

SUBSTITUTE HOUSE BILL 1827

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Dyer, Dellwo, Morris and Jacobsen; by request of Health Services Commission)

Read first time 03/01/95.

1 AN ACT Relating to conflicts of interest among health care
2 providers, facilities, and third-party payers; amending RCW 18.35.110,
3 18.46.050, 18.51.054, 18.51.060, 18.100.140, 18.130.180, 48.05.140,
4 48.62.091, 51.48.280, 70.41.130, 70.42.120, 70.42.130, 70.42.140,
5 70.42.150, 70.42.160, 70.127.170, 70.175.100, and 71.12.590; adding a
6 new section to chapter 43.70 RCW; adding a new chapter to Title 19 RCW;
7 creating new sections; repealing RCW 19.68.010, 19.68.020, 19.68.030,
8 and 19.68.040; prescribing penalties; and providing an effective date.

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

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

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

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

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

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

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

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

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

5 NEW SECTION. **Sec. 2.** DEFINITIONS. (1) "Department" means the
6 department of health.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 under such circumstances as the department deems appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 NEW SECTION. **Sec. 8.** VIOLATIONS--ATTORNEY GENERAL--CEASE AND
23 DESIST ORDER--TEMPORARY ORDER--PENALTY--RECOVERY IN SUPERIOR COURT.
24 (1) If it appears to the attorney general that a person has engaged in
25 or is about to engage in an act or practice constituting a violation of
26 a provision of this chapter or a rule adopted or order issued under
27 this chapter, the attorney general may, in the attorney general's
28 discretion, issue an order directing the person to cease and desist
29 from continuing the act or practice. Reasonable notice of an
30 opportunity for a hearing shall be given. The attorney general may
31 issue a temporary order pending the hearing, which shall remain in
32 effect until ten days after the hearing is held and which shall become
33 final if the person to whom the notice is addressed does not request a
34 hearing within fifteen days after the receipt of the notice.

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

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

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

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

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

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

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

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

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

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

37 (d) Falsifying hearing test or evaluation results;

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

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

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

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

15 (D) Acute or chronic dizziness;

16 (E) Any unilateral hearing loss;

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

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

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

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

1 licensee is engaged in the diagnosis of illness or the practice of
2 medicine or any other activity prohibited under the laws of this state;

3 (ii) Fitting and dispensing a hearing aid to any person under
4 eighteen years of age who has not been examined and cleared for hearing
5 aid use within the previous six months by a physician specializing in
6 otolaryngology except in the case of replacement instruments or except
7 in the case of the parents or guardian of such person refusing, for
8 good cause, to seek medical opinion: PROVIDED, That should the parents
9 or guardian of such person refuse, for good cause, to seek medical
10 opinion, the licensee shall obtain from such parents or guardian a
11 certificate to that effect in a form as prescribed by the department;

12 (iii) Fitting and dispensing a hearing aid to any person under
13 eighteen years of age who has not been examined by an audiologist who
14 holds at least a master's degree in audiology for recommendations
15 during the previous six months, without first advising such person or
16 his or her parents or guardian in writing that he or she should first
17 consult an audiologist who holds at least a master's degree in
18 audiology, except in cases of hearing aids replaced within six months
19 of their purchase;

20 (f) Representing that the services or advice of a person licensed
21 to practice medicine and surgery under chapter 18.71 RCW or osteopathy
22 and surgery under chapter 18.57 RCW or of a clinical audiologist will
23 be used or made available in the selection, fitting, adjustment,
24 maintenance, or repair of hearing aids when that is not true, or using
25 the word "doctor," "clinic," or other like words, abbreviations, or
26 symbols which tend to connote a medical or osteopathic profession when
27 such use is not accurate;

28 (g) Permitting another to use his or her license;

29 (h) Stating or implying that the use of any hearing aid will
30 restore normal hearing, preserve hearing, prevent or retard progression
31 of a hearing impairment, or any other false, misleading, or medically
32 or audiologicaly unsupportable claim regarding the efficiency of a
33 hearing aid;

34 (i) Representing or implying that a hearing aid is or will be
35 "custom-made," "made to order," "prescription made," or in any other
36 sense specially fabricated for an individual when that is not the case;
37 or

38 (j) Directly or indirectly offering, giving, permitting, or causing
39 to be given, money or anything of value to any person who advised

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

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

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

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

12 The department may assess civil monetary penalties not exceeding
13 five thousand dollars per violation or deny, suspend, or revoke a
14 license in any case in which it finds that there has been failure or
15 refusal to comply with the requirements established under this chapter
16 or the rules adopted under it or sections 1 through 9 of this act and
17 the rules adopted under it.

18 RCW 43.70.095 governs notice of assessment of civil monetary
19 penalties. RCW 43.70.115 governs notice of a license denial,
20 revocation, suspension, or modification and provides the right to an
21 adjudicative proceeding.

22 Funds received from the civil monetary penalties shall be paid into
23 the health facilities account.

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

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

29 (1) Operated a nursing home without a license or under a revoked or
30 suspended license; or

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

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

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

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

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

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

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

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

25 (b) Order stop placement;

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

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

31 (e) Appoint temporary management as provided in subsection (7) of
32 this section.

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

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

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

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

9 (d) Willfully prevented, interfered with, or attempted to impede in
10 any way the work of any duly authorized representative of the
11 department and the lawful enforcement of any provision of this chapter
12 or of chapter 74.42 RCW; or

13 (e) Willfully prevented or interfered with any representative of
14 the department in the preservation of evidence of any violation of any
15 of the provisions of this chapter or of chapter 74.42 RCW or the
16 standards, rules, and regulations adopted under them; or

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

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

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

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

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

36 (4)(a) Civil penalties collected under this section or under
37 chapter 74.42 RCW shall be deposited into a special fund administered
38 by the department to be applied to the protection of the health or
39 property of residents of nursing homes found to be deficient, including

1 payment for the costs of relocation of residents to other facilities,
2 maintenance of operation of a facility pending correction of
3 deficiencies or closure, and reimbursement of residents for personal
4 funds lost.

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

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

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

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

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

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

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

23 (b) When the department has ordered a stop placement, the
24 department may approve a readmission to the nursing home from a
25 hospital when the department determines the readmission would be in the
26 best interest of the individual seeking readmission.

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

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

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

32 (A) The deficiencies necessitating stop placement action have been
33 corrected, and

34 (B) The provider exhibits the capacity to maintain adequate care
35 and service.

36 (d) A nursing home provider shall have the right to an informal
37 review to present written evidence to refute the deficiencies cited as
38 the basis for the stop placement. A request for an informal review

1 must be made in writing within ten days of the effective date of the
2 stop placement.

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

6 (i) The department terminates the stop placement; or

7 (ii) The stop placement is terminated by a final agency order,
8 after a hearing, pursuant to chapter 34.05 RCW.

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

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

24 (a) Oversee the operation of the facility; and

25 (b) Ensure the health and safety of the facilities residents while:

26 (i) Orderly closure of the facility occurs; or

27 (ii) The deficiencies necessitating temporary management are
28 corrected.

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

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

36 Nothing in this chapter shall authorize a director, officer,
37 shareholder, agent or employee of a corporation organized under this
38 chapter, or a corporation itself organized under this chapter, to do or

1 perform any act which would be illegal, unethical or unauthorized
2 conduct under the provisions of the following acts: (1) Physicians and
3 surgeons, chapter 18.71 RCW; (2) anti-rebating act, (~~chapter 19.68~~
4 ~~RCW~~) sections 1 through 9 of this act; (3) state bar act, chapter 2.48
5 RCW; (4) professional accounting act, chapter 18.04 RCW; (5)
6 professional architects act, chapter 18.08 RCW; (6) professional
7 auctioneers act, chapter 18.11 RCW; (7) cosmetologists, barbers, and
8 manicurists, chapter 18.16 RCW; (8) boarding homes act, chapter 18.20
9 RCW; (9) podiatric medicine and surgery, chapter 18.22 RCW; (10)
10 chiropractic act, chapter 18.25 RCW; (11) registration of contractors,
11 chapter 18.27 RCW; (12) debt adjusting act, chapter 18.28 RCW; (13)
12 dental hygienist act, chapter 18.29 RCW; (14) dentistry, chapter 18.32
13 RCW; (15) dispensing opticians, chapter 18.34 RCW; (16) naturopathic
14 physicians, chapter 18.36A RCW; (17) embalmers and funeral directors,
15 chapter 18.39 RCW; (18) engineers and land surveyors, chapter 18.43
16 RCW; (19) escrow agents registration act, chapter 18.44 RCW; (20)
17 maternity homes, chapter 18.46 RCW; (21) midwifery, chapter 18.50 RCW;
18 (22) nursing homes, chapter 18.51 RCW; (23) optometry, chapter 18.53
19 RCW; (24) osteopathic physicians and surgeons, chapter 18.57 RCW; (25)
20 pharmacists, chapter 18.64 RCW; (26) physical therapy, chapter 18.74
21 RCW; (27) registered nurses, advanced registered nurse practitioners,
22 and practical nurses, chapter 18.79 RCW; (28) psychologists, chapter
23 18.83 RCW; (29) real estate brokers and salesmen, chapter 18.85 RCW;
24 (30) veterinarians, chapter 18.92 RCW.

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

27 The following conduct, acts, or conditions constitute
28 unprofessional conduct for any license holder or applicant under the
29 jurisdiction of this chapter:

30 (1) The commission of any act involving moral turpitude,
31 dishonesty, or corruption relating to the practice of the person's
32 profession, whether the act constitutes a crime or not. If the act
33 constitutes a crime, conviction in a criminal proceeding is not a
34 condition precedent to disciplinary action. Upon such a conviction,
35 however, the judgment and sentence is conclusive evidence at the
36 ensuing disciplinary hearing of the guilt of the license holder or
37 applicant of the crime described in the indictment or information, and
38 of the person's violation of the statute on which it is based. For the

1 purposes of this section, conviction includes all instances in which a
2 plea of guilty or nolo contendere is the basis for the conviction and
3 all proceedings in which the sentence has been deferred or suspended.
4 Nothing in this section abrogates rights guaranteed under chapter 9.96A
5 RCW;

6 (2) Misrepresentation or concealment of a material fact in
7 obtaining a license or in reinstatement thereof;

8 (3) All advertising which is false, fraudulent, or misleading;

9 (4) Incompetence, negligence, or malpractice which results in
10 injury to a patient or which creates an unreasonable risk that a
11 patient may be harmed. The use of a nontraditional treatment by itself
12 shall not constitute unprofessional conduct, provided that it does not
13 result in injury to a patient or create an unreasonable risk that a
14 patient may be harmed;

15 (5) Suspension, revocation, or restriction of the individual's
16 license to practice the profession by competent authority in any state,
17 federal, or foreign jurisdiction, a certified copy of the order,
18 stipulation, or agreement being conclusive evidence of the revocation,
19 suspension, or restriction;

20 (6) The possession, use, prescription for use, or distribution of
21 controlled substances or legend drugs in any way other than for
22 legitimate or therapeutic purposes, diversion of controlled substances
23 or legend drugs, the violation of any drug law, or prescribing
24 controlled substances for oneself;

25 (7) Violation of any state or federal statute or administrative
26 rule regulating the profession in question, including any statute or
27 rule defining or establishing standards of patient care or professional
28 conduct or practice;

29 (8) Failure to cooperate with the disciplining authority by:

30 (a) Not furnishing any papers or documents;

31 (b) Not furnishing in writing a full and complete explanation
32 covering the matter contained in the complaint filed with the
33 disciplining authority; or

34 (c) Not responding to subpoenas issued by the disciplining
35 authority, whether or not the recipient of the subpoena is the accused
36 in the proceeding;

37 (9) Failure to comply with an order issued by the disciplinary
38 authority or a stipulation for informal disposition entered into with
39 the disciplinary authority;

- 1 (10) Aiding or abetting an unlicensed person to practice when a
2 license is required;
- 3 (11) Violations of rules established by any health agency;
- 4 (12) Practice beyond the scope of practice as defined by law or
5 rule;
- 6 (13) Misrepresentation or fraud in any aspect of the conduct of the
7 business or profession;
- 8 (14) Failure to adequately supervise auxiliary staff to the extent
9 that the consumer's health or safety is at risk;
- 10 (15) Engaging in a profession involving contact with the public
11 while suffering from a contagious or infectious disease involving
12 serious risk to public health;
- 13 (16) Promotion for personal gain of any unnecessary or
14 inefficacious drug, device, treatment, procedure, or service;
- 15 (17) Conviction of any gross misdemeanor or felony relating to the
16 practice of the person's profession. For the purposes of this
17 subsection, conviction includes all instances in which a plea of guilty
18 or nolo contendere is the basis for conviction and all proceedings in
19 which the sentence has been deferred or suspended. Nothing in this
20 section abrogates rights guaranteed under chapter 9.96A RCW;
- 21 (18) The procuring, or aiding or abetting in procuring, a criminal
22 abortion;
- 23 (19) The offering, undertaking, or agreeing to cure or treat
24 disease by a secret method, procedure, treatment, or medicine, or the
25 treating, operating, or prescribing for any health condition by a
26 method, means, or procedure which the licensee refuses to divulge upon
27 demand of the disciplining authority;
- 28 (20) The willful betrayal of a practitioner-patient privilege as
29 recognized by law;
- 30 (21) Violation of (~~chapter 19.68 RCW~~) sections 1 through 9 of
31 this act;
- 32 (22) Interference with an investigation or disciplinary proceeding
33 by willful misrepresentation of facts before the disciplining authority
34 or its authorized representative, or by the use of threats or
35 harassment against any patient or witness to prevent them from
36 providing evidence in a disciplinary proceeding or any other legal
37 action;
- 38 (23) Current misuse of:
- 39 (a) Alcohol;

1 (b) Controlled substances; or
2 (c) Legend drugs;
3 (24) Abuse of a client or patient or sexual contact with a client
4 or patient;
5 (25) Acceptance of more than a nominal gratuity, hospitality, or
6 subsidy offered by a representative or vendor of medical or health-
7 related products or services intended for patients, in contemplation of
8 a sale or for use in research publishable in professional journals,
9 where a conflict of interest is presented, as defined by rules of the
10 disciplining authority, in consultation with the department, based on
11 recognized professional ethical standards.

12 **Sec. 16.** RCW 48.05.140 and 1973 1st ex.s. c 152 s 1 are each
13 amended to read as follows:

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

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

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

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

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

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

34 (6) Refuses to be examined, or if its directors, officers,
35 employees or representatives refuse to submit to examination or to
36 produce its accounts, records, and files for examination by the
37 commissioner when required, or refuse to perform any legal obligation
38 relative to the examination.

1 (7) Fails to pay any final judgment rendered against it in this
2 state upon any policy, bond, recognizance, or undertaking issued or
3 guaranteed by it, within thirty days after the judgment became final or
4 within thirty days after time for taking an appeal has expired, or
5 within thirty days after dismissal of an appeal before final
6 determination, whichever date is the later.

7 (8) Is found by the commissioner, after investigation or upon
8 receipt of reliable information, to be managed by persons, whether by
9 its directors, officers, or by any other means, who are incompetent or
10 untrustworthy or so lacking in insurance company managerial experience
11 as to make a proposed operation hazardous to the insurance-buying
12 public; or that there is good reason to believe it is affiliated
13 directly or indirectly through ownership, control, reinsurance or other
14 insurance or business relations, with any person or persons whose
15 business operations are or have been marked, to the detriment of
16 policyholders or stockholders or investors or creditors or of the
17 public, by bad faith or by manipulation of assets, or of accounts, or
18 of reinsurance.

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

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

23 **Sec. 17.** RCW 48.62.091 and 1991 sp.s. c 30 s 9 are each amended to
24 read as follows:

25 (1) Within one hundred twenty days of receipt of a plan of
26 management and operation, the state risk manager shall either approve
27 or disapprove the formation of the self-insurance program after
28 reviewing the plan to determine whether the proposed program complies
29 with this chapter and all rules adopted in accordance with this
30 chapter.

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

35 (3)(a) Whenever the state risk manager determines that a joint
36 self-insurance program covering property or liability risks or an
37 individual or joint self-insured health and welfare benefits program is
38 in violation of this chapter or is operating in an unsafe financial

1 condition, the state risk manager may issue and serve upon the program
2 an order to cease and desist from the violation or practice.

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

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

11 ~~((b))~~ (ii) If the program violates the order or has not taken
12 steps to comply with the order after the expiration of twenty days
13 after the cease and desist order has been received by the program, the
14 program is deemed to be operating in violation of this chapter, and the
15 state risk manager shall notify the state auditor and the attorney
16 general of the violation.

17 ~~((c))~~ (iii) After hearing or with the consent of a program
18 governed by this chapter and in addition to or in lieu of a
19 continuation of the cease and desist order, the risk manager may levy
20 a fine upon the program in an amount not less than three hundred
21 dollars and not more than ten thousand dollars. The order levying such
22 fine shall specify the period within which the fine shall be fully
23 paid. The period within which such fines shall be paid shall not be
24 less than fifteen nor more than thirty days from the date of such
25 order. Upon failure to pay any such fine when due the risk manager
26 shall request the attorney general to bring a civil action on the risk
27 manager's behalf to collect the fine. The risk manager shall pay any
28 fine so collected to the state treasurer for the account of the general
29 fund.

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

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

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

36 (c) A description of the program structure, including participants'
37 retention, program retention, and excess insurance limits and
38 attachment point;

39 (d) An actuarial analysis, if required;

- 1 (e) A list of contractors and service providers;
- 2 (f) The financial and loss experience of the program; and
- 3 (g) Such other information as required by rule of the state risk
- 4 manager.

5 (5) No self-insurance program requiring the state risk manager's
6 approval may engage in an act or practice that in any respect
7 significantly differs from the management and operation plan that
8 formed the basis for the state risk manager's approval of the program
9 unless the program first notifies the state risk manager in writing and
10 obtains the state risk manager's approval. The state risk manager
11 shall approve or disapprove the proposed change within sixty days of
12 receipt of the notice. If the state risk manager denies a requested
13 change, the risk manager shall specify in detail the reasons for denial
14 and the manner in which the program would fail to meet the requirements
15 of this chapter or any rules adopted in accordance with this chapter.

16 **Sec. 18.** RCW 51.48.280 and 1986 c 200 s 6 are each amended to read
17 as follows:

18 (1) Any person, firm, corporation, partnership, association,
19 agency, institution, or other legal entity, that solicits or receives
20 any remuneration (including any kickback, bribe, or rebate) directly or
21 indirectly, overtly or covertly, in cash or in kind:

22 (a) In return for referring an individual to a person for the
23 furnishing or arranging for the furnishing of any item or service for
24 which payment may be made in whole or in part under this chapter; or

25 (b) In return for purchasing, leasing, ordering, or arranging for
26 or recommending purchasing, leasing, or ordering any goods, facility,
27 service, or item for which payment may be made in whole or in part
28 under this chapter;

29 shall be guilty of a class C felony: PROVIDED, That the fine, if
30 imposed, shall not be in an amount more than twenty-five thousand
31 dollars, except as authorized by RCW 9A.20.030.

32 (2) Any person, firm, corporation, partnership, association,
33 agency, institution, or other legal entity, that offers or pays any
34 remuneration (including any kickback, bribe, or rebate) directly or
35 indirectly, overtly or covertly, in cash or in kind to any person to
36 induce such person:

1 (a) To refer an individual to a person for the furnishing or
2 arranging for the furnishing of any item or service for which payment
3 may be made, in whole or in part, under this chapter; or

4 (b) To purchase, lease, order, or arrange for or recommend
5 purchasing, leasing, or ordering any goods, facility, service, or item
6 for which payment may be made in whole or in part under this chapter;
7 shall be guilty of a class C felony: PROVIDED, That the fine, if
8 imposed, shall not be in an amount more than twenty-five thousand
9 dollars, except as authorized by RCW 9A.20.030.

10 (3) Subsections (1) and (2) of this section shall not apply to:

11 (a) A discount or other reduction in price obtained by a provider
12 of services or other entity under this chapter if the reduction in
13 price is properly disclosed and appropriately reflected in the costs
14 claimed or charges made by the provider or entity under this chapter;
15 ((and))

16 (b) Any amount paid by an employer to an employee (who has a bona
17 fide employment relationship with such employer) for employment in the
18 provision of covered items or services; and

19 (c) Any activity or arrangement authorized under sections 1 through
20 9 of this act or the rules adopted thereunder.

21 (4) Subsections (1) and (2) of this section, if applicable to the
22 conduct involved, ((shall supersede the criminal provisions of chapter
23 19.68 RCW, but)) shall not preclude ((administrative)) proceedings
24 authorized by ((chapter 19.68 RCW)) sections 1 through 9 of this act.

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

27 The department is authorized to assess civil monetary penalties not
28 exceeding five thousand dollars per violation or deny, suspend, revoke,
29 or modify a license or provisional license in any case in which it
30 finds that there has been a failure or refusal to comply with the
31 requirements of this chapter or the standards or rules adopted under
32 this chapter or sections 1 through 9 of this act or rules adopted under
33 sections 1 through 9 of this act. RCW 43.70.095 governs notice of
34 assessment of civil monetary penalties. Funds received from the civil
35 monetary penalties shall be paid into the health facilities account.
36 RCW 43.70.115 governs notice of a license denial, revocation,
37 suspension, or modification and provides the right to an adjudicative
38 proceeding.

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

3 Under this chapter, and chapter 34.05 RCW, the department may deny
4 a license to any applicant who:

5 (1) Refuses to comply with the requirements of this chapter or the
6 standards or rules adopted under this chapter;

7 (2) Was the holder of a license under this chapter which was
8 revoked for cause and never reissued by the department;

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

12 (4) Refuses to allow representatives of the department to examine
13 any book, record, or file required by this chapter to be maintained;

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

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

18 (7) Violated sections 1 through 9 of this act.

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

21 Under this chapter, and chapter 34.05 RCW, the department may place
22 conditions on a license which limit or cancel a test site's authority
23 to conduct any of the tests or groups of tests of any licensee who:

24 (1) Fails or refuses to comply with the requirements of this
25 chapter or the rules adopted under this chapter;

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

29 (3) Refuses to allow representatives of the department to examine
30 any book, record, or file required by this chapter to be maintained;

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

33 (5) Willfully prevented or interfered with preservation of evidence
34 of a known violation of this chapter or the rules adopted under this
35 chapter; ((or))

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

38 (7) Violates sections 1 through 9 of this act.

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

3 Under this chapter, and chapter 34.05 RCW, the department may
4 suspend the license of any licensee who:

5 (1) Fails or refuses to comply with the requirements of this
6 chapter or the rules adopted under this chapter;

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

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

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

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

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

19 (7) Used false or fraudulent advertising; or

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

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

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

26 Under this chapter, sections 1 through 9 of this act, and chapter
27 34.05 RCW, the department may revoke the license of any licensee who:

28 (1) Fails or refuses to comply with the requirements of this
29 chapter or the rules adopted under this chapter or sections 1 through
30 9 of this act;

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

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

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

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

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

6 (7) Used false or fraudulent advertising; or

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

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

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

15 Under this chapter, sections 1 through 9 of this act, and chapter
16 34.05 RCW, the department may assess monetary penalties of up to ten
17 thousand dollars per violation in addition to or in lieu of
18 conditioning, suspending, or revoking a license. A violation occurs
19 when a licensee:

20 (1) Fails or refuses to comply with the requirements of this
21 chapter or the standards or rules adopted under this chapter or
22 sections 1 through 9 of this act;

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

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

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

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

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

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

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

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

3 Pursuant to chapter 34.05 RCW, the department may deny, suspend, or
4 revoke a license under this chapter or, in lieu thereof or in addition
5 thereto, assess monetary penalties of a civil nature not to exceed
6 ~~((one))~~ five thousand dollars per violation in any case in which it
7 finds that the licensee, or any applicant, officer, director, partner,
8 managing employee, or owner of ten percent or more of the applicant's
9 or licensee's assets:

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

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

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

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

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

26 (6) Wilfully prevented or interfered with any representative of the
27 department in the preservation of evidence of any violation of this
28 chapter or the rules adopted under this chapter;

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

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

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

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

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

38 Funds received from the civil monetary penalties shall be paid into
39 the health facilities account.

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

3 (1) The department shall establish and adopt such standards and
4 regulations pertaining to the construction, maintenance, and operation
5 of a rural health care facility and the scope of health care services,
6 and rescind, amend, or modify such regulations from time to time as
7 necessary in the public interest. In developing the regulations, the
8 department shall consult with representatives of rural hospitals,
9 community mental health centers, public health departments, community
10 and migrant health clinics, and other providers of health care in rural
11 communities. The department shall also consult with third-party
12 payers, consumers, local officials, and others to insure broad
13 participation in defining regulatory standards and requirements that
14 are appropriate for a rural health care facility.

15 (2) When developing the rural health care facility licensure rules,
16 the department shall consider the report of the Washington rural health
17 care commission established under chapter 207, Laws of 1988. Nothing
18 in this chapter requires the department to follow any specific
19 recommendation contained in that report except as it may also be
20 included in this chapter. The rules shall authorize disciplinary
21 action against the license of the rural health care facility for
22 violations of sections 1 through 9 of this act. Disciplinary action
23 shall include, but is not limited to, assessment of civil monetary
24 penalties not to exceed five thousand dollars per violation.

25 (3) Upon developing rules, the department shall enter into
26 negotiations with appropriate federal officials to seek medicare
27 approval of the facility and financial participation of medicare and
28 other federal programs in developing and operating the rural health
29 care facility.

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

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

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

1 Failure to comply with any of the provisions of RCW 71.12.550
2 through 71.12.570 or sections 1 through 9 of this act shall constitute
3 grounds for assessment of civil monetary penalties not to exceed five
4 thousand dollars per violation or denial, suspension, revocation, or
5 modification of a license: PROVIDED, HOWEVER, That nothing in this
6 chapter or the rules and regulations adopted pursuant thereto shall be
7 construed as authorizing the supervision, regulation, or control of the
8 remedial care or treatment of residents or patients in any
9 establishment, as defined in this chapter conducted in accordance with
10 the practice and principles of the body known as Church of Christ,
11 Scientist.

12 Funds received from the civil monetary penalties shall be paid into
13 the health facilities account.

14 NEW SECTION. Sec. 28. A new section is added to chapter 43.70 RCW
15 to read as follows:

16 (1) There is created in the state treasury an account to be known
17 as the health facilities account. All civil monetary penalties
18 assessed and collected by the department under RCW 18.46.050,
19 70.41.130, 70.127.170, and 71.12.590 shall be forwarded to the state
20 treasurer who shall credit such moneys to the health facilities
21 account.

22 (2) Funds in the health facilities account shall be expended to
23 educate facilities, their operators, and employees in the minimum
24 standards necessary to protect the public health, safety, and welfare.
25 Only the secretary of health or the secretary's designee may authorize
26 expenditures from the account. Costs incurred by the department in
27 administering the account shall be paid from the account. Any residue
28 in the account shall be accumulated and shall not revert to the general
29 fund at the end of the biennium.

30 NEW SECTION. Sec. 29. REPEALER. The following acts or parts of
31 acts are each repealed:

32 (1) RCW 19.68.010 and 1993 c 492 s 233, 1973 1st ex.s. c 26 s 1, &
33 1965 ex.s. c 58 s 1;

34 (2) RCW 19.68.020 and 1965 ex.s. c 58 s 2 & 1949 c 204 s 2;

35 (3) RCW 19.68.030 and 1965 ex.s. c 58 s 3; and

36 (4) RCW 19.68.040 and 1949 c 204 s 4.

1 NEW SECTION. **Sec. 30.** CODIFICATION. Sections 1 through 9 of this
2 act shall constitute a new chapter in Title 19 RCW.

3 NEW SECTION. **Sec. 31.** DELAYED EFFECTIVE DATE. Sections 1, 2, and
4 4 through 29 of this act shall take effect on January 1, 1996.

5 NEW SECTION. **Sec. 32.** IMPLEMENTATION. The department may take
6 such steps as are necessary to ensure that this act is implemented on
7 its effective date. The department shall adopt implementing rules
8 under section 3 of this act, which shall become effective on January 1,
9 1996.

10 NEW SECTION. **Sec. 33.** CAPTIONS. Captions as used in this act
11 constitute no part of the law.

12 NEW SECTION. **Sec. 34.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

--- END ---