
ENGROSSED SUBSTITUTE HOUSE BILL 2264

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Koster, Huff, D. Sommers, Sterk, Sherstad, Boldt, Mulliken, Thompson and McMorris)

Read first time 04/07/97.

1 AN ACT Relating to abolishing the state health care policy board;
2 amending RCW 41.05.021, 43.70.054, 43.70.066, 43.70.068, 43.72.300, and
3 43.72.310; reenacting and amending RCW 42.17.310; adding new sections
4 to chapter 43.72 RCW; creating a new section; repealing RCW 43.72.320,
5 43.73.010, 43.73.020, 43.73.030, and 43.73.040; repealing 1996 c 281 s
6 2 (uncodified); providing an effective date; and declaring an
7 emergency.

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

9 **Sec. 1.** RCW 41.05.021 and 1995 1st sp.s. c 6 s 7 are each amended
10 to read as follows:

11 (1) The Washington state health care authority is created within
12 the executive branch. The authority shall have an administrator
13 appointed by the governor, with the consent of the senate. The
14 administrator shall serve at the pleasure of the governor. The
15 administrator may employ up to seven staff members, who shall be exempt
16 from chapter 41.06 RCW, and any additional staff members as are
17 necessary to administer this chapter. The administrator may delegate
18 any power or duty vested in him or her by this chapter, including
19 authority to make final decisions and enter final orders in hearings

1 conducted under chapter 34.05 RCW. The primary duties of the authority
2 shall be to: Administer state employees' insurance benefits and
3 retired or disabled school employees' insurance benefits; administer
4 the basic health plan pursuant to chapter 70.47 RCW; study state-
5 purchased health care programs in order to maximize cost containment in
6 these programs while ensuring access to quality health care; and
7 implement state initiatives, joint purchasing strategies, and
8 techniques for efficient administration that have potential application
9 to all state-purchased health services. The authority's duties
10 include, but are not limited to, the following:

11 (a) To administer health care benefit programs for employees and
12 retired or disabled school employees as specifically authorized in RCW
13 41.05.065 and in accordance with the methods described in RCW
14 41.05.075, 41.05.140, and other provisions of this chapter;

15 (b) To analyze state-purchased health care programs and to explore
16 options for cost containment and delivery alternatives for those
17 programs that are consistent with the purposes of those programs,
18 including, but not limited to:

19 (i) Creation of economic incentives for the persons for whom the
20 state purchases health care to appropriately utilize and purchase
21 health care services, including the development of flexible benefit
22 plans to offset increases in individual financial responsibility;

23 (ii) Utilization of provider arrangements that encourage cost
24 containment, including but not limited to prepaid delivery systems,
25 utilization review, and prospective payment methods, and that ensure
26 access to quality care, including assuring reasonable access to local
27 providers, especially for employees residing in rural areas;

28 (iii) Coordination of state agency efforts to purchase drugs
29 effectively as provided in RCW 70.14.050;

30 (iv) Development of recommendations and methods for purchasing
31 medical equipment and supporting services on a volume discount basis;
32 and

33 (v) Development of data systems to obtain utilization data from
34 state-purchased health care programs in order to identify cost centers,
35 utilization patterns, provider and hospital practice patterns, and
36 procedure costs, utilizing the information obtained pursuant to RCW
37 41.05.031;

38 (c) To analyze areas of public and private health care interaction;

1 (d) To provide information and technical and administrative
2 assistance to the board;

3 (e) To review and approve or deny applications from counties,
4 municipalities, and other political subdivisions of the state to
5 provide state-sponsored insurance or self-insurance programs to their
6 employees in accordance with the provisions of RCW 41.04.205, setting
7 the premium contribution for approved groups as outlined in RCW
8 41.05.050;

9 (f) To appoint a health care policy technical advisory committee as
10 required by RCW 41.05.150;

11 (g) To establish billing procedures and collect funds from school
12 districts and educational service districts under RCW 28A.400.400 in a
13 way that minimizes the administrative burden on districts; and

14 (h) To promulgate and adopt rules consistent with this chapter as
15 described in RCW 41.05.160.

16 (2) On and after January 1, 1996, the public employees' benefits
17 board may implement strategies to promote managed competition among
18 employee health benefit plans. Strategies may include but are not
19 limited to:

20 (a) Standardizing the benefit package;

21 (b) Soliciting competitive bids for the benefit package;

22 (c) Limiting the state's contribution to a percent of the lowest
23 priced qualified plan within a geographical area;

24 (d) Monitoring the impact of the approach under this subsection
25 with regards to: Efficiencies in health service delivery, cost shifts
26 to subscribers, access to and choice of managed care plans state-wide,
27 and quality of health services. The health care authority shall also
28 advise on the value of administering a benchmark employer-managed plan
29 to promote competition among managed care plans. The health care
30 authority shall report its findings and recommendations to the
31 legislature by January 1, 1997.

32 (3) The health care authority shall, no later than July 1, 1996,
33 submit to the appropriate committees of the legislature, proposed
34 methods whereby, through the use of a voucher-type process, state
35 employees may enroll with any health carrier to receive employee
36 benefits. Such methods shall include the employee option of
37 participating in a health care savings account, as set forth in Title
38 48 RCW.

1 (~~(4) The Washington health care policy board shall study the~~
2 ~~necessity and desirability of the health care authority continuing as~~
3 ~~a self-insuring entity and make recommendations to the appropriate~~
4 ~~committees of the legislature by December 1, 1996.~~)

5 **Sec. 2.** RCW 43.70.054 and 1995 c 267 s 2 are each amended to read
6 as follows:

7 (1) To promote the public interest consistent with chapter 267,
8 Laws of 1995, the department of health, in cooperation with the
9 (~~health care policy board and the~~) information services board
10 established under RCW 43.105.032, shall develop health care data
11 standards to be used by, and developed in collaboration with,
12 consumers, purchasers, health carriers, providers, and state government
13 as consistent with the intent of chapter 492, Laws of 1993 as amended
14 by chapter 267, Laws of 1995, to promote the delivery of quality health
15 services that improve health outcomes for state residents. The data
16 standards shall include content, coding, confidentiality, and
17 transmission standards for all health care data elements necessary to
18 support the intent of this section, and to improve administrative
19 efficiency and reduce cost. Purchasers, as allowed by federal law,
20 health carriers, health facilities and providers as defined in chapter
21 48.43 RCW, and state government shall utilize the data standards. The
22 information and data elements shall be reported as the department of
23 health directs by rule in accordance with data standards developed
24 under this section.

25 (2) The health care data collected, maintained, and studied by the
26 department under this section(~~(, the health care policy board,)~~) or any
27 other entity: (a) Shall include a method of associating all
28 information on health care costs and services with discrete cases; (b)
29 shall not contain any means of determining the personal identity of any
30 enrollee, provider, or facility; (c) shall only be available for
31 retrieval in original or processed form to public and private
32 requesters; (d) shall be available within a reasonable period of time
33 after the date of request; and (e) shall give strong consideration to
34 data standards that achieve national uniformity.

35 (3) The cost of retrieving data for state officials and agencies
36 shall be funded through state general appropriation. The cost of
37 retrieving data for individuals and organizations engaged in research
38 or private use of data or studies shall be funded by a fee schedule

1 developed by the department that reflects the direct cost of retrieving
2 the data or study in the requested form.

3 (4) All persons subject to this section shall comply with
4 departmental requirements established by rule in the acquisition of
5 data, however, the department shall adopt no rule or effect no policy
6 implementing the provisions of this section without an act of law.

7 (5) The department shall submit developed health care data
8 standards to the appropriate committees of the legislature by December
9 31, 1995.

10 **Sec. 3.** RCW 43.70.066 and 1995 c 267 s 4 are each amended to read
11 as follows:

12 (1) The department of health (~~in consultation with the health~~
13 ~~policy board~~) shall study the feasibility of a uniform quality
14 assurance and improvement program for use by all public and private
15 health plans and health care providers and facilities. In this study,
16 the department shall consult with:

- 17 (a) Public and private purchasers of health care services;
- 18 (b) Health carriers;
- 19 (c) Health care providers and facilities; and
- 20 (d) Consumers of health services.

21 (2) In conducting the study, the department shall propose standards
22 that meet the needs of affected persons and organizations, whether
23 public or private, without creation of differing levels of quality
24 assurance. All consumers of health services should be afforded the
25 same level of quality assurance.

26 (3) At a minimum, the study shall include but not be limited to the
27 following program components and indicators appropriate for consumer
28 disclosure:

- 29 (a) Health care provider training, credentialing, and licensure
30 standards;
- 31 (b) Health care facility credentialing and recredentialing;
- 32 (c) Staff ratios in health care facilities;
- 33 (d) Annual mortality and morbidity rates of cases based on a
34 defined set of procedures performed or diagnoses treated in health care
35 facilities, adjusted to fairly consider variable factors such as
36 patient demographics and case severity;
- 37 (e) The average total cost and average length of hospital stay for
38 a defined set of procedures and diagnoses;

1 (f) The total number of the defined set of procedures, by
2 specialty, performed by each physician at a health care facility within
3 the previous twelve months;

4 (g) Utilization performance profiles by provider, both primary care
5 and specialty care, that have been adjusted to fairly consider variable
6 factors such as patient demographics and severity of case;

7 (h) Health plan fiscal performance standards;

8 (i) Health care provider and facility recordkeeping and reporting
9 standards;

10 (j) Health care utilization management that monitors trends in
11 health service underutilization, as well as overutilization of
12 services;

13 (k) Health monitoring that is responsive to consumer, purchaser,
14 and public health assessment needs; and

15 (l) Assessment of consumer satisfaction and disclosure of consumer
16 survey results.

17 (4) In conducting the study, the department shall develop standards
18 that permit each health care facility, provider group, or health
19 carrier to assume responsibility for and determine the physical method
20 of collection, storage, and assimilation of quality indicators for
21 consumer disclosure. The study may define the forms, frequency, and
22 posting requirements for disclosure of information.

23 In developing proposed standards under this subsection, the
24 department shall identify options that would minimize provider burden
25 and administrative cost resulting from duplicative private sector data
26 submission requirements.

27 (5) The department shall submit a preliminary report to the
28 legislature by December 31, 1995, including recommendations for initial
29 legislation pursuant to subsection (6) of this section, and shall
30 submit supplementary reports and recommendations as completed,
31 consistent with appropriated funds and staffing.

32 (6) The department shall not adopt any rule implementing the
33 uniform quality assurance program or consumer disclosure provisions
34 unless expressly directed to do so by an act of law.

35 **Sec. 4.** RCW 43.70.068 and 1995 c 267 s 5 are each amended to read
36 as follows:

37 ~~((No later than July 1, 1995, the health care policy board together~~
38 ~~with)) The department of health, the health care authority, the~~

1 department of social and health services, the office of the insurance
2 commissioner, and the department of labor and industries shall form an
3 interagency group for coordination and consultation on quality
4 assurance activities and collaboration on final recommendations for the
5 study required under RCW 43.70.066. (~~By December 31, 1996, the group
6 shall review all state agency programs governing health service quality
7 assurance, in light of legislative actions pursuant to RCW
8 43.70.066(6), and shall recommend to the legislature, the
9 consolidation, coordination, or elimination of rules and programs that
10 would be made unnecessary pursuant to the development of a uniform
11 quality assurance and improvement program.~~)

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.72 RCW
13 to read as follows:

14 As used in this chapter, "health carrier," "health care provider,"
15 "provider," "health plan," and "health care facility" have the same
16 meaning as provided in RCW 48.43.005.

17 **Sec. 6.** RCW 43.72.300 and 1993 c 492 s 447 are each amended to
18 read as follows:

19 (1) The legislature recognizes that competition among health care
20 providers, facilities, payers, and purchasers will yield the best
21 allocation of health care resources, the lowest prices for health care
22 services, and the highest quality of health care when there exists a
23 large number of buyers and sellers, easily comparable health ((care))
24 plans and services, minimal barriers to entry and exit into the health
25 care market, and adequate information for buyers and sellers to base
26 purchasing and production decisions. However, the legislature finds
27 that purchasers of health care services and health care coverage do not
28 have adequate information upon which to base purchasing decisions; that
29 health care facilities and providers of health care services face legal
30 and market disincentives to develop economies of scale or to provide
31 the most cost-efficient and efficacious service; that health insurers,
32 contractors, and health maintenance organizations face market
33 disincentives in providing health care coverage to those Washington
34 residents with the most need for health care coverage; and that
35 potential competitors in the provision of health care coverage bear
36 unequal burdens in entering the market for health care coverage.

1 (2) The legislature therefore intends to exempt from state anti-
2 trust laws, and to provide immunity from federal anti-trust laws
3 through the state action doctrine for activities approved under this
4 chapter that might otherwise be constrained by such laws and intends to
5 displace competition in the health care market: To contain the
6 aggregate cost of health care services; to promote the development of
7 comprehensive, integrated, and cost-effective health care delivery
8 systems through cooperative activities among health care providers and
9 facilities; to promote comparability of health care coverage; to
10 improve the cost-effectiveness in providing health care coverage
11 relative to health promotion, disease prevention, and the amelioration
12 or cure of illness; to assure universal access to a publicly
13 determined, uniform package of health care benefits; and to create
14 reasonable equity in the distribution of funds, treatment, and medical
15 risk among purchasers of health care coverage, payers of health care
16 services, providers of health care services, health care facilities,
17 and Washington residents. To these ends, any lawful action taken
18 pursuant to chapter 492, Laws of 1993 by any person or entity created
19 or regulated by chapter 492, Laws of 1993 are declared to be taken
20 pursuant to state statute and in furtherance of the public purposes of
21 the state of Washington.

22 (3) The legislature does not intend and unless explicitly permitted
23 in accordance with RCW 43.72.310 or under rules adopted pursuant to
24 chapter 492, Laws of 1993, does not authorize any person or entity to
25 engage in activities or to conspire to engage in activities that would
26 constitute per se violations of state and federal anti-trust laws
27 including but not limited to conspiracies or agreements:

28 (a) Among competing health care providers not to grant discounts,
29 not to provide services, or to fix the price of their services;

30 (b) Among ((certified)) health ((plans)) carriers as to the price
31 or level of reimbursement for health care services;

32 (c) Among ((certified)) health ((plans)) carriers to boycott a
33 group or class of health care service providers;

34 (d) Among purchasers of ((certified)) health plan coverage to
35 boycott a particular plan or class of plans;

36 (e) Among ((certified)) health ((plans)) carriers to divide the
37 market for health care coverage; or

38 (f) Among ((certified)) health ((plans)) carriers and purchasers to
39 attract or discourage enrollment of any Washington resident or groups

1 of residents in a (~~certified~~) health plan based upon the perceived or
2 actual risk of loss in including such resident or group of residents in
3 a (~~certified~~) health plan or purchasing group.

4 **Sec. 7.** RCW 43.72.310 and 1995 c 267 s 8 are each amended to read
5 as follows:

6 (1) (~~Until May 8, 1995, and after June 30, 1996, a certified~~) A
7 health (~~plan~~) carrier, health care facility, health care provider, or
8 other person involved in the development, delivery, or marketing of
9 health care or (~~certified~~) health plans may request, in writing, that
10 the (~~commission~~) department of health obtain an informal opinion from
11 the attorney general as to whether particular conduct is authorized by
12 chapter 492, Laws of 1993. Trade secret or proprietary information
13 contained in a request for informal opinion shall be identified as such
14 and shall not be disclosed other than to an authorized employee of the
15 (~~commission~~) department of health or attorney general without the
16 consent of the party making the request, except that information in
17 summary or aggregate form and market share data may be contained in the
18 informal opinion issued by the attorney general. The attorney general
19 shall issue such opinion within thirty days of receipt of a written
20 request for an opinion or within thirty days of receipt of any
21 additional information requested by the attorney general necessary for
22 rendering an opinion unless extended by the attorney general for good
23 cause shown. If the attorney general concludes that such conduct is
24 not authorized by chapter 492, Laws of 1993, the person or organization
25 making the request may petition the (~~commission~~) department of health
26 for review and approval of such conduct in accordance with subsection
27 (3) of this section.

28 (2) After obtaining the written opinion of the attorney general and
29 consistent with such opinion, the (~~health services commission~~)
30 department of health:

31 (a) May authorize conduct by a (~~certified~~) health (~~plan~~)
32 carrier, health care facility, health care provider, or any other
33 person that could tend to lessen competition in the relevant market
34 upon a strong showing that the conduct is likely to achieve the policy
35 goals of chapter 492, Laws of 1993 and a more competitive alternative
36 is impractical;

37 (b) Shall adopt rules governing conduct among providers, health
38 care facilities, and (~~certified~~) health (~~plans~~) carriers including

1 rules governing provider and facility contracts with ((certified))
2 health ((plans)) carriers, rules governing the use of "most favored
3 nation" clauses and exclusive dealing clauses in such contracts, and
4 rules providing that ((certified)) health ((plans)) carriers in rural
5 areas contract with a sufficient number and type of health care
6 providers and facilities to ensure consumer access to local health care
7 services;

8 (c) Shall adopt rules permitting health care providers within the
9 service area of a plan to collectively negotiate the terms and
10 conditions of contracts with a ((certified)) health ((plan)) carrier
11 including the ability of providers to meet and communicate for the
12 purposes of these negotiations; and

13 (d) Shall adopt rules governing cooperative activities among health
14 care facilities and providers.

15 (3) (~~Until May 8, 1995, and after June 30, 1996, a certified~~) A
16 health ((plan)) carrier, health care facility, health care provider, or
17 any other person involved in the development, delivery, and marketing
18 of health care services or ((certified)) health plans may file a
19 written petition with the ((commission)) department of health
20 requesting approval of conduct that could tend to lessen competition in
21 the relevant market. Such petition shall be filed in a form and manner
22 prescribed by rule of the ((commission)) department of health.

23 The ((commission)) department of health shall issue a written
24 decision approving or denying a petition filed under this section
25 within ninety days of receipt of a properly completed written petition
26 unless extended by the ((commission)) department of health for good
27 cause shown. The decision shall set forth findings as to benefits and
28 disadvantages and conclusions as to whether the benefits outweigh the
29 disadvantages.

30 (4) In authorizing conduct and adopting rules of conduct under this
31 section, the ((commission)) department of health with the advice of the
32 attorney general, shall consider the benefits of such conduct in
33 furthering the goals of health care reform including but not limited
34 to:

- 35 (a) Enhancement of the quality of health services to consumers;
- 36 (b) Gains in cost efficiency of health services;
- 37 (c) Improvements in utilization of health services and equipment;
- 38 (d) Avoidance of duplication of health services resources; or

1 (e) And as to (b) and (c) of this subsection: (i) Facilitates the
2 exchange of information relating to performance expectations; (ii)
3 simplifies the negotiation of delivery arrangements and relationships;
4 and (iii) reduces the transactions costs on the part of ((~~certified~~))
5 health ((~~plans~~)) carriers and providers in negotiating more cost-
6 effective delivery arrangements.

7 These benefits must outweigh disadvantages including and not
8 limited to:

9 (i) Reduced competition among ((~~certified~~)) health ((~~plans~~))
10 carriers, health care providers, or health care facilities;

11 (ii) Adverse impact on quality, availability, or price of health
12 care services to consumers; or

13 (iii) The availability of arrangements less restrictive to
14 competition that achieve the same benefits.

15 (5) Conduct authorized by the ((~~commission~~)) department of health
16 shall be deemed taken pursuant to state statute and in the furtherance
17 of the public purposes of the state of Washington.

18 (6) With the assistance of the attorney general's office, the
19 ((~~commission~~)) department of health shall actively supervise any
20 conduct authorized under this section to determine whether such conduct
21 or rules permitting certain conduct should be continued and whether a
22 more competitive alternative is practical. The ((~~commission~~))
23 department of health shall periodically review petitioned conduct
24 through, at least, annual progress reports from petitioners, annual or
25 more frequent reviews by the ((~~commission~~)) department of health that
26 evaluate whether the conduct is consistent with the petition, and
27 whether the benefits continue to outweigh any disadvantages. If the
28 ((~~commission~~)) department of health determines that the likely benefits
29 of any conduct approved through rule, petition, or otherwise by the
30 ((~~commission~~)) department of health no longer outweigh the
31 disadvantages attributable to potential reduction in competition, the
32 ((~~commission~~)) department of health shall order a modification or
33 discontinuance of such conduct. Conduct ordered discontinued by the
34 ((~~commission~~)) department of health shall no longer be deemed to be
35 taken pursuant to state statute and in the furtherance of the public
36 purposes of the state of Washington.

37 (7) Nothing contained in chapter 492, Laws of 1993 is intended to
38 in any way limit the ability of rural hospital districts to enter into

1 cooperative agreements and contracts pursuant to RCW 70.44.450 and
2 chapter 39.34 RCW.

3 ~~((8) Only requests for informal opinions under subsection (1) of
4 this section and petitions under subsection (3) of this section that
5 were received prior to May 8, 1995, or after June 30, 1996, shall be
6 considered.))~~

7 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.72 RCW
8 to read as follows:

9 The secretary of health shall from time to time establish fees to
10 accompany the filing of a petition under this section and for the
11 active supervision of conduct approved under RCW 43.72.310. Such fees
12 may vary according to the size of the transaction proposed in the
13 petition or under active supervision. In setting such fees, the
14 secretary shall consider that consumers and the public benefit when
15 activities meeting the standards of this section are permitted to
16 proceed; the importance of assuring that persons sponsoring beneficial
17 activities are not foreclosed from filing a petition under this section
18 because of the fee; and the necessity to avoid a conflict, or the
19 appearance of a conflict, between the interests of the department and
20 the public. The fee for a petition shall not exceed the level that
21 will defray the reasonable costs the department and attorney general
22 incur in considering a petition, and in no event shall be greater than
23 twenty-five thousand dollars. The fee for review of approved conduct
24 shall not exceed the level that will defray the reasonable costs the
25 department and attorney general incur in conducting such a review and
26 in no event shall be greater than ten thousand dollars per annum. The
27 fees shall be fixed by rule adopted in accordance with the provisions
28 of the administrative procedure act, chapter 34.05 RCW, and shall be
29 deposited in the health professions account established in accordance
30 with RCW 43.70.320.

31 **Sec. 9.** RCW 42.17.310 and 1996 c 305 s 2, 1996 c 253 s 302, 1996
32 c 191 s 88, and 1996 c 80 s 1 are each reenacted and amended to read as
33 follows:

34 (1) The following are exempt from public inspection and copying:

35 (a) Personal information in any files maintained for students in
36 public schools, patients or clients of public institutions or public
37 health agencies, or welfare recipients.

1 (b) Personal information in files maintained for employees,
2 appointees, or elected officials of any public agency to the extent
3 that disclosure would violate their right to privacy.

4 (c) Information required of any taxpayer in connection with the
5 assessment or collection of any tax if the disclosure of the
6 information to other persons would (i) be prohibited to such persons by
7 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result
8 in unfair competitive disadvantage to the taxpayer.

9 (d) Specific intelligence information and specific investigative
10 records compiled by investigative, law enforcement, and penology
11 agencies, and state agencies vested with the responsibility to
12 discipline members of any profession, the nondisclosure of which is
13 essential to effective law enforcement or for the protection of any
14 person's right to privacy.

15 (e) Information revealing the identity of persons who are witnesses
16 to or victims of crime or who file complaints with investigative, law
17 enforcement, or penology agencies, other than the public disclosure
18 commission, if disclosure would endanger any person's life, physical
19 safety, or property. If at the time a complaint is filed the
20 complainant, victim or witness indicates a desire for disclosure or
21 nondisclosure, such desire shall govern. However, all complaints filed
22 with the public disclosure commission about any elected official or
23 candidate for public office must be made in writing and signed by the
24 complainant under oath.

25 (f) Test questions, scoring keys, and other examination data used
26 to administer a license, employment, or academic examination.

27 (g) Except as provided by chapter 8.26 RCW, the contents of real
28 estate appraisals, made for or by any agency relative to the
29 acquisition or sale of property, until the project or prospective sale
30 is abandoned or until such time as all of the property has been
31 acquired or the property to which the sale appraisal relates is sold,
32 but in no event shall disclosure be denied for more than three years
33 after the appraisal.

34 (h) Valuable formulae, designs, drawings, and research data
35 obtained by any agency within five years of the request for disclosure
36 when disclosure would produce private gain and public loss.

37 (i) Preliminary drafts, notes, recommendations, and intra-agency
38 memorandums in which opinions are expressed or policies formulated or

1 recommended except that a specific record shall not be exempt when
2 publicly cited by an agency in connection with any agency action.

3 (j) Records which are relevant to a controversy to which an agency
4 is a party but which records would not be available to another party
5 under the rules of pretrial discovery for causes pending in the
6 superior courts.

7 (k) Records, maps, or other information identifying the location of
8 archaeological sites in order to avoid the looting or depredation of
9 such sites.

10 (l) Any library record, the primary purpose of which is to maintain
11 control of library materials, or to gain access to information, which
12 discloses or could be used to disclose the identity of a library user.

13 (m) Financial information supplied by or on behalf of a person,
14 firm, or corporation for the purpose of qualifying to submit a bid or
15 proposal for (i) a ferry system construction or repair contract as
16 required by RCW 47.60.680 through 47.60.750 or (ii) highway
17 construction or improvement as required by RCW 47.28.070.

18 (n) Railroad company contracts filed prior to July 28, 1991, with
19 the utilities and transportation commission under RCW 81.34.070, except
20 that the summaries of the contracts are open to public inspection and
21 copying as otherwise provided by this chapter.

22 (o) Financial and commercial information and records supplied by
23 private persons pertaining to export services provided pursuant to
24 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
25 export projects pursuant to RCW 43.23.035.

26 (p) Financial disclosures filed by private vocational schools under
27 chapters 28B.85 and 28C.10 RCW.

28 (q) Records filed with the utilities and transportation commission
29 or attorney general under RCW 80.04.095 that a court has determined are
30 confidential under RCW 80.04.095.

31 (r) Financial and commercial information and records supplied by
32 businesses or individuals during application for loans or program
33 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
34 or during application for economic development loans or program
35 services provided by any local agency.

36 (s) Membership lists or lists of members or owners of interests of
37 units in timeshare projects, subdivisions, camping resorts,
38 condominiums, land developments, or common-interest communities

1 affiliated with such projects, regulated by the department of
2 licensing, in the files or possession of the department.

3 (t) All applications for public employment, including the names of
4 applicants, resumes, and other related materials submitted with respect
5 to an applicant.

6 (u) The residential addresses and residential telephone numbers of
7 employees or volunteers of a public agency which are held by the agency
8 in personnel records, employment or volunteer rosters, or mailing lists
9 of employees or volunteers.

10 (v) The residential addresses and residential telephone numbers of
11 the customers of a public utility contained in the records or lists
12 held by the public utility of which they are customers.

13 (w)(i) The federal social security number of individuals governed
14 under chapter 18.130 RCW maintained in the files of the department of
15 health, except this exemption does not apply to requests made directly
16 to the department from federal, state, and local agencies of
17 government, and national and state licensing, credentialing,
18 investigatory, disciplinary, and examination organizations; (ii) the
19 current residential address and current residential telephone number of
20 a health care provider governed under chapter 18.130 RCW maintained in
21 the files of the department, if the provider requests that this
22 information be withheld from public inspection and copying, and
23 provides to the department an accurate alternate or business address
24 and business telephone number. On or after January 1, 1995, the
25 current residential address and residential telephone number of a
26 health care provider governed under RCW 18.130.140 maintained in the
27 files of the department shall automatically be withheld from public
28 inspection and copying unless the provider specifically requests the
29 information be released, and except as provided for under RCW
30 42.17.260(9).

31 (x) Information obtained by the board of pharmacy as provided in
32 RCW 69.45.090.

33 (y) Information obtained by the board of pharmacy or the department
34 of health and its representatives as provided in RCW 69.41.044,
35 69.41.280, and 18.64.420.

36 (z) Financial information, business plans, examination reports, and
37 any information produced or obtained in evaluating or examining a
38 business and industrial development corporation organized or seeking
39 certification under chapter 31.24 RCW.

1 (aa) Financial and commercial information supplied to the state
2 investment board by any person when the information relates to the
3 investment of public trust or retirement funds and when disclosure
4 would result in loss to such funds or in private loss to the providers
5 of this information.

6 (bb) Financial and valuable trade information under RCW 51.36.120.

7 (cc) Client records maintained by an agency that is a domestic
8 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
9 crisis center as defined in RCW 70.125.030.

10 (dd) Information that identifies a person who, while an agency
11 employee: (i) Seeks advice, under an informal process established by
12 the employing agency, in order to ascertain his or her rights in
13 connection with a possible unfair practice under chapter 49.60 RCW
14 against the person; and (ii) requests his or her identity or any
15 identifying information not be disclosed.

16 (ee) Investigative records compiled by an employing agency
17 conducting a current investigation of a possible unfair practice under
18 chapter 49.60 RCW or of a possible violation of other federal, state,
19 or local laws prohibiting discrimination in employment.

20 (ff) Business related information protected from public inspection
21 and copying under RCW 15.86.110.

22 (gg) Financial, commercial, operations, and technical and research
23 information and data submitted to or obtained by the clean Washington
24 center in applications for, or delivery of, program services under
25 chapter 70.95H RCW.

26 (hh) Information and documents created specifically for, and
27 collected and maintained by a quality improvement committee pursuant to
28 RCW 43.70.510, regardless of which agency is in possession of the
29 information and documents.

30 (ii) Personal information in files maintained in a data base
31 created under RCW 43.07.360.

32 (jj) Proprietary financial and commercial information that the
33 submitting entity, with review by the department of health, or
34 interagency quality committee, specifically identifies at the time it
35 is submitted and that is provided to or obtained by: (i) The
36 department of health in connection with an application for, or the
37 supervision of, an antitrust exemption sought by the submitting entity
38 under RCW 43.72.310; or (ii) the interagency quality committee under
39 RCW 43.70.068 in connection with its authority to study health care

1 issues. If a request for such information is received, the submitting
2 entity must be notified of the request. Within ten business days of
3 receipt of the notice, the submitting entity shall provide a written
4 statement of the continuing need for confidentiality, which shall be
5 provided to the requester. Upon receipt of such notice, the department
6 of health or interagency quality committee shall continue to treat
7 information designated under this section as exempt from disclosure.
8 If the requester initiates an action to compel disclosure under this
9 chapter, the submitting entity must be joined as a party to demonstrate
10 the continuing need for confidentiality.

11 (kk) Health care information, as defined in RCW 70.02.010(6),
12 obtained by the department of health as authorized by section 2,
13 chapter 281, Laws of 1996 or the interagency quality committee as
14 authorized by RCW 43.70.068 under its authority to study health care
15 issues. Such information shall be released in a form that the record
16 does not identify the recipient of the health care or that would
17 otherwise be permitted by chapter 70.02 RCW without consent of the
18 patient.

19 (2) Except for information described in subsection (1)(c)(i) of
20 this section and confidential income data exempted from public
21 inspection pursuant to RCW 84.40.020, the exemptions of this section
22 are inapplicable to the extent that information, the disclosure of
23 which would violate personal privacy or vital governmental interests,
24 can be deleted from the specific records sought. No exemption may be
25 construed to permit the nondisclosure of statistical information not
26 descriptive of any readily identifiable person or persons.

27 (3) Inspection or copying of any specific records exempt under the
28 provisions of this section may be permitted if the superior court in
29 the county in which the record is maintained finds, after a hearing
30 with notice thereof to every person in interest and the agency, that
31 the exemption of such records is clearly unnecessary to protect any
32 individual's right of privacy or any vital governmental function.

33 (4) Agency responses refusing, in whole or in part, inspection of
34 any public record shall include a statement of the specific exemption
35 authorizing the withholding of the record (or part) and a brief
36 explanation of how the exemption applies to the record withheld.

37 NEW SECTION. Sec. 10. The following acts or parts of acts are
38 each repealed:

- 1 (1) RCW 43.72.320 and 1995 c 267 s 10;
- 2 (2) RCW 43.73.010 and 1995 c 265 s 9;
- 3 (3) RCW 43.73.020 and 1995 c 265 s 10;
- 4 (4) RCW 43.73.030 and 1995 c 265 s 11;
- 5 (5) RCW 43.73.040 and 1995 c 265 s 12; and
- 6 (6) 1996 c 281 s 2 (uncodified).

7 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 July 1, 1997.

11 NEW SECTION. **Sec. 12.** If specific funding for the purposes of
12 section 8 of this act, referencing section 8 of this act by bill or
13 chapter number, is not provided by June 30, 1997, in the omnibus
14 appropriations act, section 8 of this act is null and void.

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