  
26 medicare and medicaid based on a calculation using patient days; and

27 (ii) A commitment to maintaining the payer mix in (a) of this  
28 subsection for a period of five consecutive years after the beds are  
29 made available for use by patients.

30 (b) A (~~psychiatric~~) behavioral health hospital that adds new  
31 psychiatric beds under this subsection (3) must:

32 (i) Notify the department of the addition of new psychiatric  
33 beds. The department shall provide the (~~psychiatric~~) behavioral  
34 health hospital with a notice of exemption within (~~thirty~~) 30 days;  
35 and

36 (ii) Commence the project within two years of the date of receipt  
37 of the notice of exemption.

38 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must  
39 remain the types of psychiatric beds indicated to the department in  
40 the original exemption application unless a certificate of need is

1 granted to change their use or the (~~psychiatric~~) behavioral health  
2 hospital voluntarily reduces its licensed capacity.

3 (4) (a) Until June 30, 2023, an entity seeking to construct,  
4 develop, or establish a (~~psychiatric~~) behavioral health hospital  
5 licensed as an establishment under chapter 71.12 RCW is exempt from  
6 certificate of need requirements if the proposed (~~psychiatric~~)  
7 behavioral health hospital will have no more than (~~sixteen~~) 16 beds  
8 and dedicate a portion of the beds to providing treatment to adults  
9 on (~~ninety~~) 90 or (~~one hundred eighty~~) 180-day involuntary  
10 commitment orders. The (~~psychiatric~~) behavioral health hospital may  
11 also provide treatment to adults on a 120 hour detention or 14-day  
12 involuntary commitment order.

13 (b) An entity that seeks to construct, develop, or establish a  
14 (~~psychiatric~~) behavioral health hospital under this subsection (4)  
15 must:

16 (i) Notify the department of the addition of construction,  
17 development, or establishment. The department shall provide the  
18 entity with a notice of exemption within (~~thirty~~) 30 days; and

19 (ii) Commence the project within two years of the date of receipt  
20 of the notice of exemption.

21 (c) Entities granted an exemption under RCW 70.38.111(11) (b) (ii)  
22 may not exceed (~~sixteen~~) 16 beds unless a certificate of need is  
23 granted to increase the (~~psychiatric~~) behavioral health hospital's  
24 capacity.

25 (5) This section expires June 30, 2025.

26 **Sec. 25.** RCW 71.24.025 and 2021 c 302 s 402 are each reenacted  
27 and amended to read as follows:

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

30 (1) "988 crisis hotline" means the universal telephone number  
31 within the United States designated for the purpose of the national  
32 suicide prevention and mental health crisis hotline system operating  
33 through the national suicide prevention lifeline.

34 (2) "Acutely mentally ill" means a condition which is limited to  
35 a short-term severe crisis episode of:

36 (a) A mental disorder as defined in RCW 71.05.020 or, in the case  
37 of a child, as defined in RCW 71.34.020;

1 (b) Being gravely disabled as defined in RCW 71.05.020 or, in the  
2 case of a child, a gravely disabled minor as defined in RCW  
3 71.34.020; or

4 (c) Presenting a likelihood of serious harm as defined in RCW  
5 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

6 (3) "Alcoholism" means a disease, characterized by a dependency  
7 on alcoholic beverages, loss of control over the amount and  
8 circumstances of use, symptoms of tolerance, physiological or  
9 psychological withdrawal, or both, if use is reduced or discontinued,  
10 and impairment of health or disruption of social or economic  
11 functioning.

12 (4) "Approved substance use disorder treatment program" means a  
13 program for persons with a substance use disorder provided by a  
14 treatment program licensed or certified by the department as meeting  
15 standards adopted under this chapter.

16 (5) "Authority" means the Washington state health care authority.

17 (6) "Available resources" means funds appropriated for the  
18 purpose of providing community behavioral health programs, federal  
19 funds, except those provided according to Title XIX of the Social  
20 Security Act, and state funds appropriated under this chapter or  
21 chapter 71.05 RCW by the legislature during any biennium for the  
22 purpose of providing residential services, resource management  
23 services, community support services, and other behavioral health  
24 services. This does not include funds appropriated for the purpose of  
25 operating and administering the state psychiatric hospitals.

26 (7) "Behavioral health administrative services organization"  
27 means an entity contracted with the authority to administer  
28 behavioral health services and programs under RCW 71.24.381,  
29 including crisis services and administration of chapter 71.05 RCW,  
30 the involuntary treatment act, for all individuals in a defined  
31 regional service area.

32 (8) "Behavioral health aide" means a counselor, health educator,  
33 and advocate who helps address individual and community-based  
34 behavioral health needs, including those related to alcohol, drug,  
35 and tobacco abuse as well as mental health problems such as grief,  
36 depression, suicide, and related issues and is certified by a  
37 community health aide program of the Indian health service or one or  
38 more tribes or tribal organizations consistent with the provisions of  
39 25 U.S.C. Sec. 16161 and RCW 43.71B.010 (7) and (8).

1 (9) "Behavioral health provider" means a person licensed under  
2 chapter 18.57, 18.71, 18.71A, 18.83, 18.205, 18.225, or 18.79 RCW, as  
3 it applies to registered nurses and advanced registered nurse  
4 practitioners.

5 (10) "Behavioral health services" means mental health services as  
6 described in this chapter and chapter 71.36 RCW and substance use  
7 disorder treatment services as described in this chapter that,  
8 depending on the type of service, are provided by licensed or  
9 certified behavioral health agencies, behavioral health providers, or  
10 integrated into other health care providers.

11 (11) "Child" means a person under the age of (~~eighteen~~) 18  
12 years.

13 (12) "Chronically mentally ill adult" or "adult who is  
14 chronically mentally ill" means an adult who has a mental disorder  
15 and meets at least one of the following criteria:

16 (a) Has undergone two or more episodes of hospital care for a  
17 mental disorder within the preceding two years; or

18 (b) Has experienced a continuous (~~psychiatric~~) behavioral  
19 health hospitalization or residential treatment exceeding six months'  
20 duration within the preceding year; or

21 (c) Has been unable to engage in any substantial gainful activity  
22 by reason of any mental disorder which has lasted for a continuous  
23 period of not less than (~~twelve~~) 12 months. "Substantial gainful  
24 activity" shall be defined by the authority by rule consistent with  
25 Public Law 92-603, as amended.

26 (13) "Clubhouse" means a community-based program that provides  
27 rehabilitation services and is licensed or certified by the  
28 department.

29 (14) "Community behavioral health program" means all  
30 expenditures, services, activities, or programs, including reasonable  
31 administration and overhead, designed and conducted to prevent or  
32 treat substance use disorder, mental illness, or both in the  
33 community behavioral health system.

34 (15) "Community behavioral health service delivery system" means  
35 public, private, or tribal agencies that provide services  
36 specifically to persons with mental disorders, substance use  
37 disorders, or both, as defined under RCW 71.05.020 and receive  
38 funding from public sources.

39 (16) "Community support services" means services authorized,  
40 planned, and coordinated through resource management services

1 including, at a minimum, assessment, diagnosis, emergency crisis  
2 intervention available (~~(twenty-four)~~) 24 hours, seven days a week,  
3 prescreening determinations for persons who are mentally ill being  
4 considered for placement in nursing homes as required by federal law,  
5 screening for patients being considered for admission to residential  
6 services, diagnosis and treatment for children who are acutely  
7 mentally ill or severely emotionally or behaviorally disturbed  
8 discovered under screening through the federal Title XIX early and  
9 periodic screening, diagnosis, and treatment program, investigation,  
10 legal, and other nonresidential services under chapter 71.05 RCW,  
11 case management services, psychiatric treatment including medication  
12 supervision, counseling, psychotherapy, assuring transfer of relevant  
13 patient information between service providers, recovery services, and  
14 other services determined by behavioral health administrative  
15 services organizations.

16 (17) "Consensus-based" means a program or practice that has  
17 general support among treatment providers and experts, based on  
18 experience or professional literature, and may have anecdotal or case  
19 study support, or that is agreed but not possible to perform studies  
20 with random assignment and controlled groups.

21 (18) "County authority" means the board of county commissioners,  
22 county council, or county executive having authority to establish a  
23 behavioral health administrative services organization, or two or  
24 more of the county authorities specified in this subsection which  
25 have entered into an agreement to establish a behavioral health  
26 administrative services organization.

27 (19) "Crisis call center hub" means a state-designated center  
28 participating in the national suicide prevention lifeline network to  
29 respond to statewide or regional 988 calls that meets the  
30 requirements of RCW 71.24.890.

31 (20) "Crisis stabilization services" means services such as 23-  
32 hour crisis stabilization units based on the living room model,  
33 crisis stabilization units as provided in RCW 71.05.020, triage  
34 facilities as provided in RCW 71.05.020, short-term respite  
35 facilities, peer-run respite services, and same-day walk-in  
36 behavioral health services, including within the overall crisis  
37 system components that operate like hospital emergency departments  
38 that accept all walk-ins, and ambulance, fire, and police drop-offs.

39 (21) "Department" means the department of health.

1 (22) "Designated crisis responder" has the same meaning as in RCW  
2 71.05.020.

3 (23) "Director" means the director of the authority.

4 (24) "Drug addiction" means a disease characterized by a  
5 dependency on psychoactive chemicals, loss of control over the amount  
6 and circumstances of use, symptoms of tolerance, physiological or  
7 psychological withdrawal, or both, if use is reduced or discontinued,  
8 and impairment of health or disruption of social or economic  
9 functioning.

10 (25) "Early adopter" means a regional service area for which all  
11 of the county authorities have requested that the authority purchase  
12 medical and behavioral health services through a managed care health  
13 system as defined under RCW 71.24.380(~~((6))~~) (7).

14 (26) "Emerging best practice" or "promising practice" means a  
15 program or practice that, based on statistical analyses or a well  
16 established theory of change, shows potential for meeting the  
17 evidence-based or research-based criteria, which may include the use  
18 of a program that is evidence-based for outcomes other than those  
19 listed in subsection (27) of this section.

20 (27) "Evidence-based" means a program or practice that has been  
21 tested in heterogeneous or intended populations with multiple  
22 randomized, or statistically controlled evaluations, or both; or one  
23 large multiple site randomized, or statistically controlled  
24 evaluation, or both, where the weight of the evidence from a systemic  
25 review demonstrates sustained improvements in at least one outcome.  
26 "Evidence-based" also means a program or practice that can be  
27 implemented with a set of procedures to allow successful replication  
28 in Washington and, when possible, is determined to be cost-  
29 beneficial.

30 (28) "Immediate jeopardy" means a situation in which the licensed  
31 or certified behavioral health agency's noncompliance with one or  
32 more statutory or regulatory requirements has placed the health and  
33 safety of patients in its care at risk for serious injury, serious  
34 harm, serious impairment, or death.

35 (29) "Indian health care provider" means a health care program  
36 operated by the Indian health service or by a tribe, tribal  
37 organization, or urban Indian organization as those terms are defined  
38 in the Indian health care improvement act (25 U.S.C. Sec. 1603).

39 (~~((29))~~) (30) "Intensive behavioral health treatment facility"  
40 means a community-based specialized residential treatment facility

1 for individuals with behavioral health conditions, including  
2 individuals discharging from or being diverted from state and local  
3 hospitals, whose impairment or behaviors do not meet, or no longer  
4 meet, criteria for involuntary inpatient commitment under chapter  
5 71.05 RCW, but whose care needs cannot be met in other community-  
6 based placement settings.

7 ~~((30))~~ (31) "Licensed or certified behavioral health agency"  
8 means:

9 (a) An entity licensed or certified according to this chapter or  
10 chapter 71.05 RCW;

11 (b) An entity deemed to meet state minimum standards as a result  
12 of accreditation by a recognized behavioral health accrediting body  
13 recognized and having a current agreement with the department; or

14 (c) An entity with a tribal attestation that it meets state  
15 minimum standards for a licensed or certified behavioral health  
16 agency.

17 ~~((31))~~ (32) "Licensed physician" means a person licensed to  
18 practice medicine or osteopathic medicine and surgery in the state of  
19 Washington.

20 ~~((32))~~ (33) "Long-term inpatient care" means inpatient services  
21 for persons committed for, or voluntarily receiving intensive  
22 treatment for, periods of ~~((ninety))~~ 90 days or greater under chapter  
23 71.05 RCW. "Long-term inpatient care" as used in this chapter does  
24 not include: (a) Services for individuals committed under chapter  
25 71.05 RCW who are receiving services pursuant to a conditional  
26 release or a court-ordered less restrictive alternative to detention;  
27 or (b) services for individuals voluntarily receiving less  
28 restrictive alternative treatment on the grounds of the state  
29 hospital.

30 ~~((33))~~ (34) "Managed care organization" means an organization,  
31 having a certificate of authority or certificate of registration from  
32 the office of the insurance commissioner, that contracts with the  
33 authority under a comprehensive risk contract to provide prepaid  
34 health care services to enrollees under the authority's managed care  
35 programs under chapter 74.09 RCW.

36 ~~((34))~~ (35) "Mental health peer-run respite center" means a  
37 peer-run program to serve individuals in need of voluntary, short-  
38 term, noncrisis services that focus on recovery and wellness.

39 ~~((35))~~ (36) Mental health "treatment records" include  
40 registration and all other records concerning persons who are



1 receiving or who at any time have received services for mental  
2 illness, which are maintained by the department of social and health  
3 services or the authority, by behavioral health administrative  
4 services organizations and their staffs, by managed care  
5 organizations and their staffs, or by treatment facilities.  
6 "Treatment records" do not include notes or records maintained for  
7 personal use by a person providing treatment services for the  
8 entities listed in this subsection, or a treatment facility if the  
9 notes or records are not available to others.

10 ~~((36))~~ (37) "Mentally ill persons," "persons who are mentally  
11 ill," and "the mentally ill" mean persons and conditions defined in  
12 subsections (2), (12), ~~((44))~~ (45), and ~~((45))~~ (46) of this  
13 section.

14 ~~((37))~~ (38) "Mobile rapid response crisis team" means a team  
15 that provides professional on-site community-based intervention such  
16 as outreach, de-escalation, stabilization, resource connection, and  
17 follow-up support for individuals who are experiencing a behavioral  
18 health crisis, that shall include certified peer counselors as a best  
19 practice to the extent practicable based on workforce availability,  
20 and that meets standards for response times established by the  
21 authority.

22 ~~((38))~~ (39) "Recovery" means a process of change through which  
23 individuals improve their health and wellness, live a self-directed  
24 life, and strive to reach their full potential.

25 ~~((39))~~ (40) "Research-based" means a program or practice that  
26 has been tested with a single randomized, or statistically controlled  
27 evaluation, or both, demonstrating sustained desirable outcomes; or  
28 where the weight of the evidence from a systemic review supports  
29 sustained outcomes as described in subsection (27) of this section  
30 but does not meet the full criteria for evidence-based.

31 ~~((40))~~ (41) "Residential services" means a complete range of  
32 residences and supports authorized by resource management services  
33 and which may involve a facility, a distinct part thereof, or  
34 services which support community living, for persons who are acutely  
35 mentally ill, adults who are chronically mentally ill, children who  
36 are severely emotionally disturbed, or adults who are seriously  
37 disturbed and determined by the behavioral health administrative  
38 services organization or managed care organization to be at risk of  
39 becoming acutely or chronically mentally ill. The services shall  
40 include at least evaluation and treatment services as defined in

1 chapter 71.05 RCW, acute crisis respite care, long-term adaptive and  
2 rehabilitative care, and supervised and supported living services,  
3 and shall also include any residential services developed to service  
4 persons who are mentally ill in nursing homes, residential treatment  
5 facilities, assisted living facilities, and adult family homes, and  
6 may include outpatient services provided as an element in a package  
7 of services in a supported housing model. Residential services for  
8 children in out-of-home placements related to their mental disorder  
9 shall not include the costs of food and shelter, except for  
10 children's long-term residential facilities existing prior to January  
11 1, 1991.

12 ~~((41))~~ (42) "Resilience" means the personal and community  
13 qualities that enable individuals to rebound from adversity, trauma,  
14 tragedy, threats, or other stresses, and to live productive lives.

15 ~~((42))~~ (43) "Resource management services" mean the planning,  
16 coordination, and authorization of residential services and community  
17 support services administered pursuant to an individual service plan  
18 for: (a) Adults and children who are acutely mentally ill; (b) adults  
19 who are chronically mentally ill; (c) children who are severely  
20 emotionally disturbed; or (d) adults who are seriously disturbed and  
21 determined by a behavioral health administrative services  
22 organization or managed care organization to be at risk of becoming  
23 acutely or chronically mentally ill. Such planning, coordination, and  
24 authorization shall include mental health screening for children  
25 eligible under the federal Title XIX early and periodic screening,  
26 diagnosis, and treatment program. Resource management services  
27 include seven day a week, ~~((twenty-four))~~ 24 hour a day availability  
28 of information regarding enrollment of adults and children who are  
29 mentally ill in services and their individual service plan to  
30 designated crisis responders, evaluation and treatment facilities,  
31 and others as determined by the behavioral health administrative  
32 services organization or managed care organization, as applicable.

33 ~~((43))~~ (44) "Secretary" means the secretary of the department  
34 of health.

35 ~~((44))~~ (45) "Seriously disturbed person" means a person who:

36 (a) Is gravely disabled or presents a likelihood of serious harm  
37 to himself or herself or others, or to the property of others, as a  
38 result of a mental disorder as defined in chapter 71.05 RCW;

39 (b) Has been on conditional release status, or under a less  
40 restrictive alternative order, at some time during the preceding two

1 years from an evaluation and treatment facility or a state mental  
2 health hospital;

3 (c) Has a mental disorder which causes major impairment in  
4 several areas of daily living;

5 (d) Exhibits suicidal preoccupation or attempts; or

6 (e) Is a child diagnosed by a mental health professional, as  
7 defined in chapter 71.34 RCW, as experiencing a mental disorder which  
8 is clearly interfering with the child's functioning in family or  
9 school or with peers or is clearly interfering with the child's  
10 personality development and learning.

11 (~~(45)~~) (46) "Severely emotionally disturbed child" or "child  
12 who is severely emotionally disturbed" means a child who has been  
13 determined by the behavioral health administrative services  
14 organization or managed care organization, if applicable, to be  
15 experiencing a mental disorder as defined in chapter 71.34 RCW,  
16 including those mental disorders that result in a behavioral or  
17 conduct disorder, that is clearly interfering with the child's  
18 functioning in family or school or with peers and who meets at least  
19 one of the following criteria:

20 (a) Has undergone inpatient treatment or placement outside of the  
21 home related to a mental disorder within the last two years;

22 (b) Has undergone involuntary treatment under chapter 71.34 RCW  
23 within the last two years;

24 (c) Is currently served by at least one of the following child-  
25 serving systems: Juvenile justice, child-protection/welfare, special  
26 education, or developmental disabilities;

27 (d) Is at risk of escalating maladjustment due to:

28 (i) Chronic family dysfunction involving a caretaker who is  
29 mentally ill or inadequate;

30 (ii) Changes in custodial adult;

31 (iii) Going to, residing in, or returning from any placement  
32 outside of the home, for example, (~~(psychiatric)~~) behavioral health  
33 hospital, short-term inpatient, residential treatment, group or  
34 foster home, or a correctional facility;

35 (iv) Subject to repeated physical abuse or neglect;

36 (v) Drug or alcohol abuse; or

37 (vi) Homelessness.

38 (~~(46)~~) (47) "State minimum standards" means minimum  
39 requirements established by rules adopted and necessary to implement  
40 this chapter by:

1 (a) The authority for:

2 (i) Delivery of mental health and substance use disorder  
3 services; and

4 (ii) Community support services and resource management services;

5 (b) The department of health for:

6 (i) Licensed or certified behavioral health agencies for the  
7 purpose of providing mental health or substance use disorder programs  
8 and services, or both;

9 (ii) Licensed behavioral health providers for the provision of  
10 mental health or substance use disorder services, or both; and

11 (iii) Residential services.

12 (~~((47))~~) (48) "Substance use disorder" means a cluster of  
13 cognitive, behavioral, and physiological symptoms indicating that an  
14 individual continues using the substance despite significant  
15 substance-related problems. The diagnosis of a substance use disorder  
16 is based on a pathological pattern of behaviors related to the use of  
17 the substances.

18 (~~((48))~~) (49) "Tribe," for the purposes of this section, means a  
19 federally recognized Indian tribe.

20 **Sec. 26.** RCW 71.24.037 and 2019 c 446 s 23 and 2019 c 325 s 1007  
21 are each reenacted and amended to read as follows:

22 (1) The secretary shall license or certify any agency or facility  
23 that: (a) Submits payment of the fee established under RCW 43.70.110  
24 and 43.70.250; and (b) submits a complete application that  
25 demonstrates the ability to comply with requirements for operating  
26 and maintaining an agency or facility in statute or rule(~~(; and (c)~~  
27 ~~successfully completes the prelicensure inspection requirement)~~).

28 (2) The secretary shall establish by rule minimum standards for  
29 licensed or certified behavioral health agencies that must, at a  
30 minimum, establish: (a) Qualifications for staff providing services  
31 directly to persons with mental disorders, substance use disorders,  
32 or both; (b) the intended result of each service; and (c) the rights  
33 and responsibilities of persons receiving behavioral health services  
34 pursuant to this chapter and chapters 71.34 and (~~(chapter)~~) 71.05  
35 RCW. The secretary shall provide for deeming of licensed or certified  
36 behavioral health agencies as meeting state minimum standards as a  
37 result of accreditation by a recognized behavioral health accrediting  
38 body recognized and having a current agreement with the department.

1           (3) ~~((The department shall review reports or other information~~  
2 ~~alleging a failure to comply with this chapter or the standards and~~  
3 ~~rules adopted under this chapter and may initiate investigations and~~  
4 ~~enforcement actions based on those reports.~~

5           ~~(4) The department shall conduct inspections of agencies and~~  
6 ~~facilities, including reviews of records and documents required to be~~  
7 ~~maintained under this chapter or rules adopted under this chapter.~~

8           ~~(5) The department may suspend, revoke, limit, restrict, or~~  
9 ~~modify an approval, or refuse to grant approval, for failure to meet~~  
10 ~~the provisions of this chapter, or the standards adopted under this~~  
11 ~~chapter. RCW 43.70.115 governs notice of a license or certification~~  
12 ~~denial, revocation, suspension, or modification and provides the~~  
13 ~~right to an adjudicative proceeding.~~

14           ~~(6))~~ No licensed or certified behavioral health ~~((service~~  
15 ~~provider))~~ agency may advertise or represent itself as a licensed or  
16 certified behavioral health ~~((service provider))~~ agency if approval  
17 has not been granted or has been denied, suspended, revoked, or  
18 canceled.

19           ~~((7))~~ (4) Licensure or certification as a behavioral health  
20 ~~((service provider))~~ agency is effective for one calendar year from  
21 the date of issuance of the license or certification. The license or  
22 certification must specify the types of services provided by the  
23 behavioral health ~~((service provider))~~ agency that meet the standards  
24 adopted under this chapter. Renewal of a license or certification  
25 must be made in accordance with this section for initial approval and  
26 in accordance with the standards set forth in rules adopted by the  
27 secretary.

28           ~~((8))~~ (5) Licensure or certification as a licensed or certified  
29 behavioral health ~~((service provider))~~ agency must specify the types  
30 of services provided that meet the standards adopted under this  
31 chapter. Renewal of a license or certification must be made in  
32 accordance with this section for initial approval and in accordance  
33 with the standards set forth in rules adopted by the secretary.

34           ~~((9))~~ (6) The department shall develop a process by which a  
35 provider may obtain dual licensure as an evaluation and treatment  
36 facility and secure withdrawal management and stabilization facility.

37           ~~((10))~~ (7) Licensed or certified behavioral health ~~((service~~  
38 ~~providers))~~ agencies may not provide types of services for which the  
39 licensed or certified behavioral health ~~((service provider))~~ agency  
40 has not been certified. Licensed or certified behavioral health

1 ((service providers)) agencies may provide services for which  
2 approval has been sought and is pending, if approval for the services  
3 has not been previously revoked or denied.

4 ~~((11) The department periodically shall inspect licensed or  
5 certified behavioral health service providers at reasonable times and  
6 in a reasonable manner.~~

7 ~~(12) Upon petition of the department and after a hearing held  
8 upon reasonable notice to the facility, the superior court may issue  
9 a warrant to an officer or employee of the department authorizing him  
10 or her to enter and inspect at reasonable times, and examine the  
11 books and accounts of, any licensed or certified behavioral health  
12 service provider refusing to consent to inspection or examination by  
13 the department or which the department has reasonable cause to  
14 believe is operating in violation of this chapter.~~

15 ~~(13))~~ (8) The department shall maintain and periodically publish  
16 a current list of licensed or certified behavioral health ((service  
17 providers)) agencies.

18 ~~((14) Each licensed or certified behavioral health service  
19 provider shall file with the department or the authority upon  
20 request, data, statistics, schedules, and information the department  
21 or the authority reasonably requires. A licensed or certified  
22 behavioral health service provider that without good cause fails to  
23 furnish any data, statistics, schedules, or information as requested,  
24 or files fraudulent returns thereof, may have its license or  
25 certification revoked or suspended.~~

26 ~~(15) The authority shall use the data provided in subsection (14)  
27 of this section to evaluate each program that admits children to  
28 inpatient substance use disorder treatment upon application of their  
29 parents. The evaluation must be done at least once every twelve  
30 months. In addition, the authority shall randomly select and review  
31 the information on individual children who are admitted on  
32 application of the child's parent for the purpose of determining  
33 whether the child was appropriately placed into substance use  
34 disorder treatment based on an objective evaluation of the child's  
35 condition and the outcome of the child's treatment.~~

36 ~~(16) Any settlement agreement entered into between the department  
37 and licensed or certified behavioral health service providers to  
38 resolve administrative complaints, license or certification  
39 violations, license or certification suspensions, or license or  
40 certification revocations may not reduce the number of violations~~

1 reported by the department unless the department concludes, based on  
2 evidence gathered by inspectors, that the licensed or certified  
3 behavioral health service provider did not commit one or more of the  
4 violations.

5 ~~(17) In cases in which a behavioral health service provider that  
6 is in violation of licensing or certification standards attempts to  
7 transfer or sell the behavioral health service provider to a family  
8 member, the transfer or sale may only be made for the purpose of  
9 remedying license or certification violations and achieving full  
10 compliance with the terms of the license or certification. Transfers  
11 or sales to family members are prohibited in cases in which the  
12 purpose of the transfer or sale is to avoid liability or reset the  
13 number of license or certification violations found before the  
14 transfer or sale. If the department finds that the owner intends to  
15 transfer or sell, or has completed the transfer or sale of, ownership  
16 of the behavioral health service provider to a family member solely  
17 for the purpose of resetting the number of violations found before  
18 the transfer or sale, the department may not renew the behavioral  
19 health service provider's license or certification or issue a new  
20 license or certification to the behavioral health service provider.)~~

21 NEW SECTION. **Sec. 27.** A new section is added to chapter 71.24  
22 RCW to read as follows:

23 (1) The department shall review reports or other information  
24 alleging a failure to comply with this chapter or the standards and  
25 rules adopted under this chapter and may initiate investigations and  
26 enforcement actions based on those reports.

27 (2) The department shall conduct inspections of licensed or  
28 certified behavioral health agencies, including reviews of records  
29 and documents required to be maintained under this chapter or rules  
30 adopted under this chapter.

31 (3) Each licensed or certified behavioral health agency shall  
32 file with the department or the authority upon request data,  
33 statistics, schedules, medical records, and other information the  
34 department or the authority reasonably requires. A licensed or  
35 certified behavioral health agency that without good cause fails to  
36 furnish any data, statistics, schedules, or information as requested,  
37 or files fraudulent returns thereof, may have its license or  
38 certification revoked or suspended.

1 (4) The authority shall use the data provided in subsection (3)  
2 of this section to evaluate each program that admits children to  
3 inpatient substance use disorder treatment upon application of their  
4 parents. The evaluation shall be done at least once every 12 months.  
5 In addition, the authority shall randomly select and review the  
6 information on individual children who are admitted on application of  
7 the child's parent for the purpose of determining whether the child  
8 was appropriately placed into substance use disorder treatment based  
9 on an objective evaluation of the child's condition and the outcome  
10 of the child's treatment.

11 (5) Any settlement agreement entered into between the department  
12 and licensed or certified behavioral health agencies to resolve  
13 administrative complaints, license or certification violations,  
14 license or certification suspensions, or license or certification  
15 revocations may not reduce the number of violations reported by the  
16 department unless the department concludes, based on evidence  
17 gathered by inspectors, that the licensed or certified behavioral  
18 health agency did not commit one or more of the violations.

19 (6) In cases in which a licensed or certified behavioral health  
20 agency that is in violation of licensing or certification standards  
21 attempts to transfer or sell the behavioral health agency to a family  
22 member, the transfer or sale may only be made for the purpose of  
23 remedying license or certification violations and achieving full  
24 compliance with the terms of the license or certification. Transfers  
25 or sales to family members are prohibited in cases in which the  
26 purpose of the transfer or sale is to avoid liability or reset the  
27 number of license or certification violations found before the  
28 transfer or sale. If the department finds that the owner intends to  
29 transfer or sell, or has completed the transfer or sale of, ownership  
30 of the behavioral health agency to a family member solely for the  
31 purpose of resetting the number of violations found before the  
32 transfer or sale, the department may not renew the behavioral health  
33 agency's license or certification or issue a new license or  
34 certification to the behavioral health provider.

35 (7) In any case in which the department finds that a licensed or  
36 certified behavioral health agency has failed or refused to comply  
37 with the requirements of this chapter or the standards or rules  
38 adopted under this chapter, the department may take one or more of  
39 the actions identified in this section, except as otherwise limited  
40 in this section.



1 (a) When the department determines the licensed or certified  
2 behavioral health agency has previously been subject to an  
3 enforcement action for the same or similar type of violation of the  
4 same statute or rule, or has been given any previous statement of  
5 deficiency that included the same or similar type of violation of the  
6 same or similar statute or rule, or when the licensed or certified  
7 behavioral health agency failed to correct noncompliance with a  
8 statute or rule by a date established or agreed to by the department,  
9 the department may impose reasonable conditions on a license.  
10 Conditions may include correction within a specified amount of time,  
11 training, or hiring a department-approved consultant if the licensed  
12 or certified behavioral health agency cannot demonstrate to the  
13 department that it has access to sufficient internal expertise.

14 (b) (i) In accordance with the department's authority under RCW  
15 43.70.095, the department may assess a civil fine of up to \$3,000 per  
16 violation on a licensed or certified behavioral health agency when  
17 the department determines the licensed or certified behavioral health  
18 agency has previously been subject to an enforcement action for the  
19 same or similar type of violation of the same statute or rule, or has  
20 been given any previous statement of deficiency that included the  
21 same or similar type of violation of the same or similar statute or  
22 rule, or when the licensed or certified behavioral health agency  
23 failed to correct noncompliance with a statute or rule by a date  
24 established or agreed to by the department.

25 (ii) Proceeds from these fines may only be used by the department  
26 to provide training or technical assistance to licensed or certified  
27 behavioral health agencies and to offset costs associated with  
28 licensing, certification, or enforcement of behavioral health  
29 agencies.

30 (iii) The department shall adopt in rules under this chapter  
31 specific fine amounts in relation to the severity of the  
32 noncompliance and at an adequate level to be a deterrent to future  
33 noncompliance.

34 (iv) If a licensee is aggrieved by the department's action of  
35 assessing civil fines, the licensee has the right to appeal under RCW  
36 43.70.095.

37 (c) The department may suspend new intake or admission of a  
38 specific category or categories of individuals receiving behavioral  
39 health services as related to the violation by imposing a limited

1 stop placement. This may only be done if the department finds that  
2 noncompliance results in immediate jeopardy.

3 (i) Prior to imposing a limited stop placement, the department  
4 shall provide a licensed or certified behavioral health agency  
5 written notification upon identifying deficient practices or  
6 conditions that constitute an immediate jeopardy, and the licensed or  
7 certified behavioral health agency shall have 24 hours from  
8 notification to develop and implement a department-approved plan to  
9 correct the deficient practices or conditions that constitute an  
10 immediate jeopardy. If the deficient practices or conditions that  
11 constitute immediate jeopardy are not verified by the department as  
12 having been corrected within the same 24-hour period, the department  
13 may issue the limited stop placement.

14 (ii) When the department imposes a limited stop placement, the  
15 licensed or certified behavioral health agency may not accept any new  
16 individuals in the category or categories subject to the limited stop  
17 placement until the limited stop placement is terminated.

18 (iii) The department shall conduct a follow-up inspection within  
19 five business days or within the time period requested by the  
20 licensed or certified behavioral health agency if more than five  
21 business days is needed to verify the violation necessitating the  
22 limited stop placement has been corrected.

23 (iv) The limited stop placement shall be terminated when:

24 (A) The department verifies the violation necessitating the  
25 limited stop placement has been corrected or the department  
26 determines that the licensed or certified behavioral health agency  
27 has taken intermediate action to address the immediate jeopardy; and

28 (B) The licensed or certified behavioral health agency  
29 establishes the ability to maintain correction of the violation  
30 previously found deficient.

31 (d) The department may suspend new intake or admission of  
32 individuals receiving behavioral health services as related to the  
33 violation by imposing a stop placement. This may only be done if the  
34 department finds that noncompliance results in immediate jeopardy and  
35 is not confined to a specific category or categories of individuals.

36 (i) Prior to imposing a stop placement, the department shall  
37 provide a licensed or certified behavioral health agency written  
38 notification upon identifying deficient practices or conditions that  
39 constitute an immediate jeopardy. The licensed or certified  
40 behavioral health agency shall have 24 hours from notification to

1 develop and implement a department-approved plan to correct the  
2 deficient practices or conditions that constitute an immediate  
3 jeopardy. If the deficient practices or conditions that constitute an  
4 immediate jeopardy are not verified by the department as having been  
5 corrected within the same 24-hour period, the department may issue  
6 the stop placement.

7 (ii) When the department imposes a stop placement, the licensed  
8 or certified behavioral health agency may not accept any new  
9 individuals receiving behavioral health services until the stop  
10 placement is terminated.

11 (iii) The department shall conduct a follow-up inspection within  
12 five business days or within the time period requested by the  
13 licensed or certified behavioral health agency if more than five  
14 business days is needed to verify the violation necessitating the  
15 stop placement has been corrected.

16 (iv) The stop placement shall be terminated when:

17 (A) The department verifies the violation necessitating the stop  
18 placement has been corrected or the department determines that the  
19 licensed or certified behavioral health agency has taken intermediate  
20 action to address the immediate jeopardy; and

21 (B) The licensed or certified behavioral health agency  
22 establishes the ability to maintain correction of the violation  
23 previously found deficient.

24 (e) The department may suspend a specific category or categories  
25 of behavioral health services as related to the violation by imposing  
26 a limited stop service. This may only be done if the department finds  
27 that noncompliance results in immediate jeopardy.

28 (i) Prior to imposing a limited stop service, the department  
29 shall provide a licensed or certified behavioral health agency  
30 written notification upon identifying deficient practices or  
31 conditions that constitute an immediate jeopardy. The licensed or  
32 certified behavioral health agency shall have 24 hours from  
33 notification to develop and implement a department-approved plan to  
34 correct the deficient practices or conditions that constitute an  
35 immediate jeopardy. If the deficient practices or conditions that  
36 constitute immediate jeopardy are not verified by the department as  
37 having been corrected within the same 24-hour period, the department  
38 may issue the limited stop service.

39 (ii) When the department imposes a limited stop service, the  
40 licensed or certified behavioral health agency may not provide the

1 services in the category or categories subject to the limited stop  
2 service to any new or existing individuals, unless otherwise allowed  
3 by the department, until the limited stop service is terminated.

4 (iii) The department shall conduct a follow-up inspection within  
5 five business days or within the time period requested by the  
6 licensed or certified behavioral health agency if more than five  
7 business days is needed to verify the violation necessitating the  
8 limited stop service has been corrected.

9 (iv) The limited stop service shall be terminated when:

10 (A) The department verifies the violation necessitating the  
11 limited stop service has been corrected or the department determines  
12 that the licensed or certified behavioral health agency has taken  
13 intermediate action to address the immediate jeopardy; and

14 (B) The licensed or certified behavioral health agency  
15 establishes the ability to maintain correction of the violation  
16 previously found deficient.

17 (f) The department may suspend, revoke, or refuse to renew a  
18 license.

19 (8) (a) Except as otherwise provided, RCW 43.70.115 governs notice  
20 of the imposition of conditions on a license, a limited stop  
21 placement, stop placement, limited stop service, or the suspension,  
22 revocation, or refusal to renew a license and provides the right to  
23 an adjudicative proceeding. Adjudicative proceedings and hearings  
24 under this section are governed by the administrative procedure act,  
25 chapter 34.05 RCW. The application for an adjudicative proceeding  
26 must be in writing, state the basis for contesting the adverse  
27 action, include a copy of the department's notice, be served on and  
28 received by the department within 28 days of the licensee's receipt  
29 of the adverse notice, and be served in a manner that shows proof of  
30 receipt.

31 (b) When the department determines a licensee's noncompliance  
32 results in immediate jeopardy, the department may make the imposition  
33 of conditions on a licensee, a limited stop placement, stop  
34 placement, limited stop service, or the suspension of a license  
35 effective immediately upon receipt of the notice by the licensee,  
36 pending any adjudicative proceeding.

37 (i) When the department makes the suspension of a license or  
38 imposition of conditions on a license effective immediately, a  
39 licensee is entitled to a show cause hearing before a presiding  
40 officer within 14 days of making the request. The licensee must

1 request the show cause hearing within 28 days of receipt of the  
2 notice of immediate suspension or immediate imposition of conditions.  
3 At the show cause hearing the department has the burden of  
4 demonstrating that more probably than not there is an immediate  
5 jeopardy.

6 (ii) At the show cause hearing, the presiding officer may  
7 consider the notice and documents supporting the immediate suspension  
8 or immediate imposition of conditions and the licensee's response and  
9 shall provide the parties with an opportunity to provide documentary  
10 evidence and written testimony, and to be represented by counsel.  
11 Prior to the show cause hearing, the department shall provide the  
12 licensee with all documentation that supports the department's  
13 immediate suspension or immediate imposition of conditions.

14 (iii) If the presiding officer determines there is no immediate  
15 jeopardy, the presiding officer may overturn the immediate suspension  
16 or immediate imposition of conditions.

17 (iv) If the presiding officer determines there is immediate  
18 jeopardy, the immediate suspension or immediate imposition of  
19 conditions shall remain in effect pending a full hearing.

20 (v) If the secretary sustains the immediate suspension or  
21 immediate imposition of conditions, the licensee may request an  
22 expedited full hearing on the merits of the department's action. A  
23 full hearing must be provided within 90 days of the licensee's  
24 request.

25 (9) When the department determines an alleged violation, if true,  
26 would constitute an immediate jeopardy, and the licensee fails to  
27 cooperate with the department's investigation of such an alleged  
28 violation, the department may impose an immediate limited stop  
29 placement, immediate stop placement, immediate limited stop service,  
30 immediate imposition of conditions, or immediate suspension.

31 (a) When the department imposes an immediate limited stop  
32 placement, immediate stop placement, immediate limited stop service,  
33 immediate imposition of conditions, or immediate suspension for  
34 failure to cooperate, a licensee is entitled to a show cause hearing  
35 before a presiding officer within 14 days of making the request. The  
36 licensee must request the show cause hearing within 28 days of  
37 receipt of the notice of an immediate limited stop placement,  
38 immediate stop placement, immediate limited stop service, immediate  
39 imposition of conditions, or immediate suspension for failure to  
40 cooperate. At the show cause hearing the department has the burden of

1 demonstrating that more probably than not the alleged violation, if  
2 true, would constitute an immediate jeopardy and the licensee failed  
3 to cooperate with the department's investigation.

4 (b) At the show cause hearing, the presiding officer may consider  
5 the notice and documents supporting the immediate limited stop  
6 placement, immediate stop placement, immediate limited stop service,  
7 immediate imposition of conditions, or immediate suspension for  
8 failure to cooperate, and the licensee's response and shall provide  
9 the parties with an opportunity to provide documentary evidence and  
10 written testimony, and to be represented by counsel. Prior to the  
11 show cause hearing, the department shall provide the licensee with  
12 all documentation that supports the department's immediate action for  
13 failure to cooperate.

14 (c) If the presiding officer determines the alleged violation, if  
15 true, does not constitute an immediate jeopardy or determines that  
16 the licensee cooperated with the department's investigation, the  
17 presiding officer may overturn the immediate action for failure to  
18 cooperate.

19 (d) If the presiding officer determines the allegation, if true,  
20 would constitute an immediate jeopardy and the licensee failed to  
21 cooperate with the department's investigation, the immediate action  
22 for failure to cooperate shall remain in effect pending a full  
23 hearing.

24 (e) If the presiding officer sustains the immediate action for  
25 failure to cooperate, the licensee may request an expedited full  
26 hearing on the merits of the department's action. A full hearing must  
27 be provided within 90 days of the licensee's request.

28 **Sec. 28.** RCW 70.170.020 and 2022 c 197 s 1 are each amended to  
29 read as follows:

30 As used in this chapter:

31 (1) "Department" means department of health.

32 (2) "Hospital" means any health care institution which is  
33 required to qualify for a license under RCW 70.41.020(8); or as a  
34 (~~psychiatric~~) behavioral health hospital under chapter 71.12 RCW.

35 (3) "Secretary" means secretary of health.

36 (4) "Charity care" means medically necessary hospital health care  
37 rendered to indigent persons when third-party coverage, if any, has  
38 been exhausted, to the extent that the persons are unable to pay for

1 the care or to pay deductibles or coinsurance amounts required by a  
2 third-party payer, as determined by the department.

3 (5) "Indigent persons" are those patients or their guarantors who  
4 qualify for charity care pursuant to RCW 70.170.060(5) based on the  
5 federal poverty level, adjusted for family size, and who have  
6 exhausted any third-party coverage.

7 (6) "Third-party coverage" means an obligation on the part of an  
8 insurance company, health care service contractor, health maintenance  
9 organization, group health plan, government program, tribal health  
10 benefits, or health care sharing ministry as defined in 26 U.S.C.  
11 Sec. 5000A to pay for the care of covered patients and services, and  
12 may include settlements, judgments, or awards actually received  
13 related to the negligent acts of others which have resulted in the  
14 medical condition for which the patient has received hospital health  
15 care service. The pendency of such settlements, judgments, or awards  
16 must not stay hospital obligations to consider an eligible patient  
17 for charity care.

18 (7) "Special studies" means studies which have not been funded  
19 through the department's biennial or other legislative  
20 appropriations.

21 **Sec. 29.** RCW 18.64.005 and 2022 c 240 s 15 are each amended to  
22 read as follows:

23 The commission shall:

24 (1) Regulate the practice of pharmacy and enforce all laws placed  
25 under its jurisdiction;

26 (2) Prepare or determine the nature of, and supervise the grading  
27 of, examinations for applicants for pharmacists' licenses;

28 (3) Establish the qualifications for licensure of pharmacists or  
29 pharmacy interns;

30 (4) Conduct hearings for the revocation or suspension of  
31 licenses, permits, registrations, certificates, or any other  
32 authority to practice granted by the commission, which hearings may  
33 also be conducted by an administrative law judge appointed under  
34 chapter 34.12 RCW or a presiding officer designated by the  
35 commission. The commission may authorize the secretary, or their  
36 designee, to serve as the presiding officer for any disciplinary  
37 proceedings of the commission (~~authorized under this chapter~~). The  
38 presiding officer shall not vote on or make any final decision in  
39 cases pertaining to standards of practice or where clinical expertise

1 is necessary. All functions performed by the presiding officer shall  
2 be subject to chapter 34.05 RCW;

3 (5) Issue subpoenas and administer oaths in connection with any  
4 hearing, or disciplinary proceeding held under this chapter or any  
5 other chapter assigned to the commission;

6 (6) Assist the regularly constituted enforcement agencies of this  
7 state in enforcing all laws pertaining to drugs, controlled  
8 substances, and the practice of pharmacy, or any other laws or rules  
9 under its jurisdiction;

10 (7) Promulgate rules for the dispensing, distribution,  
11 wholesaling, and manufacturing of drugs and devices and the practice  
12 of pharmacy for the protection and promotion of the public health,  
13 safety, and welfare. Violation of any such rules shall constitute  
14 grounds for ~~((refusal))~~ denial of an application, assessment of a  
15 civil fine, imposition of a limited stop service, imposition of  
16 reasonable conditions, suspension, ~~((or))~~ revocation, or modification  
17 of licenses or any other authority to practice issued by the  
18 commission;

19 (8) Adopt rules establishing and governing continuing education  
20 requirements for pharmacists and other licensees applying for renewal  
21 of licenses under this chapter;

22 (9) Be immune, collectively and individually, from suit in any  
23 action, civil or criminal, based upon any disciplinary proceedings or  
24 other official acts performed as members of the commission. Such  
25 immunity shall apply to employees of the department when acting in  
26 the course of disciplinary proceedings;

27 (10) Suggest strategies for preventing, reducing, and eliminating  
28 drug misuse, diversion, and abuse, including professional and public  
29 education, and treatment of persons misusing and abusing drugs;

30 (11) Conduct or encourage educational programs to be conducted to  
31 prevent the misuse, diversion, and abuse of drugs for health care  
32 practitioners and licensed or certified health care facilities;

33 (12) Monitor trends of drug misuse, diversion, and abuse and make  
34 periodic reports to disciplinary boards of licensed health care  
35 practitioners and education, treatment, and appropriate law  
36 enforcement agencies regarding these trends;

37 (13) Enter into written agreements with all other state and  
38 federal agencies with any responsibility for controlling drug misuse,  
39 diversion, or abuse and with health maintenance organizations, health  
40 care service contractors, and health care providers to assist and



1 promote coordination of agencies responsible for ensuring compliance  
2 with controlled substances laws and to monitor observance of these  
3 laws and cooperation between these agencies. The department of social  
4 and health services, the department of labor and industries, and any  
5 other state agency including licensure disciplinary boards, shall  
6 refer all apparent instances of over-prescribing by practitioners and  
7 all apparent instances of legend drug overuse to the department. The  
8 department shall also encourage such referral by health maintenance  
9 organizations, health service contractors, and health care providers;

10 (14) Whenever the workload of the commission requires, request  
11 that the secretary appoint pro tempore members. While serving as  
12 members pro tempore persons have all the powers, duties, and  
13 immunities, and are entitled to the emoluments, including travel  
14 expenses, of the commission.

15 **Sec. 30.** RCW 18.64.011 and 2021 c 78 s 1 are each amended to  
16 read as follows:

17 The definitions in this section apply throughout this chapter  
18 unless the context clearly requires otherwise.

19 (1) "Administer" means the direct application of a drug or  
20 device, whether by injection, inhalation, ingestion, or any other  
21 means, to the body of a patient or research subject.

22 (2) "Business licensing system" means the mechanism established  
23 by chapter 19.02 RCW by which business licenses, endorsed for  
24 individual state-issued licenses, are issued and renewed utilizing a  
25 business license application and a business license expiration date  
26 common to each renewable license endorsement.

27 (3) "Chart order" means a lawful order for a drug or device  
28 entered on the chart or medical record of an inpatient or resident of  
29 an institutional facility by a practitioner or his or her designated  
30 agent.

31 (4) "Closed door long-term care pharmacy" means a pharmacy that  
32 provides pharmaceutical care to a defined and exclusive group of  
33 patients who have access to the services of the pharmacy because they  
34 are treated by or have an affiliation with a long-term care facility  
35 or hospice program, and that is not a retailer of goods to the  
36 general public.

37 (5) "Commission" means the pharmacy quality assurance commission.

38 (6) "Compounding" means the act of combining two or more  
39 ingredients in the preparation of a prescription. Reconstitution and

1 mixing of (a) sterile products according to federal food and drug  
2 administration-approved labeling does not constitute compounding if  
3 prepared pursuant to a prescription and administered immediately or  
4 in accordance with package labeling, and (b) nonsterile products  
5 according to federal food and drug administration-approved labeling  
6 does not constitute compounding if prepared pursuant to a  
7 prescription.

8 (7) "Controlled substance" means a drug or substance, or an  
9 immediate precursor of such drug or substance, so designated under or  
10 pursuant to the provisions of chapter 69.50 RCW.

11 (8) "Deliver" or "delivery" means the actual, constructive, or  
12 attempted transfer from one person to another of a drug or device,  
13 whether or not there is an agency relationship.

14 (9) "Department" means the department of health.

15 (10) "Device" means instruments, apparatus, and contrivances,  
16 including their components, parts, and accessories, intended (a) for  
17 use in the diagnosis, cure, mitigation, treatment, or prevention of  
18 disease in human beings or other animals, or (b) to affect the  
19 structure or any function of the body of human beings or other  
20 animals.

21 (11) "Dispense" means the interpretation of a prescription or  
22 order for a drug, biological, or device and, pursuant to that  
23 prescription or order, the proper selection, measuring, compounding,  
24 labeling, or packaging necessary to prepare that prescription or  
25 order for delivery.

26 (12) "Distribute" means the delivery of a drug or device other  
27 than by administering or dispensing.

28 (13) "Drug" and "devices" do not include surgical or dental  
29 instruments or laboratory materials, gas and oxygen, therapy  
30 equipment, X-ray apparatus or therapeutic equipment, their component  
31 parts or accessories, or equipment, instruments, apparatus, or  
32 contrivances used to render such articles effective in medical,  
33 surgical, or dental treatment, or for use or consumption in or for  
34 mechanical, industrial, manufacturing, or scientific applications or  
35 purposes. "Drug" also does not include any article or mixture covered  
36 by the Washington pesticide control act (chapter 15.58 RCW), as  
37 enacted or hereafter amended, nor medicated feed intended for and  
38 used exclusively as a feed for animals other than human beings.

39 (14) "Drugs" means:

1 (a) Articles recognized in the official United States  
2 pharmacopoeia or the official homeopathic pharmacopoeia of the United  
3 States;

4 (b) Substances intended for use in the diagnosis, cure,  
5 mitigation, treatment, or prevention of disease in human beings or  
6 other animals;

7 (c) Substances (other than food) intended to affect the structure  
8 or any function of the body of human beings or other animals; or

9 (d) Substances intended for use as a component of any substances  
10 specified in (a), (b), or (c) of this subsection, but not including  
11 devices or their component parts or accessories.

12 (15) "Health care entity" means an organization that provides  
13 health care services in a setting that is not otherwise licensed by  
14 the state to acquire or possess legend drugs. Health care entity  
15 includes a freestanding outpatient surgery center, a residential  
16 treatment facility, and a freestanding cardiac care center. "Health  
17 care entity" does not include an individual practitioner's office or  
18 a multipractitioner clinic, regardless of ownership, unless the owner  
19 elects licensure as a health care entity. "Health care entity" also  
20 does not include an individual practitioner's office or  
21 multipractitioner clinic identified by a hospital on a pharmacy  
22 application or renewal pursuant to RCW 18.64.043.

23 (16) "Hospice program" means a hospice program certified or paid  
24 by medicare under Title XVIII of the federal social security act, or  
25 a hospice program licensed under chapter 70.127 RCW.

26 (17) "Institutional facility" means any organization whose  
27 primary purpose is to provide a physical environment for patients to  
28 obtain health care services including, but not limited to, services  
29 in a hospital, long-term care facility, hospice program, mental  
30 health facility, drug abuse treatment center, residential  
31 habilitation center, or a local, state, or federal correction  
32 facility.

33 (18) "Labeling" means the process of preparing and affixing a  
34 label to any drug or device container. The label must include all  
35 information required by current federal and state law and pharmacy  
36 rules.

37 (19) "Legend drugs" means any drugs which are required by any  
38 applicable federal or state law or regulation to be dispensed on  
39 prescription only or are restricted to use by practitioners only.

1 (20) "Long-term care facility" means a nursing home licensed  
2 under chapter 18.51 RCW, an assisted living facility licensed under  
3 chapter 18.20 RCW, or an adult family home licensed under chapter  
4 70.128 RCW.

5 (21) "Manufacture" means the production, preparation,  
6 propagation, compounding, or processing of a drug or other substance  
7 or device or the packaging or repackaging of such substance or  
8 device, or the labeling or relabeling of the commercial container of  
9 such substance or device, but does not include the activities of a  
10 practitioner who, as an incident to his or her administration or  
11 dispensing such substance or device in the course of his or her  
12 professional practice, personally prepares, compounds, packages, or  
13 labels such substance or device. "Manufacture" includes the  
14 distribution of a licensed pharmacy compounded drug product to other  
15 state licensed persons or commercial entities for subsequent resale  
16 or distribution, unless a specific product item has approval of the  
17 commission. The term does not include:

18 (a) The activities of a licensed pharmacy that compounds a  
19 product on or in anticipation of an order of a licensed practitioner  
20 for use in the course of their professional practice to administer to  
21 patients, either personally or under their direct supervision;

22 (b) The practice of a licensed pharmacy when repackaging  
23 commercially available medication in small, reasonable quantities for  
24 a practitioner legally authorized to prescribe the medication for  
25 office use only;

26 (c) The distribution of a drug product that has been compounded  
27 by a licensed pharmacy to other appropriately licensed entities under  
28 common ownership or control of the facility in which the compounding  
29 takes place; or

30 (d) The delivery of finished and appropriately labeled compounded  
31 products dispensed pursuant to a valid prescription to alternate  
32 delivery locations, other than the patient's residence, when  
33 requested by the patient, or the prescriber to administer to the  
34 patient, or to another licensed pharmacy to dispense to the patient.

35 (22) "Manufacturer" means a person, corporation, or other entity  
36 engaged in the manufacture of drugs or devices.

37 (23) "Nonlegend" or "nonprescription" drugs means any drugs which  
38 may be lawfully sold without a prescription.

1 (24) "Person" means an individual, corporation, government,  
2 governmental subdivision or agency, business trust, estate, trust,  
3 partnership or association, or any other legal entity.

4 (25) "Pharmacist" means a person duly licensed by the commission  
5 to engage in the practice of pharmacy.

6 (26) "Pharmacy" means every place properly licensed by the  
7 commission where the practice of pharmacy is conducted.

8 (27) "Poison" does not include any article or mixture covered by  
9 the Washington pesticide control act (chapter 15.58 RCW), as enacted  
10 or hereafter amended.

11 (28) "Practice of pharmacy" includes the practice of and  
12 responsibility for: Interpreting prescription orders; the  
13 compounding, dispensing, labeling, administering, and distributing of  
14 drugs and devices; the monitoring of drug therapy and use; the  
15 initiating or modifying of drug therapy in accordance with written  
16 guidelines or protocols previously established and approved for his  
17 or her practice by a practitioner authorized to prescribe drugs; the  
18 participating in drug utilization reviews and drug product selection;  
19 the proper and safe storing and distributing of drugs and devices and  
20 maintenance of proper records thereof; the providing of information  
21 on legend drugs which may include, but is not limited to, the  
22 advising of therapeutic values, hazards, and the uses of drugs and  
23 devices.

24 (29) "Practitioner" means a physician, dentist, veterinarian,  
25 nurse, or other person duly authorized by law or rule in the state of  
26 Washington to prescribe drugs.

27 (30) "Prescription" means an order for drugs or devices issued by  
28 a practitioner duly authorized by law or rule in the state of  
29 Washington to prescribe drugs or devices in the course of his or her  
30 professional practice for a legitimate medical purpose.

31 (31) "Secretary" means the secretary of health or the secretary's  
32 designee.

33 (32) "Shared pharmacy services" means a system that allows a  
34 participating pharmacist or pharmacy pursuant to a request from  
35 another participating pharmacist or pharmacy to process or fill a  
36 prescription or drug order, which may include but is not necessarily  
37 limited to preparing, packaging, labeling, data entry, compounding  
38 for specific patients, dispensing, performing drug utilization  
39 reviews, conducting claims adjudication, obtaining refill

1 authorizations, reviewing therapeutic interventions, or reviewing  
2 chart orders.

3 (33) "Wholesaler" means a corporation, individual, or other  
4 entity which buys drugs or devices for resale and distribution to  
5 corporations, individuals, or entities other than consumers.

6 (34) "Directed plan of correction" means a plan devised by the  
7 commission that includes specific actions that must be taken to  
8 correct identified unresolved deficiencies with time frames to  
9 complete them.

10 (35) "Immediate jeopardy" means a situation in which a licensee's  
11 noncompliance with one or more statutory or regulatory requirements  
12 has placed the health and safety of individuals or animals at risk  
13 for serious injury, serious harm, serious impairment, or death.

14 (36) "License," "licensing," and "licensure" shall be deemed  
15 equivalent to the terms "approval," "credential," "certificate,"  
16 "certification," "permit," and "registration" and an "exemption"  
17 issued under chapter 69.50 RCW.

18 (37) "Plan of correction" means a proposal devised by the  
19 applicant or licensee that includes specific actions that must be  
20 taken to correct identified unresolved deficiencies with the time  
21 frames to complete them.

22 (38) "Statement of deficiency" means a written statement of the  
23 deficiencies prepared by the commission, or its designee, identifying  
24 one or more violations of law. The report clearly identifies the  
25 specific law or rule that has been violated along with a description  
26 of the reasons for noncompliance.

27 NEW SECTION. Sec. 31. A new section is added to chapter 18.64  
28 RCW to read as follows:

29 This section governs the denial of an application for a license  
30 or the suspension, revocation, or modification of a license issued by  
31 the commission. This section does not govern actions taken under  
32 chapter 18.130 RCW.

33 (1) The commission shall give written notice of the denial of an  
34 application for a license to the applicant or its agent. The form,  
35 contents, and service of the notice shall comply with this chapter  
36 and the procedural rules adopted by the commission.

37 (2) The commission shall give written notice of revocation,  
38 suspension, or modification of a license to the licensee or its

1 agent. The form, contents, and service of the notice shall comply  
2 with this chapter and the procedural rules adopted by the commission.

3 (3) Except as otherwise provided in this chapter, revocation,  
4 suspension, or modification is effective 28 days after the licensee  
5 or the agent receives the notice.

6 (a) The commission may make the date the action is effective  
7 later than 28 days after receipt. If the commission does so, it shall  
8 state the effective date in the written notice given to the licensee  
9 or its agent.

10 (b) The commission may make the date the action is effective  
11 sooner than 28 days after receipt when necessary to protect the  
12 public health, safety, or welfare. When the commission does so, it  
13 shall state the effective date and the reasons supporting the  
14 effective date in the written notice given to the licensee or its  
15 agent.

16 (4) Except for licensees suspended for noncompliance with a child  
17 support order under chapter 74.20A RCW, a license applicant or  
18 licensee who is aggrieved by a commission denial, revocation,  
19 suspension, or modification has the right to an adjudicative  
20 proceeding. The proceeding is governed by the administrative  
21 procedure act, chapter 34.05 RCW. The form, contents, and service of  
22 the application for an adjudicative hearing must comply with this  
23 chapter and with the procedural rules adopted by the commission and  
24 must be served on and received by the commission within 28 days of  
25 the applicant or licensee receiving the notice.

26 (5) (a) If the commission gives a licensee 28 or more days' notice  
27 of revocation, suspension, or modification and the licensee files an  
28 appeal before its effective date, the commission shall not implement  
29 the adverse action until the final order has been entered. The  
30 commission may implement part or all of the adverse action while the  
31 proceedings are pending if the appellant causes an unreasonable delay  
32 in the proceeding, if the circumstances change so that implementation  
33 is in the public interest, or for other good cause.

34 (b) If the commission gives a licensee less than 28 days' notice  
35 of revocation, suspension, or modification and the licensee timely  
36 files a sufficient appeal, the commission may implement the adverse  
37 action on the effective date stated in the notice. The commission may  
38 stay implementation of part or all of the adverse action while the  
39 proceedings are pending if staying implementation is in the public  
40 interest or for other good cause.

1 (6) The commission may accept the surrender of the licensee's  
2 license. A licensee whose surrender has been accepted may not  
3 petition for reinstatement of its surrendered license.

4 NEW SECTION. **Sec. 32.** A new section is added to chapter 18.64  
5 RCW to read as follows:

6 This section governs the assessment of a civil fine against a  
7 licensee issued by the commission. This section does not govern  
8 actions taken under chapter 18.130 RCW.

9 (1) The commission shall give written notice to the licensee or  
10 its agent against whom it assesses a civil fine. The form, contents,  
11 and service of the notice shall comply with this chapter and the  
12 procedural rules adopted by the commission.

13 (2) The civil fine is due and payable 28 days after receipt by  
14 the licensee or its agent. The commission may make the date the fine  
15 is due later than 28 days after receipt by the licensee or its agent.  
16 When the commission does so, it shall state the date the fine is due  
17 in the written notice given to the licensee against whom it assesses  
18 the fine.

19 (3) The licensee against whom the commission assesses a civil  
20 fine has the right to an adjudicative proceeding. The proceeding is  
21 governed by the administrative procedure act, chapter 34.05 RCW. The  
22 form, contents, and service of the application for an adjudicative  
23 hearing must comply with this chapter and the procedural rules  
24 adopted by the commission and must be served on and received by the  
25 commission within 28 days of the licensee receiving the notice.

26 NEW SECTION. **Sec. 33.** A new section is added to chapter 18.64  
27 RCW to read as follows:

28 This section does not govern actions taken under chapter 18.130  
29 RCW.

30 (1) The commission is authorized to take any of the actions  
31 identified in this section against licenses, registrations, permits,  
32 or other credentials or approvals issued by the commission under this  
33 chapter and chapters 18.64A, 69.38, 69.41, 69.43, 69.45, and 69.50  
34 RCW in any case in which it finds the licensee has failed or refused  
35 to comply with any state or federal statute or administrative rule  
36 regulating the license in question including, but not limited to,  
37 Title 69 RCW, this chapter, chapter 18.64A RCW, and administrative



1 rules adopted by the commission, except as otherwise limited in this  
2 section.

3 (a) When the commission determines a licensee has previously been  
4 subject to an enforcement action for the same or similar type of  
5 violation of the same or similar statute or rule, or has been given  
6 any previous statement of deficiency that included the same or  
7 similar type of violation of the same or similar statute or rule, or  
8 when the licensee failed to correct noncompliance with a statute or  
9 rule by a date established or agreed to by the commission, the  
10 commission may impose reasonable conditions on a license. Conditions  
11 may include correction within a specified amount of time, a directed  
12 plan of correction, training, or hiring a commission-approved  
13 consultant if the licensee cannot demonstrate to the commission that  
14 it has access to sufficient internal expertise. If the commission  
15 determines the violations constitute immediate jeopardy, the  
16 conditions may be imposed immediately in accordance with subsection  
17 (2)(b) of this section.

18 (b)(i) In accordance with the commission's authority under  
19 section 32 of this act, the commission may assess a civil fine of up  
20 to \$10,000 per violation, not to exceed a total fine of \$1,000,000,  
21 on a licensee when the commission determines the licensee has  
22 previously been subject to an enforcement action for the same or  
23 similar type of violation of the same or similar statute or rule, or  
24 has been given any previous statement of deficiency that included the  
25 same or similar type of violation of the same or similar statute or  
26 rule, or when a licensee failed to correct noncompliance with a  
27 statute or rule by a date established or agreed to by the commission.

28 (ii) Proceeds from these fines may only be used by the commission  
29 to provide training or technical assistance to licensees and to  
30 offset costs associated with licensing and enforcement.

31 (iii) The commission shall adopt in rules under this chapter to  
32 establish specific fine amounts in relation to the severity of the  
33 noncompliance and at an adequate level to be a deterrent to future  
34 noncompliance.

35 (iv) If a licensee is aggrieved by the commission's action of  
36 assessing civil fines, the licensee has the right to appeal under  
37 section 32 of this act.

38 (c) The commission may restrict the ability of a licensee to  
39 engage in a specific service related to a violation by imposing a

1 limited stop service. This may only be done if the commission finds  
2 that noncompliance results in immediate jeopardy.

3 (i) Prior to imposing a limited stop service, the commission  
4 shall provide a licensee written notification upon identifying  
5 deficient practices or conditions that constitute an immediate  
6 jeopardy. The licensee shall have 24 hours from notification to  
7 develop and implement a commission-approved plan to correct the  
8 deficient practices or conditions that constitute an immediate  
9 jeopardy. If the deficient practices or conditions that constitute  
10 immediate jeopardy are not verified by the commission as having been  
11 corrected within the same 24-hour period, the commission may issue  
12 the limited stop service.

13 (ii) When the commission imposes a limited stop service, the  
14 licensee may not provide the services subject to the limited stop  
15 service, unless otherwise allowed by the commission, until the  
16 limited stop service order is terminated.

17 (iii) The commission shall conduct a follow-up inspection within  
18 five business days or within the time period requested by the  
19 licensee if more than five business days is needed to verify the  
20 violation necessitating the limited stop service has been corrected.

21 (iv) The limited stop service shall be terminated when:

22 (A) The commission verifies the violation necessitating the  
23 limited stop service has been corrected or the commission determines  
24 that the licensee has taken intermediate action to address the  
25 immediate jeopardy; and

26 (B) The licensee establishes the ability to maintain correction  
27 of the violation previously found deficient.

28 (d) The commission may deny an application, or suspend, revoke,  
29 or modify a license.

30 (2)(a) Except as otherwise provided, sections 31 and 32 of this  
31 act govern notices of actions taken by the commission under  
32 subsection (1) of this section and provides the right to an  
33 adjudicative proceeding. Adjudicative proceedings and hearings under  
34 this section are governed by the administrative procedure act,  
35 chapter 34.05 RCW.

36 (b) When the commission determines a licensee's noncompliance  
37 results in immediate jeopardy, the commission may make the imposition  
38 of conditions on a licensee, a limited stop service, or the  
39 suspension or modification of a license effective immediately upon

1 receipt of the notice by the licensee, pending any adjudicative  
2 proceeding.

3 (i) When the commission makes the suspension or modification of a  
4 license or imposition of conditions on a license effective  
5 immediately, a licensee is entitled to a show cause hearing before a  
6 hearing panel of the commission within 14 days of making the request.  
7 The licensee must request the show cause hearing within 28 days of  
8 receipt of the notice. At the show cause hearing the commission has  
9 the burden of demonstrating that more probably than not there is an  
10 immediate jeopardy.

11 (ii) At the show cause hearing, the commission may consider the  
12 notice and documents supporting the immediate imposition of  
13 conditions on a licensee, or the suspension or modification of a  
14 license, and the licensee's response, and shall provide the parties  
15 with an opportunity to provide documentary evidence and written  
16 testimony, and to be represented by counsel. Prior to the show cause  
17 hearing, the commission shall provide the licensee with all  
18 documentation that supports the commission's immediate imposition of  
19 conditions on a licensee or suspension or modification of a license.

20 (iii) If the hearing panel of the commission determines there is  
21 no immediate jeopardy, the hearing panel of the commission may  
22 overturn the immediate suspension or modification of the license or  
23 immediate imposition of conditions.

24 (iv) If the hearing panel of the commission determines there is  
25 immediate jeopardy, the immediate suspension or modification of the  
26 license or immediate imposition of conditions shall remain in effect  
27 pending a full hearing.

28 (v) If the commission sustains the immediate suspension or  
29 modification of the license or immediate imposition of conditions,  
30 the licensee may request an expedited full hearing on the merits. A  
31 full hearing must be provided within 90 days of the licensee's  
32 request, unless otherwise stipulated by the parties.

33 (3) The commission may take action under subsection (1) of this  
34 section against a nonresident pharmacy for failure to comply with any  
35 requirement of RCW 18.64.350 through 18.64.400, conduct that caused  
36 injury to a resident of this state, or conduct that resulted in  
37 adverse action against the nonresident pharmacy by a federal agency  
38 or the regulatory or licensing agency in the state in which the  
39 nonresident pharmacy is located.

1 (4) When the commission determines an alleged violation, if true,  
2 would constitute an immediate jeopardy, and the licensee fails to  
3 cooperate with the commission's investigation of such an alleged  
4 violation, the commission may impose an immediate limited stop  
5 service, immediate imposition of conditions, or immediate suspension  
6 or modification of a license.

7 (a) When the commission imposes an immediate limited stop  
8 service, immediate imposition of conditions, or immediate suspension  
9 or modification of a license for failure to cooperate, a licensee is  
10 entitled to a show cause hearing before a presiding officer within 14  
11 days of making the request. The licensee must request the show cause  
12 hearing within 28 days of receipt of the notice of an immediate  
13 limited stop service, immediate imposition of conditions, or  
14 immediate suspension or modification of a license for failure to  
15 cooperate. At the show cause hearing the commission has the burden of  
16 demonstrating that more probably than not the alleged violation, if  
17 true, would constitute an immediate jeopardy and the licensee failed  
18 to cooperate with the commission's investigation.

19 (b) At the show cause hearing, the presiding officer may consider  
20 the notice and documents supporting the immediate limited stop  
21 service, immediate imposition of conditions, or immediate suspension  
22 or modification of a license for failure to cooperate, and the  
23 licensee's response and shall provide the parties with an opportunity  
24 to provide documentary evidence and written testimony, and to be  
25 represented by counsel. Prior to the show cause hearing, the  
26 commission shall provide the licensee with all documentation that  
27 supports the commission's immediate action for failure to cooperate.

28 (c) If the presiding officer determines the alleged violation, if  
29 true, does not constitute an immediate jeopardy or determines that  
30 the licensee cooperated with the commission's investigation, the  
31 presiding officer may overturn the immediate action for failure to  
32 cooperate.

33 (d) If the presiding officer determines the allegation, if true,  
34 would constitute an immediate jeopardy and the licensee failed to  
35 cooperate with the commission's investigation, the immediate action  
36 for failure to cooperate shall remain in effect pending a full  
37 hearing.

38 (e) If the presiding officer sustains the immediate action for  
39 failure to cooperate, the licensee may request an expedited full

1 hearing on the merits of the commission's action. A full hearing must  
2 be provided within 90 days of the licensee's request.

3 NEW SECTION. **Sec. 34.** A new section is added to chapter 18.64  
4 RCW to read as follows:

5 This section does not govern actions taken under chapter 18.130  
6 RCW.

7 (1) A licensee whose license has been suspended under this  
8 chapter may petition the commission for reinstatement after an  
9 interval as determined by the commission in the order. The commission  
10 shall hold hearings on the petition. The commission may deny the  
11 petition or may order reinstatement of the licensee's license. The  
12 commission may impose terms and conditions in the order of  
13 reinstatement.

14 (2) A licensee whose license has been suspended for noncompliance  
15 with a support order or visitation order under RCW 74.20A.320 may  
16 petition for reinstatement at any time by providing the commission a  
17 release issued by the department of social and health services  
18 stating that the person is in compliance with the order. If the  
19 person has continued to meet all other requirements for reinstatement  
20 during the suspension, the commission shall automatically reissue the  
21 person's license upon receipt of the release, and payment of a  
22 reinstatement fee, if any.

23 NEW SECTION. **Sec. 35.** A new section is added to chapter 18.64  
24 RCW to read as follows:

25 The uniform disciplinary act, chapter 18.130 RCW, governs  
26 unlicensed practice of persons required to obtain a license under  
27 this chapter.

28 **Sec. 36.** RCW 18.64.047 and 2013 c 19 s 10 are each amended to  
29 read as follows:

30 (1) Any itinerant vendor or any peddler of any nonprescription  
31 drug or preparation for the treatment of disease or injury, shall pay  
32 a registration fee determined by the secretary on a date to be  
33 determined by the secretary as provided in RCW 43.70.250 and  
34 43.70.280. The department may issue a registration to such vendor on  
35 an approved application made to the department.

36 (2) Any itinerant vendor or peddler who shall vend or sell, or  
37 offer to sell to the public any such nonprescription drug or

1 preparation without having registered to do so as provided in this  
2 section, is guilty of a misdemeanor and each sale or offer to sell  
3 shall constitute a separate offense.

4 (3) In event the registration fee remains unpaid on the date due,  
5 no renewal or new registration shall be issued except upon compliance  
6 with administrative procedures, administrative requirements, and fees  
7 determined as provided in RCW 43.70.250 and 43.70.280. This  
8 registration shall not authorize the sale of legend drugs or  
9 controlled substances.

10 (4) An itinerant vendor may purchase products containing any  
11 detectable quantity of ephedrine, pseudoephedrine, or  
12 phenylpropanolamine, or their salts, isomers, or salts of isomers  
13 only from a wholesaler licensed by the department under RCW 18.64.046  
14 or from a manufacturer licensed by the department under RCW  
15 18.64.045. The commission shall issue a warning to an itinerant  
16 vendor who violates this subsection, and may suspend or revoke the  
17 registration of the vendor for a subsequent violation.

18 (5) An itinerant vendor who has purchased products containing any  
19 detectable quantity of ephedrine, pseudoephedrine, or  
20 phenylpropanolamine, or their salts, isomers, or salts of isomers, in  
21 a suspicious transaction as defined in RCW 69.43.035, is subject to  
22 the following requirements:

23 (a) The itinerant vendor may not sell any quantity of ephedrine,  
24 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
25 salts of isomers, if the total monthly sales of these products exceed  
26 ~~((ten))~~ 10 percent of the vendor's total prior monthly sales of  
27 nonprescription drugs in March through October. In November through  
28 February, the vendor may not sell any quantity of ephedrine,  
29 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
30 salts of isomers, if the total monthly sales of these products exceed  
31 ~~((twenty))~~ 20 percent of the vendor's total prior monthly sales of  
32 nonprescription drugs. For purposes of this section, "monthly sales"  
33 means total dollars paid by buyers. ~~((The commission may suspend or  
34 revoke the registration of an itinerant vendor who violates this  
35 subsection.))~~

36 (b) The itinerant vendor shall maintain inventory records of the  
37 receipt and disposition of nonprescription drugs, utilizing existing  
38 inventory controls if an auditor or investigator can determine  
39 compliance with (a) of this subsection, and otherwise in the form and  
40 manner required by the commission. The records must be available for

1 inspection by the commission or any law enforcement agency and must  
2 be maintained for two years. The commission may suspend or revoke the  
3 registration of an itinerant vendor who violates this subsection. For  
4 purposes of this subsection, "disposition" means the return of  
5 product to the wholesaler or distributor.

6 **Sec. 37.** RCW 18.64.165 and 2016 c 81 s 10 are each amended to  
7 read as follows:

8 ~~((The commission shall have the power to refuse, suspend, or~~  
9 ~~revoke the license of any manufacturer, wholesaler, pharmacy,~~  
10 ~~shopkeeper, itinerant vendor, peddler, poison distributor, health~~  
11 ~~care entity, or precursor chemical distributor)) In addition to any  
12 other grounds, the commission may take action against a license  
13 issued under this chapter and chapters 18.64A, 69.38, 69.41, 69.43,  
14 69.45, and 69.50 RCW, except nonresident pharmacies, upon proof that:~~

15 (1) The license was procured through fraud, misrepresentation, or  
16 deceit;

17 (2) Except as provided in RCW 9.97.020, the licensee has violated  
18 or has permitted any employee to violate any of the laws of this  
19 state or the United States relating to drugs, controlled substances,  
20 cosmetics, or nonprescription drugs, or has violated any of the rules  
21 and regulations of the commission or has been convicted of a felony.

22 **Sec. 38.** RCW 18.64A.020 and 2013 c 19 s 33 are each amended to  
23 read as follows:

24 (1)(a) The commission shall adopt, in accordance with chapter  
25 34.05 RCW, rules fixing the classification and qualifications and the  
26 educational and training requirements for persons who may be employed  
27 as pharmacy technicians or who may be enrolled in any pharmacy  
28 technician training program. Such rules shall provide that:

29 (i) Licensed pharmacists shall supervise the training of pharmacy  
30 technicians;

31 (ii) Training programs shall assure the competence of pharmacy  
32 technicians to aid and assist pharmacy operations. Training programs  
33 shall consist of instruction and/or practical training; and

34 (iii) Pharmacy technicians shall complete continuing education  
35 requirements established in rule by the commission.

36 (b) Such rules may include successful completion of examinations  
37 for applicants for pharmacy technician certificates. If such  
38 examination rules are adopted, the commission shall prepare or

1 determine the nature of, and supervise the grading of the  
2 examinations. The commission may approve an examination prepared or  
3 administered by a private testing agency or association of licensing  
4 authorities.

5 (2) The commission may disapprove or revoke approval of any  
6 training program for failure to conform to commission rules. In the  
7 case of the disapproval or revocation of approval of a training  
8 program by the commission, a hearing shall be conducted in accordance  
9 with (~~RCW 18.64.160~~) section 31 of this act, and appeal may be  
10 taken in accordance with the administrative procedure act, chapter  
11 34.05 RCW.

12 **Sec. 39.** RCW 18.64A.060 and 2013 c 19 s 38 are each amended to  
13 read as follows:

14 No pharmacy licensed in this state shall utilize the services of  
15 pharmacy ancillary personnel without approval of the commission.

16 Any pharmacy licensed in this state may apply to the commission  
17 for permission to use the services of pharmacy ancillary personnel.  
18 The application shall be accompanied by a fee and shall comply with  
19 administrative procedures and administrative requirements set  
20 pursuant to RCW 43.70.250 and 43.70.280, shall detail the manner and  
21 extent to which the pharmacy ancillary personnel would be used and  
22 supervised, and shall provide other information in such form as the  
23 secretary may require.

24 The commission may approve or reject such applications. In  
25 addition, the commission may modify the proposed utilization of  
26 pharmacy ancillary personnel and approve the application as modified.  
27 Whenever it appears to the commission that pharmacy ancillary  
28 personnel are being utilized in a manner inconsistent with the  
29 approval granted, the commission may withdraw such approval. In the  
30 event a hearing is requested upon the rejection of an application, or  
31 upon the withdrawal of approval, a hearing shall be conducted in  
32 accordance with (~~chapter 18.64 RCW, as now or hereafter amended,~~)  
33 section 31 of this act and appeal may be taken in accordance with the  
34 administrative procedure act, chapter 34.05 RCW.

35 NEW SECTION. **Sec. 40.** A new section is added to chapter 69.38  
36 RCW to read as follows:

37 Chapter 18.64 RCW governs the denial of licenses and the  
38 discipline of persons licensed under this chapter. The uniform



1 disciplinary act, chapter 18.130 RCW, governs unlicensed practice of  
2 persons required to obtain a license under this chapter.

3 **Sec. 41.** RCW 69.45.080 and 2013 c 19 s 84 are each amended to  
4 read as follows:

5 (1) The manufacturer is responsible for the actions and conduct  
6 of its representatives with regard to drug samples.

7 ~~(2) ((The commission may hold a public hearing to examine a  
8 possible violation and may require a designated representative of the  
9 manufacturer to attend.~~

10 ~~(3) If a manufacturer fails to comply with this chapter following  
11 notification by the commission, the commission may impose a civil  
12 penalty of up to five thousand dollars. The commission shall take no  
13 action to impose any civil penalty except pursuant to a hearing held  
14 in accordance with chapter 34.05 RCW.~~

15 ~~(4))~~ Chapter 18.64 RCW governs the denial of licenses and the  
16 discipline of persons registered under this chapter.

17 (3) Specific drug samples which are distributed in this state in  
18 violation of this chapter, following notification by the commission,  
19 shall be subject to seizure following the procedures set out in RCW  
20 69.41.060.

21 NEW SECTION. **Sec. 42.** A new section is added to chapter 69.45  
22 RCW to read as follows:

23 The uniform disciplinary act, chapter 18.130 RCW, governs  
24 unlicensed practice of persons required to obtain a registration  
25 under this chapter.

26 **Sec. 43.** RCW 69.43.100 and 2013 c 19 s 74 are each amended to  
27 read as follows:

28 ~~((The pharmacy quality assurance commission shall have the power  
29 to refuse, suspend, or revoke the permit of any manufacturer or  
30 wholesaler))~~ In addition to any other grounds, the pharmacy quality  
31 assurance commission may take action against a permit issued under  
32 this chapter upon proof that:

33 (1) The permit was procured through fraud, misrepresentation, or  
34 deceit;

35 (2) The permittee has violated or has permitted any employee to  
36 violate any of the laws of this state relating to drugs, controlled  
37 substances, cosmetics, or nonprescription drugs, or has violated any

1 of the rules and regulations of the pharmacy quality assurance  
2 commission.

3 **Sec. 44.** RCW 69.43.140 and 2013 c 19 s 78 are each amended to  
4 read as follows:

5 (1) (~~In addition to the other penalties provided for in this~~  
6 ~~chapter or in chapter 18.64 RCW, the pharmacy quality assurance~~  
7 ~~commission may impose a civil penalty, not to exceed ten thousand~~  
8 ~~dollars for each violation, on any licensee or registrant who has~~  
9 ~~failed to comply with this chapter or the rules adopted under this~~  
10 ~~chapter. In the case of a continuing violation, every day the~~  
11 ~~violation continues shall be considered a separate violation))  
12 Chapter 18.64 RCW governs the denial of permits and the discipline of  
13 permits issued under this chapter. The uniform disciplinary act,  
14 chapter 18.130 RCW, governs unlicensed practice of persons required  
15 to obtain a permit under this chapter.~~

16 (2) The pharmacy quality assurance commission may waive (~~the~~  
17 ~~suspension or revocation of a license or registration)) action taken  
18 under chapter 18.64 RCW against a permit issued under this chapter  
19 (~~18.64 RCW, or waive any civil penalty under this chapter,~~) if the  
20 (~~licensee or registrant~~) permittee establishes that he or she acted  
21 in good faith to prevent violations of this chapter, and the  
22 violation occurred despite the licensee's or registrant's exercise of  
23 due diligence. In making such a determination, the pharmacy quality  
24 assurance commission may consider evidence that an employer trained  
25 employees on how to sell, transfer, or otherwise furnish substances  
26 specified in RCW 69.43.010(1) in accordance with applicable laws.~~

27 **Sec. 45.** RCW 69.50.302 and 2013 c 19 s 98 are each amended to  
28 read as follows:

29 (a) Every person who manufactures, distributes, or dispenses any  
30 controlled substance within this state or who proposes to engage in  
31 the manufacture, distribution, or dispensing of any controlled  
32 substance within this state, shall obtain annually a registration  
33 issued by the (~~department~~) commission in accordance with the  
34 commission's rules.

35 (b) A person registered by the (~~department~~) commission under  
36 this chapter to manufacture, distribute, dispense, or conduct  
37 research with controlled substances may possess, manufacture,  
38 distribute, dispense, or conduct research with those substances to

1 the extent authorized by the registration and in conformity with this  
2 Article.

3 (c) The following persons need not register and may lawfully  
4 possess controlled substances under this chapter:

5 (1) An agent or employee of any registered manufacturer,  
6 distributor, or dispenser of any controlled substance if the agent or  
7 employee is acting in the usual course of business or employment.  
8 This exemption shall not include any agent or employee distributing  
9 sample controlled substances to practitioners without an order;

10 (2) A common or contract carrier or warehouse operator, or an  
11 employee thereof, whose possession of any controlled substance is in  
12 the usual course of business or employment;

13 (3) An ultimate user or a person in possession of any controlled  
14 substance pursuant to a lawful order of a practitioner or in lawful  
15 possession of a substance included in Schedule V.

16 (d) The commission may waive by rule the requirement for  
17 registration of certain manufacturers, distributors, or dispensers  
18 upon finding it consistent with the public health and safety.  
19 Personal practitioners licensed or registered in the state of  
20 Washington under the respective professional licensing acts shall not  
21 be required to be registered under this chapter unless the specific  
22 exemption is denied pursuant to ((RCW 69.50.305)) sections 31 and 33  
23 of this act for violation of any provisions of this chapter.

24 (e) A separate registration is required at each principal place  
25 of business or professional practice where the applicant  
26 manufactures, distributes, or dispenses controlled substances.

27 (f) The department, at the direction of the commission, may  
28 inspect the establishment of a registrant or applicant for  
29 registration in accordance with rules adopted by the commission.

30 **Sec. 46.** RCW 69.50.303 and 2013 c 19 s 99 are each amended to  
31 read as follows:

32 (a) The ((department)) commission shall register an applicant to  
33 manufacture ((or)), distribute, dispense, or conduct research with  
34 controlled substances included in RCW 69.50.204, 69.50.206,  
35 69.50.208, 69.50.210, and 69.50.212 unless the commission determines  
36 that the issuance of that registration would be inconsistent with the  
37 public interest. In determining the public interest, the commission  
38 shall consider the following factors:

1 (1) maintenance of effective controls against diversion of  
2 controlled substances into other than legitimate medical, scientific,  
3 research, or industrial channels;

4 (2) compliance with applicable state and local law;

5 (3) promotion of technical advances in the art of manufacturing  
6 controlled substances and the development of new substances;

7 (4) any convictions of the applicant under any laws of another  
8 country or federal or state laws relating to any controlled  
9 substance;

10 (5) past experience in the manufacture or distribution of  
11 controlled substances, and the existence in the applicant's  
12 establishment of effective controls against diversion of controlled  
13 substances into other than legitimate medical, scientific, research,  
14 or industrial channels;

15 (6) furnishing by the applicant of false or fraudulent material  
16 in any application filed under this chapter;

17 (7) suspension or revocation of the applicant's federal  
18 registration to manufacture, distribute, or dispense controlled  
19 substances as authorized by federal law; and

20 (8) any other factors relevant to and consistent with the public  
21 health and safety.

22 (b) Registration under subsection (a) of this section does not  
23 entitle a registrant to manufacture or distribute controlled  
24 substances included in Schedule I or II other than those specified in  
25 the registration.

26 (c) Practitioners must be registered, or exempted under RCW  
27 69.50.302(d), to dispense any controlled substances or to conduct  
28 research with controlled substances included in Schedules II through  
29 V if they are authorized to dispense or conduct research under the  
30 law of this state. The commission need not require separate  
31 registration under this Article for practitioners engaging in  
32 research with nonnarcotic substances included in Schedules II through  
33 V where the registrant is already registered under this Article in  
34 another capacity. Practitioners registered under federal law to  
35 conduct research with substances included in Schedule I may conduct  
36 research with substances included in Schedule I within this state  
37 upon furnishing the commission evidence of that federal registration.

38 (d) A manufacturer or distributor registered under the federal  
39 Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., may submit a  
40 copy of the federal application as an application for registration as

1 a manufacturer or distributor under this section. The commission may  
2 require a manufacturer or distributor to submit information in  
3 addition to the application for registration under the federal act.

4 **Sec. 47.** RCW 69.50.304 and 2013 c 19 s 100 are each amended to  
5 read as follows:

6 (a) ~~((A))~~ This chapter and chapter 18.64 RCW govern the denial of  
7 registrations and the discipline of registrations issued under RCW  
8 69.50.303. The uniform disciplinary act, chapter 18.130 RCW, governs  
9 unlicensed practice of persons required to obtain a registration  
10 under this chapter.

11 (b) In addition to any other grounds, the commission may take  
12 action against the registration, or exemption from registration,  
13 under RCW 69.50.303 to manufacture, distribute, ~~((or))~~ dispense, or  
14 conduct research with a controlled substance ~~((may be suspended or~~  
15 ~~revoked by the commission))~~ upon finding that the registrant has:

16 (1) furnished false or fraudulent material information in any  
17 application filed under this chapter;

18 (2) been convicted of a felony under any state or federal law  
19 relating to any controlled substance;

20 (3) had the registrant's federal registration suspended or  
21 revoked and is no longer authorized by federal law to manufacture,  
22 distribute, ~~((or))~~ dispense, or conduct research with controlled  
23 substances; or

24 (4) committed acts that would render registration under RCW  
25 69.50.303 inconsistent with the public interest as determined under  
26 that section.

27 ~~((b))~~ (c) The commission may limit revocation or suspension of  
28 a registration to the particular controlled substance or schedule of  
29 controlled substances, with respect to which grounds for revocation  
30 or suspension exist.

31 ~~((e))~~ (d) If the commission suspends or revokes a registration,  
32 all controlled substances owned or possessed by the registrant at the  
33 time of suspension or the effective date of the revocation order may  
34 be placed under seal. No disposition may be made of substances under  
35 seal until the time for taking an appeal has elapsed or until all  
36 appeals have been concluded unless a court, upon application, orders  
37 the sale of perishable substances and the deposit of the proceeds of  
38 the sale with the court. Upon a revocation order becoming final, all  
39 controlled substances may be forfeited to the state.

1        ~~((d))~~ (e) The ~~((department))~~ commission may seize or place  
2 under seal any controlled substance owned or possessed by a  
3 registrant whose registration has expired or who has ceased to  
4 practice or do business in the manner contemplated by the  
5 registration. The controlled substance must be held for the benefit  
6 of the registrant or the registrant's successor in interest. The  
7 ~~((department))~~ commission shall notify a registrant, or the  
8 registrant's successor in interest, who has any controlled substance  
9 seized or placed under seal, of the procedures to be followed to  
10 secure the return of the controlled substance and the conditions  
11 under which it will be returned. The ~~((department))~~ commission may  
12 not dispose of any controlled substance seized or placed under seal  
13 under this subsection until the expiration of ~~((one hundred eighty))~~  
14 180 days after the controlled substance was seized or placed under  
15 seal. The costs incurred by the ~~((department))~~ commission in seizing,  
16 placing under seal, maintaining custody, and disposing of any  
17 controlled substance under this subsection may be recovered from the  
18 registrant, any proceeds obtained from the disposition of the  
19 controlled substance, or from both. Any balance remaining after the  
20 costs have been recovered from the proceeds of any disposition must  
21 be delivered to the registrant or the registrant's successor in  
22 interest.

23        ~~((e))~~ (f) The ~~((department))~~ commission shall promptly notify  
24 the drug enforcement administration of all orders restricting,  
25 suspending, or revoking registration and all forfeitures of  
26 controlled substances.

27        **Sec. 48.** RCW 69.50.310 and 2013 c 19 s 104 are each amended to  
28 read as follows:

29        On and after September 21, 1977, a humane society and animal  
30 control agency may apply to the ~~((department))~~ commission for  
31 registration pursuant to the applicable provisions of this chapter  
32 for the sole purpose of being authorized to purchase, possess, and  
33 administer sodium pentobarbital to euthanize injured, sick, homeless,  
34 or unwanted domestic pets and animals. Any agency so registered shall  
35 not permit a person to administer sodium pentobarbital unless such  
36 person has demonstrated adequate knowledge of the potential hazards  
37 and proper techniques to be used in administering this drug.

38        The ~~((department))~~ commission may issue a limited registration to  
39 carry out the provisions of this section. ~~((The commission shall~~

1 ~~promulgate such rules as it deems necessary to insure strict~~  
2 ~~compliance with the provisions of this section. The commission may~~  
3 ~~suspend or revoke registration upon determination that the person~~  
4 ~~administering sodium pentobarbital has not demonstrated adequate~~  
5 ~~knowledge as herein provided. This authority is granted in addition~~  
6 ~~to any other power to suspend or revoke registration as provided by~~  
7 ~~law.)) Chapter 18.64 RCW governs the denial of licenses and the~~  
8 ~~discipline of registrations issued under this chapter. The uniform~~  
9 ~~disciplinary act, chapter 18.130 RCW, governs unlicensed practice of~~  
10 ~~persons required to obtain a registration under this chapter.~~

11 **Sec. 49.** RCW 69.50.320 and 2013 c 19 s 106 are each amended to  
12 read as follows:

13 The department of fish and wildlife may apply to the ((~~department~~  
14 ~~of health~~)) commission for registration pursuant to the applicable  
15 provisions of this chapter to purchase, possess, and administer  
16 controlled substances for use in chemical capture programs. The  
17 department of fish and wildlife must not permit a person to  
18 administer controlled substances unless the person has demonstrated  
19 adequate knowledge of the potential hazards and proper techniques to  
20 be used in administering controlled substances.

21 The ((~~department of health~~)) commission may issue a limited  
22 registration to carry out the provisions of this section. The  
23 commission may adopt rules to ensure strict compliance with the  
24 provisions of this section. The commission, in consultation with the  
25 department of fish and wildlife, must by rule add or remove  
26 additional controlled substances for use in chemical capture  
27 programs. ((The)) Chapter 18.64 RCW governs the denial of licenses  
28 and the discipline of registrations issued under this chapter. The  
29 uniform disciplinary act, chapter 18.130 RCW, governs unlicensed  
30 practice of persons required to obtain a registration under this  
31 chapter. In addition to any other grounds, the commission ((shall))  
32 may suspend or revoke a registration issued under this chapter upon  
33 determination that the person administering controlled substances has  
34 not demonstrated adequate knowledge as required by this section.  
35 ((This authority is granted in addition to any other power to suspend  
36 or revoke registration as provided by law.))

37 **Sec. 50.** RCW 69.41.080 and 2013 c 19 s 57 are each amended to  
38 read as follows:

1 Humane societies and animal control agencies registered with the  
2 (~~pharmacy quality assurance~~) commission under chapter 69.50 RCW and  
3 authorized to euthanize animals may purchase, possess, and administer  
4 approved legend drugs for the sole purpose of sedating animals prior  
5 to euthanasia, when necessary, and for use in chemical capture  
6 programs. For the purposes of this section, "approved legend drugs"  
7 means those legend drugs designated by the commission by rule as  
8 being approved for use by such societies and agencies for animal  
9 sedating or capture and does not include any substance regulated  
10 under chapter 69.50 RCW. Any society or agency so registered shall  
11 not permit persons to administer any legend drugs unless such person  
12 has demonstrated to the satisfaction of the commission adequate  
13 knowledge of the potential hazards involved in and the proper  
14 techniques to be used in administering the drugs.

15 The commission shall promulgate rules to regulate the purchase,  
16 possession, and administration of legend drugs by such societies and  
17 agencies and to insure strict compliance with the provisions of this  
18 section. Such rules shall require that the storage, inventory  
19 control, administration, and recordkeeping for approved legend drugs  
20 conform to the standards adopted by the commission under chapter  
21 69.50 RCW to regulate the use of controlled substances by such  
22 societies and agencies. (~~The~~) Chapter 18.64 RCW governs the denial  
23 of licenses and the discipline of registrations issued under chapter  
24 69.50 RCW. The uniform disciplinary act, chapter 18.130 RCW, governs  
25 unlicensed practice of persons required to obtain a registration  
26 under this chapter. In addition to any other grounds, the commission  
27 may suspend or revoke a registration issued under chapter 69.50 RCW  
28 upon a determination by the commission that the person administering  
29 legend drugs has not demonstrated adequate knowledge as herein  
30 provided. (~~This authority is granted in addition to any other power~~  
31 to suspend or revoke a registration as provided by law.))

32 NEW SECTION. Sec. 51. The following acts or parts of acts are  
33 each repealed:

34 (1) RCW 18.64.200 (Refusal, suspension, and revocation of other  
35 licenses—Appeal procedure) and 2013 c 19 s 15, 1963 c 38 s 11, & 1909  
36 c 213 s 11;

37 (2) RCW 18.64.390 (Nonresident pharmacies—Violations—Penalties)  
38 and 2013 c 19 s 23 & 1991 c 87 s 5; and



1           (3)   RCW   69.50.305   (Procedure   for   denial,   suspension,   or  
2   revocation   of   registration)   and   2013   c   19   s   101   &   1971   ex.s.   c   308   s  
3   69.50.305.

--- **END** ---