
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1850

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Dyer, Backlund, Skinner, Talcott, Schoesler, Mitchell and Cooke)

Read first time 04/05/97.

1 AN ACT Relating to the long-term care reorganization and standards
2 of care reform act; amending RCW 70.129.010, 70.129.030, 70.129.110,
3 70.129.150, 74.39A.030, 74.39A.040, 74.39A.050, 74.39A.060, 70.129.105,
4 74.42.030, 74.42.450, 43.20B.080, 74.34.010, 74.39A.170, and
5 70.128.175; adding a new section to chapter 74.39A RCW; adding a new
6 section to chapter 70.124 RCW; adding new sections to chapter 74.34
7 RCW; adding new sections to chapter 18.20 RCW; adding a new section to
8 chapter 43.20B RCW; adding a new section to chapter 43.70 RCW; adding
9 a new section to chapter 18.51 RCW; creating new sections; repealing
10 RCW 74.39.030, 74.39.040, 74.39A.005, and 74.39A.008; and declaring an
11 emergency.

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

13 **PART I**

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

16 NEW SECTION. **Sec. 102.** FINDINGS AND INTENT. The legislature
17 finds and declares that the state's current fragmented categorical

1 system for administering services to persons with disabilities and the
2 elderly is not client and family-centered and has created significant
3 organizational barriers to providing high quality, safe, and effective
4 care and support. The present fragmented system results in
5 uncoordinated enforcement of regulations designed to protect the health
6 and safety of disabled persons, lacks accountability due to the absence
7 of management information systems' client tracking data, and
8 perpetuates difficulty in matching client needs and services to
9 multiple categorical funding sources.

10 The legislature further finds that Washington's chronically
11 functionally disabled population of all ages is growing at a rapid pace
12 due to a population of the very old and increased incidence of
13 disability due in large measure to technological improvements in acute
14 care causing people to live longer. Further, to meet the significant
15 and growing long-term care needs into the near future, rapid,
16 fundamental changes must take place in the way we finance, organize,
17 and provide long-term care services to the chronically functionally
18 disabled.

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

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

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

28 (1) "Adult family home" means a home licensed under chapter 70.128
29 RCW.

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

33 (3) "Assisted living services" means services provided by a
34 boarding home that has a contract with the department under RCW
35 74.39A.010 and the resident is housed in a private apartment-like unit.

36 (4) "Boarding home" means a facility licensed under chapter 18.20
37 RCW.

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

9 (6) "Department" means the department of social and health
10 services.

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

14 (8) "Functionally disabled person" is synonymous with chronic
15 functionally disabled and means a person who because of a recognized
16 chronic physical or mental condition or disease is impaired to the
17 extent of being dependent upon others for direct care, support,
18 supervision, or monitoring to perform activities of daily living.
19 "Activities of daily living", in this context, means self-care
20 abilities related to personal care such as bathing, eating, using the
21 toilet, dressing, and transfer. Instrumental activities of daily
22 living may also be used to assess a person's functional abilities as
23 they are related to the mental capacity to perform activities in the
24 home and the community such as cooking, shopping, house cleaning, doing
25 laundry, working, and managing personal finances.

26 (9) "Home and community services" means adult family homes, in-home
27 services, and other services administered or provided by contract by
28 the department directly or through contract with area agencies on aging
29 or similar services provided by facilities and agencies licensed by the
30 department.

31 (10) "Long-term care" is synonymous with chronic care and means
32 care and supports delivered indefinitely, intermittently, or over a
33 sustained time to persons of any age disabled by chronic mental or
34 physical illness, disease, or a medical condition that is permanent,
35 not reversible or curable, or is long-lasting and severely limits their
36 mental or physical capacity for self-care. The use of this definition
37 is not intended to expand the scope of services, care, or assistance by
38 any individuals, groups, residential care settings, or professions
39 unless otherwise expressed by law.

1 (11) "Nursing home" means a facility licensed under chapter 18.51
2 RCW.

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

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

7 NEW SECTION. **Sec. 104.** JOINT LEGISLATIVE COMMITTEE ON LONG-TERM
8 CARE OVERSIGHT. (1) There is created a joint legislative committee on
9 long-term care oversight. The committee shall consist of: (a) Four
10 members of the senate appointed by the president of the senate, two of
11 whom shall be members of the majority party and two of whom shall be
12 members of the minority party; and (b) four members of the house of
13 representatives, two of whom shall be members of the majority party and
14 two of whom shall be members of the minority party.

15 (2) The committee shall elect a chair and vice-chair. The chair
16 shall be a member of the senate in even-numbered years and a member of
17 the house of representatives in odd-numbered years. The vice-chair
18 shall be a member of the senate in odd-numbered years and a member of
19 the house of representatives in even-numbered years.

20 (3) The committee shall:

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

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

25 (c) In cooperation with the department of social and health
26 services, develop suggestions to simplify, reduce, or eliminate
27 unnecessary rules, procedures, and burdensome paperwork that prove to
28 be barriers to providing effective coordination or high quality direct
29 services;

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

32 (e) List all nonmeans tested programs and activities funded by the
33 federal older Americans act and state funded senior citizens act or
34 other such state funded programs and recommend how to integrate such
35 services into existing long-term care programs for the functionally
36 disabled;

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

1 (g) Evaluate the need for long-term care training and review all
2 long-term care training and education programs conducted by the
3 department and suggest modifications to improve the training system.

4 **PART II**

5 **QUALITY STANDARDS AND COMPLAINT ENFORCEMENT**

6 NEW SECTION. **Sec. 201.** A new section is added to chapter 70.124
7 RCW to read as follows:

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

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

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

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

34 (3) For the purposes of this section:

35 (a) "Whistleblower" means a resident or employee of a nursing home,
36 state hospital, or adult family home, or any person licensed under
37 Title 18 RCW, who in good faith reports alleged abuse, neglect,

1 exploitation, or abandonment to the department or to a law enforcement
2 agency;

3 (b) "Workplace reprisal or retaliatory action" means, but is not
4 limited to: Denial of adequate staff to perform duties; frequent staff
5 changes; frequent and undesirable office changes; refusal to assign
6 meaningful work; unwarranted and unsubstantiated report of misconduct
7 under Title 18 RCW; letters of reprimand or unsatisfactory performance
8 evaluations; demotion; denial of employment; or a supervisor or
9 superior encouraging coworkers to behave in a hostile manner toward the
10 whistleblower; and

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

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

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

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

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

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

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

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

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

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

36 (3) For the purposes of this section:

37 (a) "Whistleblower" means a resident or a person with a mandatory
38 duty to report under this chapter, or any person licensed under Title

1 18 RCW, who in good faith reports alleged abuse, neglect, exploitation,
2 or abandonment to the department, or the department of health, or to a
3 law enforcement agency;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (1) The facility must inform the resident both orally and in
35 writing in a language that the resident understands of his or her
36 rights and all rules and regulations governing resident conduct and
37 responsibilities during the stay in the facility. The notification

1 must be made prior to or upon admission. Receipt of the information
2 must be acknowledged in writing.

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

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

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

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

1 substantial and continuing change in the resident's condition
2 necessitating substantially greater or lesser services, items, or
3 activities, then the charges for those services, items, or activities
4 may be changed upon fourteen days advance written notice.

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

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

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

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

15 (5) Notification of changes.

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

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

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

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

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

30 (ii) A decision to transfer or discharge the resident from the
31 facility.

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

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

37 **Sec. 205.** RCW 70.129.110 and 1994 c 214 s 12 are each amended to
38 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. If a resident, or his or her
15 legal representative, objects to a discharge decision initiated by the
16 department, the resident shall not be discharged if the resident has
17 been assessed and determined to require nursing facility services. In
18 contracting with nursing homes and boarding homes for enhanced adult
19 residential care placements, neither the department nor the department
20 of health shall ((not)) require, by contract or through other means,
21 structural modifications to existing building construction.

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

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

35 (c) The department may authorize a supplemental assisted living
36 services or an enhanced adult residential care services rate for up to
37 four years for facilities that convert from nursing home use and do not
38 retain rights to the converted nursing home beds under chapter 70.38
39 RCW, if the department determines that payment of a supplemental rate

1 is cost-effective and necessary to foster expansion of contracted
2 assisted living or enhanced adult residential care services.

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

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

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

18 (a) Are medicaid clients, medicaid applicants, or eligible for both
19 medicare and medicaid; and

20 (b) Apply or are likely to apply for admission to a nursing
21 facility.

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

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

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

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

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

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

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

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

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

10 (c) Describe the role of the department in providing nursing
11 facility case management.

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

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

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

28 (1) The system shall be ~~((consumer))~~ client-centered and promote
29 privacy, independence, dignity, choice, and a home or home-like
30 environment for consumers consistent with chapter . . . , Laws of 1997
31 (this act).

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

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

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

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

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

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

31 (8) No provider or staff, or prospective provider or staff, with a
32 stipulated finding of fact, conclusion of law, an agreed order, or
33 finding of fact, conclusion of law, or final order issued by a
34 disciplining authority, a court of law, or entered into a state
35 registry finding him or her guilty of abuse, neglect, exploitation, or
36 abandonment of a minor or a vulnerable adult as defined in chapter
37 74.34 RCW shall be employed in the care of and have unsupervised access
38 to vulnerable adults.

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

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

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

28 (1) The aging and adult services administration of the department
29 shall establish and maintain a toll-free telephone number for receiving
30 complaints regarding a facility that the administration licenses or
31 with which it contracts for long-term care services.

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

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

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

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

15 (a) Upon receipt of a complaint, the department shall make a
16 preliminary review of the complaint, assess the severity of the
17 complaint, and assign an appropriate response time. Complaints
18 involving imminent danger to the health, safety, or well-being of a
19 resident must be responded to within two days. When appropriate, the
20 department shall make an on-site investigation within a reasonable time
21 after receipt of the complaint or otherwise ensure that complaints are
22 responded to.

23 (b) The complainant must be: Promptly contacted by the department,
24 unless anonymous or unavailable despite several attempts by the
25 department, and informed of the right to discuss the alleged violations
26 with the inspector and to provide other information the complainant
27 believes will assist the inspector; informed of the department's course
28 of action; and informed of the right to receive a written copy of the
29 investigation report.

30 (c) In conducting the investigation, the department shall interview
31 the complainant, unless anonymous, and shall use its best efforts to
32 interview the resident or residents allegedly harmed by the violations,
33 and, in addition to facility staff, any available independent sources
34 of relevant information, including if appropriate the family members of
35 the resident.

36 (d) Substantiated complaints involving harm to a resident, if an
37 applicable law or regulation has been violated, are subject to one or
38 more of the actions provided in RCW 74.39A.080 or 70.128.160. Whenever

1 appropriate, the department shall also give consultation and technical
2 assistance to the provider.

3 (e) In the best practices of total quality management and
4 continuous quality improvement, after a department finding of a
5 violation that is serious, recurring, or uncorrected following a
6 previous citation, the department shall make an on-site revisit of the
7 facility to ensure correction of the violation, except for license or
8 contract suspensions or revocations.

9 (f) Substantiated complaints of neglect, abuse, exploitation, or
10 abandonment of residents, or suspected criminal violations, shall also
11 be referred by the department to the appropriate law enforcement
12 agencies, the attorney general, and appropriate professional
13 disciplining authority.

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

32 ((+6)) (7) The resident has the right to be free of interference,
33 coercion, discrimination, and reprisal from a facility in exercising
34 his or her rights, including the right to voice grievances about
35 treatment furnished or not furnished. A facility that provides long-
36 term care services shall not discriminate or retaliate in any manner
37 against a resident, employee, or any other person on the basis or for
38 the reason that such resident or any other person made a complaint to
39 the department, the attorney general, law enforcement agencies, or the

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

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

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

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

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

- 34 (1) The resident's rights and responsibilities in the facility;
35 (2) Rules governing resident conduct;
36 (3) Services, items, and activities available in the facility; and

1 (4) Charges for services, items, and activities, including those
2 not included in the facility's basic daily rate or not paid by
3 medicaid.

4 The facility shall provide this information before admission, or at
5 the time of admission in case of emergency, and as changes occur during
6 the resident's stay. The resident and his or her representative must
7 be informed in writing in advance of changes in the availability or
8 charges for services, items, or activities, or of changes in the
9 facility's rules. Except in unusual circumstances, thirty days'
10 advance notice must be given prior to the change. The resident or
11 legal guardian or representative shall acknowledge in writing receipt
12 of this information (~~and any changes in the information~~)).

13 The written information provided by the facility pursuant to this
14 section, and the terms of any admission contract executed between the
15 facility and an individual seeking admission to the facility, must be
16 consistent with the requirements of this chapter and chapter 18.51 RCW
17 and, for facilities certified under medicaid or medicare, with the
18 applicable federal requirements.

19 NEW SECTION. Sec. 213. A new section is added to chapter 18.20
20 RCW to read as follows:

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

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

27 (2) The goal of the system is continuous quality improvement with
28 the focus on resident satisfaction and outcomes for residents. This
29 includes that when conducting licensing inspections, the department
30 shall interview an appropriate percentage of residents, family members,
31 and advocates in addition to interviewing appropriate staff.

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

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

37 (5) Monitoring should be outcome based and responsive to resident
38 complaints and a clear set of health, quality of care, and safety

1 standards that are easily understandable and have been made available
2 to facilities.

3 (6) Prompt and specific enforcement remedies shall also be
4 implemented without delay, consistent with RCW 18.20.160, for
5 facilities found to have delivered care or failed to deliver care
6 resulting in problems that are serious, recurring, or uncorrected, or
7 that create a hazard that is causing or likely to cause death or
8 serious harm to one or more residents. These enforcement remedies may
9 also include, when appropriate, reasonable conditions on a license. In
10 the selection of remedies, the safety, health, and well-being of
11 residents shall be of paramount importance.

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

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

25 (9) No licensee, administrator, or staff, or prospective licensee,
26 administrator, or staff, with a stipulated finding of fact, conclusion
27 of law, and agreed order, or finding of fact, conclusion of law, or
28 final order issued by a disciplining authority, a court of law, or
29 entered into the state registry finding him or her guilty of abuse,
30 neglect, exploitation, or abandonment of a minor or a vulnerable adult
31 as defined in chapter 74.34 RCW shall be employed in the care of and
32 have unsupervised access to vulnerable adults.

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

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

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

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

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

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

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

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

34 (c) In conducting the investigation, the department shall interview
35 the complainant, unless anonymous, and shall use its best efforts to
36 interview the resident or residents allegedly harmed by the violations,
37 and, in addition to facility staff, any available independent sources
38 of relevant information, including if appropriate the family members of
39 the resident.

1 (d) Substantiated complaints involving harm to a resident, if an
2 applicable law or regulation has been violated, are subject to one or
3 more of the actions provided in RCW 18.20.190. Whenever appropriate,
4 the department shall also give consultation and technical assistance to
5 the facility.

6 (e) In the best practices of total quality management and
7 continuous quality improvement, after a department finding of a
8 violation that is serious, recurring, or uncorrected following a
9 previous citation, the department shall make an on-site revisit of the
10 facility to ensure correction of the violation. This subsection does
11 not prevent the department from enforcing license suspensions or
12 revocations.

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

18 (6) The department may provide the substance of the complaint to
19 the licensee before the completion of the investigation by the
20 department unless such disclosure would reveal the identity of a
21 complainant, witness, or resident who chooses to remain anonymous.
22 Neither the substance of the complaint provided to the licensee or
23 contractor nor any copy of the complaint or related report published,
24 released, or made otherwise available shall disclose, or reasonably
25 lead to the disclosure of, the name, title, or identity of any
26 complainant, or other person mentioned in the complaint, except that
27 the name of the provider and the name or names of any officer,
28 employee, or agent of the department conducting the investigation shall
29 be disclosed after the investigation has been closed and the complaint
30 has been substantiated. The department may disclose the identity of
31 the complainant if such disclosure is requested in writing by the
32 complainant. Nothing in this subsection shall be construed to
33 interfere with the obligation of the long-term care ombudsman program
34 to monitor the department's licensing, contract, and complaint
35 investigation files for long-term care facilities.

36 (7) The resident has the right to be free of interference,
37 coercion, discrimination, and reprisal from a facility in exercising
38 his or her rights, including the right to voice grievances about
39 treatment furnished or not furnished. A facility licensed under this

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

25 NEW SECTION. **Sec. 215.** Within existing funds, the long-term care
26 ombudsman shall conduct a follow-up review of the department of
27 health's licensing inspections and complaint investigations of boarding
28 homes and of the department of social and health services' monitoring
29 of boarding homes with contracts under chapter 74.39A RCW. The review
30 must include, but is not limited to, an examination of the enforcement
31 of resident rights and care standards in boarding homes, the timeliness
32 of complaint investigations, and compliance by the departments with the
33 standards set forth in this act. The long-term care ombudsman shall
34 consult with the departments of health and social and health services,
35 long-term care facility organizations, resident groups, and senior and
36 disabled citizen organizations and report to appropriate committees of
37 the house of representatives and the senate concerning its review of

1 the departments' enforcement activities and any applicable
2 recommendations by January 5, 1998.

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

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

7 (a) The facility;

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

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

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

20 (3) A resident shall be transferred or discharged only for medical
21 reasons, the resident's welfare or request, the welfare of other
22 residents, or nonpayment. A resident may not be discharged for
23 nonpayment if the discharge would be prohibited by the medicaid
24 program.

25 (4) If a resident chooses to remain in the nursing facility, the
26 department shall respect that choice, provided that if the resident is
27 a medicaid recipient, the resident continues to require a nursing
28 facility level of care.

29 (5) If the department determines that a resident no longer requires
30 a nursing facility level of care, the resident shall not be discharged
31 from the nursing facility until at least thirty days after written
32 notice is given to the resident, the resident's surrogate decision
33 maker and, if appropriate, a family member or the resident's
34 representative. A form for requesting a hearing to appeal the
35 discharge decision shall be attached to the written notice. The
36 written notice shall include at least the following:

37 (a) The reason for the discharge;

1 (b) A statement that the resident has the right to appeal the
2 discharge; and

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

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

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

19 **PART III**

20 **ESTATE RECOVERY CONSUMER DISCLOSURE**

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

23 (1) It is the intent of the legislature to ensure that needy
24 individuals have access to basic long-term care without requiring them
25 to sell their homes. In the face of rising medical costs and limited
26 funding for social welfare programs, however, the state's medicaid and
27 state-funded long-term care programs have placed an increasing
28 financial burden on the state. By balancing the interests of
29 individuals with immediate and future unmet medical care needs,
30 surviving spouses and dependent children, adult nondependent children,
31 more distant heirs, and the state, the estate recovery provisions of
32 RCW 43.20B.080 and 74.39A.170 provide an equitable and reasonable
33 method of easing the state's financial burden while ensuring the
34 continued viability of the medicaid and state-funded long-term care
35 programs.

36 (2) It is further the intent of the legislature to confirm that
37 chapter 21, Laws of 1994, effective July 1, 1994, repealed and

1 substantially reenacted the state's medicaid estate recovery laws and
2 did not eliminate the department's authority to recover the cost of
3 medical assistance paid prior to October 1, 1993, from the estates of
4 deceased recipients regardless of whether they died before, on, or
5 after July 1, 1994.

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

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

12 (2) Liens may be adjusted by foreclosure in accordance with chapter
13 61.12 RCW.

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

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

30 (5)(a) The department shall establish procedures consistent with
31 standards established by the federal department of health and human
32 services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when
33 such recovery would work an undue hardship.

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

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

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

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

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

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

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

31 It is the intent of the legislature to assist frail elders and
32 vulnerable adults by providing these persons with the protection of the
33 courts and with the least-restrictive services, such as home care, and
34 by preventing or reducing inappropriate institutional care. The
35 legislature finds that it is in the interests of the public health,
36 safety, and welfare of the people of the state to provide a procedure
37 for identifying these vulnerable persons and providing the services and
38 remedies necessary for their well-being.

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

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

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

27 **Sec. 305.** RCW 74.39A.170 and 1995 1st sp.s. c 18 s 56 are each
28 amended to read as follows:

29 (1) All payments made in state-funded long-term care shall be
30 recoverable as if they were medical assistance payments subject to
31 recovery under 42 U.S.C. Sec. 1396p and chapter 43.20B RCW(~~(, but)~~)
32 without regard to the recipient's age, except the cost of state-funded
33 adult protective services provided under chapter 74.34 RCW to frail
34 elders and vulnerable adults.

35 (2) In determining eligibility for state-funded long-term care
36 services programs, except for protective services provided to frail
37 elders and vulnerable adults, the department shall impose the same

1 rules with respect to the transfer of assets for less than fair market
2 value as are imposed under 42 U.S.C. 1396p with respect to nursing home
3 and home and community services.

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

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

13 By November 15, 1997, the secretary shall identify and report to
14 the legislature:

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

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

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

26 PART IV

27 ADULT FAMILY HOMES

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

30 (1) Unless the context clearly requires otherwise, these
31 definitions shall apply throughout this section and RCW 35.63.140,
32 35A.63.149, 36.70.755, 35.22.680, and 36.32.560:

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

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

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

6 (2) An adult family home shall be considered a residential use of
7 property for zoning and public and private utility rate purposes.
8 Adult family homes shall be a permitted use in all areas zoned for
9 residential or commercial purposes, including areas zoned for single
10 family dwellings.

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

32 NEW SECTION. **Sec. 403.** The department of social and health
33 services is authorized to adopt rules for implementing the provisions
34 of section 402 of this act.

35 **PART V**

36 **MISCELLANEOUS PROVISIONS**

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

15 NEW SECTION. **Sec. 502.** The department of community, trade, and
16 economic development, in collaboration with the organizations
17 designated by state or federal law to provide protection and advocacy
18 and ombuds services for older Americans and people with disabilities
19 using publicly funded long-term care residential services, may conduct
20 a study, make recommendations, and draft legislation necessary to
21 implement changes that will result in a single coordinating umbrella
22 for ombuds and advocacy services that maximizes efficiency, minimizes
23 duplication, and allows for specialization in target populations such
24 as developmental disabilities, older Americans, and mental illness, and
25 assures that the providers of ombuds services have sufficient expertise
26 and experience with target populations and the systems that serve them.
27 The study, if funded, shall include review of all relevant federal and
28 state laws and regulations, including but not limited to the older
29 Americans act, 42 U.S.C. 3001 as amended, the developmental
30 disabilities assistance and bill of rights act as amended, 42 U.S.C.
31 6000, the protection and advocacy for persons with mental illness act
32 as amended, 42 U.S.C. 10801, the rehabilitation act of 1973 as amended,
33 29 U.S.C. 701, the long-term care ombudsman statute chapter 43.190 RCW,
34 developmental disabilities statute, Title 71A RCW, and the community
35 mental health services regulations, chapter 275-57 WAC. If funded, the
36 study shall identify the gaps in current ombuds and advocacy services,
37 and develop a cost assessment for implementation of a comprehensive
38 umbrella of ombuds and advocacy services. If funded, the department of

1 community, trade, and economic development shall report to the
2 appropriate committees of the house of representatives and the senate
3 by January 10, 1998.

4 NEW SECTION. **Sec. 503.** The department of social and health
5 services may review the cost and feasibility of implementing
6 developmental disabilities certification standards for community
7 residential alternatives to ensure that services are adequate for the
8 health, safety, care, treatment, and support of persons with
9 developmental disabilities. The community residential alternatives
10 shall include, but not be limited to, entities that contract or
11 directly provide services with the division of developmental
12 disabilities such as group homes, agency alternative living, intensive
13 and other tenant support services, adult family homes, or boarding
14 homes. Certification standards shall review at a minimum the following
15 areas. Administrative and financial capabilities of the provider,
16 health and safety practices, the opportunities for the individuals
17 served by the programs to have power and choice in their lives,
18 opportunities to develop friendships and relationships, and
19 opportunities to develop self-respect and to gain respect from others,
20 to participate in the community, and to gain independent living skills.
21 If the review is funded, the department shall also recommend whether
22 adult family homes that choose to provide services only to persons with
23 developmental disabilities should receive special certification or
24 licensure apart from or in place of the existing adult family home
25 license. The review may also recommend the type and amount of provider
26 training necessary to appropriately support persons with developmental
27 disabilities in community residential alternatives. The department may
28 include the assistance of other departments, vested interest groups,
29 and family members in the development of recommendations. If funded,
30 the department shall report to the appropriate committees of the house
31 of representatives and the senate by January 30, 1998.

32 NEW SECTION. **Sec. 504.** Any section or provision of this act that
33 may be susceptible to more than one construction shall be interpreted
34 in favor of the construction most likely to comply with federal laws
35 entitling this state to receive federal funds for the various programs
36 of the department of health or the department of social and health
37 services. If any section of this act is found to be in conflict with

1 federal requirements that are a prescribed condition of the allocation
2 of federal funds to the state, or to any departments or agencies
3 thereof, the conflicting part is declared to be inoperative solely to
4 the extent of the conflict. The rules issued under this act shall meet
5 federal requirements that are a necessary condition to the receipt of
6 federal funds by the state.

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

9 The department of health shall implement a nursing home resident
10 protection program in cooperation with the department of social and
11 health services and disciplining authorities and according to
12 guidelines established by the federal health care financing
13 administration. The department of social and health services shall
14 retain authority to review and investigate all allegations of nursing
15 home resident neglect, abuse, and misappropriation of resident
16 property. If the department of social and health services makes a
17 preliminary determination, based upon credible evidence and an
18 investigation by the department, that a licensed, certified, or
19 registered health care provider listed in RCW 18.130.040 and used by
20 the nursing home to provide services to a resident, except for a
21 certified or registered nursing assistant, has neglected or abused a
22 resident or misappropriated a resident's property, the department of
23 social and health services shall immediately refer its determination
24 regarding the individual to the appropriate disciplining authority, as
25 defined in chapter 18.130 RCW. The disciplining authority shall pursue
26 administrative adjudicatory or disciplinary proceedings according to
27 federal timelines and requirements, and consistent with the
28 administrative procedure act, chapter 34.05 RCW. A finding of fact,
29 stipulated finding of fact, agreed order, or final order issued by the
30 disciplining authority that finds the individual health care provider
31 guilty of neglect, abuse, or misappropriation of resident property
32 shall be promptly reported to the department of social and health
33 services. The disciplining authority shall not make a finding that an
34 individual has neglected a resident if the individual demonstrates that
35 such neglect was caused by factors beyond the control of the
36 individual.

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

3 The department of social and health services shall implement a
4 nursing home resident protection program in cooperation with the
5 department of health and disciplining authorities and according to
6 guidelines established by the federal health care financing
7 administration. The department of social and health services shall
8 conduct a timely review and investigation of all credible allegations
9 of nursing home resident neglect, abuse, and misappropriation of
10 resident property. If the department of social and health services
11 makes a preliminary determination, based upon credible evidence and an
12 investigation by the department, that a licensed, certified, or
13 registered health care provider listed in RCW 18.130.040 and used by
14 the nursing home to provide services to a resident, except for a
15 certified or registered nursing assistant, has neglected or abused a
16 resident or misappropriated a resident's property, the department of
17 social and health services shall immediately refer its determination
18 regarding the individual to the department of health or disciplining
19 authority, as defined in RCW 18.130.020. The disciplining authority,
20 except the department of social and health services for individuals
21 referred to the disciplining authority, shall pursue administrative
22 adjudicatory or disciplinary proceedings according to federal timelines
23 and requirements, and consistent with the administrative procedure act,
24 chapter 34.05 RCW. Other individuals used by a nursing home, including
25 certified and registered nursing assistants, with a preliminary
26 determination of neglect, abuse, or misappropriation of resident
27 property shall receive notice and the right to an administrative fair
28 hearing from the department of social and health services according to
29 federal timelines and requirements, and consistent with the
30 administrative procedure act, chapter 34.05 RCW. An individual with a
31 finding of fact, stipulated finding of fact, agreed order, or final
32 order issued by the department of social and health services that finds
33 the individual guilty of neglect, abuse, or misappropriation of
34 resident property shall not be employed in the care of and have
35 unsupervised access to vulnerable adults, as defined in chapter 74.34
36 RCW. The department shall not make a finding that an individual has
37 neglected a resident if the individual demonstrates that such neglect
38 was caused by factors beyond the control of the individual. Upon
39 receipt from the disciplining authority of a finding of fact,

1 stipulated finding of fact, agreed order, or final order that finds the
2 individual health care provider guilty of neglect, abuse, or
3 misappropriation of resident property, the department of social and
4 health services shall report this information to the nursing home where
5 the incident occurred, the long-term care facility where the individual
6 works, if different, and other entities serving vulnerable adults upon
7 request by the entity.

8 NEW SECTION. **Sec. 507.** The following acts or parts of acts are
9 each repealed:

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

14 NEW SECTION. **Sec. 508.** Part headings and captions used in this
15 act are not part of the law.

16 NEW SECTION. **Sec. 509.** Section 403 of this act is necessary for
17 the immediate preservation of the public peace, health, or safety, or
18 support of the state government and its existing public institutions,
19 and takes effect immediately.

--- END ---