
HOUSE BILL 1908

State of Washington

54th Legislature

1995 Regular Session

By Representatives Dyer, Cooke, Ballasiotes, Stevens, Elliot, Talcott, Cairnes, Lambert, Pelesky, Hymes, Robertson, Mielke, Carrell, Backlund and L. Thomas

Read first time 02/14/95. Referred to Committee on Health Care.

1 AN ACT Relating to long-term care; amending RCW 74.39.005,
2 74.39.040, 74.39A.010, 70.128.007, 70.128.010, 43.190.020, 43.190.060,
3 74.08.545, 74.08.550, 74.08.570, 18.51.091, 18.51.140, 18.51.300,
4 11.40.010, 11.42.020, 11.62.010, 11.28.120, 18.39.250, 18.39.255,
5 68.46.050, 70.129.040, 43.20B.080, 74.46.105, 74.46.115, 74.46.640, and
6 74.46.690; adding new sections to chapter 74.39A RCW; adding new
7 sections to chapter 70.41 RCW; adding a new section to chapter 70.128
8 RCW; adding a new section to chapter 74.46 RCW; creating a new section;
9 recodifying RCW 74.08.530, 74.08.560, 74.08.570, 74.08.545, and
10 74.08.550; repealing RCW 74.08.541; prescribing penalties; providing an
11 effective date; and declaring an emergency.

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

13 NEW SECTION. **Sec. 1.** A new section is added to chapter 74.39A RCW
14 to read as follows:

15 Unless the context clearly requires otherwise, the definitions in
16 this section apply throughout this chapter.

17 (1) "Adult family home" means a facility licensed under chapter
18 70.128 RCW.

1 (2) "Adult residential care" means services provided by a boarding
2 home that has a contract with the department under section 10 of this
3 act.

4 (3) "Aging and adult services administration" means the aging and
5 adult services administration of the department.

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

9 (5) "Boarding home" means a facility licensed under chapter 18.20
10 RCW.

11 (6) "Cost-effective care" means care that is necessary to enable an
12 individual to achieve his or her highest practicable level of physical,
13 mental, and psychosocial well-being, in an environment that is
14 appropriate to the care and safety needs of the individual, and such
15 care cannot be provided at a lower cost in any other setting.

16 (7) "Department" means the department of social and health
17 services.

18 (8) "Home and community services" means assisted living services,
19 modified assisted living services, adult residential care, adult family
20 homes, in-home services, and other services administered by the aging
21 and adult services administration of the department directly or through
22 contract with area agencies on aging.

23 (9) "Long-term care services" means the services administered
24 directly or through contract by the aging and adult services
25 administration of the department, including but not limited to nursing
26 facility care and home and community services.

27 (10) "Modified assisted living services" means services provided by
28 a boarding home that has a contract with the department under RCW
29 74.39A.010.

30 (11) "Nursing facility" means a nursing facility as defined in
31 section 1919(a) of the federal social security act and regulations
32 adopted thereunder.

33 (12) "Nursing home" means a facility licensed under chapter 18.51
34 RCW.

35 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.39A RCW
36 to read as follows:

1 (1) To the extent of available funding, the department shall expand
2 cost-effective options for home and community services for consumers
3 for whom the state participates in the cost of their care.

4 (2) In expanding home and community services, the department shall:

5 (a) Take full advantage of federal funding available under Title XVIII
6 and Title XIX of the federal social security act, including home
7 health, adult day care, waiver options, and state plan services; (b) be
8 authorized to use funds available under its community options program
9 entry system waiver granted under section 1915(c) of the federal social
10 security act to expand the availability of in-home, adult residential
11 care, adult family homes, modified assisted living services, and
12 assisted living services; and (c) endeavor to contract with nursing
13 homes and boarding homes for up to one thousand five hundred assisted
14 living service placements and modified assisted living services
15 placements to provide care for individuals who would otherwise require
16 nursing facility services. In contracting with nursing homes and
17 boarding homes for modified assisted living service placements, the
18 department shall not require, by contract or through other means,
19 structural modifications to existing building construction.

20 (3)(a) The department shall by rule establish payment rates for
21 home and community services that support the provision of cost-
22 effective care.

23 (b) The department may authorize a modified assisted living rate
24 for nursing homes that temporarily or permanently convert their bed use
25 for the purpose of providing modified assisted living services under
26 chapter 70.38 RCW, when the department determines that payment of a
27 modified rate is cost-effective and necessary to foster expansion of
28 contracted modified assisted living services. As an incentive for
29 nursing homes to permanently delicense a portion of its nursing home
30 bed capacity for the purpose of providing modified assisted living
31 services, the department may authorize a supplemental add-on to the
32 modified assisted living services rate.

33 (c) The department may authorize a supplemental assisted living
34 rate for up to four years for facilities that convert from nursing home
35 use and do not retain rights to the converted nursing home beds under
36 chapter 70.38 RCW, if the department determines that payment of a
37 supplemental rate is cost-effective and necessary to foster expansion
38 of contracted assisted living services.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.41 RCW
2 to read as follows:

3 (1)(a) The department of social and health services, in
4 consultation with hospitals and acute care facilities, shall promote
5 the most appropriate and cost-effective use of long-term care services
6 by developing and distributing to hospitals information on the various
7 chronic long-term care programs that it administers directly or through
8 contract. The information developed by the department of social and
9 health services shall, at a minimum, include the following:

10 (i) An identification and detailed description of each long-term
11 care service available in the state;

12 (ii) Functional, cognitive, and medicaid eligibility criteria that
13 may be required for placement or admission to each long-term care
14 service; and

15 (iii) A long-term care services resource manual for each hospital,
16 that identifies the long-term care services operating within each
17 hospital's patient service area. The long-term care services resource
18 manual shall, at a minimum, identify the name, address, and telephone
19 number of each entity known to be providing long-term care services; a
20 brief description of the programs or services provided by each of the
21 identified entities; and the name or names of a person or persons who
22 may be contacted for further information or assistance in accessing the
23 programs or services at each of the identified entities.

24 (b) The information required in (a) of this subsection shall be
25 periodically updated and distributed to hospitals by the department of
26 social and health services so that the information reflects current
27 long-term care service options available within each hospital's patient
28 service area.

29 (2) To the extent that a patient will have continuing care needs,
30 once discharged from the hospital setting, hospitals shall, during the
31 course of the patient's hospital stay, promote each patient's family
32 member's and/or legal representative's understanding of available long-
33 term care service discharge options by, at a minimum:

34 (a) Discussing the various and relevant long-term care services
35 available, including eligibility criteria;

36 (b) Making available, to patients, their family members, and/or
37 legal representative, a copy of the most current long-term care
38 services resource manual; and

1 (c) Responding to long-term care questions posed by patients, their
2 family members, and/or legal representative; or

3 (d) Assisting the patient, their family members, and/or legal
4 representative in contacting appropriate persons or entities to respond
5 to the question or questions posed.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.41 RCW
7 to read as follows:

8 "Cost-effective care" and "long-term care services," where used in
9 section 3 of this act, shall have the same meaning as that given in
10 section 1 of this act.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.41 RCW
12 to read as follows:

13 Hospitals and acute care facilities shall:

14 (1) Establish and maintain a system for discharge planning and
15 designate a person responsible for system management and
16 implementation;

17 (2) Establish written policies and procedures to:

18 (a) Identify patients needing further nursing, therapy, or
19 supportive care following discharge from the hospital;

20 (b) Develop a documented discharge plan for each identified patient
21 including:

22 (i) Coordinate with patient and family or caregiver, as
23 appropriate;

24 (ii) Coordinate with appropriate members of the health care team;

25 (iii) Coordinate with the receiving agency or agencies, when
26 necessary; and

27 (iv) Work cooperatively with the department of social and health
28 services and local long-term care information and assistance
29 organizations in the planning and implementation of long-term care
30 patient discharge services;

31 (c) Notify referral agencies, minimally to include verbal contact
32 and communication regarding:

33 (i) Relevant patient history;

34 (ii) Specific care requirements including equipment, supplies, and
35 medications needed; and

36 (iii) Date care is to be initiated;

1 (d) For those patients identified under (a) of this subsection,
2 assess and document needs and implement discharge plans to the extent
3 possible by the hospital; and

4 (e) Provide any patient needing long-term care services both
5 written and verbal information on the array of long-term care options,
6 the most appropriate and cost-effective long-term care services
7 available, and the eligibility criteria, locations, directions, contact
8 persons, and other information that will promote an informed choice of
9 care for the patient, family members, or legal representative.

10 **Sec. 6.** RCW 74.39.005 and 1989 c 427 s 2 are each amended to read
11 as follows:

12 The purpose of this chapter is to:

13 (1) Establish a balanced range of (~~community-based~~) health,
14 social, and supportive services that deliver long-term care services to
15 chronically, functionally disabled persons of all ages;

16 (2) Ensure that functional disability shall be the determining
17 factor in defining long-term care service needs and that these needs
18 will be determined by a uniform system for comprehensively assessing
19 functional disability;

20 (3) Ensure that services are provided in the most independent
21 living situation consistent with individual needs;

22 (4) Ensure that long-term care service options shall be developed
23 and made available that enable functionally disabled persons to
24 continue to live in their homes or other community residential
25 facilities while in the care of their families or other volunteer
26 support persons;

27 (5) Ensure that long-term care services are coordinated in a way
28 that minimizes administrative cost, eliminates unnecessarily complex
29 organization, minimizes program and service duplication, and maximizes
30 the use of financial resources in directly meeting the needs of persons
31 with functional limitations;

32 (6) Develop a systematic plan for the coordination, planning,
33 budgeting, and administration of long-term care services now fragmented
34 between the division of developmental disabilities, division of mental
35 health, aging and adult services administration, division of children
36 and family services, division of vocational rehabilitation, office on
37 AIDS, division of health, and bureau of alcohol and substance abuse;

1 (7) Encourage the development of a state-wide long-term care case
2 management system that effectively coordinates the plan of care and
3 services provided to eligible clients;

4 (8) Ensure that individuals and organizations affected by or
5 interested in long-term care programs have an opportunity to
6 participate in identification of needs and priorities, policy
7 development, planning, and development, implementation, and monitoring
8 of state supported long-term care programs;

9 (9) Support educational institutions in Washington state to assist
10 in the procurement of federal support for expanded research and
11 training in long-term care; and

12 (10) Facilitate the development of a coordinated system of long-
13 term care education that is clearly articulated between all levels of
14 higher education and reflective of both in-home care needs and
15 institutional care needs of functionally disabled persons.

16 **Sec. 7.** RCW 74.39.040 and 1989 c 427 s 13 are each amended to read
17 as follows:

18 ~~((1) A long term care commission is created. It shall consist of:~~

19 ~~(a) Four legislators who shall serve on the executive committee,~~
20 ~~one from each of the two largest caucuses in the house of~~
21 ~~representatives and the senate who shall be selected by the president~~
22 ~~of the senate and the speaker of the house of representatives;~~

23 ~~(b) Six members, to be selected by the executive committee, who~~
24 ~~shall be authorities in gerontology, developmental disabilities,~~
25 ~~neurological impairments, physical disabilities, mental illness,~~
26 ~~nursing, long term care service delivery, long term care service~~
27 ~~financing, systems development, or systems analysis;~~

28 ~~(c) Three members, to be selected by the executive committee, who~~
29 ~~represent long term care consumers, services providers, or advocates;~~

30 ~~(d) Two members, to be selected by the executive committee, who~~
31 ~~represent county government;~~

32 ~~(e) One member, to be selected by the secretary of social and~~
33 ~~health services, to represent the department of social and health~~
34 ~~services long term care programs, including at least developmental~~
35 ~~disabilities, mental health, aging and adult services, AIDS, children's~~
36 ~~services, alcohol and substance abuse, and vocational rehabilitation;~~

37 and

1 ~~(f) Two members, to represent the governor, who shall serve on the~~
2 ~~executive committee.~~

3 ~~The legislative members shall select a chair from the membership of~~
4 ~~the commission.~~

5 ~~The commission shall be staffed, to the extent possible, by staff~~
6 ~~from the appropriate senate and house of representatives committees.~~

7 ~~The commission may form technical advisory committees to assist it~~
8 ~~with any particular matters deemed necessary by the commission.~~

9 ~~The commission and technical advisory committee members shall~~
10 ~~receive no compensation, but except for publicly funded agency staff,~~
11 ~~shall, to the extent funds are available, be reimbursed for their~~
12 ~~expenses while attending any meetings in the same manner as legislators~~
13 ~~engaged in interim committee business as specified in RCW 44.04.120.~~

14 ~~The commission may receive appropriations, grants, gifts, and other~~
15 ~~payments from any governmental or other public or private entity or~~
16 ~~person which it may use to defray the cost of its operations or to~~
17 ~~contract for technical assistance, with the approval of the senate~~
18 ~~committee on facilities and operations and the house of representatives~~
19 ~~executive rules committee.~~

20 ~~(2) The long term care commission shall develop legislation and~~
21 ~~recommend administrative actions necessary to achieve the following~~
22 ~~long term care reforms:~~

23 ~~(a) The systematic coordination, planning, budgeting, and~~
24 ~~administration of long term care services currently administered by the~~
25 ~~department of social and health services, division of developmental~~
26 ~~disabilities, aging and adult services administration, division of~~
27 ~~vocational rehabilitation, office on AIDS, division of health, and the~~
28 ~~bureau of alcohol and substance abuse;~~

29 ~~(b))~~ The legislature finds the intent of the 1989 legislature to
30 reform statutory provisions of long-term care for persons of all ages
31 with chronic functional disability, although not enacted, continues to
32 be applicable. The need to streamline the current bureaucratic
33 fragmentation of chronic health services for the person with functional
34 disabilities and facilitate the development of client centered,
35 accessible, high quality, cost-effective, and appropriate long-term
36 care services options for persons with functional disabilities is even
37 more pressing today. The legislature further finds that if we are
38 going to meet the significant and growing chronic care needs in the
39 next two decades, rapid fundamental changes will need to take place in

1 the way we finance, organize, and provide long-term care services to
2 the functionally disabled. The public demands, and it is the intent of
3 the legislature to reduce the cost and size of government and provide
4 efficient and effective public service to the persons most impaired by
5 chronic functional disability.

6 To realize the need for a cost-effective, uniform, and fully
7 integrated long-term care system while simultaneously reducing the size
8 and cost of government, the joint committee on health systems oversight
9 if enacted pursuant to House Bill No. 1262 or the legislative budget
10 committee if House Bill No. 1262 is not enacted, shall develop a
11 working plan for long-term care reform, including recommendations and
12 statutory changes, by December 12, 1995, to accomplish the following:

13 (1) Reorganize and consolidate, on a noncategorical basis, all
14 disease or age-specific (categorical) organizational entities of state
15 administration and their regional elements pertaining to chronic care
16 services to persons with functional mental and physical disabilities,
17 including but not limited to: In the department of social and health
18 services: Health and rehabilitative services and aging and adult
19 services; in the department of health: Aids chronic care and boarding
20 homes; the department of services to the blind; in the department of
21 veterans affairs: Nursing facilities; and in all other state agencies
22 that provide chronic long-term health care services;

23 (2) Implement a streamlined client centered administrative and
24 delivery system for long-term care services state-wide that
25 incorporates all long-term care services for the person with functional
26 disabilities to include the functionally disabled, developmentally
27 disabled, mentally ill, traumatically brain injured, and others with
28 chronic functional disabilities. The system shall be a single point
29 entry system administered at the local level that allows the person
30 with functional disabilities to obtain needs determination, eligibility
31 screening, priority setting, and services information and assistance.
32 The system shall be designed so that acute health care services are
33 effectively coordinated with long-term care services. The system shall
34 recognize and respect the individuality and dignity of all functionally
35 disabled individuals and promote self reliance and the preference for
36 the assistance and comfort provided by families, friends, and community
37 volunteers. It shall also recognize the importance of community
38 organizations and the public and private infrastructure in the delivery
39 of care and support. All major points of access into the long-term

1 care system shall be identified and integrated into the system to
2 insure that clients are fully informed of the most appropriate least
3 expensive care options;

4 (3) Provision of long-term care services to persons based on their
5 functional disabilities noncategorically and in the most independent
6 living situation consistent with the person's needs and preferences;

7 ((+e)) (4) A consistent definition of appropriate roles and
8 responsibilities for state and local government, regional
9 organizations, and private organizations in the planning,
10 administration, financing, and delivery of long-term care services;

11 ((+d)) (5) Technical assistance to enable local communities to
12 have greater participation and control in the planning, administration,
13 and provision of long-term care services;

14 ((+e)) (6) A case management system that coordinates an
15 appropriate and cost-effective plan of care and services for eligible
16 functionally disabled persons based on their individual needs and
17 preferences;

18 ((+f)) (7) A sufficient supply of quality institutional and
19 noninstitutional residential alternatives for functionally disabled
20 persons, and supports for the providers of such services;

21 ((+g)) (8) Public and private alternative funding for long-term
22 care services, ~~((such as federal Title XIX funding of personal care~~
23 ~~services through the limited casualty program for the medically needy~~
24 ~~and other optional services)) that includes the promotion of affordable
25 stand alone long-term care insurance options or as part of overall
26 health care insurance benefits, a uniform fee copayment scale for
27 client participation in state-funded, long-term care programs, and
28 private, long-term care insurance;~~

29 ((+h)) (9) A systematic and balanced long-term care services
30 payment and reimbursement system, including a case mix nursing home
31 reimbursement, that will provide access to needed services while
32 controlling the rate of cost increases for such services;

33 ((+i)) (10) Active involvement of volunteers and advocacy groups;

34 ((+j)) (11) An integrated data base that provides long-term care
35 client tracking;

36 ((+k)) (12) A coordinated education system for long-term care to
37 insure client safety and quality of services; ((and

38 (+l)) (13) Administratively separate the nonmeans tested economic
39 and social welfare and advocacy programs of the older Americans act, 42

1 U.S.C. Chap 35 and 45 C.F.R. 1321 et seq. from the need and means
2 tested programs for persons with functional disabilities;

3 (14) Review all activities mandated and expenditures authorized by
4 the senior citizens services act, chapter 74.38 RCW; and identify which
5 funds are being used for functionally disabled seniors and identify how
6 these senior citizens services act funds can be directed to programs
7 serving the most disabled elderly; and

8 (15) Other issues deemed appropriate by the ((implementation team))
9 joint committee on health systems oversight.

10 The ((commission)) joint committee on health systems oversight, if
11 created in House Bill No. 1262, or the legislative budget committee if
12 House Bill No. 1262 is not enacted, shall report to the legislature
13 with its findings, recommendations, and proposed legislation by
14 December ((1, 1990)) 12, 1995.

15 NEW SECTION. Sec. 8. A new section is added to chapter 74.39A RCW
16 to read as follows:

17 The department's system of quality improvement for long-term care
18 services shall be guided by the following principles, consistent with
19 applicable federal laws and regulations:

20 (1) The system shall be consumer centered and promote privacy,
21 independence, dignity, choice, and a home or home-like environment for
22 consumers.

23 (2) The goal of the system is continuous quality improvement with
24 the focus on consumer satisfaction and outcomes for consumers.

25 (3) Providers should be supported in their efforts to improve
26 quality through training, technical assistance, and case management.

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

29 (5) Monitoring should be outcome based and responsive to consumer
30 complaints.

31 (6) Providers generally should be assisted in addressing identified
32 problems initially through consultation and technical assistance.
33 Enforcement remedies shall be available for problems that are serious,
34 recurring, or that have been uncorrected.

35 **Sec. 9.** RCW 74.39A.010 and 1993 c 508 s 3 are each amended to read
36 as follows:

1 (1) To the extent of available funding, the department of social
2 and health services may contract with licensed boarding homes under
3 chapter 18.20 RCW and tribally licensed boarding homes for assisted
4 living services and modified assisted living services. The department
5 shall develop ~~((rules))~~ terms and conditions for facilities that
6 contract with the department for assisted living services or modified
7 assisted living services to establish:

8 (a) Facility service standards consistent with the principles in
9 section 8 of this act and consistent with chapter 70.129 RCW;

10 (b) Standards for resident living areas consistent with section 2
11 of this act;

12 (c) Training requirements for providers and their staff.

13 (2) The department's terms and conditions shall provide that
14 ~~((ensure that the contracted))~~ services in assisted living and modified
15 assisted living facilities:

16 ~~((+1))~~ (a) Recognize individual needs, privacy, and autonomy;

17 ~~((+2))~~ (b) Include, but not be limited to, personal care, nursing
18 services, medication administration, and supportive services that
19 promote independence and self-sufficiency;

20 ~~((+3))~~ (c) Are of sufficient scope to assure that each resident
21 who chooses to remain in the assisted living or modified assisted
22 living settings may do so, ~~((unless nursing care needs exceed the level~~
23 of care defined by the department)) to the extent that the care
24 provided continues to be cost-effective. However, the resident may
25 waive the provision of any service that would otherwise promote their
26 ability to function at their highest practicable level, but only if the
27 resident has been fully informed as to his or her need for and
28 potential to benefit from the services that are to be waived;

29 ~~((+4))~~ (d) Are directed first to those persons most likely, in the
30 absence of modified assisted living services or assisted living
31 services, to need hospital, nursing facility, or other out-of-home
32 placement; and

33 ~~((+5))~~ (e) Are provided in compliance with applicable ~~((department~~
34 of health)) facility and professional licensing laws and rules.

35 (3) When a facility contracts with the department for assisted
36 living services or modified assisted living services, only services and
37 facility standards that are provided to or in behalf of the assisted
38 living services or modified assisted living services client shall be
39 subject to the department's contract standards.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 74.39A
2 RCW to read as follows:

3 (1) To the extent of available funding, the department of social
4 and health services may contract for adult residential care.

5 (2) The department shall, by contract, develop terms and conditions
6 for facilities that contract with the department for adult residential
7 care to establish:

8 (a) Facility service standards consistent with the principles in
9 section 8 of this act and consistent with chapter 70.129 RCW; and

10 (b) Training requirements for providers and their staff.

11 (3) The department shall, by contract, provide that services in
12 adult residential care facilities:

13 (a) Recognize individual needs, privacy, and autonomy;

14 (b) Include personal care services and other services that promote
15 independence and self-sufficiency and aging in place;

16 (c) Are directed first to those persons most likely, in the absence
17 of adult residential care services, to need hospital, nursing facility,
18 or other out-of-home placement; and

19 (d) Are provided in compliance with applicable facility and
20 professional licensing laws and rules.

21 (4) When a facility contracts with the department for adult
22 residential care, only services and facility standards that are
23 provided to or in behalf of the adult residential care client shall be
24 subject to the adult residential care contract standards.

25 NEW SECTION. **Sec. 11.** A new section is added to chapter 74.39A
26 RCW to read as follows:

27 (1) The department shall, by contract, establish reasonable minimum
28 qualifications and training requirements to assure that assisted living
29 service, modified assisted living service, and adult residential care
30 providers with whom the department contracts are capable of providing
31 services consistent with this chapter.

32 (2) The department shall not contract for assisted living, modified
33 assisted living, or adult residential care services with a provider if
34 the department finds that the provider or any partner, officer,
35 director, managerial employee, or owner of five percent or more of the
36 provider has a history of significant noncompliance with federal or
37 state regulations, rules, or laws in providing care or services to
38 vulnerable adults or to children.

1 **Sec. 12.** RCW 70.128.007 and 1989 c 427 s 15 are each amended to
2 read as follows:

3 The purposes of this chapter are to:

4 (1) Encourage the establishment and maintenance of adult family
5 homes that provide a humane, safe, and homelike environment for persons
6 with functional limitations who need personal and special care;

7 (2) Establish standards for regulating adult family homes that
8 adequately protect residents(~~(, but are consistent with the abilities~~
9 ~~and resources of an adult family home so as not to discourage~~
10 ~~individuals from serving as adult family home providers; and));~~

11 (3) Encourage consumers, families, providers, and the public to
12 become active in assuring their full participation in development of
13 adult family homes that provide high quality and cost-effective care;

14 (4) Provide for appropriate care of residents in adult family homes
15 by requiring that each resident have a care plan that promotes his or
16 her ability to achieve their highest practicable level of physical,
17 mental, and psychosocial functioning, unless the resident waives his or
18 her right to receive any such services after being fully informed as to
19 the need for and potential to benefit from services that are to be
20 waived; and

21 (5) Accord each resident the right to participate in the
22 development of the care plan and in other major decisions involving the
23 resident and their care.

24 **Sec. 13.** RCW 70.128.010 and 1989 c 427 s 16 are each amended to
25 read as follows:

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

28 (1) "Adult family home" means a regular family abode of a person or
29 persons who are providing personal care, room, and board to more than
30 one but not more than four adults who are not related by blood or
31 marriage to the person or persons providing the services; except that
32 a maximum of six adults may be permitted if the department determines
33 that the home is of adequate size and that the home and the provider
34 are capable of meeting standards and qualifications as provided for in
35 this act.

36 (2) "Provider" means any person who is licensed under this chapter
37 to operate an adult family home. The provider shall reside at the
38 adult family home(~~(, except that))~~. Exceptions may be authorized by

1 the department (~~(for good cause,)~~) through standards as defined in
2 rule.

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

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

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

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

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

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

15 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.128
16 RCW to read as follows:

17 The legislature recognizes that adult family homes located within
18 the boundaries of a federally recognized Indian reservation may be
19 licensed by the Indian tribe. The department may pay for care for
20 persons residing in such homes, if there has been a tribal or state
21 background check of the provider and any staff, and the client is
22 otherwise eligible for services administered by the department.

23 **Sec. 15.** RCW 43.190.020 and 1991 sp.s. c 8 s 3 are each amended to
24 read as follows:

25 As used in this chapter, "long-term care facility" means any of the
26 following (~~(which provide services to persons sixty years of age and~~
27 ~~older and is))):~~

28 (1) A facility which:

29 (a) Maintains and operates twenty-four hour skilled nursing
30 services for the care and treatment of chronically ill or convalescent
31 patients, including mental, emotional, or behavioral problems, mental
32 retardation, or alcoholism;

33 (b) Provides supportive, restorative, and preventive health
34 services in conjunction with a socially oriented program to its
35 residents, and which maintains and operates twenty-four hour services
36 including board, room, personal care, and intermittent nursing care.
37 "Long-term health care facility" includes nursing homes and nursing

1 facilities, but does not include acute care hospital or other licensed
2 facilities except for that distinct part of the hospital or facility
3 which provides nursing facility services.

4 (2) Any family home, group care facility, or similar facility
5 determined by the secretary, for twenty-four hour nonmedical care of
6 persons in need of personal services, supervision, or assistance
7 essential for sustaining the activities of daily living or for the
8 protection of the individual.

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

10 **Sec. 16.** RCW 43.190.060 and 1987 c 158 s 3 are each amended to
11 read as follows:

12 A long-term care ombudsman shall:

13 (1) Investigate and resolve complaints made by or on behalf of
14 (~~elder individuals who are~~) residents of long-term care facilities
15 relating to administrative action which may adversely affect the
16 health, safety, welfare, and rights of these individuals;

17 (2) Monitor the development and implementation of federal, state,
18 and local laws, rules, regulations, and policies with respect to long-
19 term care facilities in this state;

20 (3) Provide information as appropriate to public agencies regarding
21 the problems of individuals residing in long-term care facilities; and

22 (4) Provide for training volunteers and promoting the development
23 of citizen organizations to participate in the ombudsman program. A
24 volunteer long-term care ombudsman shall be able to identify and
25 resolve problems regarding the care of residents in long-term care
26 facilities and to assist such residents in the assertion of their civil
27 and human rights. However, volunteers shall not be used for complaint
28 investigations but may engage in fact-finding activities to determine
29 whether a formal complaint should be submitted to the department.

30 NEW SECTION. **Sec. 17.** RCW 74.08.530, 74.08.560, 74.08.570,
31 74.08.545, and 74.08.550 are each recodified in chapter 74.39A RCW.

32 NEW SECTION. **Sec. 18.** RCW 74.08.541 and 1989 c 427 s 4, 1986 c
33 222 s 1, 1983 1st ex.s. c 41 s 39, & 1981 1st ex.s. c 6 s 17 are each
34 repealed.

1 **Sec. 19.** RCW 74.08.545 and 1989 c 427 s 5 are each amended to read
2 as follows:

3 It is the intent of the legislature that chore services be provided
4 to eligible persons within the limits of funds appropriated for that
5 purpose. Therefore, the department shall provide services only to
6 those persons identified as at risk of being placed in a long-term care
7 facility in the absence of such services. The department shall not
8 provide chore services to any individual who is eligible for, and whose
9 needs can be met by another community service administered by the
10 department. Chore services shall be provided to the extent necessary
11 to maintain a safe and healthful living environment. It is the policy
12 of the state to encourage the development of volunteer chore services
13 in local communities as a means of meeting chore care service needs and
14 directing financial resources. In determining eligibility for chore
15 services, the department shall consider the following:

16 (1) The kind of services needed;

17 (2) The degree of service need, and the extent to which an
18 individual is dependent upon such services to remain in his or her home
19 or return to his or her home;

20 (3) The availability of personal or community resources which may
21 be utilized to meet the individual's need; and

22 (4) Such other factors as the department considers necessary to
23 insure service is provided only to those persons whose chore service
24 needs cannot be met by relatives, friends, nonprofit organizations,
25 ~~((or))~~ other persons, or by other programs or resources.

26 In determining the level of services to be provided under this
27 chapter, ~~((the))~~ the client shall be assessed using an instrument
28 designed by the department to determine the level of functional
29 disability, the need for service and the person's risk of long-term
30 care facility placement.

31 NEW SECTION. **Sec. 20.** A new section is added to chapter 74.39A
32 RCW to read as follows:

33 (1) The department shall establish a monthly dollar lid for each
34 region on chore services expenditures within the legislative
35 appropriation. Priority for services shall be given to the following
36 situations:

37 (a) People who were receiving chore personal care services as of
38 June 30, 1995;

1 (b) People for whom chore personal care services are necessary to
2 return to the community from a nursing home;

3 (c) People for whom chore personal care services are necessary to
4 prevent unnecessary nursing home placement; and

5 (d) People for whom chore personal care services are necessary as
6 a protective measure based on referrals resulting from an adult
7 protective services investigation.

8 (2) The department shall require a client to participate in the
9 cost of chore services as a necessary precondition to receiving chore
10 services paid for by the state. The client shall retain an amount
11 equal to one hundred percent of the federal poverty level, adjusted for
12 household size, for maintenance needs. The department shall consider
13 the remaining income as the client participation amount for chore
14 services except for those persons whose participation is established
15 under RCW 74.08.570.

16 (3) The department shall establish, by rule, the maximum amount of
17 resources a person may retain and be eligible for chore services.

18 **Sec. 21.** RCW 74.08.550 and 1989 c 427 s 6 are each amended to read
19 as follows:

20 (1) The department is authorized to develop a program to provide
21 for ~~((those))~~ chore services ~~((enumerated in RCW 74.08.541))~~ under this
22 chapter.

23 (2) The department may provide assistance in the recruiting of
24 providers of the services enumerated in ~~((RCW 74.08.541))~~ section 20 of
25 this act and seek to assure the timely provision of services in
26 emergency situations.

27 (3) The department shall assure that all providers of the chore
28 services ~~((enumerated in RCW 74.08.541))~~ under this chapter are
29 compensated for the delivery of the services on a prompt and regular
30 basis.

31 **Sec. 22.** RCW 74.08.570 and 1989 c 427 s 7 are each amended to read
32 as follows:

33 (1) An otherwise eligible disabled person shall not be deemed
34 ineligible for chore services under this chapter if the person's gross
35 income from employment, adjusted downward by the cost of the chore
36 services to be provided and the disabled person's work expenses, does
37 not exceed the maximum eligibility standard established by the

1 department for such chore services. The department shall establish a
2 (~~sliding scale fee schedule for~~) methodology for client participation
3 that allows such disabled persons(~~(, taking into consideration the~~
4 ~~person's ability to pay and work expenses)~~) to be employed.

5 (2) If a disabled person arranges for chore services through an
6 individual provider arrangement, the client's contribution shall be
7 counted as first dollar toward the total amount owed to the provider
8 for chore services rendered.

9 (3) As used in this section:

10 (a) "Gross income" means total earned wages, commissions, salary,
11 and any bonus;

12 (b) "Work expenses" includes:

13 (i) Payroll deductions required by law or as a condition of
14 employment, in amounts actually withheld;

15 (ii) The necessary cost of transportation to and from the place of
16 employment by the most economical means, except rental cars; and

17 (iii) Expenses of employment necessary for continued employment,
18 such as tools, materials, union dues, transportation to service
19 customers if not furnished by the employer, and uniforms and clothing
20 needed on the job and not suitable for wear away from the job;

21 (c) "Employment" means any work activity for which a recipient
22 receives monetary compensation;

23 (d) "Disabled" means:

24 (i) Permanently and totally disabled as defined by the department
25 and as such definition is approved by the federal social security
26 administration for federal matching funds;

27 (ii) Eighteen years of age or older;

28 (iii) A resident of the state of Washington; and

29 (iv) Willing to submit to such examinations as are deemed necessary
30 by the department to establish the extent and nature of the disability.

31 **Sec. 23.** RCW 18.51.091 and 1987 c 476 s 24 are each amended to
32 read as follows:

33 The department shall make or cause to be made at least one
34 inspection of each nursing home (~~(prior to license renewal and shall~~
35 ~~inspect community-based services as part of the licensing renewal~~
36 ~~survey)~~) at least every eighteen months. The inspection shall be made
37 without providing advance notice of it. Every inspection may include
38 an inspection of every part of the premises and an examination of all

1 records, methods of administration, the general and special dietary and
2 the stores and methods of supply. Those nursing homes that provide
3 community-based care shall establish and maintain separate and distinct
4 accounting and other essential records for the purpose of appropriately
5 allocating costs of the providing of such care: PROVIDED, That such
6 costs shall not be considered allowable costs for reimbursement
7 purposes under chapter 74.46 RCW. Following such inspection or
8 inspections, written notice of any violation of this law or the rules
9 and regulations promulgated hereunder, shall be given the applicant or
10 licensee and the department. The notice shall describe the reasons for
11 the facility's noncompliance. The department may prescribe by
12 regulations that any licensee or applicant desiring to make specified
13 types of alterations or additions to its facilities or to construct new
14 facilities shall, before commencing such alteration, addition or new
15 construction, submit its plans and specifications therefor to the
16 department for preliminary inspection and approval or recommendations
17 with respect to compliance with the regulations and standards herein
18 authorized.

19 **Sec. 24.** RCW 18.51.140 and 1986 c 266 s 83 are each amended to
20 read as follows:

21 Standards for fire protection and the enforcement thereof, with
22 respect to all nursing homes to be licensed hereunder, shall be the
23 responsibility of the director of community, trade, and economic
24 development, through the director of fire protection, who shall adopt
25 such recognized standards as may be applicable to nursing homes for the
26 protection of life against the cause and spread of fire and fire
27 hazards. The department upon receipt of an application for a license,
28 shall submit to the director of community, trade, and economic
29 development, through the director of fire protection, in writing, a
30 request for an inspection, giving the applicant's name and the location
31 of the premises to be licensed. Upon receipt of such a request, the
32 director of community, trade, and economic development, through the
33 director of fire protection, or his or her deputy, shall make an
34 inspection of the nursing home to be licensed, and if it is found that
35 the premises do not comply with the required safety standards and fire
36 regulations as promulgated by the director of community, trade, and
37 economic development, through the director of fire protection, he or
38 she shall promptly make a written report to the nursing home and the

1 department as to the manner and time allowed in which the premises must
2 qualify for a license and set forth the conditions to be remedied with
3 respect to fire regulations. The department, applicant or licensee
4 shall notify the director of community, trade, and economic
5 development, through the director of fire protection, upon completion
6 of any requirements made by him or her, and the director of community,
7 trade, and economic development, through the director of fire
8 protection, or his or her deputy, shall make a reinspection of such
9 premises. Whenever the nursing home to be licensed meets with the
10 approval of the director of community, trade, and economic development,
11 through the director of fire protection, he or she shall submit to the
12 department, a written report approving same with respect to fire
13 protection before a full license can be issued. The director of
14 community, trade, and economic development, through the director of
15 fire protection, shall make or cause to be made inspections of such
16 nursing homes at least ((annually)) every eighteen months.

17 In cities which have in force a comprehensive building code, the
18 provisions of which are determined by the director of community, trade,
19 and economic development, through the director of fire protection, to
20 be equal to the minimum standards of the code for nursing homes adopted
21 by the director of community, trade, and economic development, through
22 the director of fire protection, the chief of the fire department,
23 provided the latter is a paid chief of a paid fire department, shall
24 make the inspection with the director of community, trade, and economic
25 development, through the director of fire protection, or his or her
26 deputy and they shall jointly approve the premises before a full
27 license can be issued.

28 **Sec. 25.** RCW 18.51.300 and 1981 1st ex.s. c 2 s 24 are each
29 amended to read as follows:

30 Unless specified otherwise by the department, a nursing home shall
31 retain and preserve all records which relate directly to the care and
32 treatment of a patient for a period of no less than ((ten)) eight years
33 following the most recent discharge of the patient; except the records
34 of minors, which shall be retained and preserved for a period of no
35 less than three years following attainment of the age of eighteen
36 years, or ten years following such discharge, whichever is longer.

1 If a nursing home ceases operations, it shall make immediate
2 arrangements, as approved by the department, for preservation of its
3 records.

4 The department shall by regulation define the type of records and
5 the information required to be included in the records to be retained
6 and preserved under this section; which records may be retained in
7 photographic form pursuant to chapter 5.46 RCW.

8 NEW SECTION. **Sec. 26.** A new section is added to chapter 74.39A
9 RCW to read as follows:

10 (1) A person who receives an asset from an applicant for or
11 recipient of long-term care services for less than fair market value
12 shall be subject to a civil fine payable to the department if:

13 (a) The applicant for or recipient of long-term care services
14 transferred the asset for the purpose of qualifying for state or
15 federal coverage for long-term care services and the person who
16 received the asset was aware, or should have been aware, of this
17 purpose;

18 (b) Such transfer establishes a period of ineligibility for such
19 service under state or federal laws or regulations; and

20 (c) The department provides coverage for such services during the
21 period of ineligibility because the failure to provide such coverage
22 would result in an undue hardship for the applicant or recipient.

23 (2) The civil fine imposed under this section shall be imposed in
24 a judicial proceeding initiated by the department and shall equal the
25 amount the department expends for the care of the applicant or
26 recipient during the period of ineligibility attributable to the amount
27 transferred to the person subject to the civil fine.

28 (3) Transfers subject to a civil fine under this section shall be
29 considered null and void and a fraudulent conveyance as to the
30 department. The department shall have the right to petition a court to
31 set aside such transfers and require all assets transferred returned to
32 the applicant or recipient.

33 NEW SECTION. **Sec. 27.** A new section is added to chapter 74.39A
34 RCW to read as follows:

35 (1) All payments made in state-funded long-term care shall be
36 recoverable as if they were medical assistance payments subject to

1 recovery under 42 U.S.C. Sec. 1396p and chapter 43.20B RCW, but without
2 regard to the recipient's age.

3 (2) In determining eligibility for state-funded long-term care
4 services programs, the department shall impose the same rules with
5 respect to the transfer of assets for less than fair market value as
6 are imposed under 42 U.S.C. 1396p with respect to nursing home and home
7 and community services.

8 NEW SECTION. **Sec. 28.** A new section is added to chapter 74.39A
9 RCW to read as follows:

10 Notwithstanding any other provision of law:

11 (1) In order to facilitate and ensure compliance with the federal
12 social security act, Title XIX, as now existing or hereafter amended,
13 later enactment to be adopted by reference by the director by rule, and
14 other state laws mandating recovery of assets from estates of persons
15 receiving long-term care services, the secretary of the department,
16 with the approval of the office of the attorney general, may pay the
17 reasonable and proper fees of attorneys admitted to practice before
18 courts of this state, and associated professionals such as guardians,
19 who are engaged in probate practice for the purpose of maintaining
20 actions under Title 11 RCW, to the end that assets are not wasted, but
21 are rather collected and preserved, and used for the care of the client
22 or the reimbursement of the department pursuant to this chapter or
23 chapter 43.20B RCW.

24 (2) The department may hire such other agencies and professionals
25 on a contingency basis or otherwise as are necessary and cost-effective
26 to collect bad debts owed to the department for long-term care
27 services.

28 **Sec. 29.** RCW 11.40.010 and 1994 c 221 s 25 are each amended to
29 read as follows:

30 Every personal representative shall, after appointment and
31 qualification, give a notice to the creditors of the deceased, stating
32 such appointment and qualification as personal representative and
33 requiring all persons having claims against the deceased to serve the
34 same on the personal representative or the estate's attorney of record,
35 and file an executed copy thereof with the clerk of the court, within
36 four months after the date of the first publication of such notice
37 described in this section or within four months after the date of the

1 filing of the copy of such notice with the clerk of the court,
2 whichever is the later, or within the time otherwise provided in RCW
3 11.40.013. The four-month time period after the later of the date of
4 the first publication of the notice to creditors or the date of the
5 filing of such notice with the clerk of the court is referred to in
6 this chapter as the "four-month time limitation." Such notice shall be
7 given as follows:

8 (1) The personal representative shall give actual notice, as
9 provided in RCW 11.40.013, to such creditors who become known to the
10 personal representative within such four-month time limitation;

11 (2) The personal representative shall cause such notice to be
12 published once in each week for three successive weeks in the county in
13 which the estate is being administered; (~~and~~)

14 (3) The personal representative shall file a copy of such notice
15 with the clerk of the court; and

16 (4) The personal representative shall mail a copy of the notice,
17 including the decedent's social security number, to the state of
18 Washington, department of social and health services, office of
19 financial recovery.

20 Except as otherwise provided in RCW 11.40.011 or 11.40.013, any
21 claim not filed within the four-month time limitation shall be forever
22 barred, if not already barred by any otherwise applicable statute of
23 limitations. This bar is effective as to claims against both the
24 decedent's probate assets and nonprobate assets as described in RCW
25 11.18.200. Proof by affidavit of the giving and publication of such
26 notice shall be filed with the court by the personal representative.

27 Acts of a notice agent in complying with chapter 221, Laws of 1994
28 may be adopted and ratified by the personal representative as if done
29 by the personal representative in complying with this chapter, except
30 that if at the time of the appointment and qualification of the
31 personal representative a notice agent had commenced nonprobate notice
32 to creditors under chapter 11.42 RCW, the personal representative shall
33 give published notice as provided in RCW 11.42.180.

34 **Sec. 30.** RCW 11.42.020 and 1994 c 221 s 32 are each amended to
35 read as follows:

36 (1) The notice agent may give nonprobate notice to the creditors of
37 the decedent if:

1 (a) As of the date of the filing of a copy of the notice with the
2 clerk of the superior court for the notice county, the notice agent has
3 no knowledge of the appointment and qualification of a personal
4 representative in the decedent's estate in the state of Washington or
5 of another person becoming a notice agent; and

6 (b) According to the records of the clerk of the superior court for
7 the notice county as of 8:00 a.m. on the date of the filing, no
8 personal representative of the decedent's estate had been appointed and
9 qualified and no cause number regarding the decedent had been issued to
10 any other notice agent by the clerk under RCW 11.42.010.

11 (2) The notice must state that all persons having claims against
12 the decedent shall: (a) Serve the same on the notice agent if the
13 notice agent is a resident of the state of Washington upon whom service
14 of all papers may be made, or on the nonprobate resident agent for the
15 notice agent, if any, or on the attorneys of record of the notice agent
16 at their respective address in the state of Washington; and (b) file an
17 executed copy of the notice with the clerk of the superior court for
18 the notice county, within: (i)(A) Four months after the date of the
19 first publication of the notice described in this section; or (B) four
20 months after the date of the filing of the copy of the notice with the
21 clerk of the superior court for the notice county, whichever is later;
22 or (ii) the time otherwise provided in RCW 11.42.050. The four-month
23 time period after the later of the date of the first publication of the
24 notice to creditors or the date of the filing of the notice with the
25 clerk of the court is referred to in this chapter as the "four-month
26 time limitation."

27 (3) The notice agent shall declare in the notice in affidavit form
28 or under the penalty of perjury under the laws of the state of
29 Washington as provided in RCW 9A.72.085 that: (a) The notice agent is
30 entitled to give the nonprobate notice under subsection (1) of this
31 section; and (b) the notice is being given by the notice agent as
32 permitted by this section.

33 (4) The notice agent shall sign the notice and file it with the
34 clerk of the superior court for the notice county. The notice must be
35 given as follows:

36 (a) The notice agent shall give actual notice as to creditors of
37 the decedent who become known to the notice agent within the four-month
38 time limitation as required in RCW 11.42.050;

1 (b) The notice agent shall cause the notice to be published once in
2 each week for three successive weeks in the notice county; (~~and~~)

3 (c) The notice agent shall file a copy of the notice with the clerk
4 of the superior court for the notice county; and

5 (d) The notice agent shall mail a copy of the notice, including the
6 decedent's social security number, to the state of Washington,
7 department of social and health services, office of financial recovery.

8 (5) A claim not filed within the four-month time limitation is
9 forever barred, if not already barred by an otherwise applicable
10 statute of limitations, except as provided in RCW 11.42.030 or
11 11.42.050. The bar is effective to bar claims against both the probate
12 estate of the decedent and nonprobate assets that were subject to
13 satisfaction of the decedent's general liabilities immediately before
14 the decedent's death. If a notice to the creditors of a decedent is
15 published by more than one notice agent and the notice agents are not
16 acting jointly, the four-month time limitation means the four-month
17 time limitation that applies to the notice agent who first publishes
18 the notice. Proof by affidavit or perjury declaration made under RCW
19 9A.72.085 of the giving and publication of the notice must be filed
20 with the clerk of the superior court for the notice county by the
21 notice agent.

22 **Sec. 31.** RCW 11.62.010 and 1993 c 291 s 1 are each amended to read
23 as follows:

24 (1) At any time after forty days from the date of a decedent's
25 death, any person who is indebted to or who has possession of any
26 personal property belonging to the decedent or to the decedent and his
27 or her surviving spouse as a community, which debt or personal property
28 is an asset which is subject to probate, shall pay such indebtedness or
29 deliver such personal property, or so much of either as is claimed, to
30 a person claiming to be a successor of the decedent upon receipt of
31 proof of death and of an affidavit made by said person which meets the
32 requirements of subsection (2) of this section.

33 (2) An affidavit which is to be made pursuant to this section shall
34 state:

35 (a) The claiming successor's name and address, and that the
36 claiming successor is a "successor" as defined in RCW 11.62.005;

37 (b) That the decedent was a resident of the state of Washington on
38 the date of his or her death;

1 (c) That the value of the decedent's entire estate subject to
2 probate, not including the surviving spouse's community property
3 interest in any assets which are subject to probate in the decedent's
4 estate, wherever located, less liens and encumbrances, does not exceed
5 sixty thousand dollars;

6 (d) That forty days have elapsed since the death of the decedent;

7 (e) That no application or petition for the appointment of a
8 personal representative is pending or has been granted in any
9 jurisdiction;

10 (f) That all debts of the decedent including funeral and burial
11 expenses have been paid or provided for;

12 (g) A description of the personal property and the portion thereof
13 claimed, together with a statement that such personal property is
14 subject to probate;

15 (h) That the claiming successor has given written notice, either by
16 personal service or by mail, identifying his or her claim, and
17 describing the property claimed, to all other successors of the
18 decedent, and that at least ten days have elapsed since the service or
19 mailing of such notice; and

20 (i) That the claiming successor is either personally entitled to
21 full payment or delivery of the property claimed or is entitled to full
22 payment or delivery thereof on the behalf and with the written
23 authority of all other successors who have an interest therein.

24 (3) A transfer agent of any security shall change the registered
25 ownership of the security claimed from the decedent to the person
26 claiming to be the successor with respect to such security upon the
27 presentation of proof of death and of an affidavit made by such person
28 which meets the requirements of subsection (2) of this section. Any
29 governmental agency required to issue certificates of ownership or of
30 license registration to personal property shall issue a new certificate
31 of ownership or of license registration to a person claiming to be a
32 successor of the decedent upon receipt of proof of death and of an
33 affidavit made by such person which meets the requirements of
34 subsection (2) of this section.

35 (4) No release from any Washington state or local taxing authority
36 may be required before any assets or debts are paid or delivered to a
37 successor of a decedent as required under this section.

1 (5) A copy of the affidavit, including the decedent's social
2 security number, shall be mailed to the state of Washington, department
3 of social and health services, office of financial recovery.

4 **Sec. 32.** RCW 11.28.120 and 1994 c 221 s 23 are each amended to
5 read as follows:

6 Administration of an estate if the decedent died intestate or if
7 the personal representative or representatives named in the will
8 declined or were unable to serve shall be granted to some one or more
9 of the persons hereinafter mentioned, and they shall be respectively
10 entitled in the following order:

11 (1) The surviving spouse, or such person as he or she may request
12 to have appointed.

13 (2) The next of kin in the following order: (a) Child or children;
14 (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e)
15 nephews or nieces.

16 (3) The trustee named by the decedent in an inter vivos trust
17 instrument, testamentary trustee named in the will, guardian of the
18 person or estate of the decedent, or attorney in fact appointed by the
19 decedent, if any such a fiduciary controlled or potentially controlled
20 substantially all of the decedent's probate and nonprobate assets.

21 (4) One or more of the beneficiaries or transferees of the
22 decedent's probate or nonprobate assets.

23 (5)(a) The director of revenue, or the director's designee, for
24 those estates having property subject to the provisions of chapter
25 11.08 RCW; however, the director may waive this right.

26 (b) The secretary of the department of social and health services
27 for those estates owing debts for long-term care services as defined in
28 section 1 of this act; however the secretary may waive this right.

29 (6) One or more of the principal creditors.

30 (7) If the persons so entitled shall fail for more than forty days
31 after the death of the decedent to present a petition for letters of
32 administration, or if it appears to the satisfaction of the court that
33 there is no next of kin, as above specified eligible to appointment, or
34 they waive their right, and there are no principal creditor or
35 creditors, or such creditor or creditors waive their right, then the
36 court may appoint any suitable person to administer such estate.

1 **Sec. 33.** RCW 18.39.250 and 1989 c 390 s 3 are each amended to read
2 as follows:

3 (1) Any funeral establishment selling funeral merchandise or
4 services by prearrangement funeral service contract and accepting
5 moneys therefore shall establish and maintain one or more
6 prearrangement funeral service trusts under Washington state law with
7 two or more designated trustees, for the benefit of the beneficiary of
8 the prearrangement funeral service contract or may join with one or
9 more other Washington state licensed funeral establishments in a
10 "master trust" provided that each member of the "master trust" shall
11 comply individually with the requirements of this chapter.

12 (2) Up to ten percent of the cash purchase price of each
13 prearrangement funeral service contract, excluding sales tax, may be
14 retained by the funeral establishment unless otherwise provided in this
15 chapter. If the prearrangement funeral service contract is canceled
16 within thirty calendar days of its signing, then the purchaser shall
17 receive a full refund of all moneys paid under the contract.

18 (3) At least ninety percent of the cash purchase price of each
19 prearrangement funeral service contract, paid in advance, excluding
20 sales tax, shall be placed in the trust established or utilized by the
21 funeral establishment. Deposits to the prearrangement funeral service
22 trust shall be made not later than the twentieth day of the month
23 following receipt of each payment made on the last ninety percent of
24 each prearrangement funeral service contract, excluding sales tax.

25 (4) All prearrangement funeral service trust moneys shall be
26 deposited in an insured account in a qualified public depository or
27 shall be invested in instruments issued or insured by any agency of the
28 federal government if these securities are held in a public depository.
29 The account shall be designated as the prearrangement funeral service
30 trust of the funeral establishment for the benefit of the beneficiaries
31 named in the prearrangement funeral service contracts. The
32 prearrangement funeral service trust shall not be considered as, nor
33 shall it be used as, an asset of the funeral establishment.

34 (5) After deduction of reasonable fees for the administration of
35 the trust, taxes paid or withheld, or other expenses of the trust, all
36 interest, dividends, increases, or accretions of whatever nature earned
37 by a trust shall be kept unimpaired and shall become a part of the
38 trust. Adequate records shall be maintained to allocate the share of
39 principal and interest to each contract. Fees deducted for the

1 administration of the trust shall not exceed one percent of the face
2 amount of the prearrangement funeral service contract per annum. In no
3 instance shall the administrative charges deducted from the
4 prearrangement funeral service trust reduce, diminish, or in any other
5 way lessen the value of the trust so that the services or merchandise
6 provided for under the contract are reduced, diminished, or in any
7 other way lessened.

8 (6) Except as otherwise provided in this chapter, the trustees of
9 a prearrangement funeral service trust shall permit withdrawal of all
10 funds deposited under a prearrangement funeral service contract, plus
11 accruals thereon, under the following circumstances and conditions:

12 (a) If the funeral establishment files a verified statement with
13 the trustees that the prearrangement funeral merchandise and services
14 covered by the contract have been furnished and delivered in accordance
15 therewith; or

16 (b) If the funeral establishment files a verified statement with
17 the trustees that the prearrangement funeral merchandise and services
18 covered by the contract have been canceled in accordance with its
19 terms.

20 (7) Subsequent to the thirty calendar day cancellation period
21 provided for in this chapter, any purchaser or beneficiary who has a
22 revocable prearrangement funeral service contract has the right to
23 demand a refund of the amount in trust.

24 (8) Prearrangement funeral service contracts which have or should
25 have an account in a prearrangement funeral service trust may be
26 terminated by the board if the funeral establishment goes out of
27 business, becomes insolvent or bankrupt, makes an assignment for the
28 benefit of creditors, has its prearrangement funeral service
29 certificate of registration revoked, or for any other reason is unable
30 to fulfill the obligations under the contract. In such event, or upon
31 demand by the purchaser or beneficiary of the prearrangement funeral
32 service contract, the funeral establishment shall refund to the
33 purchaser or beneficiary all moneys deposited in the trust and
34 allocated to the contract unless otherwise ordered by a court of
35 competent jurisdiction. The purchaser or beneficiary may, in lieu of
36 a refund, elect to transfer the prearrangement funeral service contract
37 and all amounts in trust to another funeral establishment licensed
38 under this chapter which will agree, by endorsement to the contract, to
39 be bound by the contract and to provide the funeral merchandise or

1 services. Election of this option shall not relieve the defaulting
2 funeral establishment of its obligation to the purchaser or beneficiary
3 for any amounts required to be, but not placed, in trust.

4 (9) Prior to the sale or transfer of ownership or control of any
5 funeral establishment which has contracted for prearrangement funeral
6 service contracts, any person, corporation, or other legal entity
7 desiring to acquire such ownership or control shall apply to the
8 director in accordance with RCW 18.39.145. Persons and business
9 entities selling or relinquishing, and persons and business entities
10 purchasing or acquiring ownership or control of such funeral
11 establishments shall each verify and attest to a report showing the
12 status of the prearrangement funeral service trust or trusts on the
13 date of the sale. This report shall be on a form prescribed by the
14 board and shall be considered part of the application for a funeral
15 establishment license. In the event of failure to comply with this
16 subsection, the funeral establishment shall be deemed to have gone out
17 of business and the provisions of subsection (8) of this section shall
18 apply.

19 (10) Prearrangement funeral service trust moneys shall not be used,
20 directly or indirectly, for the benefit of the funeral establishment or
21 any director, officer, agent, or employee of the funeral establishment
22 including, but not limited to, any encumbrance, pledge, or other use of
23 prearrangement funeral service trust moneys as collateral or other
24 security.

25 (11)(a) If, at the time of the signing of the prearrangement
26 funeral service contract, the beneficiary of the trust is a recipient
27 of public assistance as defined in RCW 74.04.005, or reasonably
28 anticipates being so defined, the contract may provide that the trust
29 will be irrevocable. If after the contract is entered into, the
30 beneficiary becomes eligible or seeks to become eligible for public
31 assistance under Title 74 RCW, the contract may provide for an election
32 by the beneficiary, or by the purchaser on behalf of the beneficiary,
33 to make the trust irrevocable thereafter in order to become or remain
34 eligible for such assistance.

35 (b) The department of social and health services shall notify the
36 trustee of any prearrangement service trust that the department has a
37 claim on the estate of a beneficiary for long-term care services. Such
38 notice shall be renewed at least every three years. The trustees upon
39 becoming aware of the death of a beneficiary shall give notice to the

1 department of social and health services, office of financial recovery,
2 who shall file any claim there may be within thirty days of the notice.

3 (12) Every prearrangement funeral service contract financed through
4 a prearrangement funeral service trust shall contain language which:

5 (a) Informs the purchaser of the prearrangement funeral service
6 trust and the amount to be deposited in the trust;

7 (b) Indicates if the contract is revocable or not in accordance
8 with subsection (11) of this section;

9 (c) Specifies that a full refund of all moneys paid on the contract
10 will be made if the contract is canceled within thirty calendar days of
11 its signing;

12 (d) Specifies that, in the case of cancellation by a purchaser or
13 beneficiary eligible to cancel under the contract or under this
14 chapter, up to ten percent of the contract amount may be retained by
15 the seller to cover the necessary expenses of selling and setting up
16 the contract;

17 (e) Identifies the trust to be used and contains information as to
18 how the trustees may be contacted.

19 **Sec. 34.** RCW 18.39.255 and 1989 c 390 s 4 are each amended to read
20 as follows:

21 Prearranged funeral service contracts funded through insurance
22 shall contain language which:

23 (1) States the amount of insurance;

24 (2) Informs the purchaser of the name and address of the insurance
25 company through which the insurance will be provided, the policy
26 number, and the name of the beneficiary; ((and))

27 (3) Informs the purchaser that amounts paid for insurance may not
28 be refundable;

29 (4) Informs that any funds from the policy not used for services
30 may be subject to a claim for reimbursement for long-term care services
31 paid for by the state; and

32 (5) States that for purposes of the contract, the procedures in RCW
33 18.39.250(11)(b) shall control such recoupment.

34 **Sec. 35.** RCW 68.46.050 and 1973 1st ex.s. c 68 s 5 are each
35 amended to read as follows:

36 (1) A bank, trust company, or savings and loan association
37 designated as the depository of prearrangement funds shall permit

1 withdrawal by a cemetery authority of all funds deposited under any
2 specific prearrangement contract plus interest accrued thereon, under
3 the following circumstances and conditions:

4 ~~((1))~~ (a) If the cemetery authority files a verified statement
5 with the depository that the prearrangement merchandise and services
6 covered by a contract have been furnished and delivered in accordance
7 therewith; or

8 ~~((2))~~ (b) If the cemetery authority files a verified statement
9 that a specific prearrangement contract has been canceled in accordance
10 with its terms.

11 (2) The department of social and health services shall notify the
12 cemetery authority maintaining a prearrangement trust fund regulated by
13 this chapter that the department has a claim on the estate of a
14 beneficiary for long-term care services. Such notice shall be renewed
15 at least every three years. The cemetery authority upon becoming aware
16 of the death of a beneficiary shall give notice to the department of
17 social and health services, office of financial recovery, who shall
18 file any claim there may be within thirty days of the notice.

19 **Sec. 36.** RCW 70.129.040 and 1994 c 214 s 5 are each amended to
20 read as follows:

21 (1) The resident has the right to manage his or her financial
22 affairs, and the facility may not require residents to deposit their
23 personal funds with the facility.

24 (2) Upon written authorization of a resident, if the facility
25 agrees to manage the resident's personal funds, the facility must hold,
26 safeguard, manage, and account for the personal funds of the resident
27 deposited with the facility as specified in this section.

28 ~~((3))~~(a) The facility must deposit a resident's personal funds in
29 excess of one hundred dollars in an interest-bearing account or
30 accounts that is separate from any of the facility's operating
31 accounts, and that credits all interest earned on residents' funds to
32 that account. In pooled accounts, there must be a separate accounting
33 for each resident's share.

34 (b) The facility must maintain a resident's personal funds that do
35 not exceed one hundred dollars in a noninterest-bearing account,
36 interest-bearing account, or petty cash fund.

1 (~~(4)~~) (3) The facility must establish and maintain a system that
2 assures a full and complete and separate accounting of each resident's
3 personal funds entrusted to the facility on the resident's behalf.

4 (a) The system must preclude any commingling of resident funds with
5 facility funds or with the funds of any person other than another
6 resident.

7 (b) The individual financial record must be available on request to
8 the resident or his or her legal representative.

9 (~~(5)~~) (4) Upon the death of a resident with a personal fund
10 deposited with the facility the facility must convey within forty-five
11 days the resident's funds, and a final accounting of those funds, to
12 the individual or probate jurisdiction administering the resident's
13 estate; but in the case of a resident who received long-term care
14 services paid for by the state, the funds and accounting shall be sent
15 to the state of Washington, department of social and health services,
16 office of financial recovery. The department shall establish a release
17 procedure for use for burial expenses.

18 **Sec. 37.** RCW 43.20B.080 and 1994 c 21 s 3 are each amended to read
19 as follows:

20 (1) The department shall file liens, seek adjustment, or otherwise
21 effect recovery for medical assistance correctly paid on behalf of an
22 individual as required by this chapter and 42 U.S.C. Sec. 1396p.

23 (2) Liens may be adjusted by foreclosure in accordance with chapter
24 61.12 RCW.

25 (3) In the case of an individual who was fifty-five years (~~or~~
26 ~~{or}~~) of age or older when the individual received medical assistance,
27 the department shall seek adjustment or recovery from the individual's
28 estate, and from nonprobate assets of the individual as defined by RCW
29 11.02.005 except property passing through a community property
30 agreement, but only for medical assistance consisting of nursing
31 facility services, home and community-based services, other services
32 that the department determines to be appropriate, and related hospital
33 and prescription drug services. Recovery from the individual's estate,
34 including foreclosure of liens imposed under this section, shall be
35 undertaken as soon as practicable, consistent with the requirements of
36 42 U.S.C. Sec. 1396p.

37 (~~(3)~~) (4)(a) The department shall establish procedures consistent
38 with standards established by the federal department of health and

1 human services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery
2 when such recovery would work an undue hardship.

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

7 (5) The department is authorized to adopt rules to effect recovery
8 under this section. The department may adopt by rule later enactments
9 of the federal laws referenced in this section.

10 NEW SECTION. Sec. 38. A new section is added to chapter 74.46 RCW
11 to read as follows:

12 Upon the death of a resident with a personal fund deposited with
13 the facility, the facility must convey within forty-five days the
14 resident's funds, and a final accounting of those funds, to the
15 individual or probate jurisdiction administering the resident's estate;
16 but in the case of a resident who received long-term care services, the
17 funds and accounting shall be sent to the state of Washington,
18 department of social and health services, office of financial recovery.
19 The department shall establish a release procedure for use for burial
20 expenses.

21 **Sec. 39.** RCW 74.46.105 and 1985 c 361 s 10 are each amended to
22 read as follows:

23 Cost reports and patient trust accounts of contractors shall be
24 field audited by the department, either by department staff or by
25 auditors under contract to the department, in accordance with the
26 provisions of this chapter. The department when it deems necessary to
27 assure the accuracy of cost reports may review any underlying financial
28 statements or other records upon which the cost reports are based. The
29 department shall have the authority to accept or reject audits which
30 fail to satisfy the requirements of this section or which are performed
31 by auditors who violate any of the rules of this section. Department
32 audits of the cost reports and patient trust accounts shall be
33 conducted as follows:

34 (1) Each year the department will provide for field audit of the
35 cost report, statistical reports, and patient trust funds, as
36 established by RCW 74.46.700, of all or a sample of reporting
37 facilities selected by profiles of costs, exceptions, contract

1 terminations, upon special requests or other factors determined by the
2 department.

3 (2) Beginning with audits for calendar year (~~((1983, up to one~~
4 ~~hundred percent of contractors cost reports and patient care trust fund~~
5 ~~accounts shall be audited: PROVIDED, That each contractor shall be~~
6 ~~audited at least once in every three year period))~~ 1993, contractors'
7 cost reports and resident care trust fund accounts shall be audited
8 periodically as determined necessary by the department.

9 (3) Facilities shall be selected for sample audits within one
10 hundred twenty days of submission of a correct and complete cost
11 report, and shall be so informed of the department's intent to audit.
12 Audits so scheduled shall be completed within one year of selection.

13 (4) Where an audit for a recent reporting or trust fund period
14 discloses material discrepancies, undocumented costs or mishandling of
15 patient trust funds, auditors may examine prior unaudited periods, for
16 indication of similar material discrepancies, undocumented costs or
17 mishandling of patient trust funds for not more than two reporting
18 periods preceding the facility reporting period selected in the sample.

19 (5) The audit will result in a schedule summarizing appropriate
20 adjustments to the contractor's cost report. These adjustments will
21 include an explanation for the adjustment, the general ledger account
22 or account group, and the dollar amount. Patient trust fund audits
23 shall be reported separately and in accordance with RCW 74.46.700.

24 (6) Audits shall meet generally accepted auditing standards as
25 promulgated by the American institute of certified public accountants
26 and the standards for audit of governmental organizations, programs,
27 activities and functions as published by the comptroller general of the
28 United States. Audits shall be supervised or reviewed by a certified
29 public accountant.

30 (7) No auditor under contract with or employed by the department to
31 perform audits in accordance with the provisions of this chapter shall:

32 (a) Have had direct or indirect financial interest in the
33 ownership, financing or operation of a nursing home in this state
34 during the period covered by the audits;

35 (b) Acquire or commit to acquire any direct or indirect financial
36 interest in the ownership, financing or operation of a nursing home in
37 this state during said auditor's employment or contract with the
38 department;

1 (c) Accept as a client any nursing home in this state during or
2 within two years of termination of said auditor's contract or
3 employment with the department.

4 (8) Audits shall be conducted by auditors who are otherwise
5 independent as determined by the standards of independence established
6 by the American institute of certified public accountants.

7 (9) All audit rules adopted after March 31, 1984, shall be
8 published before the beginning of the cost report year to which they
9 apply.

10 **Sec. 40.** RCW 74.46.115 and 1983 1st ex.s. c 67 s 6 are each
11 amended to read as follows:

12 The office of the state auditor shall (~~annually~~) at least once in
13 every three state fiscal years commencing July 1, 1995, review the
14 performance of the department to ensure that departmental audits are
15 conducted in accordance with generally accepted (~~accounting principles~~
16 ~~and~~) auditing standards.

17 **Sec. 41.** RCW 74.46.640 and 1983 1st ex.s. c 67 s 34 are each
18 amended to read as follows:

19 (1) Payments to a contractor may be withheld by the department in
20 each of the following circumstances:

21 (a) A required report is not properly completed and filed by the
22 contractor within the appropriate time period, including any approved
23 extension. Payments will be released as soon as a properly completed
24 report is received;

25 (b) State auditors, department auditors, or authorized personnel in
26 the course of their duties are refused access to a nursing (~~home~~)
27 facility or are not provided with existing appropriate records.
28 Payments will be released as soon as such access or records are
29 provided;

30 (c) A refund in connection with a settlement or rate adjustment is
31 not paid by the contractor when due. The amount withheld will be
32 limited to the unpaid amount of the refund; (~~and~~)

33 (d) Payment for the final thirty days of service under a contract
34 will be held in the absence of adequate alternate security acceptable
35 to the department pending final settlement when the contract is
36 terminated; and

1 (e) Payment for services at any time during the contract period in
2 the absence of adequate alternate security acceptable to the
3 department, if a nursing facility's medicaid overpayment liability, as
4 determined by preliminary settlement, or final settlement, or both,
5 reaches or exceeds fifty thousand dollars, whether subject to a good
6 faith dispute or not, and for each subsequent increase in liability
7 reaching or exceeding twenty-five thousand dollars. Payments will be
8 released as soon as acceptable security is provided or refund to the
9 department is made.

10 (2) No payment will be withheld until written notification of the
11 suspension is provided to the contractor, stating the reason
12 ~~((therefor))~~ for the withholding, except that a request for
13 administrative review or appeal of a suspension of payment, if
14 available to the contractor and not already exhausted, shall not delay
15 suspension of payment pending the outcome of the review or appeal.

16 **Sec. 42.** RCW 74.46.690 and 1985 c 361 s 3 are each amended to read
17 as follows:

18 (1) When a facility contract is terminated for any reason, the old
19 contractor shall submit final reports as required by RCW 74.46.040.

20 (2) Upon notification of a contract termination, the department
21 shall determine by preliminary or final settlement calculations the
22 amount of any overpayments made to the contractor, including
23 overpayments disputed by the contractor. If preliminary or final
24 settlements are unavailable for any period up to the date of contract
25 termination, the department shall make a reasonable estimate of any
26 overpayment or underpayments for such periods. The reasonable estimate
27 shall be based upon prior period settlements, available audit findings,
28 the projected impact of prospective rates, and other information
29 available to the department.

30 (3) The old contractor shall provide security, in a form deemed
31 adequate by the department, in the amount of determined and estimated
32 overpayments, whether or not the overpayments are the subject of good
33 faith dispute. Security shall consist of:

34 (a) Withheld payments due the contractor; or

35 (b) A surety bond issued by a bonding company acceptable to the
36 department; or

37 (c) An assignment of funds to the department; or

38 (d) Collateral acceptable to the department; or

1 (e) A purchaser's assumption of liability for the prior
2 contractor's overpayment; (~~(e)~~)

3 (f) A promissory note secured by a deed of trust; or

4 (g) Any combination of (a), (b), (c), (d), (~~(e)~~) (e), or (f) of
5 this subsection.

6 (4) A surety bond or assignment of funds shall:

7 (a) Be at least equal in amount to determined or estimated
8 overpayments, whether or not the subject of good faith dispute, minus
9 withheld payments;

10 (b) Be issued or accepted by a bonding company or financial
11 institution licensed to transact business in Washington state;

12 (c) Be for a term sufficient to ensure effectiveness after final
13 settlement and the exhaustion of administrative and judicial remedies:
14 PROVIDED, That the bond or assignment shall initially be for a term of
15 five years, and shall be forfeited if not renewed thereafter in an
16 amount equal to any remaining overpayment in dispute;

17 (d) Provide that the full amount of the bond or assignment, or
18 both, shall be paid to the department if a properly completed final
19 cost report is not filed in accordance with this chapter, or if
20 financial records supporting this report are not preserved and made
21 available to the auditor; and

22 (e) Provide that an amount equal to any recovery the department
23 determines is due from the contractor at settlement, but not exceeding
24 the amount of the bond and assignment, shall be paid to the department
25 if the contractor does not pay the refund within sixty days following
26 receipt of written demand or the conclusion of administrative or
27 judicial proceedings to contest settlement issues.

28 (5) The department shall release any payment withheld as security
29 if alternate security is provided under subsection (3) of this section
30 in an amount equivalent to determined and estimated overpayments.

31 (6) If the total of withheld payments, bonds, and assignments is
32 less than the total of determined and estimated overpayments, the
33 unsecured amount of such overpayments shall be a debt due the state and
34 shall become a lien against the real and personal property of the
35 contractor from the time of filing by the department with the county
36 auditor of the county where the contractor resides or owns property,
37 and the lien claim has preference over the claims of all unsecured
38 creditors.

1 (7) The contractor shall file a properly completed final cost
2 report in accordance with the requirements of this chapter, which shall
3 be audited by the department. A final settlement shall be determined
4 within ninety days following completion of the audit process, including
5 any administrative review of the audit requested by the contractor.

6 (8) Following determination of settlement for all periods, security
7 held pursuant to this section shall be released to the contractor after
8 overpayments determined in connection with final settlement have been
9 paid by the contractor. If the contractor contests the settlement
10 determination in accordance with RCW 74.46.170, the department shall
11 hold the security, not to exceed the amount of estimated unrecovered
12 overpayments being contested, pending completion of the administrative
13 appeal process.

14 (9) If, after calculation of settlements for any periods, it is
15 determined that overpayments exist in excess of the value of security
16 held by the state, the department may seek recovery of these additional
17 overpayments as provided by law.

18 ~~((If a contract is terminated solely in order for the same
19 owner to contract with the department to deliver services to another
20 classification of medical care recipients at the same facility, the
21 contractor is not required to submit final cost reports, and security
22 shall not be required))~~ Regardless of whether a contractor intends to
23 terminate its medicaid contract, if a facility's medicaid overpayment
24 liability for one or more settlement periods reaches, or exceeds a
25 total of fifty thousand dollars, as determined by preliminary
26 settlement or final settlement, or both, whether subject to a good
27 faith dispute or not, the department shall demand and obtain security
28 equivalent to such overpayment, and for each subsequent increase in
29 liability reaching or exceeding twenty-five thousand dollars. Such
30 security shall meet the criteria in subsections (3) and (4) of this
31 section, except that the department shall not accept an assumption of
32 liability. The department shall withhold all or portions of a
33 facility's current contract payments or impose liens, or both, as
34 authorized in subsection (6) of this section if security acceptable to
35 the department is not forthcoming. The department shall release a
36 facility's withheld payments or lift liens, or both, if the facility
37 subsequently provides security acceptable to the department. This
38 subsection shall apply to all overpayments determined by preliminary or

1 final settlements issued on or after July 1, 1995, regardless of what
2 reimbursement periods the settlements may cover.

3 NEW SECTION. **Sec. 43.** If any part of this act is found to be in
4 conflict with federal requirements that are a prescribed condition to
5 the allocation of federal funds to the state, the conflicting part of
6 this act is inoperative solely to the extent of the conflict and with
7 respect to the agencies directly affected, and this finding does not
8 affect the operation of the remainder of this act in its application to
9 the agencies concerned. The rules under this act shall meet federal
10 requirements that are a necessary condition to the receipt of federal
11 funds by the state.

12 NEW SECTION. **Sec. 44.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 45.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and shall take
19 effect July 1, 1995.

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