

2 E2SHB 1850 - CONF REPT
3 By Conference Committee

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "PART I

8 NEW SECTION. **Sec. 101.** This act shall be known and may be cited
9 as the Clara act.

10 NEW SECTION. **Sec. 102.** FINDINGS AND INTENT. The legislature
11 finds and declares that the state's current fragmented categorical
12 system for administering services to persons with disabilities and the
13 elderly is not client and family-centered and has created significant
14 organizational barriers to providing high quality, safe, and effective
15 care and support. The present fragmented system results in
16 uncoordinated enforcement of regulations designed to protect the health
17 and safety of disabled persons, lacks accountability due to the absence
18 of management information systems' client tracking data, and
19 perpetuates difficulty in matching client needs and services to
20 multiple categorical funding sources.

21 The legislature further finds that Washington's chronically
22 functionally disabled population of all ages is growing at a rapid pace
23 due to a population of the very old and increased incidence of
24 disability due in large measure to technological improvements in acute
25 care causing people to live longer. Further, to meet the significant
26 and growing long-term care needs into the near future, rapid,
27 fundamental changes must take place in the way we finance, organize,
28 and provide long-term care services to the chronically functionally
29 disabled.

30 The legislature further finds that the public demands that
31 long-term care services be safe, client and family-centered, and
32 designed to encourage individual dignity, autonomy, and development of
33 the fullest human potential at home or in other residential settings,
34 whenever practicable.

1 NEW SECTION. **Sec. 103.** A new section is added to chapter 74.39A
2 RCW to read as follows:

3 DEFINITIONS. Unless the context clearly requires otherwise, the
4 definitions in this section apply throughout this chapter.

5 (1) "Adult family home" means a home licensed under chapter 70.128
6 RCW.

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

10 (3) "Assisted living services" means services provided by a
11 boarding home that has a contract with the department under RCW
12 74.39A.010 and the resident is housed in a private apartment-like unit.

13 (4) "Boarding home" means a facility licensed under chapter 18.20
14 RCW.

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

23 (6) "Department" means the department of social and health
24 services.

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

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

1 cooking, shopping, house cleaning, doing laundry, working, and managing
2 personal finances.

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

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

17 (11) "Nursing home" means a facility licensed under chapter 18.51
18 RCW.

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

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

23 NEW SECTION. **Sec. 104.** JOINT LEGISLATIVE COMMITTEE ON LONG-TERM
24 CARE OVERSIGHT. (1) There is created a joint legislative committee on
25 long-term care oversight. The committee shall consist of: (a) Four
26 members of the senate appointed by the president of the senate, two of
27 whom shall be members of the majority party and two of whom shall be
28 members of the minority party; and (b) four members of the house of
29 representatives, two of whom shall be members of the majority party and
30 two of whom shall be members of the minority party.

31 (2) The committee shall elect a chair and vice-chair. The chair
32 shall be a member of the senate in even-numbered years and a member of
33 the house of representatives in odd-numbered years. The vice-chair
34 shall be a member of the senate in odd-numbered years and a member of
35 the house of representatives in even-numbered years.

36 (3) The committee shall:

37 (a) Review the need for reorganization and reform of long-term care
38 administration and service delivery;

1 (b) Review all quality standards developed, revised, and enforced
2 by the department;

3 (c) In cooperation with the department of social and health
4 services, develop suggestions to simplify, reduce, or eliminate
5 unnecessary rules, procedures, and burdensome paperwork that prove to
6 be barriers to providing effective coordination or high quality direct
7 services;

8 (d) Suggest methods of cost-efficiencies that can be used to
9 reallocate funds to unmet needs in direct services;

10 (e) List all nonmeans tested programs and activities funded by the
11 federal older Americans act and state funded senior citizens act or
12 other such state funded programs and recommend how to integrate such
13 services into existing long-term care programs for the functionally
14 disabled;

15 (f) Suggest methods to establish a single point of entry for
16 service eligibility and delivery for functionally disabled persons;

17 (g) Evaluate the need for long-term care training and review all
18 long-term care training and education programs conducted by the
19 department and suggest modifications to improve the training system;

20 (h) Describe current facilities and services that provide long-term
21 care to all types of chronically disabled individuals in the state
22 including Revised Code of Washington requirements, Washington
23 Administrative Code rules, allowable occupancy, typical clientele,
24 discharge practices, agency oversight, rates, eligibility requirements,
25 entry process, social and health services and other services provided,
26 staffing standards, and physical plant standards;

27 (i) Determine the extent to which the current long-term care system
28 meets the health and safety needs of the state's long-term care
29 population and is appropriate for the specific and identified needs of
30 the residents in all settings;

31 (j) Assess the adequacy of the discharge and referral process in
32 protecting the health and safety of long-term care clients;

33 (k) Determine the extent to which training and supervision of
34 direct care staff are adequate to ensure safety and appropriate care;

35 (l) Identify opportunities for consolidation between categories of
36 care; and

37 (m) Determine if payment rates are adequate to cover the varying
38 costs of clients with different levels of need.

1 PART II

2 QUALITY STANDARDS AND COMPLAINT ENFORCEMENT

3 NEW SECTION. Sec. 201. A new section is added to chapter 70.124
4 RCW to read as follows:

5 (1) An employee who is a whistleblower and who as a result of being
6 a whistleblower has been subjected to workplace reprisal or retaliatory
7 action, has the remedies provided under chapter 49.60 RCW. RCW
8 4.24.500 through 4.24.520, providing certain protection to persons who
9 communicate to government agencies, apply to complaints made under this
10 section. The identity of a whistleblower who complains, in good faith,
11 to the department about suspected abuse, neglect, financial
12 exploitation, or abandonment by any person in a nursing home, state
13 hospital, or adult family home may remain confidential if requested.
14 The identity of the whistleblower shall subsequently remain
15 confidential unless the department determines that the complaint was
16 not made in good faith.

17 (2)(a) An attempt to discharge a resident from a nursing home,
18 state hospital, adult family home, or any type of discriminatory
19 treatment of a resident by whom, or upon whose behalf, a complaint
20 substantiated by the department has been submitted to the department or
21 any proceeding instituted under or related to this chapter within one
22 year of the filing of the complaint or the institution of the action,
23 raises a rebuttable presumption that the action was in retaliation for
24 the filing of the complaint.

25 (b) The presumption is rebutted by credible evidence establishing
26 the alleged retaliatory action was initiated prior to the complaint.

27 (c) The presumption is rebutted by a functional assessment
28 conducted by the department that shows that the resident's needs cannot
29 be met by the reasonable accommodations of the facility due to the
30 increased needs of the resident.

31 (3) For the purposes of this section:

32 (a) "Whistleblower" means a resident or employee of a nursing home,
33 state hospital, or adult family home, or any person licensed under
34 Title 18 RCW, who in good faith reports alleged abuse, neglect,
35 exploitation, or abandonment to the department or to a law enforcement
36 agency;

37 (b) "Workplace reprisal or retaliatory action" means, but is not
38 limited to: Denial of adequate staff to perform duties; frequent staff

1 changes; frequent and undesirable office changes; refusal to assign
2 meaningful work; unwarranted and unsubstantiated report of misconduct
3 under Title 18 RCW; letters of reprimand or unsatisfactory performance
4 evaluations; demotion; denial of employment; or a supervisor or
5 superior encouraging coworkers to behave in a hostile manner toward the
6 whistleblower; and

7 (c) "Reasonable accommodation" by a facility to the needs of a
8 prospective or current resident has the meaning given to this term
9 under the federal Americans with disabilities act of 1990, 42 U.S.C.
10 Sec. 12101 et seq. and other applicable federal or state
11 antidiscrimination laws and regulations.

12 (4) This section does not prohibit a nursing home, state hospital,
13 or adult family home from exercising its authority to terminate,
14 suspend, or discipline an employee who engages in workplace reprisal or
15 retaliatory action against a whistleblower. The protections provided
16 to whistleblowers under this chapter shall not prevent a nursing home,
17 state hospital, or adult family home from: (a) Terminating,
18 suspending, or disciplining a whistleblower for other lawful purposes;
19 or (b) for facilities with six or fewer residents, reducing the hours
20 of employment or terminating employment as a result of the demonstrated
21 inability to meet payroll requirements. The department shall determine
22 if the facility cannot meet payroll in cases where a whistleblower has
23 been terminated or had hours of employment reduced due to the inability
24 of a facility to meet payroll.

25 (5) The department shall adopt rules to implement procedures for
26 filing, investigation, and resolution of whistleblower complaints that
27 are integrated with complaint procedures under this chapter.

28 (6) No frail elder or vulnerable person who relies upon and is
29 being provided spiritual treatment in lieu of medical treatment in
30 accordance with the tenets and practices of a well-recognized religious
31 denomination shall for that reason alone be considered abandoned,
32 abused, or neglected, nor shall anything in this chapter be construed
33 to authorize, permit, or require medical treatment contrary to the
34 stated or clearly implied objection of such a person.

35 (7) The department shall adopt rules designed to discourage
36 whistleblower complaints made in bad faith or for retaliatory purposes.

37 NEW SECTION. **Sec. 202.** A new section is added to chapter 74.34
38 RCW to read as follows:

1 (1) An employee or contractor who is a whistleblower and who as a
2 result of being a whistleblower has been subjected to workplace
3 reprisal or retaliatory action, has the remedies provided under chapter
4 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection
5 to persons who communicate to government agencies, apply to complaints
6 made under this section. The identity of a whistleblower who
7 complains, in good faith, to the department about suspected abuse,
8 neglect, exploitation, or abandonment by any person in a boarding home
9 licensed or required to be licensed pursuant to chapter 18.20 RCW or a
10 veterans' home pursuant to chapter 72.36 RCW or care provided in a
11 boarding home or a veterans' home by any person associated with a
12 hospice, home care, or home health agency licensed under chapter 70.127
13 RCW or other in-home provider may remain confidential if requested.
14 The identity of the whistleblower shall subsequently remain
15 confidential unless the department determines that the complaint was
16 not made in good faith.

17 (2)(a) An attempt to expel a resident from a boarding home or
18 veterans' home, or any type of discriminatory treatment of a resident
19 who is a consumer of hospice, home health, home care services, or other
20 in-home services by whom, or upon whose behalf, a complaint
21 substantiated by the department or the department of health has been
22 submitted to the department or any proceeding instituted under or
23 related to this chapter within one year of the filing of the complaint
24 or the institution of the action, raises a rebuttable presumption that
25 the action was in retaliation for the filing of the complaint.

26 (b) The presumption is rebutted by credible evidence establishing
27 the alleged retaliatory action was initiated prior to the complaint.

28 (c) The presumption is rebutted by a functional assessment
29 conducted by the department that shows that the resident or consumer's
30 needs cannot be met by the reasonable accommodations of the facility
31 due to the increased needs of the resident.

32 (3) For the purposes of this section:

33 (a) "Whistleblower" means a resident or a person with a mandatory
34 duty to report under this chapter, or any person licensed under Title
35 18 RCW, who in good faith reports alleged abuse, neglect, exploitation,
36 or abandonment to the department, or the department of health, or to a
37 law enforcement agency;

38 (b) "Workplace reprisal or retaliatory action" means, but is not
39 limited to: Denial of adequate staff to perform duties; frequent staff

1 changes; frequent and undesirable office changes; refusal to assign
2 meaningful work; unwarranted and unsubstantiated report of misconduct
3 under Title 18 RCW; letters of reprimand or unsatisfactory performance
4 evaluations; demotion; denial of employment; or a supervisor or
5 superior encouraging coworkers to behave in a hostile manner toward the
6 whistleblower. The protections provided to whistleblowers under this
7 chapter shall not prevent a nursing home, state hospital, boarding
8 home, or adult family home from: (i) Terminating, suspending, or
9 disciplining a whistleblower for other lawful purposes; or (ii) for
10 facilities licensed under chapter 70.128 RCW, reducing the hours of
11 employment or terminating employment as a result of the demonstrated
12 inability to meet payroll requirements. The department shall determine
13 if the facility cannot meet payroll in cases in which a whistleblower
14 has been terminated or had hours of employment reduced because of the
15 inability of a facility to meet payroll; and

16 (c) "Reasonable accommodation" by a facility to the needs of a
17 prospective or current resident has the meaning given to this term
18 under the federal Americans with disabilities act of 1990, 42 U.S.C.
19 Sec. 12101 et seq. and other applicable federal or state
20 antidiscrimination laws and regulations.

21 (4) This section does not prohibit a boarding home or veterans'
22 home from exercising its authority to terminate, suspend, or discipline
23 any employee who engages in workplace reprisal or retaliatory action
24 against a whistleblower.

25 (5) The department shall adopt rules to implement procedures for
26 filing, investigation, and resolution of whistleblower complaints that
27 are integrated with complaint procedures under this chapter.

28 (6) No frail elder or vulnerable person who relies upon and is
29 being provided spiritual treatment in lieu of medical treatment in
30 accordance with the tenets and practices of a well-recognized religious
31 denomination shall for that reason alone be considered abandoned,
32 abused, or neglected, nor shall anything in this chapter be construed
33 to authorize, permit, or require medical treatment contrary to the
34 stated or clearly implied objection of such a person.

35 (7) The department, and the department of health for facilities,
36 agencies, or individuals it regulates, shall adopt rules designed to
37 discourage whistleblower complaints made in bad faith or for
38 retaliatory purposes.

1 **Sec. 203.** RCW 70.129.010 and 1994 c 214 s 2 are each amended to
2 read as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Department" means the department of state government
6 responsible for licensing the provider in question.

7 (2) "Facility" means a long-term care facility.

8 (3) "Long-term care facility" means a facility that is licensed or
9 required to be licensed under chapter 18.20, 72.36, or 70.128 RCW.

10 (4) "Resident" means the individual receiving services in a long-
11 term care facility, that resident's attorney in fact, guardian, or
12 other legal representative acting within the scope of their authority.

13 (5) "Physical restraint" means a manual method, obstacle, or
14 physical or mechanical device, material, or equipment attached or
15 adjacent to the resident's body that restricts freedom of movement or
16 access to his or her body((+))_ is used for discipline or
17 convenience((+))_ and not required to treat the resident's medical
18 symptoms.

19 (6) "Chemical restraint" means a psychopharmacologic drug that is
20 used for discipline or convenience and not required to treat the
21 resident's medical symptoms.

22 (7) "Representative" means a person appointed under RCW 7.70.065.

23 (8) "Reasonable accommodation" by a facility to the needs of a
24 prospective or current resident has the meaning given to this term
25 under the federal Americans with disabilities act of 1990, 42 U.S.C.
26 Sec. 12101 et seq. and other applicable federal or state
27 antidiscrimination laws and regulations.

28 **Sec. 204.** RCW 70.129.030 and 1994 c 214 s 4 are each amended to
29 read as follows:

30 (1) The facility must inform the resident both orally and in
31 writing in a language that the resident understands of his or her
32 rights and all rules and regulations governing resident conduct and
33 responsibilities during the stay in the facility. The notification
34 must be made prior to or upon admission. Receipt of the information
35 must be acknowledged in writing.

36 (2) The resident or his or her legal representative has the right:

1 (a) Upon an oral or written request, to access all records
2 pertaining to himself or herself including clinical records within
3 twenty-four hours; and

4 (b) After receipt of his or her records for inspection, to purchase
5 at a cost not to exceed the community standard photocopies of the
6 records or portions of them upon request and two working days' advance
7 notice to the facility.

8 (3) The facility shall only admit or retain individuals whose needs
9 it can safely and appropriately serve in the facility with appropriate
10 available staff or through the provision of reasonable accommodations
11 as required by state or federal law. Except in cases of emergency,
12 facilities shall not admit an individual before obtaining a
13 comprehensive assessment of the resident's needs and preferences,
14 unless unavailable despite the best efforts of the facility and other
15 interested parties. The assessment shall contain, within existing
16 department funds, the following information: Recent medical history;
17 necessary and prohibited medications; a medical professional's
18 diagnosis; significant known behaviors or symptoms that may cause
19 concern or require special care; mental illness except where protected
20 by confidentiality laws; level of personal care needs; activities and
21 service preferences; and preferences regarding issues important to the
22 potential resident, such as food and daily routine. The facility must
23 inform each resident in writing in a language the resident or his or
24 her representative understands before (~~, or at the time of~~) admission,
25 and at least once every twenty-four months thereafter, of: (a)
26 Services, items, and activities customarily available in the facility
27 or arranged for by the facility; (b) charges for those services, items,
28 and activities including charges for services, items, and activities
29 not covered by the facility's per diem rate or applicable public
30 benefit programs; and (c) the rules of facility operations required
31 under RCW 70.129.140(2). Each resident and his or her representative
32 must be informed in writing in advance of changes in the availability
33 or the charges for services, items, or activities, or of changes in the
34 facility's rules. Except in unusual circumstances, thirty days'
35 advance notice must be given prior to the change. However, for
36 facilities licensed for six or fewer residents, if there has been a
37 substantial and continuing change in the resident's condition
38 necessitating substantially greater or lesser services, items, or

1 activities, then the charges for those services, items, or activities
2 may be changed upon fourteen days advance written notice.

3 (4) The facility must furnish a written description of residents
4 rights that includes:

5 (a) A description of the manner of protecting personal funds, under
6 RCW 70.129.040;

7 (b) A posting of names, addresses, and telephone numbers of the
8 state survey and certification agency, the state licensure office, the
9 state ombudsmen program, and the protection and advocacy systems; and

10 (c) A statement that the resident may file a complaint with the
11 appropriate state licensing agency concerning resident abuse, neglect,
12 and misappropriation of resident property in the facility.

13 (5) Notification of changes.

14 (a) A facility must immediately consult with the resident's
15 physician, and if known, make reasonable efforts to notify the
16 resident's legal representative or an interested family member when
17 there is:

18 (i) An accident involving the resident which requires or has the
19 potential for requiring physician intervention;

20 (ii) A significant change in the resident's physical, mental, or
21 psychosocial status (i.e., a deterioration in health, mental, or
22 psychosocial status in either life-threatening conditions or clinical
23 complications).

24 (b) The facility must promptly notify the resident or the
25 resident's representative shall make reasonable efforts to notify an
26 interested family member, if known, when there is:

27 (i) A change in room or roommate assignment; or

28 (ii) A decision to transfer or discharge the resident from the
29 facility.

30 (c) The facility must record and update the address and phone
31 number of the resident's representative or interested family member,
32 upon receipt of notice from them.

33 (6) This section applies to long-term care facilities covered under
34 this chapter.

35 **Sec. 205.** RCW 70.129.110 and 1994 c 214 s 12 are each amended to
36 read as follows:

1 (1) The facility must permit each resident to remain in the
2 facility, and not transfer or discharge the resident from the facility
3 unless:

4 (a) The transfer or discharge is necessary for the resident's
5 welfare and the resident's needs cannot be met in the facility;

6 (b) The safety of individuals in the facility is endangered;

7 (c) The health of individuals in the facility would otherwise be
8 endangered;

9 (d) The resident has failed to make the required payment for his or
10 her stay; or

11 (e) The facility ceases to operate.

12 (2) All long-term care facilities shall fully disclose to potential
13 residents or their legal representative the service capabilities of the
14 facility prior to admission to the facility. If the care needs of the
15 applicant who is medicaid eligible are in excess of the facility's
16 service capabilities, the department shall identify other care settings
17 or residential care options consistent with federal law.

18 (3) Before a long-term care facility transfers or discharges a
19 resident, the facility must:

20 (a) First attempt through reasonable accommodations to avoid the
21 transfer or discharge, unless agreed to by the resident;

22 (b) Notify the resident and representative and make a reasonable
23 effort to notify, if known, an interested family member of the transfer
24 or discharge and the reasons for the move in writing and in a language
25 and manner they understand;

26 ~~((b))~~ (c) Record the reasons in the resident's record; and

27 ~~((e))~~ (d) Include in the notice the items described in subsection
28 ~~((4))~~ (5) of this section.

29 ~~((3))~~ (4)(a) Except when specified in this subsection, the notice
30 of transfer ~~((of- or))~~ or discharge required under subsection ~~((2))~~
31 (3) of this section must be made by the facility at least thirty days
32 before the resident is transferred or discharged.

33 (b) Notice may be made as soon as practicable before transfer or
34 discharge when:

35 (i) The safety of individuals in the facility would be endangered;

36 (ii) The health of individuals in the facility would be endangered;

37 (iii) An immediate transfer or discharge is required by the
38 resident's urgent medical needs; or

39 (iv) A resident has not resided in the facility for thirty days.

1 (~~(4)~~) (5) The written notice specified in subsection (~~(2)~~) (3)
2 of this section must include the following:

3 (a) The reason for transfer or discharge;

4 (b) The effective date of transfer or discharge;

5 (c) The location to which the resident is transferred or
6 discharged;

7 (d) The name, address, and telephone number of the state long-term
8 care ombudsman;

9 (e) For residents with developmental disabilities, the mailing
10 address and telephone number of the agency responsible for the
11 protection and advocacy of developmentally disabled individuals
12 established under part C of the developmental disabilities assistance
13 and bill of rights act; and

14 (f) For residents who are mentally ill, the mailing address and
15 telephone number of the agency responsible for the protection and
16 advocacy of mentally ill individuals established under the protection
17 and advocacy for mentally ill individuals act.

18 (~~(5)~~) (6) A facility must provide sufficient preparation and
19 orientation to residents to ensure safe and orderly transfer or
20 discharge from the facility.

21 (~~(6)~~) (7) A resident discharged in violation of this section has
22 the right to be readmitted immediately upon the first availability of
23 a gender-appropriate bed in the facility.

24 **Sec. 206.** RCW 70.129.150 and 1994 c 214 s 16 are each amended to
25 read as follows:

26 (1) Prior to admission, all long-term care facilities or nursing
27 facilities licensed under chapter 18.51 RCW that require payment of an
28 admissions fee, deposit, or a minimum stay fee, by or on behalf of a
29 person seeking (~~admissions [admission]~~) admission to the long-term
30 care facility or nursing facility, shall provide the resident, or his
31 or her representative, full disclosure in writing (~~of the long-term
32 care facility or nursing facility's schedule of charges for items and
33 services provided by the facility and~~) in a language the resident or
34 his or her representative understands, a statement of the amount of any
35 admissions fees, deposits, prepaid charges, or minimum stay fees. The
36 facility shall also disclose to the person, or his or her
37 representative, the facility's advance notice or transfer requirements,
38 prior to admission. In addition, the long-term care facility or

1 nursing facility shall also fully disclose in writing prior to
2 admission what portion of the deposits, admissions fees, prepaid
3 charges, or minimum stay fees will be refunded to the resident or his
4 or her representative if the resident leaves the long-term care
5 facility or nursing facility. Receipt of the disclosures required
6 under this subsection must be acknowledged in writing. If the facility
7 does not provide these disclosures, the deposits, admissions fees,
8 prepaid charges, or minimum stay fees may not be kept by the facility.
9 If a resident(~~(, during the first thirty days of residence,)~~) dies or
10 is hospitalized or is transferred to another facility for more
11 appropriate care and does not return to the original facility, the
12 facility shall refund any deposit or charges already paid less the
13 facility's per diem rate for the days the resident actually resided or
14 reserved or retained a bed in the facility notwithstanding any minimum
15 stay policy or discharge notice requirements, except that the facility
16 may retain an additional amount to cover its reasonable, actual
17 expenses incurred as a result of a private-pay resident's move, not to
18 exceed five days' per diem charges, unless the resident has given
19 advance notice in compliance with the admission agreement. All long-
20 term care facilities or nursing facilities covered under this section
21 are required to refund any and all refunds due the resident or
22 (~~their~~) his or her representative within thirty days from the
23 resident's date of discharge from the facility. Nothing in this
24 section applies to provisions in contracts negotiated between a nursing
25 facility or long-term care facility and a certified health plan, health
26 or disability insurer, health maintenance organization, managed care
27 organization, or similar entities.

28 (2) Where a long-term care facility or nursing facility requires
29 the execution of an admission contract by or on behalf of an individual
30 seeking admission to the facility, the terms of the contract shall be
31 consistent with the requirements of this section, and the terms of an
32 admission contract by a long-term care facility shall be consistent
33 with the requirements of this chapter.

34 **Sec. 207.** RCW 74.39A.030 and 1995 1st sp.s. c 18 s 2 are each
35 amended to read as follows:

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

1 (2) In expanding home and community services, the department shall:
2 (a) Take full advantage of federal funding available under Title XVIII
3 and Title XIX of the federal social security act, including home
4 health, adult day care, waiver options, and state plan services; and
5 (b) be authorized to use funds available under its community options
6 program entry system waiver granted under section 1915(c) of the
7 federal social security act to expand the availability of in-home,
8 adult residential care, adult family homes, enhanced adult residential
9 care, and assisted living services. By June 30, 1997, the department
10 shall undertake to reduce the nursing home medicaid census by at least
11 one thousand six hundred by assisting individuals who would otherwise
12 require nursing facility services to obtain services of their choice,
13 including assisted living services, enhanced adult residential care,
14 and other home and community services. The department shall make
15 reasonable efforts to contract for at least one hundred eighty state
16 clients who would otherwise be served in nursing facilities or in
17 assisted living to instead be served in enhanced adult residential care
18 settings by June 30, 1999. If a resident, or his or her legal
19 representative, objects to a discharge decision initiated by the
20 department, the resident shall not be discharged if the resident has
21 been assessed and determined to require nursing facility services. In
22 contracting with nursing homes and boarding homes for enhanced adult
23 residential care placements, neither the department nor the department
24 of health shall ((not)) require, by contract or through other means,
25 structural modifications to existing building construction.

26 (3)(a) The department shall by rule establish payment rates for
27 home and community services that support the provision of cost-
28 effective care. In contracting with licensed boarding homes for
29 providing additional enhanced adult residential care services for up to
30 one hundred eighty clients pursuant to subsection (2)(b) of this
31 section, the payment rate shall be established at no less than thirty-
32 five and no greater than forty percent of the average state-wide
33 nursing facility medicaid payment rate.

34 (b) The department may authorize an enhanced adult residential care
35 rate for nursing homes that temporarily or permanently convert their
36 bed use for the purpose of providing enhanced adult residential care
37 under chapter 70.38 RCW, when the department determines that payment of
38 an enhanced rate is cost-effective and necessary to foster expansion of
39 contracted enhanced adult residential care services. As an incentive

1 for nursing homes to permanently convert a portion of its nursing home
2 bed capacity for the purpose of providing enhanced adult residential
3 care, the department may authorize a supplemental add-on to the
4 enhanced adult residential care rate.

5 (c) The department may authorize a supplemental assisted living
6 services or an enhanced adult residential care services rate for up to
7 four years for facilities that convert from nursing home use and do not
8 retain rights to the converted nursing home beds under chapter 70.38
9 RCW, if the department determines that payment of a supplemental rate
10 is cost-effective and necessary to foster expansion of contracted
11 assisted living or enhanced adult residential care services.

12 **Sec. 208.** RCW 74.39A.040 and 1995 1st sp.s. c 18 s 6 are each
13 amended to read as follows:

14 The department shall work in partnership with hospitals, who choose
15 to participate, in assisting patients and their families to find long-
16 term care services of their choice according to subsections (1) through
17 (4) of this section. The department shall not delay hospital
18 discharges but shall assist and support the activities of hospital
19 discharge planners. The department also shall coordinate with home
20 health and hospice agencies whenever appropriate. The role of the
21 department is to assist the hospital and to assist patients and their
22 families in making informed choices by providing information regarding
23 home and community options to individuals who are hospitalized and
24 likely to need long-term care.

25 (1) To the extent of available funds, the department shall assess
26 individuals who:

27 (a) Are medicaid clients, medicaid applicants, or eligible for both
28 medicare and medicaid; and

29 (b) Apply or are likely to apply for admission to a nursing
30 facility.

31 (2) For individuals who are reasonably expected to become medicaid
32 recipients within one hundred eighty days of admission to a nursing
33 facility, the department shall, to the extent of available funds, offer
34 an assessment and information regarding appropriate in-home and
35 community services.

36 (3) When the department finds, based on assessment, that the
37 individual prefers and could live appropriately and cost-effectively at
38 home or in some other community-based setting, the department shall:

1 (a) Advise the individual that an in-home or other community
2 service is appropriate;

3 (b) Develop, with the individual or the individual's
4 representative, a comprehensive community service plan;

5 (c) Inform the individual regarding the availability of services
6 that could meet the applicant's needs as set forth in the community
7 service plan and explain the cost to the applicant of the available in-
8 home and community services relative to nursing facility care; and

9 (d) Discuss and evaluate the need for on-going involvement with the
10 individual or the individual's representative.

11 (4) When the department finds, based on assessment, that the
12 individual prefers and needs nursing facility care, the department
13 shall:

14 (a) Advise the individual that nursing facility care is appropriate
15 and inform the individual of the available nursing facility vacancies;

16 (b) If appropriate, advise the individual that the stay in the
17 nursing facility may be short term; and

18 (c) Describe the role of the department in providing nursing
19 facility case management.

20 (5) All hospitals who choose to not participate with the department
21 according to subsections (1) through (4) of this section shall provide
22 their own hospital long-term care discharge services for patients
23 needing long-term care information or services. The hospital shall
24 advise the individual regarding its recommended discharge placement for
25 individuals requiring posthospital care and shall, consistent with the
26 individual's expressed preferences and in accordance with his or her
27 care needs, identify services, including known costs, available in the
28 community and shall develop with the individual and his or her legal
29 representative a comprehensive community service plan, if in-home or
30 other community service is appropriate and preferred.

31 **Sec. 209.** RCW 74.39A.050 and 1995 1st sp.s. c 18 s 12 are each
32 amended to read as follows:

33 The department's system of quality improvement for long-term care
34 services shall ~~((be guided by))~~ use the following principles,
35 consistent with applicable federal laws and regulations:

36 (1) The system shall be ~~((consumer))~~ client-centered and promote
37 privacy, independence, dignity, choice, and a home or home-like

1 environment for consumers consistent with chapter . . . , Laws of 1997
2 (this act).

3 (2) The goal of the system is continuous quality improvement with
4 the focus on consumer satisfaction and outcomes for consumers. This
5 includes that when conducting licensing inspections, the department
6 shall interview an appropriate percentage of residents, family members,
7 resident managers, and advocates in addition to interviewing providers
8 and staff.

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

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

14 (5) Monitoring should be outcome based and responsive to consumer
15 complaints and a clear set of health, quality of care, and safety
16 standards that are easily understandable and have been made available
17 to providers.

18 (~~Providers generally should be assisted in addressing~~
19 ~~identified problems initially through consultation and technical~~
20 ~~assistance.)) Prompt and specific enforcement remedies shall also be
21 ((available)) implemented without delay, pursuant to RCW 74.39A.080,
22 RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers
23 found to have delivered care or failed to deliver care resulting in
24 problems that are serious, recurring, or ((that have been))
25 uncorrected, or that create a hazard that is causing or likely to cause
26 death or serious harm to one or more residents. These enforcement
27 remedies may also include, when appropriate, reasonable conditions on
28 a contract or license. In the selection of remedies, the safety,
29 health, and well-being of residents shall be of paramount importance.~~

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

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

9 (9) Under existing funds the department shall establish internally
10 a quality improvement standards committee to monitor the development of
11 standards and to suggest modifications.

12 (10) Within existing funds, the department shall design, develop,
13 and implement a long-term care training program that is flexible,
14 relevant, and qualifies towards the requirements for a nursing
15 assistant certificate as established under chapter 18.88A RCW. This
16 subsection does not require completion of the nursing assistant
17 certificate training program by providers or their staff. The long-
18 term care teaching curriculum must consist of a fundamental module, or
19 modules, and a range of other available relevant training modules that
20 provide the caregiver with appropriate options that assist in meeting
21 the resident's care needs. Some of the training modules may include,
22 but are not limited to, specific training on the special care needs of
23 persons with developmental disabilities, dementia, mental illness, and
24 the care needs of the elderly. No less than one training module must
25 be dedicated to workplace violence prevention. The nursing care
26 quality assurance commission shall work together with the department to
27 develop the curriculum modules and accept some or all of the curriculum
28 modules hour for hour towards meeting the requirements for a nursing
29 assistant certificate as defined in chapter 18.88A RCW. The department
30 may review whether facilities can develop their own related long-term
31 care training programs. The department may develop a review process
32 for determining what previous experience and training may be used to
33 waive some or all of the mandatory training.

34 **Sec. 210.** RCW 74.39A.060 and 1995 1st sp.s. c 18 s 13 are each
35 amended to read as follows:

36 (1) The aging and adult services administration of the department
37 shall establish and maintain a toll-free telephone number for receiving

1 complaints regarding a facility that the administration licenses or
2 with which it contracts for long-term care services.

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

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

15 (4) The aging and adult services administration shall refer
16 complaints to appropriate state agencies, law enforcement agencies, the
17 attorney general, the long-term care ombudsman, or other entities if
18 the department lacks authority to investigate or if its investigation
19 reveals that a follow-up referral to one or more of these entities is
20 appropriate.

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

23 (a) Upon receipt of a complaint, the department shall make a
24 preliminary review of the complaint, assess the severity of the
25 complaint, and assign an appropriate response time. Complaints
26 involving imminent danger to the health, safety, or well-being of a
27 resident must be responded to within two days. When appropriate, the
28 department shall make an on-site investigation within a reasonable time
29 after receipt of the complaint or otherwise ensure that complaints are
30 responded to.

31 (b) The complainant must be: Promptly contacted by the department,
32 unless anonymous or unavailable despite several attempts by the
33 department, and informed of the right to discuss the alleged violations
34 with the inspector and to provide other information the complainant
35 believes will assist the inspector; informed of the department's course
36 of action; and informed of the right to receive a written copy of the
37 investigation report.

38 (c) In conducting the investigation, the department shall interview
39 the complainant, unless anonymous, and shall use its best efforts to

1 interview the resident or residents allegedly harmed by the violations,
2 and, in addition to facility staff, any available independent sources
3 of relevant information, including if appropriate the family members of
4 the resident.

5 (d) Substantiated complaints involving harm to a resident, if an
6 applicable law or regulation has been violated, shall be subject to one
7 or more of the actions provided in RCW 74.39A.080 or 70.128.160.
8 Whenever appropriate, the department shall also give consultation and
9 technical assistance to the provider.

10 (e) In the best practices of total quality management and
11 continuous quality improvement, after a department finding of a
12 violation that is serious, recurring, or uncorrected following a
13 previous citation, the department shall make an on-site revisit of the
14 facility to ensure correction of the violation, except for license or
15 contract suspensions or revocations.

16 (f) Substantiated complaints of neglect, abuse, exploitation, or
17 abandonment of residents, or suspected criminal violations, shall also
18 be referred by the department to the appropriate law enforcement
19 agencies, the attorney general, and appropriate professional
20 disciplining authority.

21 (6) The department may ((not)) provide the substance of the
22 complaint to the licensee or contractor before the completion of the
23 investigation by the department unless such disclosure would reveal the
24 identity of a complainant, witness, or resident who chooses to remain
25 anonymous. Neither the substance of the complaint provided to the
26 licensee or contractor nor any copy of the complaint or related report
27 published, released, or made otherwise available shall disclose, or
28 reasonably lead to the disclosure of, the name, title, or identity of
29 any complainant, or other person mentioned in the complaint, except
30 that the name of the provider and the name or names of any officer,
31 employee, or agent of the department conducting the investigation shall
32 be disclosed after the investigation has been closed and the complaint
33 has been substantiated. The department may disclose the identity of
34 the complainant if such disclosure is requested in writing by the
35 complainant. Nothing in this subsection shall be construed to
36 interfere with the obligation of the long-term care ombudsman program
37 or department staff to monitor the department's licensing, contract,
38 and complaint investigation files for long-term care facilities.

1 ~~((6))~~ (7) The resident has the right to be free of interference,
2 coercion, discrimination, and reprisal from a facility in exercising
3 his or her rights, including the right to voice grievances about
4 treatment furnished or not furnished. A facility that provides long-
5 term care services shall not discriminate or retaliate in any manner
6 against a resident, employee, or any other person on the basis or for
7 the reason that such resident or any other person made a complaint to
8 the department, the attorney general, law enforcement agencies, or the
9 long-term care ombudsman, provided information, or otherwise cooperated
10 with the investigation of such a complaint. Any attempt to discharge
11 a resident against the resident's wishes, or any type of retaliatory
12 treatment of a resident by whom or upon whose behalf a complaint
13 substantiated by the department has been made to the department, the
14 attorney general, law enforcement agencies, or the long-term care
15 ombudsman, within one year of the filing of the complaint, raises a
16 rebuttable presumption that such action was in retaliation for the
17 filing of the complaint. "Retaliatory treatment" means, but is not
18 limited to, monitoring a resident's phone, mail, or visits; involuntary
19 seclusion or isolation; transferring a resident to a different room
20 unless requested or based upon legitimate management reasons;
21 withholding or threatening to withhold food or treatment unless
22 authorized by a terminally ill resident or his or her representative
23 pursuant to law; or persistently delaying responses to a resident's
24 request for service or assistance. A facility that provides long-term
25 care services shall not willfully interfere with the performance of
26 official duties by a long-term care ombudsman. The department shall
27 sanction and may impose a civil penalty of not more than three thousand
28 dollars for a violation of this subsection (~~and require the facility~~
29 ~~to mitigate any damages incurred by the resident)).~~

30 **Sec. 211.** RCW 70.129.105 and 1994 c 214 s 17 are each amended to
31 read as follows:

32 No long-term care facility or nursing facility licensed under
33 chapter 18.51 RCW shall require or request residents to sign waivers of
34 potential liability for losses of personal property or injury, or to
35 sign waivers of residents' rights set forth in this chapter or in the
36 applicable licensing or certification laws.

1 **Sec. 212.** RCW 74.42.030 and 1979 ex.s. c 211 s 3 are each amended
2 to read as follows:

3 Each resident or guardian or legal representative, if any, shall be
4 fully informed and receive in writing, in a language the resident or
5 his or her representative understands, the following information:

- 6 (1) The resident's rights and responsibilities in the facility;
7 (2) Rules governing resident conduct;
8 (3) Services, items, and activities available in the facility; and
9 (4) Charges for services, items, and activities, including those
10 not included in the facility's basic daily rate or not paid by
11 medicaid.

12 The facility shall provide this information before admission, or at
13 the time of admission in case of emergency, and as changes occur during
14 the resident's stay. The resident and his or her representative must
15 be informed in writing in advance of changes in the availability or
16 charges for services, items, or activities, or of changes in the
17 facility's rules. Except in unusual circumstances, thirty days'
18 advance notice must be given prior to the change. The resident or
19 legal guardian or representative shall acknowledge in writing receipt
20 of this information (~~and any changes in the information~~)).

21 The written information provided by the facility pursuant to this
22 section, and the terms of any admission contract executed between the
23 facility and an individual seeking admission to the facility, must be
24 consistent with the requirements of this chapter and chapter 18.51 RCW
25 and, for facilities certified under medicaid or medicare, with the
26 applicable federal requirements.

27 NEW SECTION. **Sec. 213.** A new section is added to chapter 18.20
28 RCW to read as follows:

29 The department's system of quality improvement for long-term care
30 services shall use the following principles, consistent with applicable
31 federal laws and regulations:

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

35 (2) The goal of the system is continuous quality improvement with
36 the focus on resident satisfaction and outcomes for residents. This
37 includes that when conducting licensing inspections, the department

1 shall interview an appropriate percentage of residents, family members,
2 and advocates in addition to interviewing appropriate staff.

3 (3) Facilities should be supported in their efforts to improve
4 quality and address identified problems initially through training,
5 consultation, and technical assistance.

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

8 (5) Monitoring should be outcome based and responsive to resident
9 complaints and a clear set of health, quality of care, and safety
10 standards that are easily understandable and have been made available
11 to facilities.

12 (6) Prompt and specific enforcement remedies shall also be
13 implemented without delay, consistent with RCW 18.20.190, for
14 facilities found to have delivered care or failed to deliver care
15 resulting in problems that are serious, recurring, or uncorrected, or
16 that create a hazard that is causing or likely to cause death or
17 serious harm to one or more residents. These enforcement remedies may
18 also include, when appropriate, reasonable conditions on a license. In
19 the selection of remedies, the safety, health, and well-being of
20 residents shall be of paramount importance.

21 (7) To the extent funding is available, the licensee,
22 administrator, and their staff should be screened through background
23 checks in a uniform and timely manner to ensure that they do not have
24 a criminal history that would disqualify them from working with
25 vulnerable adults. Employees may be provisionally hired pending the
26 results of the background check if they have been given three positive
27 references.

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

34 (9) No licensee, administrator, or staff, or prospective licensee,
35 administrator, or staff, with a stipulated finding of fact, conclusion
36 of law, and agreed order, or finding of fact, conclusion of law, or
37 final order issued by a disciplining authority, a court of law, or
38 entered into the state registry finding him or her guilty of abuse,
39 neglect, exploitation, or abandonment of a minor or a vulnerable adult

1 as defined in chapter 74.34 RCW shall be employed in the care of and
2 have unsupervised access to vulnerable adults.

3 NEW SECTION. **Sec. 214.** A new section is added to chapter 18.20
4 RCW to read as follows:

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

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

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

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

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

26 (a) Upon receipt of a complaint, the department shall make a
27 preliminary review of the complaint, assess the severity of the
28 complaint, and assign an appropriate response time. Complaints
29 involving imminent danger to the health, safety, or well-being of a
30 resident must be responded to within two days. When appropriate, the
31 department shall make an on-site investigation within a reasonable time
32 after receipt of the complaint or otherwise ensure that complaints are
33 responded to.

34 (b) The complainant must be: Promptly contacted by the department,
35 unless anonymous or unavailable despite several attempts by the
36 department, and informed of the right to discuss alleged violations
37 with the inspector and to provide other information the complainant
38 believes will assist the inspector; informed of the department's course

1 of action; and informed of the right to receive a written copy of the
2 investigation report.

3 (c) In conducting the investigation, the department shall interview
4 the complainant, unless anonymous, and shall use its best efforts to
5 interview the resident or residents allegedly harmed by the violations,
6 and, in addition to facility staff, any available independent sources
7 of relevant information, including if appropriate the family members of
8 the resident.

9 (d) Substantiated complaints involving harm to a resident, if an
10 applicable law or regulation has been violated, shall be subject to one
11 or more of the actions provided in RCW 18.20.190. Whenever
12 appropriate, the department shall also give consultation and technical
13 assistance to the facility.

14 (e) In the best practices of total quality management and
15 continuous quality improvement, after a department finding of a
16 violation that is serious, recurring, or uncorrected following a
17 previous citation, the department shall make an on-site revisit of the
18 facility to ensure correction of the violation. This subsection does
19 not prevent the department from enforcing license suspensions or
20 revocations.

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

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

1 complainant. Nothing in this subsection shall be construed to
2 interfere with the obligation of the long-term care ombudsman program
3 to monitor the department's licensing, contract, and complaint
4 investigation files for long-term care facilities.

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

33 NEW SECTION. **Sec. 215.** Within existing funds, the long-term care
34 ombudsman shall conduct a follow-up review of the department of
35 health's licensing inspections and complaint investigations of boarding
36 homes and of the department of social and health services' monitoring
37 of boarding homes with contracts under chapter 74.39A RCW. The review
38 must include, but is not limited to, an examination of the enforcement

1 of resident rights and care standards in boarding homes, the timeliness
2 of complaint investigations, and compliance by the departments with the
3 standards set forth in this act. The long-term care ombudsman shall
4 consult with the departments of health and social and health services,
5 long-term care facility organizations, resident groups, and senior and
6 disabled citizen organizations and report to appropriate committees of
7 the house of representatives and the senate concerning its review of
8 the departments' enforcement activities and any applicable
9 recommendations by January 5, 1998.

10 **Sec. 216.** RCW 74.42.450 and 1995 1st sp.s. c 18 s 64 are each
11 amended to read as follows:

12 (1) The facility shall admit as residents only those individuals
13 whose needs can be met by:

14 (a) The facility;

15 (b) The facility cooperating with community resources; or

16 (c) The facility cooperating with other providers of care
17 affiliated or under contract with the facility.

18 (2) The facility shall transfer a resident to a hospital or other
19 appropriate facility when a change occurs in the resident's physical or
20 mental condition that requires care or service that the facility cannot
21 provide. The resident, the resident's guardian, if any, the resident's
22 next of kin, the attending physician, and the department shall be
23 consulted at least fifteen days before a transfer or discharge unless
24 the resident is transferred under emergency circumstances. The
25 department shall use casework services or other means to insure that
26 adequate arrangements are made to meet the resident's needs.

27 (3) A resident shall be transferred or discharged only for medical
28 reasons, the resident's welfare or request, the welfare of other
29 residents, or nonpayment. A resident may not be discharged for
30 nonpayment if the discharge would be prohibited by the medicaid
31 program.

32 (4) If a resident chooses to remain in the nursing facility, the
33 department shall respect that choice, provided that if the resident is
34 a medicaid recipient, the resident continues to require a nursing
35 facility level of care.

36 (5) If the department determines that a resident no longer requires
37 a nursing facility level of care, the resident shall not be discharged
38 from the nursing facility until at least thirty days after written

1 notice is given to the resident, the resident's surrogate decision
2 maker and, if appropriate, a family member or the resident's
3 representative. A form for requesting a hearing to appeal the
4 discharge decision shall be attached to the written notice. The
5 written notice shall include at least the following:

6 (a) The reason for the discharge;

7 (b) A statement that the resident has the right to appeal the
8 discharge; and

9 (c) The name, address, and telephone number of the state long-term
10 care ombudsman.

11 (6) If the resident appeals a department discharge decision, the
12 resident shall not be discharged without the resident's consent until
13 at least thirty days after a final order is entered upholding the
14 decision to discharge the resident.

15 (7) Before the facility transfers or discharges a resident, the
16 facility must first attempt through reasonable accommodations to avoid
17 the transfer or discharge unless the transfer or discharge is agreed to
18 by the resident. The facility shall admit or retain only individuals
19 whose needs it can safely and appropriately serve in the facility with
20 available staff or through the provision of reasonable accommodations
21 required by state or federal law. "Reasonable accommodations" has the
22 meaning given to this term under the federal Americans with
23 disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other
24 applicable federal or state antidiscrimination laws and regulations.

25 **PART III**

26 **ESTATE RECOVERY CONSUMER DISCLOSURE**

27 NEW SECTION. Sec. 301. A new section is added to chapter 43.20B
28 RCW to read as follows:

29 (1) It is the intent of the legislature to ensure that needy
30 individuals have access to basic long-term care without requiring them
31 to sell their homes. In the face of rising medical costs and limited
32 funding for social welfare programs, however, the state's medicaid and
33 state-funded long-term care programs have placed an increasing
34 financial burden on the state. By balancing the interests of
35 individuals with immediate and future unmet medical care needs,
36 surviving spouses and dependent children, adult nondependent children,
37 more distant heirs, and the state, the estate recovery provisions of

1 RCW 43.20B.080 and 74.39A.170 provide an equitable and reasonable
2 method of easing the state's financial burden while ensuring the
3 continued viability of the medicaid and state-funded long-term care
4 programs.

5 (2) It is further the intent of the legislature to confirm that
6 chapter 21, Laws of 1994, effective July 1, 1994, repealed and
7 substantially reenacted the state's medicaid estate recovery laws and
8 did not eliminate the department's authority to recover the cost of
9 medical assistance paid prior to October 1, 1993, from the estates of
10 deceased recipients regardless of whether they received benefits
11 before, on, or after July 1, 1994.

12 **Sec. 302.** RCW 43.20B.080 and 1995 1st sp.s. c 18 s 67 are each
13 amended to read as follows:

14 (1) The department shall file liens, seek adjustment, or otherwise
15 effect recovery for medical assistance correctly paid on behalf of an
16 individual (~~as required by this chapter and~~) consistent with 42
17 U.S.C. Sec. 1396p.

18 (2) Liens may be adjusted by foreclosure in accordance with chapter
19 61.12 RCW.

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

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

36 (5)(a) The department shall establish procedures consistent with
37 standards established by the federal department of health and human

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

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

7 ~~((5))~~ (6) A lien authorized under subsections (1) through (5) of
8 this section relates back to attach to any real property that the
9 decedent had an ownership interest in immediately before death and is
10 effective as of that date.

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

14 (8) The office of financial management shall review the cost and
15 feasibility of the department of social and health services collecting
16 the client copayment for long-term care consistent with the terms and
17 conditions of RCW 74.39A.120, and the cost impact to community
18 providers under the current system for collecting the client's
19 copayment in addition to the amount charged to the client for estate
20 recovery, and report to the legislature by December 12, 1997.

21 **Sec. 303.** RCW 74.34.010 and 1995 1st sp.s. c 18 s 82 are each
22 amended to read as follows:

23 The legislature finds that frail elders and vulnerable adults may
24 be subjected to abuse, neglect, exploitation, or abandonment. The
25 legislature finds that there are a number of adults sixty years of age
26 or older who lack the ability to perform or obtain those services
27 necessary to maintain or establish their well-being. The legislature
28 finds that many frail elders and vulnerable adults have health problems
29 that place them in a dependent position. The legislature further finds
30 that a significant number of frail elders and vulnerable adults have
31 mental and verbal limitations that leave them vulnerable and incapable
32 of asking for help and protection.

33 It is the intent of the legislature to prevent or remedy the abuse,
34 neglect, exploitation, or abandonment of persons sixty years of age or
35 older who have a functional, mental, or physical inability to care for
36 or protect themselves.

37 It is the intent of the legislature to assist frail elders and
38 vulnerable adults by providing these persons with the protection of the

1 courts and with the least-restrictive services, such as home care, and
2 by preventing or reducing inappropriate institutional care. The
3 legislature finds that it is in the interests of the public health,
4 safety, and welfare of the people of the state to provide a procedure
5 for identifying these vulnerable persons and providing the services and
6 remedies necessary for their well-being.

7 It is further the intent of the legislature that the cost of
8 protective services rendered to a frail elder or vulnerable adult under
9 this chapter that are paid with state funds only not be subject to
10 recovery from the recipient or the recipient's estate, whether by lien,
11 adjustment, or any other means of recovery, regardless of the income or
12 assets of the recipient of the services. In making this exemption the
13 legislature recognizes that receipt of such services is voluntary and
14 incentives to decline services or delay permission must be kept to a
15 minimum. There may be a need to act or intervene quickly to protect
16 the assets, health, or well-being of a frail elder or vulnerable adult;
17 to prevent or halt the exploitation, neglect, abandonment, or abuse of
18 the person or assets of a frail elder or vulnerable adult; or to
19 prevent or limit inappropriate placement or retention in an institution
20 providing long-term care. The delivery of such services is less likely
21 to be impeded, and consent to such services will be more readily
22 obtained, if the cost of these services is not subject to recovery.
23 The legislature recognizes that there will be a cost in not seeking
24 financial recovery for such services, but that this cost may be offset
25 by preventing costly and inappropriate institutional placement.

26 NEW SECTION. Sec. 304. A new section is added to chapter 74.34
27 RCW to read as follows:

28 The cost of benefits and services provided to a frail elder or
29 vulnerable adult under this chapter with state funds only does not
30 constitute an obligation or lien and is not recoverable from the
31 recipient of the services or from the recipient's estate, whether by
32 lien, adjustment, or any other means of recovery.

33 **Sec. 305.** RCW 74.39A.170 and 1995 1st sp.s. c 18 s 56 are each
34 amended 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
37 recovery under 42 U.S.C. Sec. 1396p and chapter 43.20B RCW(~~(, but)~~)

1 without regard to the recipient's age, except the cost of state-funded
2 adult protective services provided under chapter 74.34 RCW to frail
3 elders and vulnerable adults.

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

10 (3) It is the responsibility of the department to fully disclose in
11 advance verbally and in writing, in easy to understand language, the
12 terms and conditions of estate recovery. The disclosure must include
13 billing and recovery and copayment procedures to all persons offered
14 long-term care services subject to recovery of payments.

15 (4) It is the intent of the legislature that the department
16 collect, to the extent possible, all costs associated with the
17 individual provider program including, but not limited to, training,
18 taxes, and fringe benefits.

19 By November 15, 1997, the secretary shall identify and report to
20 the legislature:

21 (a) The costs of identifying or tracking direct and indirect costs
22 associated with the individual provider program, including any
23 necessary changes to the department's information systems; and

24 (b) Any federal or state laws limiting the department's ability to
25 recover direct or indirect costs of the individual provider program
26 from the estate.

27 (5) To the extent funds are available and in compliance with
28 federal law, the department is responsible for also notifying the
29 client, or his or her advocate, quarterly of the types of services
30 used, charges for services, credit amount of copayment, and the
31 difference (debt) that will be charged against the estate.

32 **PART IV**
33 **ADULT FAMILY HOMES**

34 **Sec. 401.** RCW 70.128.175 and 1995 1st sp.s. c 18 s 29 are each
35 amended to read as follows:

1 (1) Unless the context clearly requires otherwise, these
2 definitions shall apply throughout this section and RCW 35.63.140,
3 35A.63.149, 36.70.755, 35.22.680, and 36.32.560:

4 (a) "Adult family home" means a regular family abode ~~((of))~~ in
5 which a person or persons ~~((providing))~~ provides personal care, special
6 care, room, and board to more than one but not more than six adults who
7 are not related by blood or marriage to the person or persons providing
8 the services.

9 (b) "Residential care facility" means a facility that cares for at
10 least five, but not more than fifteen functionally disabled persons,
11 that is not licensed pursuant to chapter 70.128 RCW.

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

14 (2) An adult family home shall be considered a residential use of
15 property for zoning and public and private utility rate purposes.
16 Adult family homes shall be a permitted use in all areas zoned for
17 residential or commercial purposes, including areas zoned for single
18 family dwellings.

19 NEW SECTION. **Sec. 402.** The department of social and health
20 services shall implement a limited moratorium on the authorization of
21 adult family home licenses until December 12, 1997, or until the
22 secretary has determined that all adult family home and group home
23 safety and quality of care standards have been reviewed by the
24 department, determined by the secretary to reasonably protect the life,
25 safety, and health of residents, and has notified all adult family home
26 and group home operators of the standards of care or any modifications
27 to the existing standards. This limited moratorium shall in no way
28 prevent a person eligible to receive services from receiving the same
29 or equivalent chronic long-term care services. In the event of a need
30 for such services, the department shall develop a process for
31 determining the availability of chronic long-term care residential
32 services on a case-by-case basis to determine if an adult family home
33 license should be granted to accommodate the needs of a particular
34 geographical or ethnic community. The department may review the cost
35 and feasibility of creating an adult family home advisory committee.
36 The secretary shall make the final determination on individual case
37 licensure until December 12, 1997, or until the moratorium has been

1 removed and determine if an adult family home advisory committee should
2 be developed.

3 NEW SECTION. **Sec. 403.** The department of social and health
4 services is authorized to adopt rules, including emergency rules, for
5 implementing the provisions of section 402 of this act.

6 **PART V**
7 **MISCELLANEOUS PROVISIONS**

8 NEW SECTION. **Sec. 501.** The department of health in cooperation
9 with the department of social and health services may develop a plan
10 for implementing a pilot program for accrediting boarding homes
11 licensed under RCW 18.20.020 with a recognized national nongovernmental
12 accreditation organization or an organization with experience in
13 developing and implementing accreditation programs in at least two
14 states. The pilot plan, if funded, shall be developed with the input
15 of residents, provider representatives, and other vested interest
16 groups. If funded, the plan shall review the overall feasibility of
17 implementation, cost or savings to the department of health, impact on
18 client health and safety, and financial and other impacts to the
19 boarding industry. If funded, the pilot boarding home accreditation
20 plan shall be presented to the appropriate committees of the house of
21 representatives and the senate by January 5, 1998.

22 NEW SECTION. **Sec. 502.** The department of community, trade, and
23 economic development, in collaboration with the organizations
24 designated by state or federal law to provide protection and advocacy
25 and ombuds services for older Americans and people with disabilities
26 using publicly funded long-term care residential services, may conduct
27 a study, make recommendations, and draft legislation necessary to
28 implement changes that will result in a single coordinating umbrella
29 for ombuds and advocacy services that maximizes efficiency, minimizes
30 duplication, and allows for specialization in target populations such
31 as developmental disabilities, older Americans, and mental illness, and
32 assures that the providers of ombuds services have sufficient expertise
33 and experience with target populations and the systems that serve them.
34 The study, if funded, shall include review of all relevant federal and
35 state laws and regulations, including but not limited to the older

1 Americans act, 42 U.S.C. 3001 as amended, the developmental
2 disabilities assistance and bill of rights act as amended, 42 U.S.C.
3 6000, the protection and advocacy for persons with mental illness act
4 as amended, 42 U.S.C. 10801, the rehabilitation act of 1973 as amended,
5 29 U.S.C. 701, the long-term care ombudsman statute chapter 43.190 RCW,
6 developmental disabilities statute, Title 71A RCW, and the community
7 mental health services regulations, chapter 275-57 WAC. If funded, the
8 study shall identify the gaps in current ombuds and advocacy services,
9 and develop a cost assessment for implementation of a comprehensive
10 umbrella of ombuds and advocacy services. If funded, the department of
11 community, trade, and economic development shall report to the
12 appropriate committees of the house of representatives and the senate
13 by January 10, 1998.

14 NEW SECTION. **Sec. 503.** The department of social and health
15 services may review the cost and feasibility of implementing
16 developmental disabilities certification standards for community
17 residential alternatives to ensure that services are adequate for the
18 health, safety, care, treatment, and support of persons with
19 developmental disabilities. The community residential alternatives
20 shall include, but not be limited to, entities that contract or
21 directly provide services with the division of developmental
22 disabilities such as group homes, agency alternative living, intensive
23 and other tenant support services, adult family homes, or boarding
24 homes. Certification standards shall review at a minimum the following
25 areas. Administrative and financial capabilities of the provider,
26 health and safety practices, the opportunities for the individuals
27 served by the programs to have power and choice in their lives,
28 opportunities to develop friendships and relationships, and
29 opportunities to develop self-respect and to gain respect from others,
30 to participate in the community, and to gain independent living skills.
31 If the review is funded, the department shall also recommend whether
32 adult family homes that choose to provide services only to persons with
33 developmental disabilities should receive special certification or
34 licensure apart from or in place of the existing adult family home
35 license. The review may also recommend the type and amount of provider
36 training necessary to appropriately support persons with developmental
37 disabilities in community residential alternatives. The department may
38 include the assistance of other departments, vested interest groups,

1 and family members in the development of recommendations. If funded,
2 the department shall report to the appropriate committees of the house
3 of representatives and the senate by January 30, 1998.

4 NEW SECTION. **Sec. 504.** Any section or provision of this act that
5 may be susceptible to more than one construction shall be interpreted
6 in favor of the construction most likely to comply with federal laws
7 entitling this state to receive federal funds for the various programs
8 of the department of health or the department of social and health
9 services. If any section of this act is found to be in conflict with
10 federal requirements that are a prescribed condition of the allocation
11 of federal funds to the state, or to any departments or agencies
12 thereof, the conflicting part is declared to be inoperative solely to
13 the extent of the conflict. The rules issued under this act shall meet
14 federal requirements that are a necessary condition to the receipt of
15 federal funds by the state.

16 NEW SECTION. **Sec. 505.** A new section is added to chapter 43.70
17 RCW to read as follows:

18 The department of health shall implement a nursing home resident
19 protection program in cooperation with the department of social and
20 health services and disciplining authorities and according to
21 guidelines established by the federal health care financing
22 administration. The department of social and health services shall
23 retain authority to review and investigate all allegations of nursing
24 home resident neglect, abuse, and misappropriation of resident
25 property. If the department of social and health services makes a
26 preliminary determination, based upon credible evidence and an
27 investigation by the department, that a licensed, certified, or
28 registered health care provider listed in RCW 18.130.040 and used by
29 the nursing home to provide services to a resident, except for a
30 certified or registered nursing assistant, has neglected or abused a
31 resident or misappropriated a resident's property, the department of
32 social and health services shall immediately refer its determination
33 regarding the individual to the appropriate disciplining authority, as
34 defined in chapter 18.130 RCW. The disciplining authority shall pursue
35 administrative adjudicatory or disciplinary proceedings according to
36 federal timelines and requirements, and consistent with the
37 administrative procedure act, chapter 34.05 RCW. The secretary of

1 social and health services shall be consulted in the consideration of
2 any complaint referred to the secretary of health and the other
3 disciplining authorities. If the disciplining authority fails to
4 comply with the applicable requirements of federal law, jurisdiction on
5 the individual case shall revert to the secretary of social and health
6 services. The secretary of social and health services and the
7 secretary of health shall enter into an interagency agreement to
8 implement the provisions of this section. A finding of fact,
9 stipulated finding of fact, agreed order, or final order issued by the
10 disciplining authority that finds the individual health care provider
11 guilty of neglect, abuse, or misappropriation of resident property
12 shall be promptly reported to the department of social and health
13 services. The disciplining authority shall not make a finding that an
14 individual has neglected a resident if the individual demonstrates that
15 such neglect was caused by factors beyond the control of the
16 individual.

17 NEW SECTION. **Sec. 506.** A new section is added to chapter 18.51
18 RCW to read as follows:

19 The department of social and health services shall implement a
20 nursing home resident protection program in cooperation with the
21 department of health and disciplining authorities and according to
22 guidelines established by the federal health care financing
23 administration. The department of social and health services shall
24 conduct a timely review and investigation of all credible allegations
25 of nursing home resident neglect, abuse, and misappropriation of
26 resident property. If the department of social and health services
27 makes a preliminary determination, based upon credible evidence and an
28 investigation by the department, that a licensed, certified, or
29 registered health care provider listed in RCW 18.130.040 and used by
30 the nursing home to provide services to a resident, except for a
31 certified or registered nursing assistant, has neglected or abused a
32 resident or misappropriated a resident's property, the department of
33 social and health services shall immediately refer its determination
34 regarding the individual to the department of health or disciplining
35 authority, as defined in RCW 18.130.020. The disciplining authority,
36 and not the department of social and health services for individuals
37 referred to the disciplining authority, shall pursue administrative
38 adjudicatory or disciplinary proceedings according to federal timelines

1 and requirements, and consistent with the administrative procedure act,
2 chapter 34.05 RCW. Other individuals used by a nursing home, including
3 certified and registered nursing assistants, with a preliminary
4 determination of neglect, abuse, or misappropriation of resident
5 property shall receive notice and the right to an administrative fair
6 hearing from the department of social and health services according to
7 federal timelines and requirements, and consistent with the
8 administrative procedure act, chapter 34.05 RCW. An individual with a
9 finding of fact, stipulated finding of fact, agreed order, or final
10 order issued by the department of social and health services that finds
11 the individual guilty of neglect, abuse, or misappropriation of
12 resident property shall not be employed in the care of and have
13 unsupervised access to vulnerable adults, as defined in chapter 74.34
14 RCW. The department shall not make a finding that an individual has
15 neglected a resident if the individual demonstrates that such neglect
16 was caused by factors beyond the control of the individual. Upon
17 receipt from the disciplining authority of a finding of fact,
18 stipulated finding of fact, agreed order, or final order that finds the
19 individual health care provider guilty of neglect, abuse, or
20 misappropriation of resident property, the department of social and
21 health services shall report this information to the nursing home where
22 the incident occurred, the long-term care facility where the individual
23 works, if different, and other entities serving vulnerable adults upon
24 request by the entity.

25 NEW SECTION. **Sec. 507.** A new section is added to chapter 9A.42
26 RCW to read as follows:

27 The legislature finds that there is a significant need to protect
28 children and dependent persons, including frail elder and vulnerable
29 adults, from abuse and neglect by their parents, by persons entrusted
30 with their physical custody, or by persons employed to provide them
31 with the basic necessities of life. The legislature further finds that
32 such abuse and neglect often takes the forms of either withholding from
33 them the basic necessities of life, including food, water, shelter,
34 clothing, and health care, or abandoning them, or both. Therefore, it
35 is the intent of the legislature that criminal penalties be imposed on
36 those guilty of such abuse or neglect. It is the intent of the
37 legislature that a person who, in good faith, is furnished Christian
38 Science treatment by a duly accredited Christian Science practitioner

1 in lieu of medical care is not considered deprived of medically
2 necessary health care or abandoned. Prosecutions under this chapter
3 shall be consistent with the rules of evidence, including hearsay,
4 under law.

5 **Sec. 508.** RCW 9A.42.010 and 1996 c 302 s 1 are each amended to
6 read as follows:

7 As used in this chapter:

8 (1) "Basic necessities of life" means food, water, shelter,
9 clothing, and medically necessary health care, including but not
10 limited to health-related treatment or activities, hygiene, oxygen, and
11 medication.

12 (2)(a) "Bodily injury" means physical pain or injury, illness, or
13 an impairment of physical condition;

14 (b) "Substantial bodily harm" means bodily injury which involves a
15 temporary but substantial disfigurement, or which causes a temporary
16 but substantial loss or impairment of the function of any bodily part
17 or organ, or which causes a fracture of any bodily part;

18 (c) "Great bodily harm" means bodily injury which creates a high
19 probability of death, or which causes serious permanent disfigurement,
20 or which causes a permanent or protracted loss or impairment of the
21 function of any bodily part or organ.

22 (3) "Child" means a person under eighteen years of age.

23 (4) "Dependent person" means a person who, because of physical or
24 mental disability, or because of extreme advanced age, is dependent
25 upon another person to provide the basic necessities of life. A
26 resident of a nursing home, as defined in RCW 18.51.010, a resident of
27 an adult family home, as defined in RCW 70.128.010, and a frail elder
28 or vulnerable adult, as defined in RCW 74.34.020(8), is presumed to be
29 a dependent person for purposes of this chapter.

30 (5) "Employed" means hired by a dependent person, another person
31 acting on behalf of a dependent person, or by an organization or
32 governmental entity, to provide to a dependent person any of the basic
33 necessities of life. A person may be "employed" regardless of whether
34 the person is paid for the services or, if paid, regardless of who pays
35 for the person's services.

36 (6) "Parent" has its ordinary meaning and also includes a guardian
37 and the authorized agent of a parent or guardian.

1 (7) "Abandons" means leaving a child or other dependent person
2 without the means or ability to obtain one or more of the basic
3 necessities of life.

4 **Sec. 509.** RCW 9A.42.050 and 1986 c 250 s 5 are each amended to
5 read as follows:

6 In any prosecution for criminal mistreatment, it shall be a defense
7 that the withholding of the basic necessities of life is due to
8 financial inability only if the person charged has made a reasonable
9 effort to obtain adequate assistance. This defense is available to a
10 person employed to provide the basic necessities of life only when the
11 agreed-upon payment has not been made.

12 **Sec. 510.** RCW 9A.42.020 and 1986 c 250 s 2 are each amended to
13 read as follows:

14 (1) A parent of a child ((~~or~~)), the person entrusted with the
15 physical custody of a child or dependent person, or a person employed
16 to provide to the child or dependent person the basic necessities of
17 life is guilty of criminal mistreatment in the first degree if he or
18 she recklessly, as defined in RCW 9A.08.010, causes great bodily harm
19 to a child or dependent person by withholding any of the basic
20 necessities of life.

21 (2) Criminal mistreatment in the first degree is a class B felony.

22 **Sec. 511.** RCW 9A.42.030 and 1986 c 250 s 3 are each amended to
23 read as follows:

24 (1) A parent of a child ((~~or~~)), the person entrusted with the
25 physical custody of a child or dependent person, or a person employed
26 to provide to the child or dependent person the basic necessities of
27 life is guilty of criminal mistreatment in the second degree if he or
28 she recklessly, as defined in RCW 9A.08.010, either (a) creates an
29 imminent and substantial risk of death or great bodily harm, or (b)
30 causes substantial bodily harm by withholding any of the basic
31 necessities of life.

32 (2) Criminal mistreatment in the second degree is a class C felony.

33 NEW SECTION. **Sec. 512.** A new section is added to chapter 9A.42
34 RCW to read as follows:

1 RCW 9A.42.020 and 9A.42.030 do not apply when a terminally ill
2 person or his or her designee requests palliative care and the person
3 receives palliative care from a licensed home health agency, hospice
4 agency, nursing home, or hospital who is providing care under the
5 medical direction of a physician.

6 **Sec. 513.** RCW 9A.44.010 and 1994 c 271 s 302 are each amended to
7 read as follows:

8 As used in this chapter:

9 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs
10 upon any penetration, however slight, and

11 (b) Also means any penetration of the vagina or anus however
12 slight, by an object, when committed on one person by another, whether
13 such persons are of the same or opposite sex, except when such
14 penetration is accomplished for medically recognized treatment or
15 diagnostic purposes, and

16 (c) Also means any act of sexual contact between persons involving
17 the sex organs of one person and the mouth or anus of another whether
18 such persons are of the same or opposite sex.

19 (2) "Sexual contact" means any touching of the sexual or other
20 intimate parts of a person done for the purpose of gratifying sexual
21 desire of either party or a third party.

22 (3) "Married" means one who is legally married to another, but does
23 not include a person who is living separate and apart from his or her
24 spouse and who has filed in an appropriate court for legal separation
25 or for dissolution of his or her marriage.

26 (4) "Mental incapacity" is that condition existing at the time of
27 the offense which prevents a person from understanding the nature or
28 consequences of the act of sexual intercourse whether that condition is
29 produced by illness, defect, the influence of a substance or from some
30 other cause.

31 (5) "Physically helpless" means a person who is unconscious or for
32 any other reason is physically unable to communicate unwillingness to
33 an act.

34 (6) "Forcible compulsion" means physical force which overcomes
35 resistance, or a threat, express or implied, that places a person in
36 fear of death or physical injury to herself or himself or another
37 person, or in fear that she or he or another person will be kidnapped.

1 (7) "Consent" means that at the time of the act of sexual
2 intercourse or sexual contact there are actual words or conduct
3 indicating freely given agreement to have sexual intercourse or sexual
4 contact.

5 (8) "Significant relationship" means a situation in which the
6 perpetrator is:

7 (a) A person who undertakes the responsibility, professionally or
8 voluntarily, to provide education, health, welfare, or organized
9 recreational activities principally for minors; ((or))

10 (b) A person who in the course of his or her employment supervises
11 minors; or

12 (c) A person who provides welfare, health or residential
13 assistance, personal care, or organized recreational activities to
14 frail elders or vulnerable adults, including a provider, employee,
15 temporary employee, volunteer, or independent contractor who supplies
16 services to long-term care facilities licensed or required to be
17 licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home
18 health, hospice, or home care agencies licensed or required to be
19 licensed under chapter 70.127 RCW, but not including a consensual
20 sexual partner.

21 (9) "Abuse of a supervisory position" means a direct or indirect
22 threat or promise to use authority to the detriment or benefit of a
23 minor.

24 (10) "Developmentally disabled," for purposes of RCW
25 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a
26 developmental disability as defined in RCW 71A.10.020.

27 (11) "Person with supervisory authority," for purposes of RCW
28 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any
29 proprietor or employee of any public or private care or treatment
30 facility who directly supervises developmentally disabled, mentally
31 disordered, or chemically dependent persons at the facility.

32 (12) "Mentally disordered person" for the purposes of RCW
33 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental
34 disorder" as defined in RCW 71.05.020(2).

35 (13) "Chemically dependent person" for purposes of RCW
36 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically
37 dependent" as defined in RCW 70.96A.020(4).

38 (14) "Health care provider" for purposes of RCW 9A.44.050 and
39 9A.44.100 means a person who is, holds himself or herself out to be, or

1 provides services as if he or she were: (a) A member of a health care
2 profession under chapter 18.130 RCW; or (b) registered or certified
3 under chapter 18.19 RCW, regardless of whether the health care provider
4 is licensed, certified, or registered by the state.

5 (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means
6 the active delivery of professional services by a health care provider
7 which the health care provider holds himself or herself out to be
8 qualified to provide.

9 (16) "Frail elder or vulnerable adult" means a person sixty years
10 of age or older who has the functional, mental, or physical inability
11 to care for himself or herself. "Frail elder or vulnerable adult" also
12 includes a person found incapacitated under chapter 11.88 RCW, a person
13 over eighteen years of age who has a developmental disability under
14 chapter 71A.10 RCW, a person admitted to a long-term care facility that
15 is licensed or required to be licensed under chapter 18.20, 18.51,
16 72.36, or 70.128 RCW, and a person receiving services from a home
17 health, hospice, or home care agency licensed or required to be
18 licensed under chapter 70.127 RCW.

19 **Sec. 514.** RCW 9A.44.050 and 1993 c 477 s 2 are each amended to
20 read as follows:

21 (1) A person is guilty of rape in the second degree when, under
22 circumstances not constituting rape in the first degree, the person
23 engages in sexual intercourse with another person:

24 (a) By forcible compulsion;

25 (b) When the victim is incapable of consent by reason of being
26 physically helpless or mentally incapacitated;

27 (c) When the victim is developmentally disabled and the perpetrator
28 is a person who is not married to the victim and who has supervisory
29 authority over the victim;

30 (d) When the perpetrator is a health care provider, the victim is
31 a client or patient, and the sexual intercourse occurs during a
32 treatment session, consultation, interview, or examination. It is an
33 affirmative defense that the defendant must prove by a preponderance of
34 the evidence that the client or patient consented to the sexual
35 intercourse with the knowledge that the sexual intercourse was not for
36 the purpose of treatment; ((or))

37 (e) When the victim is a resident of a facility for mentally
38 disordered or chemically dependent persons and the perpetrator is a

1 person who is not married to the victim and has supervisory authority
2 over the victim; or

3 (f) When the victim is a frail elder or vulnerable adult and the
4 perpetrator is a person who is not married to the victim and who has a
5 significant relationship with the victim.

6 (2) Rape in the second degree is a class A felony.

7 **Sec. 515.** RCW 9A.44.100 and 1993 c 477 s 3 are each amended to
8 read as follows:

9 (1) A person is guilty of indecent liberties when he knowingly
10 causes another person who is not his spouse to have sexual contact with
11 him or another:

12 (a) By forcible compulsion; ~~((or))~~

13 (b) When the other person is incapable of consent by reason of
14 being mentally defective, mentally incapacitated, or physically
15 helpless;

16 (c) When the victim is developmentally disabled and the perpetrator
17 is a person who is not married to the victim and who has supervisory
18 authority over the victim;

19 (d) When the perpetrator is a health care provider, the victim is
20 a client or patient, and the sexual contact occurs during a treatment
21 session, consultation, interview, or examination. It is an affirmative
22 defense that the defendant must prove by a preponderance of the
23 evidence that the client or patient consented to the sexual contact
24 with the knowledge that the sexual contact was not for the purpose of
25 treatment; ~~((or))~~

26 (e) When the victim is a resident of a facility for mentally
27 disordered or chemically dependent persons and the perpetrator is a
28 person who is not married to the victim and has supervisory authority
29 over the victim; or

30 (f) When the victim is a frail elder or vulnerable adult and the
31 perpetrator is a person who is not married to the victim and who has a
32 significant relationship with the victim.

33 (2) Indecent liberties is a class B felony.

34 **Sec. 516.** RCW 18.130.040 and 1996 c 200 s 32 and 1996 c 81 s 5 are
35 each reenacted and amended to read as follows:

36 (1) This chapter applies only to the secretary and the boards and
37 commissions having jurisdiction in relation to the professions licensed

1 under the chapters specified in this section. This chapter does not
2 apply to any business or profession not licensed under the chapters
3 specified in this section.

4 (2)(a) The secretary has authority under this chapter in relation
5 to the following professions:

6 (i) Dispensing opticians licensed under chapter 18.34 RCW;

7 (ii) Naturopaths licensed under chapter 18.36A RCW;

8 (iii) Midwives licensed under chapter 18.50 RCW;

9 (iv) Ocularists licensed under chapter 18.55 RCW;

10 (v) Massage operators and businesses licensed under chapter 18.108
11 RCW;

12 (vi) Dental hygienists licensed under chapter 18.29 RCW;

13 (vii) Acupuncturists licensed under chapter 18.06 RCW;

14 (viii) Radiologic technologists certified and X-ray technicians
15 registered under chapter 18.84 RCW;

16 (ix) Respiratory care practitioners certified under chapter 18.89
17 RCW;

18 (x) Persons registered or certified under chapter 18.19 RCW;

19 (xi) Persons registered as nursing pool operators under chapter
20 18.52C RCW;

21 (xii) Nursing assistants registered or certified under chapter
22 ((~~18.79~~) 18.88A RCW;

23 (xiii) Health care assistants certified under chapter 18.135 RCW;

24 (xiv) Dietitians and nutritionists certified under chapter 18.138
25 RCW;

26 (xv) Sex offender treatment providers certified under chapter
27 18.155 RCW;

28 (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW
29 18.71.205;

30 (xvii) Persons registered as adult family home providers and
31 resident managers under RCW 18.48.020; and

32 (xviii) Denturists licensed under chapter 18.30 RCW.

33 (b) The boards and commissions having authority under this chapter
34 are as follows:

35 (i) The podiatric medical board as established in chapter 18.22
36 RCW;

37 (ii) The chiropractic quality assurance commission as established
38 in chapter 18.25 RCW;

1 (iii) The dental quality assurance commission as established in
2 chapter 18.32 RCW;

3 (iv) The board of hearing and speech as established in chapter
4 18.35 RCW;

5 (v) The board of examiners for nursing home administrators as
6 established in chapter 18.52 RCW;

7 (vi) The optometry board as established in chapter 18.54 RCW
8 governing licenses issued under chapter 18.53 RCW;

9 (vii) The board of osteopathic medicine and surgery as established
10 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
11 18.57A RCW;

12 (viii) The board of pharmacy as established in chapter 18.64 RCW
13 governing licenses issued under chapters 18.64 and 18.64A RCW;

14 (ix) The medical quality assurance commission as established in
15 chapter 18.71 RCW governing licenses and registrations issued under
16 chapters 18.71 and 18.71A RCW;

17 (x) The board of physical therapy as established in chapter 18.74
18 RCW;

19 (xi) The board of occupational therapy practice as established in
20 chapter 18.59 RCW;

21 (xii) The nursing care quality assurance commission as established
22 in chapter 18.79 RCW governing licenses issued under that chapter;

23 (xiii) The examining board of psychology and its disciplinary
24 committee as established in chapter 18.83 RCW; and

25 (xiv) The veterinary board of governors as established in chapter
26 18.92 RCW.

27 (3) In addition to the authority to discipline license holders, the
28 disciplining authority has the authority to grant or deny licenses
29 based on the conditions and criteria established in this chapter and
30 the chapters specified in subsection (2) of this section. This chapter
31 also governs any investigation, hearing, or proceeding relating to
32 denial of licensure or issuance of a license conditioned on the
33 applicant's compliance with an order entered pursuant to RCW 18.130.160
34 by the disciplining authority.

35 (4) All disciplining authorities shall adopt procedures to ensure
36 substantially consistent application of this chapter, the Uniform
37 Disciplinary Act, among the disciplining authorities listed in
38 subsection (2) of this section.

1 **Sec. 517.** RCW 18.130.200 and 1986 c 259 s 12 are each amended to
2 read as follows:

3 A person who attempts to obtain ~~((or))~~, obtains, or attempts to
4 maintain a license by willful misrepresentation or fraudulent
5 representation is guilty of a gross misdemeanor.

6 **Sec. 518.** RCW 43.43.842 and 1992 c 104 s 1 are each amended to
7 read as follows:

8 (1)(a) The secretary of social and health services and the
9 secretary of health shall adopt additional requirements for the
10 licensure or relicensure of agencies ~~((or))~~, facilities ~~((which))~~, and
11 licensed individuals who provide care and treatment to vulnerable
12 adults. These additional requirements shall ensure that any person
13 associated with a licensed agency or facility having ~~((direct contact))~~
14 unsupervised access with a vulnerable adult shall not have been:
15 ~~((+a))~~ (i) Convicted of a crime against persons as defined in RCW
16 43.43.830, except as provided in this section; ~~((+b))~~ (ii) convicted
17 of crimes relating to financial exploitation as defined in RCW
18 43.43.830, except as provided in this section; ~~((+c))~~ (iii) found in
19 any disciplinary board final decision to have abused a vulnerable adult
20 under RCW 43.43.830; or ~~((+d))~~ (iv) the subject in a protective
21 proceeding under chapter 74.34 RCW.

22 (b) A person associated with a licensed agency or facility who has
23 unsupervised access with a vulnerable adult shall make the disclosures
24 specified in RCW 43.43.834(2). The person shall make the disclosures
25 in writing, sign, and swear to the contents under penalty of perjury.
26 The person shall, in the disclosures, specify all crimes against
27 children or other persons, and all crimes relating to financial
28 exploitation as defined in RCW 43.43.830, committed by the person.

29 (2) The rules adopted under this section shall permit the licensee
30 to consider the criminal history of an applicant for employment in a
31 licensed facility when the applicant has one or more convictions for a
32 past offense and:

33 (a) The offense was simple assault, assault in the fourth degree,
34 or the same offense as it may be renamed, and three or more years have
35 passed between the most recent conviction and the date of application
36 for employment;

1 (b) The offense was prostitution, or the same offense as it may be
2 renamed, and three or more years have passed between the most recent
3 conviction and the date of application for employment;

4 (c) The offense was theft in the third degree, or the same offense
5 as it may be renamed, and three or more years have passed between the
6 most recent conviction and the date of application for employment;

7 (d) The offense was theft in the second degree, or the same offense
8 as it may be renamed, and five or more years have passed between the
9 most recent conviction and the date of application for employment;

10 (e) The offense was forgery, or the same offense as it may be
11 renamed, and five or more years have passed between the most recent
12 conviction and the date of application for employment.

13 The offenses set forth in (a) through (e) of this subsection do not
14 automatically disqualify an applicant from employment by a licensee.
15 Nothing in this section may be construed to require the employment of
16 any person against a licensee's judgment.

17 In consultation with law enforcement personnel, the secretary of
18 social and health services and the secretary of health shall
19 investigate the conviction record and the protection proceeding record
20 information under this chapter (~~(43.43 RCW)~~) of each agency or facility
21 and its staff under their respective jurisdictions seeking licensure or
22 relicensure. An individual responding to a criminal background inquiry
23 request from his or her employer or potential employer shall disclose
24 the information about his or her criminal history under penalty of
25 perjury. The secretaries shall use the information solely for the
26 purpose of determining eligibility for licensure or relicensure.
27 Criminal justice agencies shall provide the secretaries such
28 information as they may have and that the secretaries may require for
29 such purpose.

30 **Sec. 519.** RCW 70.124.020 and 1996 c 178 s 24 are each amended to
31 read as follows:

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

34 (1) "Court" means the superior court of the state of Washington.

35 (2) "Law enforcement agency" means the police department, the
36 director of public safety, or the office of the sheriff.

37 (3) "Practitioner of the healing arts" or "practitioner" means a
38 person licensed by this state to practice podiatric medicine and

1 surgery, optometry, pharmacy, physical therapy, chiropractic, nursing,
2 dentistry, osteopathic medicine and surgery, or medicine and surgery.
3 The term "practitioner" shall include a nurses aide, a nursing home
4 administrator licensed under chapter 18.52 RCW, and a duly accredited
5 Christian Science practitioner: PROVIDED, HOWEVER, That a nursing home
6 patient who is being furnished Christian Science treatment by a duly
7 accredited Christian Science practitioner shall not be considered, for
8 that reason alone, a neglected patient for the purposes of this
9 chapter.

10 (4) "Department" means the state department of social and health
11 services.

12 (5) "Nursing home" has the meaning prescribed by RCW 18.51.010.

13 (6) "Social worker" means anyone engaged in a professional capacity
14 during the regular course of employment in encouraging or promoting the
15 health, welfare, support, or education of nursing home patients, or
16 providing social services to nursing home patients, whether in an
17 individual capacity or as an employee or agent of any public or private
18 organization or institution.

19 (7) "Psychologist" means any person licensed to practice psychology
20 under chapter 18.83 RCW, whether acting in an individual capacity or as
21 an employee or agent of any public or private organization or
22 institution.

23 (8) "Pharmacist" means any registered pharmacist under chapter
24 18.64 RCW, whether acting in an individual capacity or as an employee
25 or agent of any public or private organization or institution.

26 (9) "Abuse or neglect" or "patient abuse or neglect" means the
27 nonaccidental physical injury or condition, sexual abuse, or negligent
28 treatment of a nursing home or state hospital patient under
29 circumstances which indicate that the patient's health, welfare,
30 (~~and~~) or safety is harmed thereby.

31 (10) "Negligent treatment" means an act or omission which evinces
32 a serious disregard of consequences of such magnitude as to constitute
33 a clear and present danger to the patient's health, welfare, (~~and~~) or
34 safety.

35 (11) "State hospital" means any hospital operated and maintained by
36 the state for the care of the mentally ill under chapter 72.23 RCW.

37 **Sec. 520.** RCW 70.124.040 and 1981 c 174 s 4 are each amended to
38 read as follows:

1 (1) Where a report is (~~deemed warranted~~) required under RCW
2 70.124.030, an immediate oral report shall be made by telephone or
3 otherwise to either a law enforcement agency or to the department and,
4 upon request, shall be followed by a report in writing. The reports
5 shall contain the following information, if known:

6 (a) The name and address of the person making the report;

7 (b) The name and address of the nursing home or state hospital
8 patient;

9 (c) The name and address of the patient's relatives having
10 responsibility for the patient;

11 (d) The nature and extent of the injury or injuries;

12 (e) The nature and extent of the neglect;

13 (f) The nature and extent of the sexual abuse;

14 (g) Any evidence of previous injuries, including their nature and
15 extent; and

16 (h) Any other information which may be helpful in establishing the
17 cause of the patient's death, injury, or injuries, and the identity of
18 the perpetrator or perpetrators.

19 (2) Each law enforcement agency receiving such a report shall, in
20 addition to taking the action required by RCW 70.124.050, immediately
21 relay the report to the department, and to other law enforcement
22 agencies, including the medicaid fraud control unit of the office of
23 the attorney general, as appropriate. For any report it receives, the
24 department shall likewise take the required action and in addition
25 relay the report to the appropriate law enforcement agency or agencies.
26 The appropriate law enforcement agency or agencies shall receive
27 immediate notification when the department, upon receipt of such
28 report, has reasonable cause to believe that a criminal act has been
29 committed.

30 **Sec. 521.** RCW 70.124.070 and 1979 ex.s. c 228 s 7 are each amended
31 to read as follows:

32 A person who is required to make or to cause to be made a report
33 pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to
34 make such report or fails to cause such report to be made is guilty of
35 a gross misdemeanor.

36 NEW SECTION. **Sec. 522.** A new section is added to chapter 74.34
37 RCW to read as follows:

1 A person who is required to make or cause to be made a report under
2 RCW 74.34.030 or 74.34.040 and who knowingly fails to make the report
3 or fails to cause the report to be made is guilty of a gross
4 misdemeanor.

5 **Sec. 523.** RCW 74.34.020 and 1995 1st sp.s. c 18 s 84 are each
6 amended to read as follows:

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

9 (1) "Abandonment" means action or inaction by a person or entity
10 with a duty of care for a frail elder or a vulnerable adult that leaves
11 the vulnerable person without the means or ability to obtain necessary
12 food, clothing, shelter, or health care.

13 (2) "Abuse" means a nonaccidental act of physical or mental
14 mistreatment or injury, or sexual mistreatment, which harms a person
15 through action or inaction by another individual.

16 (3) "Consent" means express written consent granted after the
17 person has been fully informed of the nature of the services to be
18 offered and that the receipt of services is voluntary.

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

21 (5) "Exploitation" means the illegal or improper use of a frail
22 elder or vulnerable adult or that person's income or resources,
23 including trust funds, for another person's profit or advantage.

24 (6) "Neglect" means a pattern of conduct or inaction by a person or
25 entity with a duty of care for a frail elder or vulnerable adult that
26 results in the deprivation of care necessary to maintain the vulnerable
27 person's physical or mental health.

28 (7) "Secretary" means the secretary of social and health services.

29 (8) "Frail elder or vulnerable adult" means a person sixty years of
30 age or older who has the functional, mental, or physical inability to
31 care for himself or herself. "Frail elder or vulnerable adult" shall
32 include persons found incapacitated under chapter 11.88 RCW, or a
33 person who has a developmental disability under chapter 71A.10 RCW, and
34 persons admitted to any long-term care facility that is licensed or
35 required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128
36 RCW, or persons receiving services from home health, hospice, or home
37 care agencies licensed or required to be licensed under chapter 70.127
38 RCW.

1 (9) No frail elder or vulnerable person who relies upon and is
2 being provided spiritual treatment in lieu of medical treatment in
3 accordance with the tenets and practices of a well-recognized religious
4 denomination shall for that reason alone be considered abandoned,
5 abused, or neglected.

6 **Sec. 524.** RCW 43.43.832 and 1995 c 250 s 2 are each amended to
7 read as follows:

8 (1) The legislature finds that businesses and organizations
9 providing services to children, developmentally disabled persons, and
10 vulnerable adults need adequate information to determine which
11 employees or licensees to hire or engage. The legislature further
12 finds that many developmentally disabled individuals and vulnerable
13 adults desire to hire their own employees directly and also need
14 adequate information to determine which employees or licensees to hire
15 or engage. Therefore, the Washington state patrol criminal
16 identification system (~~may~~) shall disclose, upon the request of a
17 business or organization as defined in RCW 43.43.830, a developmentally
18 disabled person, or a vulnerable adult as defined in RCW 43.43.830 or
19 his or her guardian, an applicant's record for convictions of offenses
20 against children or other persons, convictions for crimes relating to
21 financial exploitation, but only if the victim was a vulnerable adult,
22 adjudications of child abuse in a civil action, the issuance of a
23 protection order against the respondent under chapter 74.34 RCW, and
24 disciplinary board final decisions and any subsequent criminal charges
25 associated with the conduct that is the subject of the disciplinary
26 board final decision. When necessary, applicants may be employed on a
27 conditional basis pending completion of such a background
28 investigation.

29 (2) The legislature also finds that the state board of education
30 may request of the Washington state patrol criminal identification
31 system information regarding a certificate applicant's record for
32 convictions under subsection (1) of this section.

33 (3) The legislature also finds that law enforcement agencies, the
34 office of the attorney general, prosecuting authorities, and the
35 department of social and health services may request this same
36 information to aid in the investigation and prosecution of child,
37 developmentally disabled person, and vulnerable adult abuse cases and
38 to protect children and adults from further incidents of abuse.

1 (4) The legislature further finds that the department of social and
2 health services, when considering persons for state positions directly
3 responsible for the care, supervision, or treatment of children,
4 developmentally disabled persons, or vulnerable adults or when
5 licensing ~~((or))~~, authorizing, or contracting such services, persons,
6 or agencies pursuant to its authority under chapter 74.15, 71A.10,
7 70.128, 18.51, 18.20, 18.48, 72.36, or 72.23 RCW, or persons receiving
8 services from home health, hospice, or home care agencies licensed or
9 required to be licensed under chapter 70.126 RCW, or any later-enacted
10 statute which purpose is to license or regulate a facility which
11 handles vulnerable adults, must consider the information listed in
12 subsection (1) of this section. However, when necessary, persons may
13 be employed on a conditional basis pending completion of the background
14 investigation. Conditional employment or unsupervised volunteer work
15 pending the completion of the criminal history background check shall
16 only be authorized if the potential volunteer, employer, or employee
17 verifies that the background application has been submitted to the
18 appropriate agency and the applicant shows three positive work or
19 personal references. The three references must be approved by the
20 employer, kept by the agency or individual serving as employer, agent,
21 supervisor, or department, as appropriate, and made available for the
22 department to review. The approved three references shall serve only
23 as a means for allowing temporary employment until an approved criminal
24 history background check has been received. The approved three
25 references do not take the place of a clear criminal history background
26 check. The Washington personnel resources board shall adopt rules to
27 accomplish the purposes of this subsection as it applies to state
28 employees.

29 (5)(a) For purposes of facilitating timely access to criminal
30 background information and to reasonably minimize the number of
31 requests made under this section, recognizing that certain health care
32 providers change employment frequently, health care facilities may,
33 upon request from another health care facility, share copies of
34 completed criminal background inquiry information.

35 (b) Completed criminal background inquiry information may be shared
36 by a willing health care facility only if the following conditions are
37 satisfied: The licensed health care facility sharing the criminal
38 background inquiry information is reasonably known to be the person's
39 most recent employer, no more than twelve months has elapsed from the

1 date the person was last employed at a licensed health care facility to
2 the date of their current employment application, and the criminal
3 background information is no more than two years old.

4 (c) If criminal background inquiry information is shared, the
5 health care facility employing the subject of the inquiry must require
6 the applicant to sign a disclosure statement indicating that there has
7 been no conviction or finding as described in RCW 43.43.842 since the
8 completion date of the most recent criminal background inquiry.

9 (d) Any health care facility that knows or has reason to believe
10 that an applicant has or may have a disqualifying conviction or finding
11 as described in RCW 43.43.842, subsequent to the completion date of
12 their most recent criminal background inquiry, shall be prohibited from
13 relying on the applicant's previous employer's criminal background
14 inquiry information. A new criminal background inquiry shall be
15 requested pursuant to RCW 43.43.830 through 43.43.842.

16 (e) Health care facilities that share criminal background inquiry
17 information shall be immune from any claim of defamation, invasion of
18 privacy, negligence, or any other claim in connection with any
19 dissemination of this information in accordance with this subsection.

20 (f) Health care facilities shall transmit and receive the criminal
21 background inquiry information in a manner that reasonably protects the
22 subject's rights to privacy and confidentiality.

23 (g) For the purposes of this subsection, "health care facility"
24 means a nursing home licensed under chapter 18.51 RCW, a boarding home
25 licensed under chapter 18.20 RCW, or an adult family home licensed
26 under chapter 70.128 RCW.

27 **Sec. 525.** RCW 43.43.842 and 1992 c 104 s 1 are each amended to
28 read as follows:

29 (1) The secretary of social and health services and the secretary
30 of health shall adopt additional requirements for the licensure or
31 relicensure of agencies providing services under chapter 74.39A RCW and
32 nursing pools under chapter 18.52C RCW or facilities which provide care
33 and treatment to vulnerable adults consistent with chapter 74.34 RCW.
34 These additional requirements shall ensure that any person associated
35 with a licensed agency or facility having direct contact with a
36 vulnerable adult shall not have been: (a) Convicted of a crime against
37 persons as defined in RCW 43.43.830, except as provided in this
38 section; (b) convicted of crimes relating to financial exploitation as

1 defined in RCW 43.43.830, except as provided in this section; (c) found
2 in any disciplinary board final decision to have abused a vulnerable
3 adult under RCW 43.43.830; or (d) the subject in a protective
4 proceeding under chapter 74.34 RCW.

5 (2) The rules adopted under this section shall permit the licensee
6 to consider the criminal history of an applicant for employment in a
7 licensed facility when the applicant has one or more convictions for a
8 past offense and:

9 (a) The offense was simple assault, assault in the fourth degree,
10 or the same offense as it may be renamed, and three or more years have
11 passed between the most recent conviction and the date of application
12 for employment;

13 (b) The offense was prostitution, or the same offense as it may be
14 renamed, and three or more years have passed between the most recent
15 conviction and the date of application for employment;

16 (c) The offense was theft in the third degree, or the same offense
17 as it may be renamed, and three or more years have passed between the
18 most recent conviction and the date of application for employment;

19 (d) The offense was theft in the second degree, or the same offense
20 as it may be renamed, and five or more years have passed between the
21 most recent conviction and the date of application for employment;

22 (e) The offense was forgery, or the same offense as it may be
23 renamed, and five or more years have passed between the most recent
24 conviction and the date of application for employment.

25 The offenses set forth in (a) through (e) of this subsection do not
26 automatically disqualify an applicant from employment by a licensee.
27 Nothing in this section may be construed to require the employment of
28 any person against a licensee's judgment.

29 In consultation with law enforcement personnel, the secretary of
30 social and health services and the secretary of health shall
31 investigate the conviction record and the protection proceeding record
32 information under chapter 43.43 RCW of each agency providing services
33 pursuant to chapters 74.39A and 18.52C RCW, or facility and its staff
34 under their respective jurisdictions seeking licensure or relicensure.
35 The secretaries shall use the information solely for the purpose of
36 determining eligibility for licensure or relicensure. Criminal justice
37 agencies shall provide the secretaries such information as they may
38 have and that the secretaries may require for such purpose.

1 **Sec. 526.** RCW 43.20A.710 and 1993 c 210 s 1 are each amended to
2 read as follows:

3 The secretary shall investigate the conviction records, pending
4 charges or disciplinary board final decisions of: (1) Persons being
5 considered for state employment in positions directly responsible for
6 the supervision, care, or treatment of children or individuals with
7 mental illness or developmental disabilities; and (2) individual
8 providers who are paid by the state for in-home services and hired by
9 individuals with physical disabilities, developmental disabilities,
10 mental illness, or mental impairment. The investigation may include an
11 examination of state and national criminal identification data and the
12 child abuse and neglect register established under chapter 26.44 RCW.
13 The secretary shall provide the results of the state background check
14 on individual providers to the individuals with physical disabilities,
15 developmental disabilities, mental illness, or mental impairment who
16 hired them and to their legal guardians, if any. The secretary shall
17 use the information solely for the purpose of determining the
18 character, suitability, and competence of these applicants except that
19 in the case of individuals with physical disabilities, developmental
20 disabilities, mental illness, or mental impairment who employ
21 individual providers, the determination of character, suitability, and
22 competence of applicants (~~shall~~) may be made by the individual with
23 a physical disability, developmental disability, mental illness, or
24 mental impairment, and except that state payment for in-home services
25 shall be denied if the in-home provider has a disqualifying criminal
26 history background. Criminal justice agencies shall provide the
27 secretary such information as they may have and that the secretary may
28 require for such purpose. If necessary, persons may be employed on a
29 conditional basis pending completion of the background investigation.
30 Conditional employment or unsupervised volunteer work pending the
31 completion of the criminal history background check shall only be
32 authorized if the potential volunteer, employer, or employee verifies
33 that the background application has been submitted to the appropriate
34 agency and the applicant shows three positive work or personal
35 references. The three references must be approved by the employer,
36 kept by the individual receiving the services, and made available for
37 the department to review. The approved three references shall serve
38 only as a means for allowing temporary employment until an approved
39 criminal history background check has been received. The approved

1 three references do not take the place of a clear criminal history
2 background check.

3 **Sec. 527.** RCW 18.52C.010 and 1988 c 243 s 1 are each amended to
4 read as follows:

5 The legislature intends to protect the public's right to high
6 quality health care by assuring that nursing pools employ, procure, or
7 refer competent and qualified nursing personnel or long-term care
8 personnel providing services pursuant to chapter 74.39A RCW, and that
9 such nursing or long-term care personnel are provided to individuals,
10 agencies, or health care facilities in a way to meet the needs of
11 residents and patients.

12 **Sec. 528.** RCW 18.52C.020 and 1991 c 3 s 130 are each amended to
13 read as follows:

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

16 (1) "Secretary" means the secretary of the department of health.

17 (2) "Health care facility" means a nursing home, hospital, hospice
18 care facility, home health care agency, hospice agency, boarding home,
19 adult family home, group home, or other entity for the delivery of
20 health care, or the delivery of long-term care services pursuant to
21 chapter 74.39A RCW, including services provided under the state-funded
22 individual provider program.

23 (3) "Nursing home" means any nursing home facility licensed
24 pursuant to chapter 18.52 RCW.

25 (4) "Nursing pool" means any person engaged in the business of
26 providing, procuring, or referring health care personnel for temporary
27 employment in health care facilities, such as licensed nurses or
28 practical nurses, and nursing assistants. "Nursing pool" does not
29 include an individual who only engages in providing his or her own
30 services.

31 (5) "Person" includes an individual, firm, corporation,
32 partnership, or association.

33 **Sec. 529.** RCW 18.52C.040 and 1991 c 3 s 132 are each amended to
34 read as follows:

35 (1) The nursing pool shall document that each temporary employee or
36 referred independent contractor provided or referred to health care

1 facilities currently meets the minimum state credentialing
2 requirements.

3 (2) The nursing pool shall not require, as a condition of
4 employment or referral, that employees or independent contractors of
5 the nursing pool recruit new employees or independent contractors for
6 the nursing pool from among the permanent employees of the health care
7 facility to which the nursing pool employee or independent contractor
8 has been assigned or referred.

9 (3) The nursing pool shall carry professional and general liability
10 insurance to insure against any loss or damage occurring, whether
11 professional or otherwise, as the result of the negligence of its
12 employees, agents or independent contractors for acts committed in the
13 course of their employment with the nursing pool: PROVIDED, That a
14 nursing pool that only refers self-employed, independent contractors to
15 health care facilities shall carry professional and general liability
16 insurance to cover its own liability as a nursing pool which refers
17 self-employed, independent contractors to health care facilities: AND
18 PROVIDED FURTHER, That it shall require, as a condition of referral,
19 that self-employed, independent contractors carry professional and
20 general liability insurance to insure against loss or damage resulting
21 from their own acts committed in the course of their own employment by
22 a health care facility.

23 (4) The uniform disciplinary act, chapter 18.130 RCW, shall govern
24 the issuance and denial of registration and the discipline of persons
25 registered under this chapter. The secretary shall be the disciplinary
26 authority under this chapter.

27 (5) All nursing pools shall require background checks under chapter
28 43.43 RCW for employees or independent contractors of the nursing pools
29 and other individuals working with unsupervised access to vulnerable
30 adults in compliance with the requirements of RCW 43.43.830 through
31 43.43.842.

32 NEW SECTION. Sec. 530. A new section is added to chapter 43.20A
33 RCW to read as follows:

34 The secretary of social and health services shall adopt additional
35 requirements for individuals who work independently, or with any agency
36 or organization providing temporary assistance as a paid or voluntary
37 employee, or through independent contractors, that brings them into

1 unsupervised access with vulnerable adults receiving long-term care
2 services or assistance under chapters 74.39A, 72.23, and 72.36 RCW.

3 NEW SECTION. **Sec. 531.** A new section is added to chapter 43.43
4 RCW to read as follows:

5 If information is released under this chapter by the state of
6 Washington, the state and its employees: (1) Make no representation
7 that the subject of the inquiry has no criminal record or adverse civil
8 or administrative decisions; (2) make no determination that the subject
9 of the inquiry is suitable for involvement with a business or
10 organization; and (3) are not liable for defamation, invasion of
11 privacy, negligence, or any other claim in connection with any lawful
12 dissemination of information.

13 NEW SECTION. **Sec. 532.** The following acts or parts of acts are
14 each repealed:

- 15 (1) RCW 74.39.030 and 1989 c 427 s 11;
- 16 (2) RCW 74.39.040 and 1989 c 427 s 13;
- 17 (3) RCW 74.39A.005 and 1993 c 508 s 1; and
- 18 (4) RCW 74.39A.008 and 1995 1st sp.s. c 18 s 1.

19 NEW SECTION. **Sec. 533.** Part headings and captions used in this
20 act are not part of the law.

21 NEW SECTION. **Sec. 534.** Section 403 of this act is necessary for
22 the immediate preservation of the public peace, health, or safety, or
23 support of the state government and its existing public institutions,
24 and takes effect immediately."

25 **E2SHB 1850** - CONF REPT
26 By Conference Committee

27

28 On page 1, line 2 of the title, after "act;" strike the remainder
29 of the title and insert "amending RCW 70.129.010, 70.129.030,
30 70.129.110, 70.129.150, 74.39A.030, 74.39A.040, 74.39A.050, 74.39A.060,
31 70.129.105, 74.42.030, 74.42.450, 43.20B.080, 74.34.010, 74.39A.170,
32 70.128.175, 9A.42.010, 9A.42.050, 9A.42.020, 9A.42.030, 9A.44.010,
33 9A.44.050, 9A.44.100, 18.130.200, 43.43.842, 70.124.020, 70.124.040,

1 70.124.070, 74.34.020, 43.43.832, 43.43.842, 43.20A.710, 18.52C.010,
2 18.52C.020, and 18.52C.040; reenacting and amending RCW 18.130.040;
3 adding a new section to chapter 74.39A RCW; adding a new section to
4 chapter 70.124 RCW; adding new sections to chapter 74.34 RCW; adding
5 new sections to chapter 18.20 RCW; adding a new section to chapter
6 43.20B RCW; adding a new section to chapter 43.70 RCW; adding a new
7 section to chapter 18.51 RCW; adding new sections to chapter 9A.42 RCW;
8 adding a new section to chapter 43.20A RCW; adding a new section to
9 chapter 43.43 RCW; creating new sections; repealing RCW 74.39.030,
10 74.39.040, 74.39A.005, and 74.39A.008; and declaring an emergency."

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