
SENATE BILL 5457

State of Washington

54th Legislature

1995 Regular Session

By Senators Quigley, Winsley, Wojahn, Franklin and Moyer; by request of Health Services Commission

Read first time 01/24/95. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to conflicts of interest among health care
2 providers, facilities, and third-party payers; amending RCW 18.35.110,
3 18.46.050, 18.51.054, 18.51.060, 18.100.140, 18.130.180, 43.72.010,
4 48.05.140, 48.62.091, 70.41.130, 70.42.120, 70.42.130, 70.42.140,
5 70.42.150, 70.42.160, 70.127.170, 70.175.100, and 71.12.590; adding a
6 new chapter to Title 19 RCW; creating new sections; repealing RCW
7 19.68.010, 19.68.020, 19.68.030, 19.68.040, and 51.48.280; prescribing
8 penalties; and providing an effective date.

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

10 NEW SECTION. **Sec. 1.** INTENT. The legislature recognizes that
11 patient or client referrals by health care providers, facilities, or
12 third-party payers for health services to an entity in which the
13 referring health care provider, facility, or third-party payer has an
14 investment or compensation interest presents a potential conflict of
15 interest. Self-referrals may result in overutilization of health
16 services or goods, increase overall costs of the health system, and
17 affect the quality of health services. These referral practices may
18 limit or completely eliminate competitive alternatives in the health
19 care market. In some instances, however, these referral practices may

1 expand and improve health services or may make services available that
2 were previously unavailable. They may also provide lower-cost options
3 to patients or increase competition.

4 Managed competition is a central component of Washington's health
5 services act, chapter 43.72 RCW, and is intended to promote more
6 cost-efficient health delivery arrangements. However, financial
7 incentives under managed competition, particularly capitated rates paid
8 to providers, facilities, and third-party payers may also translate
9 into pressures for underutilization of health services or goods. In
10 the implementation of chapter 43.72 RCW, a number of systems will be
11 initiated to identify underutilization with the intention of preventing
12 compromised patient care. Those systems include reporting
13 requirements, quality standards, and member grievance procedures. It
14 is also the intent of this chapter to authorize the commission to
15 develop regulations to prevent health care providers, facilities, or
16 third-party payers from receiving inappropriate financial gain through
17 underutilization of health services and goods.

18 It is the intent of the legislature to protect the citizens of
19 Washington from unnecessary and unduly costly health care expenditures
20 and to prevent limitations on access to health services by
21 underutilization of services for financial gain. It is also the intent
22 of the legislature to provide guidance to health care providers,
23 facilities, and third-party payers regarding acceptable patient
24 referrals.

25 Recognizing the need for flexibility to respond quickly to changes
26 in the delivery of health services, to avoid results beyond the
27 limitations on self-referral provided under this chapter and to provide
28 minimal disruption to the appropriate delivery of health services, the
29 Washington health services commission is exclusively authorized to
30 implement this chapter through adopted rules.

31 The legislature recognizes that changes in delivery of health
32 services has resulted in various methods by which health care providers
33 practice their professions and by which health care facilities and
34 third-party payers operate their businesses. It is not the intent of
35 the legislature to limit appropriate delivery of care.

36 The legislature hereby declares that the purpose of this chapter,
37 and the rules adopted under this chapter, is to complement the body of
38 federal law pertaining to health care provider investment or other
39 compensation interests and referrals. It is the intent of the

1 legislature that, in construing this chapter and the rules adopted
2 under this chapter, the courts be guided by final decisions of the
3 federal courts interpreting the various federal statutes dealing with
4 the same or similar matters.

5 NEW SECTION. **Sec. 2.** DEFINITIONS. (1) "Commission" means the
6 Washington health services commission.

7 (2) "Facility" or "health care facility" means any facility
8 licensed or certified by the state to provide health services to
9 patients or clients under chapters 18.46, 18.51, 70.41, 70.42, 70.127,
10 70.175, and 71.12 RCW.

11 (3) "Financial gain" means any remuneration that is a rebate,
12 refund, commission, unearned discount, profit, kickback, bribe, or
13 transference or splitting a fee in connection with the referral of
14 patients or clients for health services or in connection with the
15 provision of goods to patients or clients, that the provider, facility,
16 or third-party payer prescribed, required, ordered, or recommended.
17 "Financial gain" includes remuneration received or made from the
18 referral or failure to refer resulting in the underutilization of
19 health services or goods to a patient or client. "Financial gain" does
20 not include remuneration for professional services rendered by the
21 provider or the actual cost, including reasonable overhead costs, to
22 the provider for providing the health service or goods to the patient
23 or client.

24 (4) "Overutilization" means providing or referring for another
25 person to provide health services or goods that are inappropriate,
26 ineffective, or medically unnecessary for the patient or client.

27 (5) "Person" means natural persons, corporations, trusts,
28 unincorporated associations, and partnerships. "Person" does not
29 include the state, counties, municipalities, or any of their
30 subdivisions, except those governmental entities licensed, certified,
31 or regulated as health care providers, facilities, or third-party
32 payers.

33 (6) "Provider" or "health care provider" means:

34 (a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to
35 practice health or health-related services or otherwise practicing or
36 providing health services in this state consistent with state law; or

37 (b) An employee or agent of a person described in (a) of this
38 subsection, acting in the course and scope of his or her employment.

1 (7) "Third-party payer" means disability insurers regulated under
2 chapter 48.20 or 48.21 RCW, health care service contractor as defined
3 in RCW 48.44.010, health maintenance organizations as defined in RCW
4 48.46.020, entities certified in accordance with RCW 48.43.020 through
5 48.43.120, certified health plans as defined in RCW 43.72.010,
6 registered employer health plans as defined in RCW 43.72.010, self-
7 insured state health plans created under RCW 41.05.140, and self-
8 insured local government health programs regulated under chapter 48.62
9 RCW.

10 (8) "Underutilization" means failing to provide access or referral
11 to health services or goods that are appropriate, effective, and
12 medically necessary for the patient or client.

13 NEW SECTION. **Sec. 3.** REGULATION OF INAPPROPRIATE FINANCIAL GAIN.

14 (1) The commission is authorized to adopt rules that prohibit, limit,
15 or condition the payment or acceptance of inappropriate financial gain
16 in connection with:

17 (a) The referral of patients or clients; or

18 (b) The furnishing of health care goods to patients or clients,
19 that the provider, facility, or third-party payer prescribed, required,
20 ordered, or recommended;

21 under such circumstances as the commission deems appropriate.

22 (2) The means used by the commission to regulate referrals
23 involving inappropriate financial gain may include, but are not limited
24 to:

25 (a) Prohibition of investment, compensation, or referral;

26 (b) Allowing investment, compensation, or referral only upon
27 compliance with specific conditions; and

28 (c) Requiring disclosure of the investment or financial interest.

29 The commission should employ the least-restrictive regulatory
30 alternative that will nonetheless protect the interests of the
31 patients, payers, and the public.

32 (3) In adopting the rules described in subsection (1) of this
33 section, the commission shall consider:

34 (a) The need to protect patients from any adverse health impacts
35 that may occur because providers, facilities, or third-party payers
36 cause the overutilization or underutilization of health services in the
37 pursuit of inappropriate financial gain;

1 (b) The avoidance of unnecessary health expenditures that may occur
2 because providers, facilities, or third-party payers cause the
3 overutilization or underutilization of health services in the pursuit
4 of inappropriate financial gain;

5 (c) Maintaining public confidence in the integrity of the health
6 care delivery systems;

7 (d) The extent to which formation of integrated delivery systems
8 may be promoted by financial relationships among the participants in
9 certified health plans, networks, or other organizations;

10 (e) The need to encourage competition and innovation in the health
11 services delivery system;

12 (f) The need to promote access to health services in all regions of
13 the state;

14 (g) The particular circumstances of the local market for health
15 care services in rural or underserved areas;

16 (h) The incentives created by the payment mechanism, including but
17 not limited to capitation and fee for service, to which providers,
18 facilities, certified health plans, or other organizations are subject;

19 (i) The character of the goods or services involved, including
20 whether such goods or services are included within the uniform benefits
21 package; and

22 (j) The value of consistency with the body of federal law
23 pertaining to health care provider investment or other compensation
24 interest and referrals.

25 NEW SECTION. **Sec. 4.** ADVISORY OPINIONS. The commission shall
26 have the authority to issue advisory opinions on whether specific
27 circumstances or arrangements will result in a referral involving
28 inappropriate financial gain. Advisory opinions may be limited in
29 scope or effect as the commission may deem appropriate, are not binding
30 on the commission or other persons, and are not subject to the
31 administrative procedure act, chapter 34.05 RCW.

32 NEW SECTION. **Sec. 5.** DISCIPLINARY ACTION AGAINST LICENSED
33 PROVIDERS--AUTHORIZED. Disciplinary action under chapter 18.130 RCW
34 may be taken against the license of any provider violating this chapter
35 or the rules adopted under this chapter.

1 NEW SECTION. **Sec. 6.** ACTION AGAINST FACILITY LICENSE--ACTION
2 AGAINST THIRD-PARTY PAYER CERTIFICATE. If a health care facility
3 licensed by the state of Washington or a third-party payer regulated by
4 the state of Washington violates this chapter or the rules adopted by
5 the commission, the license of the health care facility and the
6 certificate of authority or its equivalent of the third-party payer
7 shall be subject to disciplinary action, including assessment of a
8 fine, by the state agency authorized to take action against health
9 facility licenses and third-party payer certificates of authority or
10 its equivalent.

11 NEW SECTION. **Sec. 7.** APPLICATION OF CONSUMER PROTECTION ACT. Any
12 violation of this chapter or the rules adopted by the commission to
13 implement this chapter shall constitute an unfair or deceptive trade
14 practice affecting the public interest under chapter 19.86 RCW. No
15 private right of action may be maintained for a violation of this
16 chapter or the rules. Any of the actions and investigative authority
17 contained in chapter 19.86 RCW are available for investigation,
18 enforcement, and to remedy a violation of this chapter, except neither
19 RCW 19.86.095 nor 19.86.130 shall apply to actions alleging violations
20 of this chapter, nor shall the private right of action in RCW 19.86.090
21 apply.

22 NEW SECTION. **Sec. 8.** VIOLATIONS--ATTORNEY GENERAL--CEASE AND
23 DESIST ORDER--TEMPORARY ORDER--PENALTY--RECOVERY IN SUPERIOR COURT.

24 (1) If it appears to the attorney general that a person has engaged in
25 or is about to engage in an act or practice constituting a violation of
26 a provision of this chapter or a rule adopted or order issued under
27 this chapter, the attorney general may, in the attorney general's
28 discretion, issue an order directing the person to cease and desist
29 from continuing the act or practice. Reasonable notice of an
30 opportunity for a hearing shall be given. The attorney general may
31 issue a temporary order pending the hearing, which shall remain in
32 effect until ten days after the hearing is held and which shall become
33 final if the person to whom the notice is addressed does not request a
34 hearing within fifteen days after the receipt of the notice.

35 (2) The attorney general may assess against any person who violates
36 this chapter, or any rule adopted under this chapter, a civil penalty
37 of not more than two thousand dollars for each violation of this

1 chapter, provided that the total civil penalty assessed shall not
2 exceed twice the amount of financial gain realized by the violator as
3 a result of violation of this chapter. Such person shall be afforded
4 the opportunity for a hearing, upon request made to the attorney
5 general within thirty days after the date of issuance of the notice of
6 assessment. If any person fails to pay an assessment after it has
7 become a final and unappealable order, or after the court has entered
8 final judgment in favor of the state, the attorney general may recover
9 the amount assessed by action in the appropriate superior court. In
10 such action, the validity and appropriateness of the final order
11 imposing the penalty shall not be subject to review.

12 (3) The administrative procedure act, chapter 34.05 RCW, shall
13 govern the rights, remedies, and procedures with respect to subsections
14 (1) and (2) of this section.

15 NEW SECTION. **Sec. 9.** SHORT TITLE. This act shall be known and
16 cited as the "health services conflict of interest act."

17 **Sec. 10.** RCW 18.35.110 and 1993 c 313 s 4 are each amended to read
18 as follows:

19 In addition to causes specified under RCW 18.130.170 and
20 18.130.180, any person licensed under this chapter may be subject to
21 disciplinary action by the board for any of the following causes:

22 (1) For unethical conduct in dealing in hearing aids. Unethical
23 conduct shall include, but not be limited to:

24 (a) Using or causing or promoting the use of, in any advertising
25 matter, promotional literature, testimonial, guarantee, warranty,
26 label, brand, insignia, or any other representation, however
27 disseminated or published, which is false, misleading or deceptive;

28 (b) Failing or refusing to honor or to perform as represented any
29 representation, promise, agreement, or warranty in connection with the
30 promotion, sale, dispensing, or fitting of the hearing aid;

31 (c) Advertising a particular model, type, or kind of hearing aid
32 for sale which purchasers or prospective purchasers responding to the
33 advertisement cannot purchase or are dissuaded from purchasing and
34 where it is established that the purpose of the advertisement is to
35 obtain prospects for the sale of a different model, type, or kind than
36 that advertised;

37 (d) Falsifying hearing test or evaluation results;

1 (e)(i) Whenever any of the following conditions are found or should
2 have been found to exist either from observations by the licensee or on
3 the basis of information furnished by the prospective hearing aid user
4 prior to fitting and dispensing a hearing aid to any such prospective
5 hearing aid user, failing to advise that prospective hearing aid user
6 in writing that the user should first consult a licensed physician
7 specializing in diseases of the ear or if no such licensed physician is
8 available in the community then to any duly licensed physician:

9 (A) Visible congenital or traumatic deformity of the ear, including
10 perforation of the eardrum;

11 (B) History of, or active drainage from the ear within the previous
12 ninety days;

13 (C) History of sudden or rapidly progressive hearing loss within
14 the previous ninety days;

15 (D) Acute or chronic dizziness;

16 (E) Any unilateral hearing loss;

17 (F) Significant air-bone gap when generally acceptable standards
18 have been established as defined by the food and drug administration;

19 (G) Visible evidence of significant cerumen accumulation or a
20 foreign body in the ear canal;

21 (H) Pain or discomfort in the ear; or

22 (I) Any other conditions that the board may by rule establish. It
23 is a violation of this subsection for any licensee or that licensee's
24 employees and putative agents upon making such required referral for
25 medical opinion to in any manner whatsoever disparage or discourage a
26 prospective hearing aid user from seeking such medical opinion prior to
27 the fitting and dispensing of a hearing aid. No such referral for
28 medical opinion need be made by any licensee in the instance of
29 replacement only of a hearing aid which has been lost or damaged beyond
30 repair within six months of the date of purchase. The licensee or the
31 licensee's employees or putative agents shall obtain a signed statement
32 from the hearing aid user documenting the waiver of medical clearance
33 and the waiver shall inform the prospective user that signing the
34 waiver is not in the user's best health interest: PROVIDED, That the
35 licensee shall maintain a copy of either the physician's statement
36 showing that the prospective hearing aid user has had a medical
37 evaluation or the statement waiving medical evaluation, for a period of
38 three years after the purchaser's receipt of a hearing aid. Nothing in
39 this section required to be performed by a licensee shall mean that the

1 licensee is engaged in the diagnosis of illness or the practice of
2 medicine or any other activity prohibited under the laws of this state;
3 (ii) Fitting and dispensing a hearing aid to any person under
4 eighteen years of age who has not been examined and cleared for hearing
5 aid use within the previous six months by a physician specializing in
6 otolaryngology except in the case of replacement instruments or except
7 in the case of the parents or guardian of such person refusing, for
8 good cause, to seek medical opinion: PROVIDED, That should the parents
9 or guardian of such person refuse, for good cause, to seek medical
10 opinion, the licensee shall obtain from such parents or guardian a
11 certificate to that effect in a form as prescribed by the department;
12 (iii) Fitting and dispensing a hearing aid to any person under
13 eighteen years of age who has not been examined by an audiologist who
14 holds at least a master's degree in audiology for recommendations
15 during the previous six months, without first advising such person or
16 his or her parents or guardian in writing that he or she should first
17 consult an audiologist who holds at least a master's degree in
18 audiology, except in cases of hearing aids replaced within six months
19 of their purchase;
20 (f) Representing that the services or advice of a person licensed
21 to practice medicine and surgery under chapter 18.71 RCW or osteopathy
22 and surgery under chapter 18.57 RCW or of a clinical audiologist will
23 be used or made available in the selection, fitting, adjustment,
24 maintenance, or repair of hearing aids when that is not true, or using
25 the word "doctor," "clinic," or other like words, abbreviations, or
26 symbols which tend to connote a medical or osteopathic profession when
27 such use is not accurate;
28 (g) Permitting another to use his or her license;
29 (h) Stating or implying that the use of any hearing aid will
30 restore normal hearing, preserve hearing, prevent or retard progression
31 of a hearing impairment, or any other false, misleading, or medically
32 or audilogically unsupportable claim regarding the efficiency of a
33 hearing aid;
34 (i) Representing or implying that a hearing aid is or will be
35 "custom-made," "made to order," "prescription made," or in any other
36 sense specially fabricated for an individual when that is not the case;
37 or
38 (j) Directly or indirectly offering, giving, permitting, or causing
39 to be given, money or anything of value to any person who advised

1 another in a professional capacity as an inducement to influence that
2 person, or to have that person influence others to purchase or contract
3 to purchase any product sold or offered for sale by the licensee, or to
4 influence any person to refrain from dealing in the products of
5 competitors.

6 (2) Engaging in any unfair or deceptive practice or unfair method
7 of competition in trade within the meaning of RCW 19.86.020.

8 (3) Aiding or abetting any violation of the rebating laws as stated
9 in (~~chapter 19.68 RCW~~) sections 1 through 9 of this act.

10 **Sec. 11.** RCW 18.46.050 and 1991 c 3 s 101 are each amended to read
11 as follows:

12 The department may deny, suspend, levy a fine, or revoke a license
13 in any case in which it finds that there has been failure or refusal to
14 comply with the requirements established under this chapter or the
15 rules adopted under it or sections 1 through 9 of this act and the
16 rules adopted under it.

17 RCW 43.70.115 governs notice of a license denial, revocation,
18 suspension, fine levying, or modification and provides the right to an
19 adjudicative proceeding.

20 **Sec. 12.** RCW 18.51.054 and 1989 c 372 s 7 are each amended to read
21 as follows:

22 The department may deny a license to any applicant if the
23 department finds that the applicant or any partner, officer, director,
24 managerial employee, or owner of five percent or more of the applicant:

25 (1) Operated a nursing home without a license or under a revoked or
26 suspended license; or

27 (2) Knowingly or with reason to know made a false statement of a
28 material fact (a) in an application for license or any data attached
29 thereto, or (b) in any matter under investigation by the department; or

30 (3) Refused to allow representatives or agents of the department to
31 inspect (a) all books, records, and files required to be maintained or
32 (b) any portion of the premises of the nursing home; or

33 (4) Willfully prevented, interfered with, or attempted to impede in
34 any way (a) the work of any authorized representative of the department
35 or (b) the lawful enforcement of any provision of this chapter or
36 chapter 74.42 RCW; or

1 (5) Has a history of significant noncompliance with federal or
2 state regulations in providing nursing home care. In deciding whether
3 to deny a license under this section, the factors the department
4 considers shall include the gravity and frequency of the noncompliance;
5 or

6 (6) Violated sections 1 through 9 of this act or the rules adopted
7 under it.

8 **Sec. 13.** RCW 18.51.060 and 1989 c 372 s 8 are each amended to read
9 as follows:

10 (1) In any case in which the department finds that a licensee, or
11 any partner, officer, director, owner of five percent or more of the
12 assets of the nursing home, or managing employee failed or refused to
13 comply with the requirements of this chapter, sections 1 through 9 of
14 this act, or of chapter 74.42 RCW, or the standards, rules and
15 regulations established under them or, in the case of a Medicaid
16 contractor, failed or refused to comply with the Medicaid requirements
17 of Title XIX of the social security act, as amended, and regulations
18 promulgated thereunder, the department may take any or all of the
19 following actions:

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

21 (b) Order stop placement;

22 (c) Assess monetary penalties of a civil nature;

23 (d) Deny payment to a nursing home for any Medicaid resident
24 admitted after notice to deny payment. Residents who are Medicaid
25 recipients shall not be responsible for payment when the department
26 takes action under this subsection;

27 (e) Appoint temporary management as provided in subsection (7) of
28 this section.

29 (2) The department may suspend, revoke, or refuse to renew a
30 license, assess monetary penalties of a civil nature, or both, in any
31 case in which it finds that the licensee, or any partner, officer,
32 director, owner of five percent or more of the assets of the nursing
33 home, or managing employee:

34 (a) Operated a nursing home without a license or under a revoked or
35 suspended license; or

36 (b) Knowingly or with reason to know made a false statement of a
37 material fact in his application for license or any data attached
38 thereto, or in any matter under investigation by the department; or

1 (c) Refused to allow representatives or agents of the department to
2 inspect all books, records, and files required to be maintained or any
3 portion of the premises of the nursing home; or

4 (d) Willfully prevented, interfered with, or attempted to impede in
5 any way the work of any duly authorized representative of the
6 department and the lawful enforcement of any provision of this chapter
7 or of chapter 74.42 RCW; or

8 (e) Willfully prevented or interfered with any representative of
9 the department in the preservation of evidence of any violation of any
10 of the provisions of this chapter or of chapter 74.42 RCW or the
11 standards, rules, and regulations adopted under them; or

12 (f) Failed to report patient abuse or neglect in violation of
13 chapter 70.124 RCW; or

14 (g) Fails to pay any civil monetary penalty assessed by the
15 department pursuant to this chapter within ten days after such
16 assessment becomes final.

17 (3) The department shall deny payment to a nursing home having a
18 Medicaid contract with respect to any Medicaid-eligible individual
19 admitted to the nursing home when:

20 (a) The department finds the nursing home not in compliance with
21 the requirements of Title XIX of the social security act, as amended,
22 and regulations promulgated thereunder, and the facility has not
23 complied with such requirements within three months; in such case, the
24 department shall deny payment until correction has been achieved; or

25 (b) The department finds on three consecutive standard surveys that
26 the nursing home provided substandard quality of care; in such case,
27 the department shall deny payment for new admissions until the facility
28 has demonstrated to the satisfaction of the department that it is in
29 compliance with Medicaid requirements and that it will remain in
30 compliance with such requirements.

31 (4)(a) Civil penalties collected under this section or under
32 chapter 74.42 RCW shall be deposited into a special fund administered
33 by the department to be applied to the protection of the health or
34 property of residents of nursing homes found to be deficient, including
35 payment for the costs of relocation of residents to other facilities,
36 maintenance of operation of a facility pending correction of
37 deficiencies or closure, and reimbursement of residents for personal
38 funds lost.

1 (b) Civil monetary penalties, if imposed, may be assessed and
2 collected, with interest, for each day a nursing home is or was out of
3 compliance. Civil monetary penalties shall not exceed three thousand
4 dollars per violation. Each day upon which the same or a substantially
5 similar action occurs is a separate violation subject to the assessment
6 of a separate penalty.

7 (c) Any civil penalty assessed under this section or chapter 74.46
8 RCW shall be a nonreimbursable item under chapter 74.46 RCW.

9 (5)(a) The department shall order stop placement on a nursing home,
10 effective upon oral or written notice, when the department determines:

11 (i) The nursing home no longer substantially meets the requirements
12 of chapter 18.51 or 74.42 RCW, or in the case of medicaid contractors,
13 the requirements of Title XIX of the social security act, as amended,
14 and any regulations promulgated under such statutes; and

15 (ii) The deficiency or deficiencies in the nursing home:

16 (A) Jeopardize the health and safety of the residents, or

17 (B) Seriously limit the nursing home's capacity to provide adequate
18 care.

19 (b) When the department has ordered a stop placement, the
20 department may approve a readmission to the nursing home from a
21 hospital when the department determines the readmission would be in the
22 best interest of the individual seeking readmission.

23 (c) The department shall terminate the stop placement when:

24 (i) The provider states in writing that the deficiencies
25 necessitating the stop placement action have been corrected; and

26 (ii) The department staff confirms in a timely fashion not to
27 exceed fifteen working days that:

28 (A) The deficiencies necessitating stop placement action have been
29 corrected, and

30 (B) The provider exhibits the capacity to maintain adequate care
31 and service.

32 (d) A nursing home provider shall have the right to an informal
33 review to present written evidence to refute the deficiencies cited as
34 the basis for the stop placement. A request for an informal review
35 must be made in writing within ten days of the effective date of the
36 stop placement.

37 (e) A stop placement shall not be delayed or suspended because the
38 nursing home requests a hearing pursuant to chapter 34.05 RCW or an
39 informal review. The stop placement shall remain in effect until:

1 (i) The department terminates the stop placement; or
2 (ii) The stop placement is terminated by a final agency order,
3 after a hearing, pursuant to chapter 34.05 RCW.

4 (6) If the department determines that an emergency exists as a
5 result of a nursing home's failure or refusal to comply with
6 requirements of this chapter or, in the case of a Medicaid contractor,
7 its failure or refusal to comply with Medicaid requirements of Title
8 XIX of the social security act, as amended, and rules adopted
9 thereunder, the department may suspend the nursing home's license and
10 order the immediate closure of the nursing home, the immediate transfer
11 of residents, or both.

12 (7) If the department determines that the health or safety of
13 residents is immediately jeopardized as a result of a nursing home's
14 failure or refusal to comply with requirements of this chapter or, in
15 the case of a medicaid contractor, its failure or refusal to comply
16 with medicaid requirements of Title XIX of the social security act, as
17 amended, and rules adopted thereunder, the department may appoint
18 temporary management to:

19 (a) Oversee the operation of the facility; and
20 (b) Ensure the health and safety of the facilities residents while:
21 (i) Orderly closure of the facility occurs; or
22 (ii) The deficiencies necessitating temporary management are
23 corrected.

24 (8) The department shall by rule specify criteria as to when and
25 how the sanctions specified in this section shall be applied. Such
26 criteria shall provide for the imposition of incrementally more severe
27 penalties for deficiencies that are repeated, uncorrected, pervasive,
28 or present a threat to the health, safety, or welfare of the residents.

29 **Sec. 14.** RCW 18.100.140 and 1994 sp.s. c 9 s 717 are each amended
30 to read as follows:

31 Nothing in this chapter shall authorize a director, officer,
32 shareholder, agent or employee of a corporation organized under this
33 chapter, or a corporation itself organized under this chapter, to do or
34 perform any act which would be illegal, unethical or unauthorized
35 conduct under the provisions of the following acts: (1) Physicians and
36 surgeons, chapter 18.71 RCW; (2) anti-rebating act, (~~chapter 19.68~~
37 ~~RCW~~) sections 1 through 9 of this act; (3) state bar act, chapter 2.48
38 RCW; (4) professional accounting act, chapter 18.04 RCW; (5)

1 professional architects act, chapter 18.08 RCW; (6) professional
2 auctioneers act, chapter 18.11 RCW; (7) cosmetologists, barbers, and
3 manicurists, chapter 18.16 RCW; (8) boarding homes act, chapter 18.20
4 RCW; (9) podiatric medicine and surgery, chapter 18.22 RCW; (10)
5 chiropractic act, chapter 18.25 RCW; (11) registration of contractors,
6 chapter 18.27 RCW; (12) debt adjusting act, chapter 18.28 RCW; (13)
7 dental hygienist act, chapter 18.29 RCW; (14) dentistry, chapter 18.32
8 RCW; (15) dispensing opticians, chapter 18.34 RCW; (16) naturopathic
9 physicians, chapter 18.36A RCW; (17) embalmers and funeral directors,
10 chapter 18.39 RCW; (18) engineers and land surveyors, chapter 18.43
11 RCW; (19) escrow agents registration act, chapter 18.44 RCW; (20)
12 maternity homes, chapter 18.46 RCW; (21) midwifery, chapter 18.50 RCW;
13 (22) nursing homes, chapter 18.51 RCW; (23) optometry, chapter 18.53
14 RCW; (24) osteopathic physicians and surgeons, chapter 18.57 RCW; (25)
15 pharmacists, chapter 18.64 RCW; (26) physical therapy, chapter 18.74
16 RCW; (27) registered nurses, advanced registered nurse practitioners,
17 and practical nurses, chapter 18.79 RCW; (28) psychologists, chapter
18 18.83 RCW; (29) real estate brokers and salesmen, chapter 18.85 RCW;
19 (30) veterinarians, chapter 18.92 RCW.

20 **Sec. 15.** RCW 18.130.180 and 1993 c 367 s 22 are each amended to
21 read as follows:

22 The following conduct, acts, or conditions constitute
23 unprofessional conduct for any license holder or applicant under the
24 jurisdiction of this chapter:

25 (1) The commission of any act involving moral turpitude,
26 dishonesty, or corruption relating to the practice of the person's
27 profession, whether the act constitutes a crime or not. If the act
28 constitutes a crime, conviction in a criminal proceeding is not a
29 condition precedent to disciplinary action. Upon such a conviction,
30 however, the judgment and sentence is conclusive evidence at the
31 ensuing disciplinary hearing of the guilt of the license holder or
32 applicant of the crime described in the indictment or information, and
33 of the person's violation of the statute on which it is based. For the
34 purposes of this section, conviction includes all instances in which a
35 plea of guilty or nolo contendere is the basis for the conviction and
36 all proceedings in which the sentence has been deferred or suspended.
37 Nothing in this section abrogates rights guaranteed under chapter 9.96A
38 RCW;

- 1 (2) Misrepresentation or concealment of a material fact in
2 obtaining a license or in reinstatement thereof;
- 3 (3) All advertising which is false, fraudulent, or misleading;
- 4 (4) Incompetence, negligence, or malpractice which results in
5 injury to a patient or which creates an unreasonable risk that a
6 patient may be harmed. The use of a nontraditional treatment by itself
7 shall not constitute unprofessional conduct, provided that it does not
8 result in injury to a patient or create an unreasonable risk that a
9 patient may be harmed;
- 10 (5) Suspension, revocation, or restriction of the individual's
11 license to practice the profession by competent authority in any state,
12 federal, or foreign jurisdiction, a certified copy of the order,
13 stipulation, or agreement being conclusive evidence of the revocation,
14 suspension, or restriction;
- 15 (6) The possession, use, prescription for use, or distribution of
16 controlled substances or legend drugs in any way other than for
17 legitimate or therapeutic purposes, diversion of controlled substances
18 or legend drugs, the violation of any drug law, or prescribing
19 controlled substances for oneself;
- 20 (7) Violation of any state or federal statute or administrative
21 rule regulating the profession in question, including any statute or
22 rule defining or establishing standards of patient care or professional
23 conduct or practice;
- 24 (8) Failure to cooperate with the disciplining authority by:
- 25 (a) Not furnishing any papers or documents;
- 26 (b) Not furnishing in writing a full and complete explanation
27 covering the matter contained in the complaint filed with the
28 disciplining authority; or
- 29 (c) Not responding to subpoenas issued by the disciplining
30 authority, whether or not the recipient of the subpoena is the accused
31 in the proceeding;
- 32 (9) Failure to comply with an order issued by the disciplinary
33 authority or a stipulation for informal disposition entered into with
34 the disciplinary authority;
- 35 (10) Aiding or abetting an unlicensed person to practice when a
36 license is required;
- 37 (11) Violations of rules established by any health agency;
- 38 (12) Practice beyond the scope of practice as defined by law or
39 rule;

1 (13) Misrepresentation or fraud in any aspect of the conduct of the
2 business or profession;

3 (14) Failure to adequately supervise auxiliary staff to the extent
4 that the consumer's health or safety is at risk;

5 (15) Engaging in a profession involving contact with the public
6 while suffering from a contagious or infectious disease involving
7 serious risk to public health;

8 (16) Promotion for personal gain of any unnecessary or
9 inefficacious drug, device, treatment, procedure, or service;

10 (17) Conviction of any gross misdemeanor or felony relating to the
11 practice of the person's profession. For the purposes of this
12 subsection, conviction includes all instances in which a plea of guilty
13 or nolo contendere is the basis for conviction and all proceedings in
14 which the sentence has been deferred or suspended. Nothing in this
15 section abrogates rights guaranteed under chapter 9.96A RCW;

16 (18) The procuring, or aiding or abetting in procuring, a criminal
17 abortion;

18 (19) The offering, undertaking, or agreeing to cure or treat
19 disease by a secret method, procedure, treatment, or medicine, or the
20 treating, operating, or prescribing for any health condition by a
21 method, means, or procedure which the licensee refuses to divulge upon
22 demand of the disciplining authority;

23 (20) The willful betrayal of a practitioner-patient privilege as
24 recognized by law;

25 (21) Violation of (~~chapter 19.68 RCW~~) sections 1 through 9 of
26 this act;

27 (22) Interference with an investigation or disciplinary proceeding
28 by willful misrepresentation of facts before the disciplining authority
29 or its authorized representative, or by the use of threats or
30 harassment against any patient or witness to prevent them from
31 providing evidence in a disciplinary proceeding or any other legal
32 action;

33 (23) Current misuse of:

34 (a) Alcohol;

35 (b) Controlled substances; or

36 (c) Legend drugs;

37 (24) Abuse of a client or patient or sexual contact with a client
38 or patient;

1 (25) Acceptance of more than a nominal gratuity, hospitality, or
2 subsidy offered by a representative or vendor of medical or health-
3 related products or services intended for patients, in contemplation of
4 a sale or for use in research publishable in professional journals,
5 where a conflict of interest is presented, as defined by rules of the
6 disciplining authority, in consultation with the department, based on
7 recognized professional ethical standards.

8 **Sec. 16.** RCW 43.72.010 and 1994 c 4 s 1 are each amended to read
9 as follows:

10 In this chapter, unless the context otherwise requires:

11 (1) "Certified health plan" or "plan" means a disability insurer
12 regulated under chapter 48.20 or 48.21 RCW, a health care service
13 contractor as defined in RCW 48.44.010, a health maintenance
14 organization as defined in RCW 48.46.020, or an entity certified in
15 accordance with RCW 48.43.020 through 48.43.120.

16 (2) "Chair" means the presiding officer of the Washington health
17 services commission.

18 (3) "Commission" or "health services commission" means the
19 Washington health services commission.

20 (4) "Community rate" means the rating method used to establish the
21 premium for the uniform benefits package adjusted to reflect
22 actuarially demonstrated differences in utilization or cost
23 attributable to geographic region and family size as determined by the
24 commission.

25 (5) "Continuous quality improvement and total quality management"
26 means a continuous process to improve health services while reducing
27 costs.

28 (6) "Employee" means a resident who is in the employment of an
29 employer, as defined by chapter 50.04 RCW.

30 (7) "Enrollee" means any person who is a Washington resident
31 enrolled in a certified health plan.

32 (8) "Enrollee point of service cost-sharing" means amounts paid to
33 certified health plans directly providing services, health care
34 providers, or health care facilities by enrollees for receipt of
35 specific uniform benefits package services, and may include copayments,
36 coinsurance, or deductibles, that together must be actuarially
37 equivalent across plans and within overall limits established by the
38 commission.

1 (9) "Enrollee premium sharing" means that portion of the premium
2 that is paid by enrollees or their family members.

3 (10) "Federal poverty level" means the federal poverty guidelines
4 determined annually by the United States department of health and human
5 services or successor agency.

6 (11) "Health care facility" or "facility" means ((hospices)) any
7 facility licensed ((under chapter 70.127 RCW, hospitals licensed under
8 chapter 70.41 RCW, rural health care facilities as defined in RCW
9 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW,
10 nursing homes licensed under chapter 18.51 RCW, community mental health
11 centers licensed under chapter 71.05 or 71.24 RCW, kidney disease
12 treatment centers licensed under chapter 70.41 RCW, ambulatory
13 diagnostic, treatment or surgical facilities licensed under chapter
14 70.41 RCW, drug and alcohol treatment facilities licensed under chapter
15 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW,
16 and includes such facilities if owned and operated by a political
17 subdivision or instrumentality of the state and such other facilities
18 as required by federal law and implementing regulations, but does not
19 include Christian Science sanatoriums operated, listed, or certified by
20 the First Church of Christ Scientist, Boston, Massachusetts)) or
21 certified by the state to provide health services to patients or
22 clients under chapters 18.46, 18.51, 70.41, 70.42, 70.127, 70.175, or
23 71.12 RCW.

24 (12) "Health care provider" or "provider" means:

25 (a) A person regulated under Title 18 RCW and chapter 70.127 RCW,
26 to practice health or health-related services or otherwise practicing
27 health care services in this state consistent with state law; or

28 (b) An employee or agent of a person described in (a) of this
29 subsection, acting in the course and scope of his or her employment.

30 (13) "Health insurance purchasing cooperative" or "cooperative"
31 means a member-owned and governed nonprofit organization certified in
32 accordance with RCW 43.72.080 and 48.43.160.

33 (14) "Long-term care" means institutional, residential, outpatient,
34 or community-based services that meet the individual needs of persons
35 of all ages who are limited in their functional capacities or have
36 disabilities and require assistance with performing two or more
37 activities of daily living for an extended or indefinite period of
38 time. These services include case management, protective supervision,

1 in-home care, nursing services, convalescent, custodial, chronic, and
2 terminally ill care.

3 (15) "Major capital expenditure" means any project or expenditure
4 for capital construction, renovations, or acquisition, including
5 medical technological equipment, as defined by the commission, costing
6 more than one million dollars.

7 (16) "Managed care" means an integrated system of insurance,
8 financing, and health services delivery functions that: (a) Assumes
9 financial risk for delivery of health services and uses a defined
10 network of providers; or (b) assumes financial risk for delivery of
11 health services and promotes the efficient delivery of health services
12 through provider assumption of some financial risk including
13 capitation, prospective payment, resource-based relative value scales,
14 fee schedules, or similar method of limiting payments to health care
15 providers.

16 (17) "Maximum enrollee financial participation" means the income-
17 related total annual payments that may be required of an enrollee per
18 family who chooses one of the three lowest priced uniform benefits
19 packages offered by plans in a geographic region including both premium
20 sharing and enrollee point of service cost-sharing.

21 (18) "Persons of color" means Asians/Pacific Islanders, African,
22 Hispanic, and Native Americans.

23 (19) "Premium" means all sums charged, received, or deposited by a
24 certified health plan as consideration for a uniform benefits package
25 or the continuance of a uniform benefits package. Any assessment, or
26 any "membership," "policy," "contract," "service," or similar fee or
27 charge made by the certified health plan in consideration for the
28 uniform benefits package is deemed part of the premium. "Premium"
29 shall not include amounts paid as enrollee point of service cost-
30 sharing.

31 (20) "Qualified employee" means an employee who is employed at
32 least thirty hours during a week or one hundred twenty hours during a
33 calendar month.

34 (21) "Registered employer health plan" means a health plan
35 established by a private employer of more than seven thousand active
36 employees in this state solely for the benefit of such employees and
37 their dependents and that meets the requirements of RCW 43.72.120.
38 Nothing contained in this subsection shall be deemed to preclude the
39 plan from providing benefits to retirees of the employer.

1 (22) "Supplemental benefits" means those appropriate and effective
2 health services that are not included in the uniform benefits package
3 or that expand the type or level of health services available under the
4 uniform benefits package and that are offered to all residents in
5 accordance with the provisions of RCW 43.72.160 and 43.72.170.

6 (23) "Technology" means the drugs, devices, equipment, and medical
7 or surgical procedures used in the delivery of health services, and the
8 organizational or supportive systems within which such services are
9 provided. It also means sophisticated and complicated machinery
10 developed as a result of ongoing research in the basic biological and
11 physical sciences, clinical medicine, electronics, and computer
12 sciences, as well as specialized professionals, medical equipment,
13 procedures, and chemical formulations used for both diagnostic and
14 therapeutic purposes.

15 (24) "Uniform benefits package" or "package" means those
16 appropriate and effective health services, defined by the commission
17 under RCW 43.72.130, that must be offered to all Washington residents
18 through certified health plans.

19 (25) "Washington resident" or "resident" means a person who intends
20 to reside in the state permanently or indefinitely and who did not move
21 to Washington for the primary purpose of securing health services under
22 RCW 43.72.090 through 43.72.240, 43.72.300, 43.72.310, 43.72.800, and
23 chapters 48.43 and 48.85 RCW. "Washington resident" also includes
24 people and their accompanying family members who are residing in the
25 state for the purpose of engaging in employment for at least one month,
26 who did not enter the state for the primary purpose of obtaining health
27 services. The confinement of a person in a nursing home, hospital, or
28 other medical institution in the state shall not by itself be
29 sufficient to qualify such person as a resident.

30 **Sec. 17.** RCW 48.05.140 and 1973 1st ex.s. c 152 s 1 are each
31 amended to read as follows:

32 The commissioner may refuse, suspend, or revoke an insurer's
33 certificate of authority, in addition to other grounds therefor in this
34 code, if the insurer:

35 (1) Fails to comply with any provision of this code other than
36 those for violation of which refusal, suspension, or revocation is
37 mandatory, or fails to comply with any proper order or regulation of
38 the commissioner.

1 (2) Is found by the commissioner to be in such condition that its
2 further transaction of insurance in this state would be hazardous to
3 policyholders and the people in this state.

4 (3) Refuses to remove or discharge a director or officer who has
5 been convicted of any crime involving fraud, dishonesty, or like moral
6 turpitude.

7 (4) Usually compels claimants under policies either to accept less
8 than the amount due them or to bring suit against it to secure full
9 payment of the amount due.

10 (5) Is affiliated with and under the same general management, or
11 interlocking directorate, or ownership as another insurer which
12 transacts insurance in this state without having a certificate of
13 authority therefor, except as is permitted by this code.

14 (6) Refuses to be examined, or if its directors, officers,
15 employees or representatives refuse to submit to examination or to
16 produce its accounts, records, and files for examination by the
17 commissioner when required, or refuse to perform any legal obligation
18 relative to the examination.

19 (7) Fails to pay any final judgment rendered against it in this
20 state upon any policy, bond, recognizance, or undertaking issued or
21 guaranteed by it, within thirty days after the judgment became final or
22 within thirty days after time for taking an appeal has expired, or
23 within thirty days after dismissal of an appeal before final
24 determination, whichever date is the later.

25 (8) Is found by the commissioner, after investigation or upon
26 receipt of reliable information, to be managed by persons, whether by
27 its directors, officers, or by any other means, who are incompetent or
28 untrustworthy or so lacking in insurance company managerial experience
29 as to make a proposed operation hazardous to the insurance-buying
30 public; or that there is good reason to believe it is affiliated
31 directly or indirectly through ownership, control, reinsurance or other
32 insurance or business relations, with any person or persons whose
33 business operations are or have been marked, to the detriment of
34 policyholders or stockholders or investors or creditors or of the
35 public, by bad faith or by manipulation of assets, or of accounts, or
36 of reinsurance.

37 (9) Does business through agents or brokers in this state or in any
38 other state who are not properly licensed under applicable laws and
39 duly enacted regulations adopted pursuant thereto.

1 (10) Violates sections 1 through 9 of this act.

2 **Sec. 18.** RCW 48.62.091 and 1991 sp.s. c 30 s 9 are each amended to
3 read as follows:

4 (1) Within one hundred twenty days of receipt of a plan of
5 management and operation, the state risk manager shall either approve
6 or disapprove the formation of the self-insurance program after
7 reviewing the plan to determine whether the proposed program complies
8 with this chapter and all rules adopted in accordance with this
9 chapter.

10 (2) If the state risk manager denies a request for approval, the
11 state risk manager shall specify in detail the reasons for denial and
12 the manner in which the program fails to meet the requirements of this
13 chapter or any rules adopted in accordance with this chapter.

14 (3)(a) Whenever the state risk manager determines that a joint
15 self-insurance program covering property or liability risks or an
16 individual or joint self-insured health and welfare benefits program is
17 in violation of this chapter or is operating in an unsafe financial
18 condition, the state risk manager may issue and serve upon the program
19 an order to cease and desist from the violation or practice.

20 ~~((a))~~ (b) Whenever the state risk manager determines that a self-
21 insurance program is in violation of sections 1 through 9 of this act,
22 the state risk manager may issue and serve upon the program an order to
23 cease and desist from the violation or practice or may levy a fine or
24 both.

25 (i) The state risk manager shall deliver the order to the
26 appropriate entity or entities directly or mail it to the appropriate
27 entity or entities by registered mail with return receipt requested.

28 ~~((b))~~ (ii) If the program violates the order or has not taken
29 steps to comply with the order after the expiration of twenty days
30 after the cease and desist order has been received by the program, the
31 program is deemed to be operating in violation of this chapter, and the
32 state risk manager shall notify the state auditor and the attorney
33 general of the violation.

34 ~~((c))~~ (iii) After hearing or with the consent of a program
35 governed by this chapter and in addition to or in lieu of a
36 continuation of the cease and desist order, the risk manager may levy
37 a fine upon the program in an amount not less than three hundred
38 dollars and not more than ten thousand dollars. The order levying such

1 fine shall specify the period within which the fine shall be fully
2 paid. The period within which such fines shall be paid shall not be
3 less than fifteen nor more than thirty days from the date of such
4 order. Upon failure to pay any such fine when due the risk manager
5 shall request the attorney general to bring a civil action on the risk
6 manager's behalf to collect the fine. The risk manager shall pay any
7 fine so collected to the state treasurer for the account of the general
8 fund.

9 (4) Each self-insurance program approved by the state risk manager
10 shall annually file a report with the state risk manager and state
11 auditor providing:

12 (a) Details of any changes in the articles of incorporation,
13 bylaws, or interlocal agreement;

14 (b) Copies of all the insurance coverage documents;

15 (c) A description of the program structure, including participants'
16 retention, program retention, and excess insurance limits and
17 attachment point;

18 (d) An actuarial analysis, if required;

19 (e) A list of contractors and service providers;

20 (f) The financial and loss experience of the program; and

21 (g) Such other information as required by rule of the state risk
22 manager.

23 (5) No self-insurance program requiring the state risk manager's
24 approval may engage in an act or practice that in any respect
25 significantly differs from the management and operation plan that
26 formed the basis for the state risk manager's approval of the program
27 unless the program first notifies the state risk manager in writing and
28 obtains the state risk manager's approval. The state risk manager
29 shall approve or disapprove the proposed change within sixty days of
30 receipt of the notice. If the state risk manager denies a requested
31 change, the risk manager shall specify in detail the reasons for denial
32 and the manner in which the program would fail to meet the requirements
33 of this chapter or any rules adopted in accordance with this chapter.

34 **Sec. 19.** RCW 70.41.130 and 1991 c 3 s 335 are each amended to read
35 as follows:

36 The department is authorized to deny, suspend, levy a fine, revoke,
37 or modify a license or provisional license in any case in which it
38 finds that there has been a failure or refusal to comply with the

1 requirements of this chapter or the standards or rules adopted under
2 this chapter or sections 1 through 9 of this act or rules adopted under
3 sections 1 through 9 of this act. RCW 43.70.115 governs notice of a
4 license denial, revocation, suspension, levying a fine, or modification
5 and provides the right to an adjudicative proceeding.

6 **Sec. 20.** RCW 70.42.120 and 1989 c 386 s 13 are each amended to
7 read as follows:

8 Under this chapter, sections 1 through 9 of this act, and chapter
9 34.05 RCW, the department may deny a license to any applicant who:

10 (1) Refuses to comply with the requirements of this chapter or the
11 standards or rules adopted under this chapter or sections 1 through 9
12 of this act;

13 (2) Was the holder of a license under this chapter or sections 1
14 through 9 of this act which was revoked for cause and never reissued by
15 the department;

16 (3) Has knowingly or with reason to know made a false statement of
17 a material fact in the application for a license or in any data
18 attached thereto or in any record required by the department;

19 (4) Refuses to allow representatives of the department to examine
20 any book, record, or file required by this chapter or sections 1
21 through 9 of this act to be maintained;

22 (5) Willfully prevented, interfered with, or attempted to impede in
23 any way the work of a representative of the department; or

24 (6) Misrepresented, or was fraudulent in, any aspect of the
25 applicant's business.

26 **Sec. 21.** RCW 70.42.130 and 1989 c 386 s 14 are each amended to
27 read as follows:

28 Under this chapter, sections 1 through 9 of this act, and chapter
29 34.05 RCW, the department may place conditions on a license which limit
30 or cancel a test site's authority to conduct any of the tests or groups
31 of tests of any licensee who:

32 (1) Fails or refuses to comply with the requirements of this
33 chapter or the rules adopted under this chapter or sections 1 through
34 9 of this act;

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

1 (3) Refuses to allow representatives of the department to examine
2 any book, record, or file required by this chapter or sections 1
3 through 9 of this act to be maintained;

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

6 (5) Willfully prevented or interfered with preservation of evidence
7 of a known violation of this chapter, sections 1 through 9 of this act,
8 or the rules adopted under this chapter; or

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

11 **Sec. 22.** RCW 70.42.140 and 1989 c 386 s 15 are each amended to
12 read as follows:

13 Under this chapter, sections 1 through 9 of this act, and chapter
14 34.05 RCW, the department may suspend the license of any licensee who:

15 (1) Fails or refuses to comply with the requirements of this
16 chapter or the rules adopted under this chapter or sections 1 through
17 9 of this act;

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

21 (3) Refuses to allow representatives of the department to examine
22 any book, record, or file required by this chapter or sections 1
23 through 9 of this act to be maintained;

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

26 (5) Willfully prevented or interfered with preservation of evidence
27 of a known violation of this chapter, sections 1 through 9 of this act,
28 or the rules adopted under this chapter;

29 (6) Misrepresented, or was fraudulent in, any aspect of the
30 licensee's business;

31 (7) Used false or fraudulent advertising; or

32 (8) Failed to pay any civil monetary penalty assessed by the
33 department under this chapter or sections 1 through 9 of this act
34 within twenty-eight days after the assessment becomes final.

35 **Sec. 23.** RCW 70.42.150 and 1989 c 386 s 16 are each amended to
36 read as follows:

1 Under this chapter, sections 1 through 9 of this act, and chapter
2 34.05 RCW, the department may revoke the license of any licensee who:

3 (1) Fails or refuses to comply with the requirements of this
4 chapter or the rules adopted under this chapter or sections 1 through
5 9 of this act;

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

9 (3) Refuses to allow representatives of the department to examine
10 any book, record, or file required by this chapter or sections 1
11 through 9 of this act to be maintained;

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

14 (5) Willfully prevented or interfered with preservation of evidence
15 of a known violation of this chapter, sections 1 through 9 of this act,
16 or the rules adopted under this chapter;

17 (6) Misrepresented, or was fraudulent in, any aspect of the
18 licensee's business;

19 (7) Used false or fraudulent advertising; or

20 (8) Failed to pay any civil monetary penalty assessed by the
21 department pursuant to this chapter or sections 1 through 9 of this act
22 within twenty-eight days after the assessment becomes final.

23 The department may summarily revoke a license when it finds
24 continued licensure of a test site immediately jeopardizes the public
25 health, safety, or welfare.

26 **Sec. 24.** RCW 70.42.160 and 1989 c 386 s 17 are each amended to
27 read as follows:

28 Under this chapter, sections 1 through 9 of this act, and chapter
29 34.05 RCW, the department may assess monetary penalties of up to ten
30 thousand dollars per violation in addition to or in lieu of
31 conditioning, suspending, or revoking a license. A violation occurs
32 when a licensee:

33 (1) Fails or refuses to comply with the requirements of this
34 chapter or the standards or rules adopted under this chapter or
35 sections 1 through 9 of this act;

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

1 (3) Refuses to allow representatives of the department to examine
2 any book, record, or file required by this chapter or sections 1
3 through 9 of this act to be maintained;

4 (4) Willfully prevents, interferes with, or attempts to impede in
5 any way the work of any representative of the department;

6 (5) Willfully prevents or interferes with preservation of evidence
7 of any known violation of this chapter, sections 1 through 9 of this
8 act, or the rules adopted under this chapter;

9 (6) Misrepresents or was fraudulent in any aspect of the
10 applicant's business; or

11 (7) Uses advertising which is false or fraudulent.

12 Each day of a continuing violation is a separate violation.

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

15 Pursuant to chapter 34.05 RCW, the department may deny, suspend, or
16 revoke a license under this chapter or, in lieu thereof or in addition
17 thereto, assess monetary penalties of a civil nature not to exceed one
18 thousand dollars per violation in any case in which it finds that the
19 licensee, or any applicant, officer, director, partner, managing
20 employee, or owner of ten percent or more of the applicant's or
21 licensee's assets:

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

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

28 (3) Has knowingly or with reason to know made a false statement of
29 a material fact in the application for the license or any data attached
30 thereto or in any record required by this chapter or matter under
31 investigation by the department;

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

35 (5) Wilfully prevented, interfered with, or attempted to impede in
36 any way the work of any representative of the department and the lawful
37 enforcement of any provision of this chapter;

1 (6) Wilfully prevented or interfered with any representative of the
2 department in the preservation of evidence of any violation of this
3 chapter or the rules adopted under this chapter;

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

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

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

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

12 (11) Violated sections 1 through 9 of this act.

13 **Sec. 26.** RCW 70.175.100 and 1989 1st ex.s. c 9 s 710 are each
14 amended to read as follows:

15 (1) The department shall establish and adopt such standards and
16 regulations pertaining to the construction, maintenance, and operation
17 of a rural health care facility and the scope of health care services,
18 and rescind, amend, or modify such regulations from time to time as
19 necessary in the public interest. In developing the regulations, the
20 department shall consult with representatives of rural hospitals,
21 community mental health centers, public health departments, community
22 and migrant health clinics, and other providers of health care in rural
23 communities. The department shall also consult with third-party
24 payers, consumers, local officials, and others to insure broad
25 participation in defining regulatory standards and requirements that
26 are appropriate for a rural health care facility.

27 (2) When developing the rural health care facility licensure rules,
28 the department shall consider the report of the Washington rural health
29 care commission established under chapter 207, Laws of 1988. Nothing
30 in this chapter requires the department to follow any specific
31 recommendation contained in that report except as it may also be
32 included in this chapter.

33 (3) Upon developing rules, the department shall enter into
34 negotiations with appropriate federal officials to seek medicare
35 approval of the facility and financial participation of medicare and
36 other federal programs in developing and operating the rural health
37 care facility.

1 (4) The department shall report periodically to the appropriate
2 committees of the legislature on the progress of rule development and
3 negotiations with the federal government.

4 (5) The department may invoke disciplinary actions, including
5 levying of fines, against the license of a rural health care facility
6 for violations of sections 1 through 9 of this act.

7 **Sec. 27.** RCW 71.12.590 and 1983 c 3 s 180 are each amended to read
8 as follows:

9 Failure to comply with any of the provisions of RCW 71.12.550
10 through 71.12.570 or sections 1 through 9 of this act shall constitute
11 grounds for revocation of license: PROVIDED, HOWEVER, That nothing in
12 this chapter or the rules and regulations adopted pursuant thereto
13 shall be construed as authorizing the supervision, regulation, or
14 control of the remedial care or treatment of residents or patients in
15 any establishment, as defined in this chapter conducted in accordance
16 with the practice and principles of the body known as Church of Christ,
17 Scientist.

18 NEW SECTION. **Sec. 28.** REPEALER. The following acts or parts of
19 acts are each repealed:

- 20 (1) RCW 19.68.010 and 1993 c 492 s 233, 1973 1st ex.s. c 26 s 1, &
21 1965 ex.s. c 58 s 1;
22 (2) RCW 19.68.020 and 1965 ex.s. c 58 s 2 & 1949 c 204 s 2;
23 (3) RCW 19.68.030 and 1965 ex.s. c 58 s 3;
24 (4) RCW 19.68.040 and 1949 c 204 s 4; and
25 (5) RCW 51.48.280 and 1986 c 200 s 6.

26 NEW SECTION. **Sec. 29.** CODIFICATION. Sections 1 through 9 of this
27 act shall constitute a new chapter in Title 19 RCW.

28 NEW SECTION. **Sec. 30.** DELAYED EFFECTIVE DATE. Sections 1, 2, and
29 4 through 29 of this act shall take effect on January 1, 1996.

30 NEW SECTION. **Sec. 31.** IMPLEMENTATION. The commission may take
31 such steps as are necessary to ensure that this act is implemented on
32 its effective date. The commission shall adopt implementing rules

1 under section 3 of this act, which shall become effective on January 1,
2 1996.

3 NEW SECTION. **Sec. 32.** CAPTIONS. Captions as used in this act
4 constitute no part of the law.

5 NEW SECTION. **Sec. 33.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

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