

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1908

Chapter 18, Laws of 1995

(partial veto)

54th Legislature
1995 1st Special Session

LONG-TERM CARE

EFFECTIVE DATE: 7/1/95

Passed by the House May 18, 1995
Yeas 90 Nays 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Passed by the Senate May 22, 1995
Yeas 45 Nays 0

JOEL PRITCHARD

President of the Senate

Approved June 15, 1995, with the
exception of sections 11, 42, and 73,
which are vetoed.

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of
the House of Representatives of the
State of Washington, do hereby certify
that the attached is **ENGROSSED SECOND
SUBSTITUTE HOUSE BILL 1908** as passed
by the House of Representatives and
the Senate on the dates hereon set
forth.

TIMOTHY A. MARTIN

Chief Clerk

FILED

June 15, 1995 - 4:17 p.m.

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1908

Passed Legislature - 1995 1st Special Session

State of Washington 54th Legislature 1995 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Dyer, Cooke, Ballasiotes, Stevens, Elliot, Talcott, Cairnes, Lambert, Pelesky, Hymes, Robertson, Mielke, Carrell, Backlund and L. Thomas)

Read first time 03/24/95.

1 AN ACT Relating to long-term care; amending RCW 74.39.005,
2 74.39.040, 74.39A.010, 70.128.007, 70.128.057, 70.128.070, 70.128.080,
3 70.128.090, 70.128.140, 70.128.150, 70.128.160, 70.128.175, 43.190.020,
4 43.190.060, 74.08.545, 74.09.520, 74.08.550, 74.08.570, 18.51.091,
5 18.51.140, 18.51.300, 18.79.040, 18.79.260, 18.88A.030, 11.40.010,
6 11.42.020, 11.62.010, 11.28.120, 18.39.250, 18.39.255, 74.42.450,
7 68.46.050, 70.129.040, 43.20B.080, 74.42.020, 74.46.450, 70.38.111,
8 70.38.115, 70.38.125, 48.85.010, 48.85.020, 48.85.030, 48.85.040,
9 48.85.050, 74.09.585, 74.34.010, 74.34.100, 74.34.020, 74.34.070,
10 74.34.030, 74.46.020, 74.46.105, 74.46.115, 74.46.160, 74.46.170,
11 74.46.180, 74.46.190, 74.46.410, 74.46.420, 74.46.430, 74.46.450,
12 74.46.460, 74.46.470, 74.46.481, 74.46.490, 74.46.500, 74.46.505,
13 74.46.510, 74.46.530, 74.46.560, 74.46.570, 74.46.640, 74.46.690,
14 74.46.770, 74.46.780, and 70.128.120; amending 1995 c 260 s 12
15 (uncodified); adding new sections to chapter 74.39A RCW; adding new
16 sections to chapter 70.41 RCW; adding new sections to chapter 74.42
17 RCW; adding a new section to chapter 18.20 RCW; adding new sections to
18 chapter 70.128 RCW; adding new sections to chapter 18.88A RCW; adding
19 new sections to chapter 74.46 RCW; adding new sections to chapter 74.34
20 RCW; creating new sections; recodifying RCW 74.08.530, 74.08.560,
21 74.08.570, 74.08.545, 74.08.550, and 74.34.100; repealing RCW

1 70.128.180, 74.08.541, 74.46.420, 74.46.430, 74.46.440, 74.46.450,
2 74.46.460, 74.46.465, 74.46.470, 74.46.481, 74.46.490, 74.46.500,
3 74.46.505, 74.46.510, 74.46.530, 74.46.540, 74.46.550, 74.46.560,
4 74.46.570, 74.46.580, and 74.46.590; prescribing penalties; providing
5 an effective date; and declaring an emergency.

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

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

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Adult family home" means a facility licensed under chapter
12 70.128 RCW.

13 (2) "Adult residential care" means personal care services provided
14 by a boarding home that is licensed under chapter 18.20 RCW and that
15 has a contract with the department under section 15 of this act.

16 (3) "Aging and adult services administration" means the aging and
17 adult services administration of the department.

18 (4) "Assisted living services" means services provided by a
19 boarding home that has a contract with the department under RCW
20 74.39A.010 and the resident is housed in a private apartment-like unit.

21 (5) "Boarding home" means a facility licensed under chapter 18.20
22 RCW.

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

31 (7) "Department" means the department of social and health
32 services.

33 (8) "Home and community services" means assisted living services,
34 enhanced adult residential care, adult residential care, adult family
35 homes, in-home services, and other services administered by the aging
36 and adult services administration of the department directly or through
37 contract with area agencies on aging.

1 (9) "Long-term care services" means the services administered
2 directly or through contract by the aging and adult services
3 administration of the department, including but not limited to nursing
4 facility care and home and community services.

5 (10) "Enhanced adult residential care" means personal care services
6 and limited nursing services, as defined by the department of health in
7 rule, which services are provided by a boarding home that is licensed
8 under chapter 18.20 RCW and that has a contract with the department
9 under section 15 of this act.

10 (11) "Nursing facility" means a nursing facility as defined in
11 section 1919(a) of the federal social security act and regulations
12 adopted thereunder.

13 (12) "Nursing home" means a facility licensed under chapter 18.51
14 RCW.

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

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

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

23 (2) In expanding home and community services, the department shall:

24 (a) Take full advantage of federal funding available under Title XVIII
25 and Title XIX of the federal social security act, including home
26 health, adult day care, waiver options, and state plan services; and

27 (b) be authorized to use funds available under its community options
28 program entry system waiver granted under section 1915(c) of the
29 federal social security act to expand the availability of in-home,
30 adult residential care, adult family homes, enhanced adult residential
31 care, and assisted living services. By June 30, 1997, the department
32 shall undertake to reduce the nursing home medicaid census by at least
33 one thousand six hundred by assisting individuals who would otherwise
34 require nursing facility services to obtain services of their choice,
35 including assisted living services, enhanced adult residential care,
36 and other home and community services. If a resident, or his or her
37 legal representative, objects to a discharge decision initiated by the
38 department, the resident shall not be discharged if the resident has

1 been assessed and determined to require nursing facility services. In
2 contracting with nursing homes and boarding homes for enhanced adult
3 residential care placements, the department shall not require, by
4 contract or through other means, structural modifications to existing
5 building construction.

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

9 (b) The department may authorize an enhanced adult residential care
10 rate for nursing homes that temporarily or permanently convert their
11 bed use for the purpose of providing enhanced adult residential care
12 under chapter 70.38 RCW, when the department determines that payment of
13 an enhanced rate is cost-effective and necessary to foster expansion of
14 contracted enhanced adult residential care services. As an incentive
15 for nursing homes to permanently convert a portion of its nursing home
16 bed capacity for the purpose of providing enhanced adult residential
17 care, the department may authorize a supplemental add-on to the
18 enhanced adult residential care rate.

19 (c) The department may authorize a supplemental assisted living
20 services rate for up to four years for facilities that convert from
21 nursing home use and do not retain rights to the converted nursing home
22 beds under chapter 70.38 RCW, if the department determines that payment
23 of a supplemental rate is cost-effective and necessary to foster
24 expansion of contracted assisted living services.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.41 RCW
26 to read as follows:

27 (1)(a) The department of social and health services, in
28 consultation with hospitals and acute care facilities, shall promote
29 the most appropriate and cost-effective use of long-term care services
30 by developing and distributing to hospitals and other appropriate
31 health care settings information on the various chronic long-term care
32 programs that it administers directly or through contract. The
33 information developed by the department of social and health services
34 shall, at a minimum, include the following:

35 (i) An identification and detailed description of each long-term
36 care service available in the state;

1 (ii) Functional, cognitive, and medicaid eligibility criteria that
2 may be required for placement or admission to each long-term care
3 service; and

4 (iii) A long-term care services resource manual for each hospital,
5 that identifies the long-term care services operating within each
6 hospital's patient service area. The long-term care services resource
7 manual shall, at a minimum, identify the name, address, and telephone
8 number of each entity known to be providing long-term care services; a
9 brief description of the programs or services provided by each of the
10 identified entities; and the name or names of a person or persons who
11 may be contacted for further information or assistance in accessing the
12 programs or services at each of the identified entities.

13 (b) The information required in (a) of this subsection shall be
14 periodically updated and distributed to hospitals by the department of
15 social and health services so that the information reflects current
16 long-term care service options available within each hospital's patient
17 service area.

18 (2) To the extent that a patient will have continuing care needs,
19 once discharged from the hospital setting, hospitals shall, during the
20 course of the patient's hospital stay, promote each patient's family
21 member's and/or legal representative's understanding of available long-
22 term care service discharge options by, at a minimum:

23 (a) Discussing the various and relevant long-term care services
24 available, including eligibility criteria;

25 (b) Making available, to patients, their family members, and/or
26 legal representative, a copy of the most current long-term care
27 services resource manual;

28 (c) Responding to long-term care questions posed by patients, their
29 family members, and/or legal representative;

30 (d) Assisting the patient, their family members, and/or legal
31 representative in contacting appropriate persons or entities to respond
32 to the question or questions posed; and

33 (e) Linking the patient and family to the local, state-designated
34 aging and long-term care network to ensure effective transitions to
35 appropriate levels of care and ongoing support.

36 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.41 RCW
37 to read as follows:

1 "Cost-effective care" and "long-term care services," where used in
2 sections 3 and 5 of this act, shall have the same meaning as that given
3 in section 1 of this act.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.41 RCW
5 to read as follows:

6 (1) Hospitals and acute care facilities shall:

7 (a) Work cooperatively with the department of social and health
8 services, area agencies on aging, and local long-term care information
9 and assistance organizations in the planning and implementation of
10 patient discharges to long-term care services.

11 (b) Establish and maintain a system for discharge planning and
12 designate a person responsible for system management and
13 implementation.

14 (c) Establish written policies and procedures to:

15 (i) Identify patients needing further nursing, therapy, or
16 supportive care following discharge from the hospital;

17 (ii) Develop a documented discharge plan for each identified
18 patient, including relevant patient history, specific care
19 requirements, and date such follow-up care is to be initiated;

20 (iii) Coordinate with patient, family, caregiver, and appropriate
21 members of the health care team;

22 (iv) Provide any patient, regardless of income status, written
23 information and verbal consultation regarding the array of long-term
24 care options available in the community, including the relative cost,
25 eligibility criteria, location, and contact persons;

26 (v) Promote an informed choice of long-term care services on the
27 part of patients, family members, and legal representatives; and

28 (vi) Coordinate with the department and specialized case management
29 agencies, including area agencies on aging and other appropriate long-
30 term care providers, as necessary, to ensure timely transition to
31 appropriate home, community residential, or nursing facility care.

32 (d) Work in cooperation with the department which is responsible
33 for ensuring that patients eligible for medicaid long-term care receive
34 prompt assessment and appropriate service authorization.

35 (2) In partnership with selected hospitals, the department of
36 social and health services shall develop and implement pilot projects
37 in up to three areas of the state with the goal of providing
38 information about appropriate in-home and community services to

1 individuals and their families early during the individual's hospital
2 stay.

3 The department shall not delay hospital discharges but shall assist
4 and support the activities of hospital discharge planners. The
5 department also shall coordinate with home health and hospice agencies
6 whenever appropriate. The role of the department is to assist the
7 hospital and to assist patients and their families in making informed
8 choices by providing information regarding home and community options.

9 The department shall by December 12, 1995, report to the house of
10 representatives health care committee and the senate health and long-
11 term care committee regarding the progress and results of the pilot
12 projects along with recommendations regarding continuation or
13 modification of the pilot projects.

14 In conducting the pilot projects, the department shall:

15 (a) Assess and offer information regarding appropriate in-home and
16 community services to individuals who are medicaid clients or
17 applicants; and

18 (b) Offer assessment and information regarding appropriate in-home
19 and community services to individuals who are reasonably expected to
20 become medicaid recipients within one hundred eighty days of admission
21 to a nursing facility.

22 NEW SECTION. Sec. 6. A new section is added to chapter 74.39A RCW
23 to read as follows:

24 The department shall work in partnership with hospitals in
25 assisting patients and their families to find long-term care services
26 of their choice. The department shall not delay hospital discharges
27 but shall assist and support the activities of hospital discharge
28 planners. The department also shall coordinate with home health and
29 hospice agencies whenever appropriate. The role of the department is
30 to assist the hospital and to assist patients and their families in
31 making informed choices by providing information regarding home and
32 community options to individuals who are hospitalized and likely to
33 need long-term care.

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

36 (a) Are medicaid clients, medicaid applicants, or eligible for both
37 medicare and medicaid; and

1 (b) Apply or are likely to apply for admission to a nursing
2 facility.

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

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

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

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

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

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

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

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

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

28 (c) Describe the role of the department in providing nursing
29 facility case management.

30 NEW SECTION. **Sec. 7.** A new section is added to chapter 74.42 RCW
31 to read as follows:

32 A nursing facility shall not admit any individual who is medicaid
33 eligible unless that individual has been assessed by the department.
34 Appropriate hospital discharge shall not be delayed pending the
35 assessment.

36 To ensure timely hospital discharge of medicaid eligible persons,
37 the date of the request for a department long-term care assessment, or
38 the date that nursing home care actually begins, whichever is later,

1 shall be deemed the effective date of the initial service and payment
2 authorization. The department shall respond promptly to such requests.

3 A nursing facility admitting an individual without a request for a
4 department assessment shall not be reimbursed by the department and
5 shall not be allowed to collect payment from a medicaid eligible
6 individual for any care rendered before the date the facility makes a
7 request to the department for an assessment. The date on which a
8 nursing facility makes a request for a department long-term care
9 assessment, or the date that nursing home care actually begins,
10 whichever is later, shall be deemed the effective date of initial
11 service and payment authorization for admissions regardless of the
12 source of referral.

13 A medicaid eligible individual residing in a nursing facility who
14 is transferred to an acute care hospital shall not be required to have
15 a department assessment under this section prior to returning to the
16 same or another nursing facility.

17 NEW SECTION. **Sec. 8.** A new section is added to chapter 74.42 RCW
18 to read as follows:

19 If a nursing facility has reason to know that a resident is likely
20 to become financially eligible for medicaid benefits within one hundred
21 eighty days, the nursing facility shall notify the patient or his or
22 her representative and the department. The department may:

- 23 (1) Assess any such resident to determine if the resident prefers
24 and could live appropriately at home or in some other community-based
25 setting; and
26 (2) Provide case management services to the resident.

27 NEW SECTION. **Sec. 9.** A new section is added to chapter 74.42 RCW
28 to read as follows:

29 (1) To the extent of available funding, the department shall
30 provide case management services to assist nursing facility residents,
31 in conjunction and partnership with nursing facility staff. The
32 purpose of the case management services is to assist residents and
33 their families to assess the appropriateness and availability of home
34 and community services that could meet the resident's needs so that the
35 resident and family can make informed choices.

36 (2) To the extent of available funding, the department shall
37 provide case management services to nursing facility residents who are:

- 1 (a) Medicaid funded;
- 2 (b) Dually medicaid and medicare eligible;
- 3 (c) Medicaid applicants; and
- 4 (d) Likely to become financially eligible for medicaid within one
- 5 hundred eighty days, pursuant to section 8 of this act.

6 **Sec. 10.** RCW 74.39.005 and 1989 c 427 s 2 are each amended to read
7 as follows:

8 The purpose of this chapter is to:

9 (1) Establish a balanced range of (~~community-based~~) health,
10 social, and supportive services that deliver long-term care services to
11 chronically, functionally disabled persons of all ages;

12 (2) Ensure that functional (~~disability~~) ability shall be the
13 determining factor in defining long-term care service needs and that
14 these needs will be determined by a uniform system for comprehensively
15 assessing functional disability;

16 (3) Ensure that services are provided in the most independent
17 living situation consistent with individual needs;

18 (4) Ensure that long-term care service options shall be developed
19 and made available that enable functionally disabled persons to
20 continue to live in their homes or other community residential
21 facilities while in the care of their families or other volunteer
22 support persons;

23 (5) Ensure that long-term care services are coordinated in a way
24 that minimizes administrative cost, eliminates unnecessarily complex
25 organization, minimizes program and service duplication, and maximizes
26 the use of financial resources in directly meeting the needs of persons
27 with functional limitations;

28 (6) Develop a systematic plan for the coordination, planning,
29 budgeting, and administration of long-term care services now fragmented
30 between the division of developmental disabilities, division of mental
31 health, aging and adult services administration, division of children
32 and family services, division of vocational rehabilitation, office on
33 AIDS, division of health, and bureau of alcohol and substance abuse;

34 (7) Encourage the development of a state-wide long-term care case
35 management system that effectively coordinates the plan of care and
36 services provided to eligible clients;

37 (8) Ensure that individuals and organizations affected by or
38 interested in long-term care programs have an opportunity to

1 participate in identification of needs and priorities, policy
2 development, planning, and development, implementation, and monitoring
3 of state supported long-term care programs;

4 (9) Support educational institutions in Washington state to assist
5 in the procurement of federal support for expanded research and
6 training in long-term care; and

7 (10) Facilitate the development of a coordinated system of long-
8 term care education that is clearly articulated between all levels of
9 higher education and reflective of both in-home care needs and
10 institutional care needs of functionally disabled persons.

11 *Sec. 11. RCW 74.39.040 and 1989 c 427 s 13 are each amended to
12 read as follows:

13 ~~((1) A long-term care commission is created. It shall consist of:~~

14 ~~(a) Four legislators who shall serve on the executive committee,~~
15 ~~one from each of the two largest caucuses in the house of~~
16 ~~representatives and the senate who shall be selected by the president~~
17 ~~of the senate and the speaker of the house of representatives;~~

18 ~~(b) Six members, to be selected by the executive committee, who~~
19 ~~shall be authorities in gerontology, developmental disabilities,~~
20 ~~neurological impairments, physical disabilities, mental illness,~~
21 ~~nursing, long-term care service delivery, long-term care service~~
22 ~~financing, systems development, or systems analysis;~~

23 ~~(c) Three members, to be selected by the executive committee, who~~
24 ~~represent long-term care consumers, services providers, or advocates;~~

25 ~~(d) Two members, to be selected by the executive committee, who~~
26 ~~represent county government;~~

27 ~~(e) One member, to be selected by the secretary of social and~~
28 ~~health services, to represent the department of social and health~~
29 ~~services long-term care programs, including at least developmental~~
30 ~~disabilities, mental health, aging and adult services, AIDS, children's~~
31 ~~services, alcohol and substance abuse, and vocational rehabilitation;~~
32 ~~and~~

33 ~~(f) Two members, to represent the governor, who shall serve on the~~
34 ~~executive committee.~~

35 ~~The legislative members shall select a chair from the membership of~~
36 ~~the commission.~~

37 ~~The commission shall be staffed, to the extent possible, by staff~~
38 ~~from the appropriate senate and house of representatives committees.~~

1 ~~The commission may form technical advisory committees to assist it~~
2 ~~with any particular matters deemed necessary by the commission.~~

3 ~~The commission and technical advisory committee members shall~~
4 ~~receive no compensation, but except for publicly funded agency staff,~~
5 ~~shall, to the extent funds are available, be reimbursed for their~~
6 ~~expenses while attending any meetings in the same manner as legislators~~
7 ~~engaged in interim committee business as specified in RCW 44.04.120.~~

8 ~~The commission may receive appropriations, grants, gifts, and other~~
9 ~~payments from any governmental or other public or private entity or~~
10 ~~person which it may use to defray the cost of its operations or to~~
11 ~~contract for technical assistance, with the approval of the senate~~
12 ~~committee on facilities and operations and the house of representatives~~
13 ~~executive rules committee.~~

14 ~~(2) The long-term care commission shall develop legislation and~~
15 ~~recommend administrative actions necessary to achieve the following~~
16 ~~long-term care reforms:~~

17 ~~(a) The systematic coordination, planning, budgeting, and~~
18 ~~administration of long-term care services currently administered by the~~
19 ~~department of social and health services, division of developmental~~
20 ~~disabilities, aging and adult services administration, division of~~
21 ~~vocational rehabilitation, office on AIDS, division of health, and the~~
22 ~~bureau of alcohol and substance abuse;~~

23 ~~(b)) The legislature finds the intent of the 1989 legislature to~~
24 ~~reform statutory provisions of long-term care for persons of all ages~~
25 ~~with chronic functional disability, although not enacted, continues to~~
26 ~~be applicable. The need to streamline the current bureaucratic~~
27 ~~fragmentation of chronic health services for the person with functional~~
28 ~~disabilities and facilitate the development of client centered,~~
29 ~~accessible, high quality, cost-effective, and appropriate long-term~~
30 ~~care services options for persons with functional disabilities is even~~
31 ~~more pressing today. The legislature further finds that if we are~~
32 ~~going to meet the significant and growing chronic care needs in the~~
33 ~~next two decades, rapid fundamental changes will need to take place in~~
34 ~~the way we finance, organize, and provide long-term care services to~~
35 ~~the functionally disabled. The public demands, and it is the intent of~~
36 ~~the legislature to reduce the cost and size of government and provide~~
37 ~~efficient and effective public service to the persons most impaired by~~
38 ~~chronic functional disability.~~

1 To realize the need for a cost-effective, uniform, and fully
2 integrated long-term care system while simultaneously reducing the size
3 and cost of government, the legislative budget committee, in
4 coordination with the Washington health care policy board, shall
5 develop a working plan for long-term care reform, including
6 recommendations and statutory changes, by December 12, 1995, to
7 accomplish the following:

8 (1) Reorganize and consolidate, on a noncategorical basis, all
9 disease or age-specific (categorical) organizational entities of state
10 administration and their regional elements pertaining to chronic care
11 services to persons with functional mental and physical disabilities,
12 including but not limited to: In the department of social and health
13 services: Health and rehabilitative services and aging and adult
14 services; in the department of health: Aids chronic care and boarding
15 homes; the department of services to the blind; in the department of
16 veterans affairs: Nursing facilities; and in all other state agencies
17 that provide chronic long-term health care services;

18 (2) Implement a streamlined client centered administrative and
19 delivery system for long-term care services state-wide that
20 incorporates all long-term care services for the person with functional
21 disabilities to include the functionally disabled, developmentally
22 disabled, mentally ill, traumatically brain injured, and others with
23 chronic functional disabilities. The system shall be a single point
24 entry system administered at the local level that allows the person
25 with functional disabilities to obtain needs determination, eligibility
26 screening, priority setting, and services information and assistance.
27 The system shall be designed so that acute health care services are
28 effectively coordinated with long-term care services. The system shall
29 recognize and respect the individuality and dignity of all functionally
30 disabled individuals and promote self-reliance and the preference for
31 the assistance and comfort provided by families, friends, and community
32 volunteers. It shall also recognize the importance of community
33 organizations and the public and private infrastructure in the delivery
34 of care and support. All major points of access into the long-term
35 care system shall be identified and integrated into the system to
36 insure that clients are fully informed of the most appropriate least
37 expensive care options;

1 (3) Provision of long-term care services to persons based on their
2 functional disabilities noncategorically and in the most independent
3 living situation consistent with the person's needs and preferences;

4 ~~((+e))~~ (4) A consistent definition of appropriate roles and
5 responsibilities for state and local government, regional
6 organizations, and private organizations in the planning,
7 administration, financing, and delivery of long-term care services;

8 ~~((+d))~~ (5) Technical assistance to enable local communities to
9 have greater participation and control in the planning, administration,
10 and provision of long-term care services;

11 ~~((+e))~~ (6) A case management system that coordinates an
12 appropriate and cost-effective plan of care and services for eligible
13 functionally disabled persons based on their individual needs and
14 preferences;

15 ~~((+f))~~ (7) A sufficient supply of quality institutional and
16 noninstitutional residential alternatives for functionally disabled
17 persons, and supports for the providers of such services;

18 ~~((+g))~~ (8) Public and private alternative funding for long-term
19 care services, ~~((such as federal Title XIX funding of personal care~~
20 ~~services through the limited casualty program for the medically needy~~
21 ~~and other optional services)) that includes the promotion of affordable~~
22 ~~stand alone long-term care insurance options or as part of overall~~
23 ~~health care insurance benefits, a uniform fee copayment scale for~~
24 ~~client participation in state-funded, long-term care programs, and~~
25 ~~private, long-term care insurance;~~

26 ~~((+h))~~ (9) A systematic and balanced long-term care services
27 payment and reimbursement system, including a case mix nursing home
28 reimbursement, that will provide access to needed services while
29 controlling the rate of cost increases for such services;

30 ~~((+i))~~ (10) Active involvement of volunteers and advocacy groups;

31 ~~((+j))~~ (11) An integrated data base that provides long-term care
32 client tracking;

33 ~~((+k))~~ (12) A coordinated education system for long-term care to
34 insure client safety and quality of services; ((and

35 +l)) (13) Administratively separate the nonmeans tested economic
36 and social welfare and advocacy programs of the older Americans act, 42
37 U.S.C. Chap 35 and 45 C.F.R. 1321 et seq. from the need and means
38 tested programs for persons with functional disabilities;

1 (14) Review all activities mandated and expenditures authorized by
2 the senior citizens services act, chapter 74.38 RCW; and identify which
3 funds are being used for functionally disabled seniors and identify how
4 these senior citizens services act funds can be directed to programs
5 serving the most disabled elderly; and

6 (15) Other issues deemed appropriate by the ((implementation team))
7 joint committee on health systems oversight.

8 The ((commission)) legislative budget committee shall report to the
9 legislature with its findings, recommendations, and proposed
10 legislation by December ((1, 1990)) 12, 1995.

11 *Sec. 11 was vetoed. See message at end of chapter.

12 NEW SECTION. Sec. 12. A new section is added to chapter 74.39A
13 RCW to read as follows:

14 The department's system of quality improvement for long-term care
15 services shall be guided by the following principles, consistent with
16 applicable federal laws and regulations:

17 (1) The system shall be consumer centered and promote privacy,
18 independence, dignity, choice, and a home or home-like environment for
19 consumers.

20 (2) The goal of the system is continuous quality improvement with
21 the focus on consumer satisfaction and outcomes for consumers.

22 (3) Providers should be supported in their efforts to improve
23 quality through training, technical assistance, and case management.

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

26 (5) Monitoring should be outcome based and responsive to consumer
27 complaints.

28 (6) Providers generally should be assisted in addressing identified
29 problems initially through consultation and technical assistance.
30 Enforcement remedies shall be available for problems that are serious,
31 recurring, or that have been uncorrected.

32 NEW SECTION. Sec. 13. A new section is added to chapter 74.39A
33 RCW to read as follows:

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

1 (2) All facilities that are licensed by, or that contract with the
2 aging and adult services administration to provide long-term care
3 services shall post in a place and manner clearly visible to residents
4 and visitors the department's toll-free complaint telephone number.

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

11 (4) The aging and adult services administration shall refer
12 complaints to appropriate state agencies, law enforcement agencies, the
13 attorney general, the long-term care ombudsman, or other entities if
14 the department lacks authority to investigate.

15 (5) The department may not provide the substance of the complaint
16 to the licensee or contractor before the completion of the
17 investigation by the department. Neither the substance of the
18 complaint provided to the licensee or contractor nor any copy of the
19 complaint or related report published, released, or made otherwise
20 available shall disclose the name, title, or identity of any
21 complainant, or other person mentioned in the complaint, except that
22 the department may disclose the identity of the complainant if such
23 disclosure is requested in writing by the complainant.

24 (6) A facility that provides long-term care services shall not
25 discriminate or retaliate in any manner against a resident on the basis
26 or for the reason that such resident or any other person made a
27 complaint to the department or the long-term care ombudsman or
28 cooperated with the investigation of such a complaint. The department
29 may impose a civil penalty of not more than three thousand dollars for
30 a violation of this subsection and require the facility to mitigate any
31 damages incurred by the resident.

32 **Sec. 14.** RCW 74.39A.010 and 1993 c 508 s 3 are each amended to
33 read as follows:

34 (1) To the extent of available funding, the department of social
35 and health services may contract with licensed boarding homes under
36 chapter 18.20 RCW and tribally licensed boarding homes for assisted
37 living services and enhanced adult residential care. The department
38 shall develop rules for facilities that contract with the department

1 for assisted living services or enhanced adult residential care to
2 establish:

3 (a) Facility service standards consistent with the principles in
4 section 12 of this act and consistent with chapter 70.129 RCW;

5 (b) Standards for resident living areas consistent with section 2
6 of this act;

7 (c) Training requirements for providers and their staff.

8 (2) The department's rules shall provide that ((ensure that the
9 contracted)) services in assisted living and enhanced adult residential
10 care:

11 ~~((+1))~~ (a) Recognize individual needs, privacy, and autonomy;

12 ~~((+2))~~ (b) Include, but not be limited to, personal care, nursing
13 services, medication administration, and supportive services that
14 promote independence and self-sufficiency;

15 ~~((+3))~~ (c) Are of sufficient scope to assure that each resident
16 who chooses to remain in the assisted living or enhanced adult
17 residential care may do so, ((unless nursing care needs exceed the
18 level of care defined by the department)) to the extent that the care
19 provided continues to be cost-effective and safe and promote the most
20 appropriate level of physical, mental, and psychosocial well-being
21 consistent with client choice;

22 ~~((+4))~~ (d) Are directed first to those persons most likely, in the
23 absence of enhanced adult residential care or assisted living services,
24 to need hospital, nursing facility, or other out-of-home placement; and

25 ~~((+5))~~ (e) Are provided in compliance with applicable ((department
26 of health)) facility and professional licensing laws and rules.

27 (3) When a facility contracts with the department for assisted
28 living services or enhanced adult residential care, only services and
29 facility standards that are provided to or in behalf of the assisted
30 living services or enhanced adult residential care client shall be
31 subject to the department's rules.

32 NEW SECTION. Sec. 15. A new section is added to chapter 74.39A
33 RCW to read as follows:

34 (1) To the extent of available funding, the department of social
35 and health services may contract for adult residential care and
36 enhanced adult residential care.

1 (2) The department shall, by rule, develop terms and conditions for
2 facilities that contract with the department for adult residential care
3 and enhanced adult residential care to establish:

4 (a) Facility service standards consistent with the principles in
5 section 12 of this act and consistent with chapter 70.129 RCW; and

6 (b) Training requirements for providers and their staff.

7 (3) The department shall, by rule, provide that services in adult
8 residential care and enhanced adult residential care facilities:

9 (a) Recognize individual needs, privacy, and autonomy;

10 (b) Include personal care and limited nursing services and other
11 services that promote independence and self-sufficiency and aging in
12 place;

13 (c) Are directed first to those persons most likely, in the absence
14 of adult residential care and enhanced adult residential care services,
15 to need hospital, nursing facility, or other out-of-home placement; and

16 (d) Are provided in compliance with applicable facility and
17 professional licensing laws and rules.

18 (4) When a facility contracts with the department for adult
19 residential care and enhanced adult residential care, only services and
20 facility standards that are provided to or in behalf of the adult
21 residential care or the enhanced adult residential care client shall be
22 subject to the adult residential care or enhanced adult residential
23 care rules.

24 (5) To the extent of available funding, the department may also
25 contract under this section with a tribally licensed boarding home for
26 the provision of services of the same nature as the services provided
27 by adult residential care facilities. The provisions of subsections
28 (2) (a) and (b) and (3) (a) through (d) of this section apply to such
29 a contract.

30 NEW SECTION. **Sec. 16.** A new section is added to chapter 74.39A
31 RCW to read as follows:

32 (1) The department shall, by rule, establish reasonable minimum
33 qualifications and training requirements to assure that assisted living
34 service, enhanced adult residential care service, and adult residential
35 care providers with whom the department contracts are capable of
36 providing services consistent with this chapter. The rules shall apply
37 only to residential capacity for which the state contracts.

1 (2) The department shall not contract for assisted living, enhanced
2 adult residential care, or adult residential care services with a
3 provider if the department finds that the provider or any partner,
4 officer, director, managerial employee, or owner of five percent or
5 more of the provider has a history of significant noncompliance with
6 federal or state regulations, rules, or laws in providing care or
7 services to vulnerable adults or to children.

8 NEW SECTION. **Sec. 17.** A new section is added to chapter 74.39A
9 RCW to read as follows:

10 (1) The department is authorized to take one or more of the actions
11 listed in subsection (2) of this section in any case in which the
12 department finds that a provider of assisted living services or
13 enhanced adult residential care services has:

14 (a) Failed or refused to comply with the requirements of this
15 chapter or the rules adopted under this chapter;

16 (b) Operated without a license or under a revoked license;

17 (c) Knowingly, or with reason to know, made a false statement of
18 material fact on his or her application for license or any data
19 attached thereto, or in any matter under investigation by the
20 department; or

21 (d) Willfully prevented or interfered with any inspection or
22 investigation by the department.

23 (2) When authorized by subsection (1) of this section, the
24 department may take one or more of the following actions:

25 (a) Refuse to issue a contract;

26 (b) Impose reasonable conditions on a contract, such as correction
27 within a specified time, training, and limits on the type of clients
28 the provider may admit or serve;

29 (c) Impose civil penalties of not more than one hundred dollars per
30 day per violation;

31 (d) Suspend, revoke, or refuse to renew a contract; or

32 (e) Suspend admissions to the facility by imposing stop placement
33 on contracted services.

34 (3) When the department orders stop placement, the facility shall
35 not admit any person admitted by contract until the stop placement
36 order is terminated. The department may approve readmission of a
37 resident to the facility from a hospital or nursing home during the
38 stop placement. The department shall terminate the stop placement

1 when: (a) The violations necessitating the stop placement have been
2 corrected; and (b) the provider exhibits the capacity to maintain
3 adequate care and service.

4 (4) Chapter 34.05 RCW applies to department actions under this
5 section, except that orders of the department imposing contracts
6 suspension, stop placement, or conditions for continuation of a
7 contract are effective immediately upon notice and shall continue
8 pending any hearing.

9 NEW SECTION. **Sec. 18.** A new section is added to chapter 18.20 RCW
10 to read as follows:

11 (1) The department of health is authorized to take one or more of
12 the actions listed in subsection (2) of this section in any case in
13 which the department finds that a boarding home provider has:

14 (a) Failed or refused to comply with the requirements of this
15 chapter or the rules adopted under this chapter;

16 (b) Operated a boarding home without a license or under a revoked
17 license;

18 (c) Knowingly, or with reason to know, made a false statement of
19 material fact on his or her application for license or any data
20 attached thereto, or in any matter under investigation by the
21 department; or

22 (d) Willfully prevented or interfered with any inspection or
23 investigation by the department.

24 (2) When authorized by subsection (1) of this section, the
25 department may take one or more of the following actions:

26 (a) Refuse to issue a license;

27 (b) Impose reasonable conditions on a license, such as correction
28 within a specified time, training, and limits on the type of clients
29 the provider may admit or serve;

30 (c) Impose civil penalties of not more than one hundred dollars per
31 day per violation;

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

33 (e) Suspend admissions to the boarding home by imposing stop
34 placement.

35 (3) When the department orders stop placement, the facility shall
36 not admit any new resident until the stop placement order is
37 terminated. The department may approve readmission of a resident to
38 the facility from a hospital or nursing home during the stop placement.

1 The department shall terminate the stop placement when: (a) The
2 violations necessitating the stop placement have been corrected; and
3 (b) the provider exhibits the capacity to maintain adequate care and
4 service.

5 (4) Chapter 34.05 RCW applies to department actions under this
6 section, except that orders of the department imposing license
7 suspension, stop placement, or conditions for continuation of a license
8 are effective immediately upon notice and shall continue pending any
9 hearing.

10 **Sec. 19.** RCW 70.128.007 and 1989 c 427 s 15 are each amended to
11 read as follows:

12 The purposes of this chapter are to:

13 (1) Encourage the establishment and maintenance of adult family
14 homes that provide a humane, safe, and homelike environment for persons
15 with functional limitations who need personal and special care;

16 (2) Establish standards for regulating adult family homes that
17 adequately protect residents(~~(, but are consistent with the abilities~~
18 ~~and resources of an adult family home so as not to discourage~~
19 ~~individuals from serving as adult family home providers; and));~~

20 (3) Encourage consumers, families, providers, and the public to
21 become active in assuring their full participation in development of
22 adult family homes that provide high quality and cost-effective care;

23 (4) Provide for appropriate care of residents in adult family homes
24 by requiring that each resident have a care plan that promotes the most
25 appropriate level of physical, mental, and psychosocial well-being
26 consistent with client choice; and

27 (5) Accord each resident the right to participate in the
28 development of the care plan and in other major decisions involving the
29 resident and their care.

30 **Sec. 20.** RCW 70.128.057 and 1991 c 40 s 2 are each amended to read
31 as follows:

32 Notwithstanding the existence or use of any other remedy, the
33 department may, in the manner provided by law, upon the advice of the
34 attorney general who shall represent the department in the proceedings,
35 maintain an action in the name of the state for an injunction, civil
36 penalty, or other process against a person to restrain or prevent the

1 operation or maintenance of an adult family home without a license
2 under this chapter.

3 NEW SECTION. **Sec. 21.** A new section is added to chapter 70.128
4 RCW to read as follows:

5 The legislature finds that the operation of an adult family home
6 without a license in violation of this chapter is a matter vitally
7 affecting the public interest for the purpose of applying the consumer
8 protection act, chapter 19.86 RCW. Operation of an adult family home
9 without a license in violation of this chapter is not reasonable in
10 relation to the development and preservation of business. Such a
11 violation is an unfair or deceptive act in trade or commerce and an
12 unfair method of competition for the purpose of applying the consumer
13 protection act, chapter 19.86 RCW.

14 **Sec. 22.** RCW 70.128.070 and 1989 c 427 s 22 are each amended to
15 read as follows:

16 (1) A license shall be valid for one year.

17 (2) At least ~~((ninety))~~ sixty days prior to expiration of the
18 license, the provider shall submit an application for renewal of a
19 license. The department shall send the provider an application for
20 renewal prior to this time. The department shall have the authority to
21 investigate any information included in the application for renewal of
22 a license.

23 (3)(a) Homes applying for a license shall be inspected at the time
24 of licensure.

25 (b) Homes licensed by the department shall be inspected at least
26 every eighteen months, subject to available funds.

27 (c) ~~((Licensed homes where a complaint has been received by the
28 department may be inspected at any time.))~~ The department may make an
29 unannounced inspection of a licensed home at any time to assure that
30 the home and provider are in compliance with this chapter and the rules
31 adopted under this chapter.

32 (4) If the department finds that the home is not in compliance with
33 this chapter, it shall require the home to correct any violations as
34 provided in this chapter. If the department finds that the home is in
35 compliance with this chapter and the rules adopted under this chapter,
36 the department shall renew the license of the home.

1 **Sec. 23.** RCW 70.128.080 and 1989 c 427 s 21 are each amended to
2 read as follows:

3 An adult family home shall have readily available for review by the
4 department, residents, and the public:

5 (1) Its license to operate; and

6 (2) A copy of each inspection report received by the home from the
7 department for the past three years.

8 **Sec. 24.** RCW 70.128.090 and 1989 c 427 s 30 are each amended to
9 read as follows:

10 (1) During inspections of an adult family home, the department
11 shall have access and authority to examine areas and articles in the
12 home used to provide care or support to residents, including residents'
13 records, accounts, and the physical premises, including the buildings,
14 grounds, and equipment. The department also shall have the authority
15 to interview the provider and residents of an adult family home.

16 (2) Whenever an inspection is conducted, the department shall
17 prepare a written report that summarizes all information obtained
18 during the inspection, and if the home is in violation of this chapter,
19 serve a copy of the inspection report upon the provider at the same
20 time as a notice of violation. If the home is not in violation of this
21 chapter, a copy of the inspection report shall be mailed to the
22 provider within ten days of the inspection of the home. All inspection
23 reports shall be made available to the public at the department during
24 business hours.

25 ~~(3) ((The inspection report shall describe any corrective measures~~
26 ~~on the part of the provider necessary to pass a reinspection. If the~~
27 ~~department finds upon reinspection of the home that the corrective~~
28 ~~measures have been satisfactorily implemented, the department shall~~
29 ~~cease any actions taken against the home. Nothing in this section~~
30 ~~shall require the department to license or renew the license of a home~~
31 ~~where serious physical harm or death has occurred to a resident)) The~~
32 ~~provider shall develop corrective measures for any violations found by~~
33 ~~the department's inspection. The department may provide consultation~~
34 ~~and technical assistance to assist the provider in developing effective~~
35 ~~corrective measures. The department shall include a statement of the~~
36 ~~provider's corrective measures in the department's inspection report.~~

1 NEW SECTION. **Sec. 25.** A new section is added to chapter 70.128
2 RCW to read as follows:

3 The legislature recognizes that adult family homes located within
4 the boundaries of a federally recognized Indian reservation may be
5 licensed by the Indian tribe. The department may pay for care for
6 persons residing in such homes, if there has been a tribal or state
7 criminal background check of the provider and any staff, and the client
8 is otherwise eligible for services administered by the department.

9 **Sec. 26.** RCW 70.128.140 and 1989 c 427 s 27 are each amended to
10 read as follows:

11 Each adult family home shall meet applicable local licensing,
12 zoning, building, and housing codes, and state and local fire safety
13 regulations as they pertain to a single-family residence. It is the
14 responsibility of the home to check with local authorities to ensure
15 all local codes are met.

16 **Sec. 27.** RCW 70.128.150 and 1989 c 427 s 28 are each amended to
17 read as follows:

18 Whenever possible adult family homes are encouraged to contact and
19 work with local quality assurance projects such as the volunteer
20 ombudsman with the goal of assuring high quality care is provided in
21 the home.

22 An adult family home may not willfully interfere with a
23 representative of the long-term care ombudsman program in the
24 performance of official duties. The department shall impose a penalty
25 of not more than one thousand dollars for any such willful
26 interference.

27 **Sec. 28.** RCW 70.128.160 and 1989 c 427 s 31 are each amended to
28 read as follows:

29 (1) The department is authorized to take one or more of the actions
30 listed in subsection (2) of this section in any case in which the
31 department finds that an adult family home provider has:

32 (a) Failed or refused to comply with the requirements of this
33 chapter or the rules adopted under this chapter;

34 (b) Operated an adult family home without a license or under a
35 revoked license;

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

5 (d) Willfully prevented or interfered with any inspection or
6 investigation by the department.

7 (2) When authorized by subsection (1) of this section, the
8 department may take one or more of the following actions:

9 (a) Refuse to issue a license;

10 (b) Impose reasonable conditions on a license, such as correction
11 within a specified time, training, and limits on the type of clients
12 the provider may admit or serve;

13 (c) Impose civil penalties of not more than one hundred dollars per
14 day per violation;

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

16 ~~((e))~~ (e) Suspend admissions to the adult family home by imposing
17 stop placement.

18 (3) When the department orders stop placement, the facility shall
19 not admit any person until the stop placement order is terminated. The
20 department may approve readmission of a resident to the facility from
21 a hospital or nursing home during the stop placement. The department
22 shall terminate the stop placement when: (a) The violations
23 necessitating the stop placement have been corrected; and (b) the
24 provider exhibits the capacity to maintain adequate care and service.

25 (4) Chapter 34.05 RCW applies to department actions under this
26 section, except that orders of the department imposing license
27 suspension, stop placement, or conditions for continuation of a license
28 are effective immediately upon notice and shall continue in effect
29 pending any hearing.

30 **Sec. 29.** RCW 70.128.175 and 1989 1st ex.s. c 9 s 815 are each
31 amended to read as follows:

32 (1) Unless the context clearly requires otherwise, these
33 definitions shall apply throughout this section and RCW 35.63.140,
34 35A.63.149, 36.70.755, 35.22.680, and 36.32.560(~~(, and 70.128.180)~~):

35 (a) "Adult family home" means a (~~facility licensed pursuant to~~
36 ~~chapter 70.128 RCW or the~~) regular family abode of a person or persons
37 (~~who are~~) providing personal care, special care, room, and board to

1 more than one but not more than six adults who are not related by blood
2 or marriage to the person or persons providing the services.

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

6 (c) "Department" means the department of social and health
7 services.

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

12 NEW SECTION. Sec. 30. A new section is added to chapter 70.128
13 RCW to read as follows:

14 (1) The department shall maintain a toll-free telephone number for
15 receiving complaints regarding adult family homes.

16 (2) An adult family home shall post in a place and manner clearly
17 visible to residents and visitors the department's toll-free complaint
18 telephone number.

19 (3) No adult family home shall discriminate or retaliate in any
20 manner against a resident on the basis or for the reason that such
21 resident or any other person made a complaint to the department or the
22 long-term care ombudsman or cooperated with the investigation of such
23 a complaint.

24 NEW SECTION. Sec. 31. RCW 70.128.180 and 1989 c 427 s 41 are each
25 repealed.

26 Sec. 32. RCW 43.190.020 and 1991 sp.s. c 8 s 3 are each amended to
27 read as follows:

28 As used in this chapter, "long-term care facility" means any of the
29 following (~~which provide services to persons sixty years of age and~~
30 ~~older and is~~):

31 (1) A facility which:

32 (a) Maintains and operates twenty-four hour skilled nursing
33 services for the care and treatment of chronically ill or convalescent
34 patients, including mental, emotional, or behavioral problems, mental
35 retardation, or alcoholism;

1 (b) Provides supportive, restorative, and preventive health
2 services in conjunction with a socially oriented program to its
3 residents, and which maintains and operates twenty-four hour services
4 including board, room, personal care, and intermittent nursing care.
5 "Long-term health care facility" includes nursing homes and nursing
6 facilities, but does not include acute care hospital or other licensed
7 facilities except for that distinct part of the hospital or facility
8 which provides nursing facility services.

9 (2) Any family home, group care facility, or similar facility
10 determined by the secretary, for twenty-four hour nonmedical care of
11 persons in need of personal services, supervision, or assistance
12 essential for sustaining the activities of daily living or for the
13 protection of the individual.

14 (3) Any swing bed in an acute care facility.

15 **Sec. 33.** RCW 43.190.060 and 1987 c 158 s 3 are each amended to
16 read as follows:

17 A long-term care ombudsman shall:

18 (1) Investigate and resolve complaints made by or on behalf of
19 (~~elder individuals who are~~) residents of long-term care facilities
20 relating to administrative action which may adversely affect the
21 health, safety, welfare, and rights of these individuals;

22 (2) Monitor the development and implementation of federal, state,
23 and local laws, rules, regulations, and policies with respect to long-
24 term care facilities in this state;

25 (3) Provide information as appropriate to public agencies regarding
26 the problems of individuals residing in long-term care facilities; and

27 (4) Provide for training volunteers and promoting the development
28 of citizen organizations to participate in the ombudsman program. A
29 volunteer long-term care ombudsman shall be able to identify and
30 resolve problems regarding the care of residents in long-term care
31 facilities and to assist such residents in the assertion of their civil
32 and human rights. However, volunteers shall not be used for complaint
33 investigations but may engage in fact-finding activities to determine
34 whether a formal complaint should be submitted to the department.

35 NEW SECTION. **Sec. 34.** RCW 74.08.530, 74.08.560, 74.08.570,
36 74.08.545, and 74.08.550 are each recodified in chapter 74.39A RCW.

1 NEW SECTION. **Sec. 35.** RCW 74.08.541 and 1989 c 427 s 4, 1986 c
2 222 s 1, 1983 1st ex.s. c 41 s 39, & 1981 1st ex.s. c 6 s 17 are each
3 repealed.

4 **Sec. 36.** RCW 74.08.545 and 1989 c 427 s 5 are each amended to read
5 as follows:

6 It is the intent of the legislature that chore services be provided
7 to eligible persons within the limits of funds appropriated for that
8 purpose. Therefore, the department shall provide services only to
9 those persons identified as at risk of being placed in a long-term care
10 facility in the absence of such services. The department shall not
11 provide chore services to any individual who is eligible for, and whose
12 needs can be met by another community service administered by the
13 department. Chore services shall be provided to the extent necessary
14 to maintain a safe and healthful living environment. It is the policy
15 of the state to encourage the development of volunteer chore services
16 in local communities as a means of meeting chore care service needs and
17 directing financial resources. In determining eligibility for chore
18 services, the department shall consider the following:

- 19 (1) The kind of services needed;
- 20 (2) The degree of service need, and the extent to which an
21 individual is dependent upon such services to remain in his or her home
22 or return to his or her home;
- 23 (3) The availability of personal or community resources which may
24 be utilized to meet the individual's need; and
- 25 (4) Such other factors as the department considers necessary to
26 insure service is provided only to those persons whose chore service
27 needs cannot be met by relatives, friends, nonprofit organizations,
28 ((or)) other persons, or by other programs or resources.

29 In determining the level of services to be provided under this
30 chapter, (({the})) the client shall be assessed using an instrument
31 designed by the department to determine the level of functional
32 disability, the need for service and the person's risk of long-term
33 care facility placement.

34 NEW SECTION. **Sec. 37.** A new section is added to chapter 74.39A
35 RCW to read as follows:

- 36 (1) The department shall establish a monthly dollar lid for each
37 region on chore services expenditures within the legislative

1 appropriation. Priority for services shall be given to the following
2 situations:

3 (a) People who were receiving chore personal care services as of
4 June 30, 1995;

5 (b) People for whom chore personal care services are necessary to
6 return to the community from a nursing home;

7 (c) People for whom chore personal care services are necessary to
8 prevent unnecessary nursing home placement; and

9 (d) People for whom chore personal care services are necessary as
10 a protective measure based on referrals resulting from an adult
11 protective services investigation.

12 (2) The department shall require a client to participate in the
13 cost of chore services as a necessary precondition to receiving chore
14 services paid for by the state. The client shall retain an amount
15 equal to one hundred percent of the federal poverty level, adjusted for
16 household size, for maintenance needs. The department shall consider
17 the remaining income as the client participation amount for chore
18 services except for those persons whose participation is established
19 under RCW 74.08.570.

20 (3) The department shall establish, by rule, the maximum amount of
21 resources a person may retain and be eligible for chore services.

22 NEW SECTION. **Sec. 38.** A new section is added to chapter 74.39A
23 RCW to read as follows:

24 (1) The legislature intends that any staff reassigned by the
25 department as a result of shifting of the reauthorization
26 responsibilities by contract outlined in this section shall be
27 dedicated for discharge planning and assisting with discharge planning
28 and information on existing discharge planning cases. Discharge
29 planning, as directed in this section, is intended for residents and
30 patients identified for discharge to long-term care pursuant to
31 sections 5, 6, and 9 of this act. The purpose of discharge planning is
32 to protect residents and patients from the financial incentives
33 inherent in keeping residents or patients in a more expensive higher
34 level of care and shall focus on care options that are in the best
35 interest of the patient or resident.

36 (2) The department shall contract with area agencies on aging:

37 (a) To provide case management services to individuals receiving
38 home and community services in their own home; and

1 (b) To reassess and reauthorize home and community services in home
2 or in other settings for individuals consistent with the intent of this
3 section:

4 (i) Who have been initially authorized by the department to receive
5 home and community services; and

6 (ii) Who, at the time of reassessment and reauthorization, are
7 receiving home and community services in their own home.

8 (3) In the event that an area agency on aging is unwilling to enter
9 into or satisfactorily fulfill a contract to provide these services,
10 the department is authorized to:

11 (a) Obtain the services through competitive bid; and

12 (b) Provide the services directly until a qualified contractor can
13 be found.

14 **Sec. 39.** RCW 74.09.520 and 1994 c 21 s 4 are each amended to read
15 as follows:

16 (1) The term "medical assistance" may include the following care
17 and services: (a) Inpatient hospital services; (b) outpatient hospital
18 services; (c) other laboratory and x-ray services; (d) nursing facility
19 services; (e) physicians' services, which shall include prescribed
20 medication and instruction on birth control devices; (f) medical care,
21 or any other type of remedial care as may be established by the
22 secretary; (g) home health care services; (h) private duty nursing
23 services; (i) dental services; (j) physical and occupational therapy
24 and related services; (k) prescribed drugs, dentures, and prosthetic
25 devices; and eyeglasses prescribed by a physician skilled in diseases
26 of the eye or by an optometrist, whichever the individual may select;
27 (l) personal care services, as provided in this section; (m) hospice
28 services; (n) other diagnostic, screening, preventive, and
29 rehabilitative services; and (o) like services when furnished to a
30 child by a school district in a manner consistent with the requirements
31 of this chapter. For the purposes of this section, the department may
32 not cut off any prescription medications, oxygen supplies, respiratory
33 services, or other life-sustaining medical services or supplies.

34 "Medical assistance," notwithstanding any other provision of law,
35 shall not include routine foot care, or dental services delivered by
36 any health care provider, that are not mandated by Title XIX of the
37 social security act unless there is a specific appropriation for these
38 services.

1 (2) The department shall amend the state plan for medical
2 assistance under Title XIX of the federal social security act to
3 include personal care services, as defined in 42 C.F.R. 440.170(f), in
4 the categorically needy program.

5 (3) The department shall adopt, amend, or rescind such
6 administrative rules as are necessary to ensure that Title XIX personal
7 care services are provided to eligible persons in conformance with
8 federal regulations.

9 (a) These administrative rules shall include financial eligibility
10 indexed according to the requirements of the social security act
11 providing for medicaid eligibility.

12 (b) The rules shall require clients be assessed as having a medical
13 condition requiring assistance with personal care tasks. Plans of care
14 must be (~~approved and~~) reviewed by a nurse.

15 (4) The department shall design and implement a means to assess the
16 level of functional disability of persons eligible for personal care
17 services under this section. The personal care services benefit shall
18 be provided to the extent funding is available according to the
19 assessed level of functional disability. Any reductions in services
20 made necessary for funding reasons should be accomplished in a manner
21 that assures that priority for maintaining services is given to persons
22 with the greatest need as determined by the assessment of functional
23 disability.

24 (5) The department shall report to the appropriate fiscal
25 committees of the legislature on the utilization and associated costs
26 of the personal care option under Title XIX of the federal social
27 security act, as defined in 42 C.F.R. 440.170(f), in the categorically
28 needy program. This report shall be submitted by January 1, 1990, and
29 submitted on a yearly basis thereafter.

30 (6) Effective July 1, 1989, the department shall offer hospice
31 services in accordance with available funds.

32 (7) For Title XIX personal care services administered by aging and
33 adult services administration of the department, the department shall
34 contract with area agencies on aging:

35 (a) To provide case management services to individuals receiving
36 Title XIX personal care services in their own home; and

37 (b) To reassess and reauthorize Title XIX personal care services or
38 other home and community services as defined in section 1 of this act

1 in home or in other settings for individuals consistent with the intent
2 of this section:

3 (i) Who have been initially authorized by the department to receive
4 Title XIX personal care services or other home and community services
5 as defined in section 1 of this act; and

6 (ii) Who, at the time of reassessment and reauthorization, are
7 receiving such services in their own home.

8 (8) In the event that an area agency on aging is unwilling to enter
9 into or satisfactorily fulfill a contract to provide these services,
10 the department is authorized to:

11 (a) Obtain the services through competitive bid; and

12 (b) Provide the services directly until a qualified contractor can
13 be found.

14 **Sec. 40.** RCW 74.08.550 and 1989 c 427 s 6 are each amended to read
15 as follows:

16 (1) The department is authorized to develop a program to provide
17 for ~~((those))~~ chore services ~~((enumerated in RCW 74.08.541))~~ under this
18 chapter.

19 (2) The department may provide assistance in the recruiting of
20 providers of the services enumerated in ~~((RCW 74.08.541))~~ section 37 of
21 this act and seek to assure the timely provision of services in
22 emergency situations.

23 (3) The department shall assure that all providers of the chore
24 services ~~((enumerated in RCW 74.08.541))~~ under this chapter are
25 compensated for the delivery of the services on a prompt and regular
26 basis.

27 **Sec. 41.** RCW 74.08.570 and 1989 c 427 s 7 are each amended to read
28 as follows:

29 (1) An otherwise eligible disabled person shall not be deemed
30 ineligible for chore services under this chapter if the person's gross
31 income from employment, adjusted downward by the cost of the chore
32 services to be provided and the disabled person's work expenses, does
33 not exceed the maximum eligibility standard established by the
34 department for such chore services. The department shall establish a
35 ~~((sliding scale fee schedule for))~~ methodology for client participation
36 that allows such disabled persons ~~((, taking into consideration the~~
37 ~~person's ability to pay and work expenses))~~ to be employed.

1 (2) If a disabled person arranges for chore services through an
2 individual provider arrangement, the client's contribution shall be
3 counted as first dollar toward the total amount owed to the provider
4 for chore services rendered.

5 (3) As used in this section:

6 (a) "Gross income" means total earned wages, commissions, salary,
7 and any bonus;

8 (b) "Work expenses" includes:

9 (i) Payroll deductions required by law or as a condition of
10 employment, in amounts actually withheld;

11 (ii) The necessary cost of transportation to and from the place of
12 employment by the most economical means, except rental cars; and

13 (iii) Expenses of employment necessary for continued employment,
14 such as tools, materials, union dues, transportation to service
15 customers if not furnished by the employer, and uniforms and clothing
16 needed on the job and not suitable for wear away from the job;

17 (c) "Employment" means any work activity for which a recipient
18 receives monetary compensation;

19 (d) "Disabled" means:

20 (i) Permanently and totally disabled as defined by the department
21 and as such definition is approved by the federal social security
22 administration for federal matching funds;

23 (ii) Eighteen years of age or older;

24 (iii) A resident of the state of Washington; and

25 (iv) Willing to submit to such examinations as are deemed necessary
26 by the department to establish the extent and nature of the disability.

27 **Sec. 42. RCW 18.51.091 and 1987 c 476 s 24 are each amended to*
28 *read as follows:*

29 *The department shall make or cause to be made at least one*
30 *inspection of each nursing home (~~(prior to license renewal and shall~~*
31 *~~inspect community-based services as part of the licensing renewal~~*
32 *~~survey)) at least every eighteen months, except that the department may~~*
33 *not inspect a facility that was citation-free at the previous*
34 *inspection sooner than twelve months after the date of the previous*
35 *inspection. The inspection shall be made without providing advance*
36 *notice of it. Every inspection may include an inspection of every part*
37 *of the premises and an examination of all records, methods of*
38 *administration, the general and special dietary and the stores and*

1 *methods of supply. Those nursing homes that provide community-based*
2 *care shall establish and maintain separate and distinct accounting and*
3 *other essential records for the purpose of appropriately allocating*
4 *costs of the providing of such care: PROVIDED, That such costs shall*
5 *not be considered allowable costs for reimbursement purposes under*
6 *chapter 74.46 RCW. Following such inspection or inspections, written*
7 *notice of any violation of this law or the rules and regulations*
8 *promulgated hereunder, shall be given the applicant or licensee and the*
9 *department. The notice shall describe the reasons for the facility's*
10 *noncompliance. The department may prescribe by regulations that any*
11 *licensee or applicant desiring to make specified types of alterations*
12 *or additions to its facilities or to construct new facilities shall,*
13 *before commencing such alteration, addition or new construction, submit*
14 *its plans and specifications therefor to the department for preliminary*
15 *inspection and approval or recommendations with respect to compliance*
16 *with the regulations and standards herein authorized.*

17 **Sec. 42 was vetoed. See message at end of chapter.*

18 **Sec. 43.** RCW 18.51.140 and 1995 c . . . s 6 (Engrossed Substitute
19 Senate Bill No. 5093) are each amended to read as follows:

20 Standards for fire protection and the enforcement thereof, with
21 respect to all nursing homes to be licensed hereunder, shall be the
22 responsibility of the chief of the Washington state patrol, through the
23 director of fire protection, who shall adopt such recognized standards
24 as may be applicable to nursing homes for the protection of life
25 against the cause and spread of fire and fire hazards. The department
26 upon receipt of an application for a license, shall submit to the chief
27 of the Washington state patrol, through the director of fire
28 protection, in writing, a request for an inspection, giving the
29 applicant's name and the location of the premises to be licensed. Upon
30 receipt of such a request, the chief of the Washington state patrol,
31 through the director of fire protection, or his or her deputy, shall
32 make an inspection of the nursing home to be licensed, and if it is
33 found that the premises do not comply with the required safety
34 standards and fire regulations as promulgated by the chief of the
35 Washington state patrol, through the director of fire protection, he or
36 she shall promptly make a written report to the nursing home and the
37 department as to the manner and time allowed in which the premises must
38 qualify for a license and set forth the conditions to be remedied with

1 respect to fire regulations. The department, applicant or licensee
2 shall notify the chief of the Washington state patrol, through the
3 director of fire protection, upon completion of any requirements made
4 by him or her, and the chief of the Washington state patrol, through
5 the director of fire protection, or his or her deputy, shall make a
6 reinspection of such premises. Whenever the nursing home to be
7 licensed meets with the approval of the chief of the Washington state
8 patrol, through the director of fire protection, he or she shall submit
9 to the department, a written report approving same with respect to fire
10 protection before a full license can be issued. The chief of the
11 Washington state patrol, through the director of fire protection, shall
12 make or cause to be made inspections of such nursing homes at least
13 ((annually)) every eighteen months.

14 In cities which have in force a comprehensive building code, the
15 provisions of which are determined by the chief of the Washington state
16 patrol, through the director of fire protection, to be equal to the
17 minimum standards of the code for nursing homes adopted by the chief of
18 the Washington state patrol, through the director of fire protection,
19 the chief of the fire department, provided the latter is a paid chief
20 of a paid fire department, shall make the inspection with the chief of
21 the Washington state patrol, through the director of fire protection,
22 or his or her deputy and they shall jointly approve the premises before
23 a full license can be issued.

24 **Sec. 44.** RCW 18.51.300 and 1981 1st ex.s. c 2 s 24 are each
25 amended to read as follows:

26 Unless specified otherwise by the department, a nursing home shall
27 retain and preserve all records which relate directly to the care and
28 treatment of a patient for a period of no less than ((ten)) eight years
29 following the most recent discharge of the patient; except the records
30 of minors, which shall be retained and preserved for a period of no
31 less than three years following attainment of the age of eighteen
32 years, or ten years following such discharge, whichever is longer.

33 If a nursing home ceases operations, it shall make immediate
34 arrangements, as approved by the department, for preservation of its
35 records.

36 The department shall by regulation define the type of records and
37 the information required to be included in the records to be retained

1 and preserved under this section; which records may be retained in
2 photographic form pursuant to chapter 5.46 RCW.

3 NEW SECTION. **Sec. 45.** A new section is added to chapter 18.88A
4 RCW to read as follows:

5 The legislature recognizes that nurses have been successfully
6 delegating nursing care tasks to family members and auxiliary staff for
7 many years. The opportunity for a nurse to delegate to nursing
8 assistants qualifying under section 46 of this act may enhance the
9 viability and quality of care in community health settings for long-
10 term care services and to allow citizens to live as independently as
11 possible with maximum safeguards.

12 NEW SECTION. **Sec. 46.** A new section is added to chapter 18.88A
13 RCW to read as follows:

14 (1) A nurse may delegate specific care tasks to nursing assistants
15 meeting the requirements of this section and who provide care to
16 individuals in community residential programs for the developmentally
17 disabled certified by the department of social and health services
18 under chapter 71A.12 RCW, to individuals residing in adult family homes
19 licensed under chapter 70.128 RCW, and to individuals residing in
20 boarding homes licensed under chapter 18.20 RCW contracting with the
21 department of social and health services to provide assisted living
22 services pursuant to RCW 74.39A.010.

23 (2) For the purposes of this section, "nursing assistant" means a
24 nursing assistant-registered or a nursing assistant-certified. Nothing
25 in this section may be construed to affect the authority of nurses to
26 delegate nursing tasks to other persons, including licensed practical
27 nurses, as authorized by law.

28 (3) Before commencing any specific nursing care tasks authorized
29 under this chapter, the nursing assistant must (a) provide to the
30 delegating nurse a certificate of completion issued by the department
31 of social and health services indicating the completion of basic core
32 training as provided in this section, (b) be regulated by the
33 department of health pursuant to this chapter, subject to the uniform
34 disciplinary act under chapter 18.130 RCW, and (c) meet any additional
35 training requirements identified by the nursing care quality assurance
36 commission and authorized by this section.

37 (4) A nurse may delegate the following care tasks:

- 1 (a) Oral and topical medications and ointments;
- 2 (b) Nose, ear, eye drops, and ointments;
- 3 (c) Dressing changes and catheterization using clean techniques as
- 4 defined by the nursing care quality assurance commission;
- 5 (d) Suppositories, enemas, ostomy care;
- 6 (e) Blood glucose monitoring;
- 7 (f) Gastrostomy feedings in established and healed condition.

8 (5) On or before September 1, 1995, the nursing care quality
9 assurance commission, in conjunction with the professional nursing
10 organizations, shall develop rules for nurse delegation protocols and
11 by December 5, 1995, identify training beyond the core training that is
12 deemed necessary for the delegation of complex tasks and patient care.

13 (6) Nursing task delegation protocols are not intended to regulate
14 the settings in which delegation may occur but are intended to ensure
15 that nursing care services have a consistent standard of practice upon
16 which the public and profession may rely and to safeguard the authority
17 of the nurse to make independent professional decisions regarding the
18 delegation of a task. Protocols shall include at least the following:

19 (a) Ensure that determination of the appropriateness of delegation
20 of a nursing task is at the discretion of the nurse;

21 (b) Allow delegation of a nursing care task only for patients who
22 have a stable and predictable condition. "Stable and predictable
23 condition" means a situation, as defined by rule by the nursing care
24 quality assurance commission, in which the patient's clinical and
25 behavioral status is known and does not require frequent presence and
26 evaluation of a registered nurse;

27 (c) Assure that the delegations of nursing tasks pursuant to this
28 chapter have the written informed consent of the patient consistent
29 with the provisions for informed consent under chapter 7.70 RCW, as
30 well as with the consent of the delegating nurse and nursing assistant.
31 The delegating nurse shall inform patients of the level of training of
32 all care providers in the setting;

33 (d) Verify that the nursing assistant has completed the core
34 training;

35 (e) Require assessment by the nurse of the ability and willingness
36 of the nursing assistant to perform the delegated nursing task in the
37 absence of direct nurse supervision and to refrain from delegation if
38 the nursing assistant is not able or willing to perform the task;

1 (f) Require the nurse to analyze the complexity of the nursing task
2 that is considered for delegation and determine the appropriate level
3 of training and any need of additional training for the nursing
4 assistant;

5 (g) Require the teaching of the nursing care task to the nursing
6 assistant including return demonstration under observation while
7 performing the task;

8 (h) Require a plan of nursing supervision and reevaluation of the
9 delegated nursing task. "Nursing supervision" means that the
10 registered nurse monitors by direct observation the skill and ability
11 of the nursing assistant to perform delegated nursing tasks. Frequency
12 of supervision is at the discretion of the registered nurse but shall
13 occur at least every sixty days;

14 (i) Require instruction to the nursing assistant that the delegated
15 nursing task is specific to a patient and is not transferable;

16 (j) Require documentation and written instruction related to the
17 delegated nursing task be provided to the nursing assistant and a copy
18 maintained in the patient record;

19 (k) Ensure that the nursing assistant is prepared to effectively
20 deal with the predictable outcomes of performing the nursing task;

21 (l) Include in the delegation of tasks an awareness of the nature
22 of the condition requiring treatment, risks of the treatment, side
23 effects, and interaction of prescribed medications;

24 (m) Require documentation in the patient's record of the rationale
25 for delegating or not delegating nursing tasks.

26 (7) A basic core training curriculum on providing care for
27 individuals in community residential programs for the developmentally
28 disabled certified by the department of social and health services
29 under chapter 71A.12 RCW shall be in addition to the training
30 requirements specified in subsection (5) of this section. Basic core
31 training shall be developed and adopted by rule by the secretary of the
32 department of social and health services. The department of social and
33 health services shall appoint an advisory panel to assist in the
34 development of core training comprised of representatives of the
35 following:

36 (a) The division of developmental disabilities;

37 (b) The nursing care quality assurance commission;

38 (c) Professional nursing organizations;

1 (d) A state-wide organization of community residential service
2 providers whose members are programs certified by the department under
3 chapter 71A.12 RCW.

4 (8) A basic core training curriculum on providing care to residents
5 in residential settings licensed under chapter 70.128 RCW, or in
6 assisted living pursuant to RCW 74.39A.010 shall be mandatory for
7 nursing assistants prior to assessment by a nurse regarding the ability
8 and willingness to perform a delegated nursing task. Core training
9 shall be developed and adopted by rule by the secretary of the
10 department of social and health services, in conjunction with an
11 advisory panel. The advisory panel shall be comprised of
12 representatives from, at a minimum, the following:

13 (a) The nursing care quality assurance commission;

14 (b) Professional nurse organizations;

15 (c) A state-wide association of community residential service
16 providers whose members are programs certified by the department under
17 chapter 71A.12 RCW;

18 (d) Aging consumer groups;

19 (e) Associations representing homes licensed under chapters 70.128
20 and 18.20 RCW; and

21 (f) Associations representing home health, hospice, and home care
22 agencies licensed under chapter 70.127 RCW.

23 NEW SECTION. **Sec. 47.** A new section is added to chapter 18.88A
24 RCW to read as follows:

25 On or before December 1, 1995, the department of health and the
26 department of social and health services, in consultation with the
27 nursing care quality assurance commission, shall develop and clarify
28 program and reimbursement policies, as well as clarify barriers to
29 current delegation, relating to the ability and authority of a nurse to
30 delegate care tasks in the programs and services operating under their
31 authority.

32 The nursing care quality assurance commission shall develop model
33 forms that will assist in standardizing the practice of delegation.

34 NEW SECTION. **Sec. 48.** A new section is added to chapter 18.88A
35 RCW to read as follows:

36 (1) The nurse and nursing assistant shall be accountable for their
37 own individual actions in the delegation process. Nurses acting within

1 the protocols of their delegation authority shall be immune from
2 liability for any action performed in the course of their delegation
3 duties. Nursing assistants following written delegation instructions
4 from registered nurses performed in the course of their accurately
5 written, delegated duties shall be immune from liability.

6 (2) No person may coerce a nurse into compromising patient safety
7 by requiring the nurse to delegate if the nurse determines it is
8 inappropriate to do so. Nurses shall not be subject to any employer
9 reprisal or disciplinary action by the Washington nursing care quality
10 assurance commission for refusing to delegate tasks or refusing to
11 provide the required training for delegation if the nurse determines
12 delegation may compromise patient safety. Nursing assistants shall not
13 be subject to any employer reprisal or disciplinary action by the
14 nursing care quality assurance commission for refusing to accept
15 delegation of a nursing task. No community residential program, adult
16 family home, or boarding home contracting to provide assisted-living
17 services may discriminate or retaliate in any manner against a person
18 because the person made a complaint or cooperated in the investigation
19 of a complaint.

20 (3) The department of social and health services shall impose a
21 civil fine of not less than two hundred fifty dollars nor more than one
22 thousand dollars on a community residential program, adult family home,
23 or boarding home under this act that knowingly permits an employee to
24 perform a nursing task except as delegated by a nurse pursuant to this
25 act.

26 NEW SECTION. **Sec. 49.** A new section is added to chapter 18.88A
27 RCW to read as follows:

28 The aging and adult services administration of the department of
29 social and health services shall establish a toll-free telephone number
30 for receiving complaints regarding delegation of specific nursing tasks
31 to nursing assistants, in conjunction with any other such system
32 maintained for long-term care services. Complaints specifically
33 related to nurse-delegation shall be referred to the nursing care
34 quality assurance commission for appropriate disposition in accordance
35 with established procedures.

36 **Sec. 50.** RCW 18.79.040 and 1994 sp.s. c 9 s 404 are each amended
37 to read as follows:

1 (1) "Registered nursing practice" means the performance of acts
2 requiring substantial specialized knowledge, judgment, and skill based
3 on the principles of the biological, physiological, behavioral, and
4 sociological sciences in either:

5 (a) The observation, assessment, diagnosis, care or counsel, and
6 health teaching of the ill, injured, or infirm, or in the maintenance
7 of health or prevention of illness of others;

8 (b) The performance of such additional acts requiring education and
9 training and that are recognized by the medical and nursing professions
10 as proper and recognized by the commission to be performed by
11 registered nurses licensed under this chapter and that are authorized
12 by the commission through its rules;

13 (c) The administration, supervision, delegation, and evaluation of
14 nursing practice. However, nothing in this subsection affects the
15 authority of a hospital, hospital district, medical clinic, or office,
16 concerning its administration and supervision;

17 (d) The teaching of nursing;

18 (e) The executing of medical regimen as prescribed by a licensed
19 physician and surgeon, dentist, osteopathic physician and surgeon,
20 podiatric physician and surgeon, physician assistant, osteopathic
21 physician assistant, or advanced registered nurse practitioner.

22 (2) Nothing in this section prohibits a person from practicing a
23 profession for which a license has been issued under the laws of this
24 state or specifically authorized by any other law of the state of
25 Washington.

26 (3) This section does not prohibit (a) the nursing care of the
27 sick, without compensation, by an unlicensed person who does not hold
28 himself or herself out to be a registered nurse, ((or)) (b) the
29 practice of licensed practical nursing by a licensed practical nurse,
30 or (c) the practice of a nursing assistant, providing delegated nursing
31 tasks under chapter 18.88A RCW.

32 **Sec. 51.** RCW 18.79.260 and 1995 c 295 s 1 are each amended to read
33 as follows:

34 A registered nurse under his or her license may perform for
35 compensation nursing care, as that term is usually understood, of the
36 ill, injured, or infirm, and in the course thereof, she or he may do
37 the following things that shall not be done by a person not so

1 licensed, except as provided in RCW 18.79.270 and section 46 of this
2 act:

3 (1) At or under the general direction of a licensed physician and
4 surgeon, dentist, osteopathic physician and surgeon, naturopathic
5 physician, podiatric physician and surgeon, physician assistant,
6 osteopathic physician assistant, or advanced registered nurse
7 practitioner acting within the scope of his or her license, administer
8 medications, treatments, tests, and inoculations, whether or not the
9 severing or penetrating of tissues is involved and whether or not a
10 degree of independent judgment and skill is required. Such direction
11 must be for acts which are within the scope of registered nursing
12 practice;

13 (2) Delegate to other persons (~~(engaged in nursing,~~) the functions
14 outlined in subsection (1) of this section in accordance with chapter
15 18.88A RCW;

16 (3) Instruct nurses in technical subjects pertaining to nursing;

17 (4) Hold herself or himself out to the public or designate herself
18 or himself as a registered nurse.

19 **Sec. 52.** RCW 18.88A.030 and 1994 sp.s. c 9 s 709 are each amended
20 to read as follows:

21 (1) A nursing assistant may assist in the care of individuals as
22 delegated by and under the direction and supervision of a licensed
23 (registered) nurse or licensed practical nurse.

24 (2) A health care facility shall not assign a nursing assistant-
25 registered to provide care until the nursing assistant-registered has
26 demonstrated skills necessary to perform competently all assigned
27 duties and responsibilities.

28 (3) Nothing in this chapter shall be construed to confer on a
29 nursing assistant the authority to administer medication unless
30 delegated as a specific nursing task pursuant to this chapter or to
31 practice as a licensed (registered) nurse or licensed practical nurse
32 as defined in chapter 18.79 RCW.

33 (4) Certification is voluntary for nursing assistants working in
34 health care facilities other than nursing homes unless otherwise
35 required by state or federal law or regulation.

36 (5) The commission may adopt rules to implement the provisions of
37 this chapter.

1 NEW SECTION. **Sec. 53.** The secretary of health in consultation
2 with the Washington nursing care quality assurance commission and the
3 department of social and health services shall monitor the
4 implementation of sections 45 through 54 of this act and shall make an
5 interim report by December 31, 1996, and a final report by December 31,
6 1997, to the legislature with any recommendations for improvements. As
7 part of the monitoring process, the secretary of health and the
8 secretary of social and health services, in consultation with the
9 University of Washington school of nursing, shall conduct a study to be
10 completed by September 30, 1997, which shall be a part of the final
11 report to be submitted to the legislature by December 31, 1997. The
12 study shall include consideration of the protection of health and
13 safety of persons with developmental disabilities and residents of
14 adult family homes and boarding homes providing assisted living
15 services, including the appropriateness of the tasks allowed for
16 delegation, level and type of training and regulation of nursing
17 assistants. The report shall include direct observation,
18 documentation, and interviews, and shall specifically include data on
19 the following:

- 20 (1) Patient, nurse, and nursing assistant satisfaction;
- 21 (2) Medication errors, including those resulting in
22 hospitalization;
- 23 (3) Compliance with required training;
- 24 (4) Compliance with nurse delegation protocols;
- 25 (5) Incidence of harm to patients, including abuse and neglect;
- 26 (6) Impact on access to care;
- 27 (7) Impact on patient quality of life; and
- 28 (8) Incidence of coercion in the nurse-delegation process.

29 NEW SECTION. **Sec. 54.** A special legislative task force is
30 established to monitor implementation of sections 45 through 53 of this
31 act. The task force shall consist of four members from the house of
32 representatives, no more than two of whom shall be members of the same
33 caucus, who shall be appointed by the speaker of the house of
34 representatives, and four members from the senate, no more than two of
35 whom shall be members of the same caucus, who shall be appointed by the
36 president of the senate. The task force shall:

- 37 (1) Review the proposed nurse delegation protocols developed by the
38 nursing care quality assurance commission;

1 (2) Review the proposed core and specialized training curricula
2 developed by the department of social and health services and by the
3 nursing care quality assurance commission;

4 (3) Review the program and reimbursement policies, and the
5 identified barriers to nurse delegation, developed by the department of
6 health and department of social and health services;

7 (4) Submit an interim report of its findings and recommendations on
8 the above actions to the legislature by January 1, 1996;

9 (5) During 1996, conduct hearings to assess the effectiveness with
10 which the delegation protocols, the core training, and nurse oversight
11 are being implemented, and their impact on patient care and quality of
12 life;

13 (6) Review and approve the proposed study designs;

14 (7) By February 1, 1997, recommend to the legislature a mechanism
15 and time frame for extending nurse delegation provisions similar to
16 those described in this act to persons residing in their own homes;

17 (8) During 1997, receive interim reports on the findings of the
18 studies conducted in accordance with this act, and conduct additional
19 fact-finding hearings on the implementation and impact of the nurse
20 delegation provisions of sections 45 through 53 of this act.

21 The office of program research and senate committee services shall
22 provide staff support to the task force. The department of health, the
23 department of social and health services, and the nursing care quality
24 assurance commission shall provide technical support as needed. The
25 task force shall cease to exist on January 1, 1998, unless extended by
26 act of the legislature.

27 NEW SECTION. **Sec. 55.** A new section is added to chapter 74.39A
28 RCW to read as follows:

29 (1) A person who receives an asset from an applicant for or
30 recipient of long-term care services for less than fair market value
31 shall be subject to a civil fine payable to the department if:

32 (a) The applicant for or recipient of long-term care services
33 transferred the asset for the purpose of qualifying for state or
34 federal coverage for long-term care services and the person who
35 received the asset was aware, or should have been aware, of this
36 purpose;

37 (b) Such transfer establishes a period of ineligibility for such
38 service under state or federal laws or regulations; and

1 (c) The department provides coverage for such services during the
2 period of ineligibility because the failure to provide such coverage
3 would result in an undue hardship for the applicant or recipient.

4 (2) The civil fine imposed under this section shall be imposed in
5 a judicial proceeding initiated by the department and shall equal (a)
6 up to one hundred fifty percent of the amount the department expends
7 for the care of the applicant or recipient during the period of
8 ineligibility attributable to the amount transferred to the person
9 subject to the civil fine plus (b) the department's court costs and
10 legal fees.

11 (3) Transfers subject to a civil fine under this section shall be
12 considered null and void and a fraudulent conveyance as to the
13 department. The department shall have the right to petition a court to
14 set aside such transfers and require all assets transferred returned to
15 the applicant or recipient.

16 NEW SECTION. **Sec. 56.** A new section is added to chapter 74.39A
17 RCW to read as follows:

18 (1) All payments made in state-funded long-term care shall be
19 recoverable as if they were medical assistance payments subject to
20 recovery under 42 U.S.C. Sec. 1396p and chapter 43.20B RCW, but without
21 regard to the recipient's age.

22 (2) In determining eligibility for state-funded long-term care
23 services programs, the department shall impose the same rules with
24 respect to the transfer of assets for less than fair market value as
25 are imposed under 42 U.S.C. 1396p with respect to nursing home and home
26 and community services.

27 NEW SECTION. **Sec. 57.** A new section is added to chapter 74.39A
28 RCW to read as follows:

29 Notwithstanding any other provision of law:

30 (1) In order to facilitate and ensure compliance with the federal
31 social security act, Title XIX, as now existing or hereafter amended,
32 later enactment to be adopted by reference by the director by rule, and
33 other state laws mandating recovery of assets from estates of persons
34 receiving long-term care services, the secretary of the department,
35 with the approval of the office of the attorney general, may pay the
36 reasonable and proper fees of attorneys admitted to practice before
37 courts of this state, and associated professionals such as guardians,

1 who are engaged in probate practice for the purpose of maintaining
2 actions under Title 11 RCW, to the end that assets are not wasted, but
3 are rather collected and preserved, and used for the care of the client
4 or the reimbursement of the department pursuant to this chapter or
5 chapter 43.20B RCW.

6 (2) The department may hire such other agencies and professionals
7 on a contingency basis or otherwise as are necessary and cost-effective
8 to collect bad debts owed to the department for long-term care
9 services.

10 **Sec. 58.** RCW 11.40.010 and 1994 c 221 s 25 are each amended to
11 read as follows:

12 Every personal representative shall, after appointment and
13 qualification, give a notice to the creditors of the deceased, stating
14 such appointment and qualification as personal representative and
15 requiring all persons having claims against the deceased to serve the
16 same on the personal representative or the estate's attorney of record,
17 and file an executed copy thereof with the clerk of the court, within
18 four months after the date of the first publication of such notice
19 described in this section or within four months after the date of the
20 filing of the copy of such notice with the clerk of the court,
21 whichever is the later, or within the time otherwise provided in RCW
22 11.40.013. The four-month time period after the later of the date of
23 the first publication of the notice to creditors or the date of the
24 filing of such notice with the clerk of the court is referred to in
25 this chapter as the "four-month time limitation." Such notice shall be
26 given as follows:

27 (1) The personal representative shall give actual notice, as
28 provided in RCW 11.40.013, to such creditors who become known to the
29 personal representative within such four-month time limitation;

30 (2) The personal representative shall cause such notice to be
31 published once in each week for three successive weeks in the county in
32 which the estate is being administered; (~~and~~)

33 (3) The personal representative shall file a copy of such notice
34 with the clerk of the court; and

35 (4) The personal representative shall mail a copy of the notice,
36 including the decedent's social security number, to the state of
37 Washington, department of social and health services, office of
38 financial recovery.

1 Except as otherwise provided in RCW 11.40.011 or 11.40.013, any
2 claim not filed within the four-month time limitation shall be forever
3 barred, if not already barred by any otherwise applicable statute of
4 limitations. This bar is effective as to claims against both the
5 decedent's probate assets and nonprobate assets as described in RCW
6 11.18.200. Proof by affidavit of the giving and publication of such
7 notice shall be filed with the court by the personal representative.

8 Acts of a notice agent in complying with chapter 221, Laws of 1994
9 may be adopted and ratified by the personal representative as if done
10 by the personal representative in complying with this chapter, except
11 that if at the time of the appointment and qualification of the
12 personal representative a notice agent had commenced nonprobate notice
13 to creditors under chapter 11.42 RCW, the personal representative shall
14 give published notice as provided in RCW 11.42.180.

15 **Sec. 59.** RCW 11.42.020 and 1994 c 221 s 32 are each amended to
16 read as follows:

17 (1) The notice agent may give nonprobate notice to the creditors of
18 the decedent if:

19 (a) As of the date of the filing of a copy of the notice with the
20 clerk of the superior court for the notice county, the notice agent has
21 no knowledge of the appointment and qualification of a personal
22 representative in the decedent's estate in the state of Washington or
23 of another person becoming a notice agent; and

24 (b) According to the records of the clerk of the superior court for
25 the notice county as of 8:00 a.m. on the date of the filing, no
26 personal representative of the decedent's estate had been appointed and
27 qualified and no cause number regarding the decedent had been issued to
28 any other notice agent by the clerk under RCW 11.42.010.

29 (2) The notice must state that all persons having claims against
30 the decedent shall: (a) Serve the same on the notice agent if the
31 notice agent is a resident of the state of Washington upon whom service
32 of all papers may be made, or on the nonprobate resident agent for the
33 notice agent, if any, or on the attorneys of record of the notice agent
34 at their respective address in the state of Washington; and (b) file an
35 executed copy of the notice with the clerk of the superior court for
36 the notice county, within: (i)(A) Four months after the date of the
37 first publication of the notice described in this section; or (B) four
38 months after the date of the filing of the copy of the notice with the

1 clerk of the superior court for the notice county, whichever is later;
2 or (ii) the time otherwise provided in RCW 11.42.050. The four-month
3 time period after the later of the date of the first publication of the
4 notice to creditors or the date of the filing of the notice with the
5 clerk of the court is referred to in this chapter as the "four-month
6 time limitation."

7 (3) The notice agent shall declare in the notice in affidavit form
8 or under the penalty of perjury under the laws of the state of
9 Washington as provided in RCW 9A.72.085 that: (a) The notice agent is
10 entitled to give the nonprobate notice under subsection (1) of this
11 section; and (b) the notice is being given by the notice agent as
12 permitted by this section.

13 (4) The notice agent shall sign the notice and file it with the
14 clerk of the superior court for the notice county. The notice must be
15 given as follows:

16 (a) The notice agent shall give actual notice as to creditors of
17 the decedent who become known to the notice agent within the four-month
18 time limitation as required in RCW 11.42.050;

19 (b) The notice agent shall cause the notice to be published once in
20 each week for three successive weeks in the notice county; ~~((and))~~

21 (c) The notice agent shall file a copy of the notice with the clerk
22 of the superior court for the notice county; and

23 (d) The notice agent shall mail a copy of the notice, including the
24 decedent's social security number, to the state of Washington,
25 department of social and health services, office of financial recovery.

26 (5) A claim not filed within the four-month time limitation is
27 forever barred, if not already barred by an otherwise applicable
28 statute of limitations, except as provided in RCW 11.42.030 or
29 11.42.050. The bar is effective to bar claims against both the probate
30 estate of the decedent and nonprobate assets that were subject to
31 satisfaction of the decedent's general liabilities immediately before
32 the decedent's death. If a notice to the creditors of a decedent is
33 published by more than one notice agent and the notice agents are not
34 acting jointly, the four-month time limitation means the four-month
35 time limitation that applies to the notice agent who first publishes
36 the notice. Proof by affidavit or perjury declaration made under RCW
37 9A.72.085 of the giving and publication of the notice must be filed
38 with the clerk of the superior court for the notice county by the
39 notice agent.

1 **Sec. 60.** RCW 11.62.010 and 1993 c 291 s 1 are each amended to read
2 as follows:

3 (1) At any time after forty days from the date of a decedent's
4 death, any person who is indebted to or who has possession of any
5 personal property belonging to the decedent or to the decedent and his
6 or her surviving spouse as a community, which debt or personal property
7 is an asset which is subject to probate, shall pay such indebtedness or
8 deliver such personal property, or so much of either as is claimed, to
9 a person claiming to be a successor of the decedent upon receipt of
10 proof of death and of an affidavit made by said person which meets the
11 requirements of subsection (2) of this section.

12 (2) An affidavit which is to be made pursuant to this section shall
13 state:

14 (a) The claiming successor's name and address, and that the
15 claiming successor is a "successor" as defined in RCW 11.62.005;

16 (b) That the decedent was a resident of the state of Washington on
17 the date of his or her death;

18 (c) That the value of the decedent's entire estate subject to
19 probate, not including the surviving spouse's community property
20 interest in any assets which are subject to probate in the decedent's
21 estate, wherever located, less liens and encumbrances, does not exceed
22 sixty thousand dollars;

23 (d) That forty days have elapsed since the death of the decedent;

24 (e) That no application or petition for the appointment of a
25 personal representative is pending or has been granted in any
26 jurisdiction;

27 (f) That all debts of the decedent including funeral and burial
28 expenses have been paid or provided for;

29 (g) A description of the personal property and the portion thereof
30 claimed, together with a statement that such personal property is
31 subject to probate;

32 (h) That the claiming successor has given written notice, either by
33 personal service or by mail, identifying his or her claim, and
34 describing the property claimed, to all other successors of the
35 decedent, and that at least ten days have elapsed since the service or
36 mailing of such notice; and

37 (i) That the claiming successor is either personally entitled to
38 full payment or delivery of the property claimed or is entitled to full

1 payment or delivery thereof on the behalf and with the written
2 authority of all other successors who have an interest therein.

3 (3) A transfer agent of any security shall change the registered
4 ownership of the security claimed from the decedent to the person
5 claiming to be the successor with respect to such security upon the
6 presentation of proof of death and of an affidavit made by such person
7 which meets the requirements of subsection (2) of this section. Any
8 governmental agency required to issue certificates of ownership or of
9 license registration to personal property shall issue a new certificate
10 of ownership or of license registration to a person claiming to be a
11 successor of the decedent upon receipt of proof of death and of an
12 affidavit made by such person which meets the requirements of
13 subsection (2) of this section.

14 (4) No release from any Washington state or local taxing authority
15 may be required before any assets or debts are paid or delivered to a
16 successor of a decedent as required under this section.

17 (5) A copy of the affidavit, including the decedent's social
18 security number, shall be mailed to the state of Washington, department
19 of social and health services, office of financial recovery.

20 **Sec. 61.** RCW 11.28.120 and 1994 c 221 s 23 are each amended to
21 read as follows:

22 Administration of an estate if the decedent died intestate or if
23 the personal representative or representatives named in the will
24 declined or were unable to serve shall be granted to some one or more
25 of the persons hereinafter mentioned, and they shall be respectively
26 entitled in the following order:

27 (1) The surviving spouse, or such person as he or she may request
28 to have appointed.

29 (2) The next of kin in the following order: (a) Child or children;
30 (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e)
31 nephews or nieces.

32 (3) The trustee named by the decedent in an inter vivos trust
33 instrument, testamentary trustee named in the will, guardian of the
34 person or estate of the decedent, or attorney in fact appointed by the
35 decedent, if any such a fiduciary controlled or potentially controlled
36 substantially all of the decedent's probate and nonprobate assets.

37 (4) One or more of the beneficiaries or transferees of the
38 decedent's probate or nonprobate assets.

1 (5)(a) The director of revenue, or the director's designee, for
2 those estates having property subject to the provisions of chapter
3 11.08 RCW; however, the director may waive this right.

4 (b) The secretary of the department of social and health services
5 for those estates owing debts for long-term care services as defined in
6 section 1 of this act; however the secretary may waive this right.

7 (6) One or more of the principal creditors.

8 (7) If the persons so entitled shall fail for more than forty days
9 after the death of the decedent to present a petition for letters of
10 administration, or if it appears to the satisfaction of the court that
11 there is no next of kin, as above specified eligible to appointment, or
12 they waive their right, and there are no principal creditor or
13 creditors, or such creditor or creditors waive their right, then the
14 court may appoint any suitable person to administer such estate.

15 **Sec. 62.** RCW 18.39.250 and 1989 c 390 s 3 are each amended to read
16 as follows:

17 (1) Any funeral establishment selling funeral merchandise or
18 services by prearrangement funeral service contract and accepting
19 moneys therefore shall establish and maintain one or more
20 prearrangement funeral service trusts under Washington state law with
21 two or more designated trustees, for the benefit of the beneficiary of
22 the prearrangement funeral service contract or may join with one or
23 more other Washington state licensed funeral establishments in a
24 "master trust" provided that each member of the "master trust" shall
25 comply individually with the requirements of this chapter.

26 (2) Up to ten percent of the cash purchase price of each
27 prearrangement funeral service contract, excluding sales tax, may be
28 retained by the funeral establishment unless otherwise provided in this
29 chapter. If the prearrangement funeral service contract is canceled
30 within thirty calendar days of its signing, then the purchaser shall
31 receive a full refund of all moneys paid under the contract.

32 (3) At least ninety percent of the cash purchase price of each
33 prearrangement funeral service contract, paid in advance, excluding
34 sales tax, shall be placed in the trust established or utilized by the
35 funeral establishment. Deposits to the prearrangement funeral service
36 trust shall be made not later than the twentieth day of the month
37 following receipt of each payment made on the last ninety percent of
38 each prearrangement funeral service contract, excluding sales tax.

1 (4) All prearrangement funeral service trust moneys shall be
2 deposited in an insured account in a qualified public depository or
3 shall be invested in instruments issued or insured by any agency of the
4 federal government if these securities are held in a public depository.
5 The account shall be designated as the prearrangement funeral service
6 trust of the funeral establishment for the benefit of the beneficiaries
7 named in the prearrangement funeral service contracts. The
8 prearrangement funeral service trust shall not be considered as, nor
9 shall it be used as, an asset of the funeral establishment.

10 (5) After deduction of reasonable fees for the administration of
11 the trust, taxes paid or withheld, or other expenses of the trust, all
12 interest, dividends, increases, or accretions of whatever nature earned
13 by a trust shall be kept unimpaired and shall become a part of the
14 trust. Adequate records shall be maintained to allocate the share of
15 principal and interest to each contract. Fees deducted for the
16 administration of the trust shall not exceed one percent of the face
17 amount of the prearrangement funeral service contract per annum. In no
18 instance shall the administrative charges deducted from the
19 prearrangement funeral service trust reduce, diminish, or in any other
20 way lessen the value of the trust so that the services or merchandise
21 provided for under the contract are reduced, diminished, or in any
22 other way lessened.

23 (6) Except as otherwise provided in this chapter, the trustees of
24 a prearrangement funeral service trust shall permit withdrawal of all
25 funds deposited under a prearrangement funeral service contract, plus
26 accruals thereon, under the following circumstances and conditions:

27 (a) If the funeral establishment files a verified statement with
28 the trustees that the prearrangement funeral merchandise and services
29 covered by the contract have been furnished and delivered in accordance
30 therewith; or

31 (b) If the funeral establishment files a verified statement with
32 the trustees that the prearrangement funeral merchandise and services
33 covered by the contract have been canceled in accordance with its
34 terms.

35 (7) Subsequent to the thirty calendar day cancellation period
36 provided for in this chapter, any purchaser or beneficiary who has a
37 revocable prearrangement funeral service contract has the right to
38 demand a refund of the amount in trust.

1 (8) Prearrangement funeral service contracts which have or should
2 have an account in a prearrangement funeral service trust may be
3 terminated by the board if the funeral establishment goes out of
4 business, becomes insolvent or bankrupt, makes an assignment for the
5 benefit of creditors, has its prearrangement funeral service
6 certificate of registration revoked, or for any other reason is unable
7 to fulfill the obligations under the contract. In such event, or upon
8 demand by the purchaser or beneficiary of the prearrangement funeral
9 service contract, the funeral establishment shall refund to the
10 purchaser or beneficiary all moneys deposited in the trust and
11 allocated to the contract unless otherwise ordered by a court of
12 competent jurisdiction. The purchaser or beneficiary may, in lieu of
13 a refund, elect to transfer the prearrangement funeral service contract
14 and all amounts in trust to another funeral establishment licensed
15 under this chapter which will agree, by endorsement to the contract, to
16 be bound by the contract and to provide the funeral merchandise or
17 services. Election of this option shall not relieve the defaulting
18 funeral establishment of its obligation to the purchaser or beneficiary
19 for any amounts required to be, but not placed, in trust.

20 (9) Prior to the sale or transfer of ownership or control of any
21 funeral establishment which has contracted for prearrangement funeral
22 service contracts, any person, corporation, or other legal entity
23 desiring to acquire such ownership or control shall apply to the
24 director in accordance with RCW 18.39.145. Persons and business
25 entities selling or relinquishing, and persons and business entities
26 purchasing or acquiring ownership or control of such funeral
27 establishments shall each verify and attest to a report showing the
28 status of the prearrangement funeral service trust or trusts on the
29 date of the sale. This report shall be on a form prescribed by the
30 board and shall be considered part of the application for a funeral
31 establishment license. In the event of failure to comply with this
32 subsection, the funeral establishment shall be deemed to have gone out
33 of business and the provisions of subsection (8) of this section shall
34 apply.

35 (10) Prearrangement funeral service trust moneys shall not be used,
36 directly or indirectly, for the benefit of the funeral establishment or
37 any director, officer, agent, or employee of the funeral establishment
38 including, but not limited to, any encumbrance, pledge, or other use of

1 prearrangement funeral service trust moneys as collateral or other
2 security.

3 (11)(a) If, at the time of the signing of the prearrangement
4 funeral service contract, the beneficiary of the trust is a recipient
5 of public assistance as defined in RCW 74.04.005, or reasonably
6 anticipates being so defined, the contract may provide that the trust
7 will be irrevocable. If after the contract is entered into, the
8 beneficiary becomes eligible or seeks to become eligible for public
9 assistance under Title 74 RCW, the contract may provide for an election
10 by the beneficiary, or by the purchaser on behalf of the beneficiary,
11 to make the trust irrevocable thereafter in order to become or remain
12 eligible for such assistance.

13 (b) The department of social and health services shall notify the
14 trustee of any prearrangement service trust that the department has a
15 claim on the estate of a beneficiary for long-term care services. Such
16 notice shall be renewed at least every three years. The trustees upon
17 becoming aware of the death of a beneficiary shall give notice to the
18 department of social and health services, office of financial recovery,
19 who shall file any claim there may be within thirty days of the notice.

20 (12) Every prearrangement funeral service contract financed through
21 a prearrangement funeral service trust shall contain language which:

22 (a) Informs the purchaser of the prearrangement funeral service
23 trust and the amount to be deposited in the trust;

24 (b) Indicates if the contract is revocable or not in accordance
25 with subsection (11) of this section;

26 (c) Specifies that a full refund of all moneys paid on the contract
27 will be made if the contract is canceled within thirty calendar days of
28 its signing;

29 (d) Specifies that, in the case of cancellation by a purchaser or
30 beneficiary eligible to cancel under the contract or under this
31 chapter, up to ten percent of the contract amount may be retained by
32 the seller to cover the necessary expenses of selling and setting up
33 the contract;

34 (e) Identifies the trust to be used and contains information as to
35 how the trustees may be contacted.

36 **Sec. 63.** RCW 18.39.255 and 1989 c 390 s 4 are each amended to read
37 as follows:

1 Prearranged funeral service contracts funded through insurance
2 shall contain language which:

3 (1) States the amount of insurance;

4 (2) Informs the purchaser of the name and address of the insurance
5 company through which the insurance will be provided, the policy
6 number, and the name of the beneficiary; ((and))

7 (3) Informs the purchaser that amounts paid for insurance may not
8 be refundable;

9 (4) Informs that any funds from the policy not used for services
10 may be subject to a claim for reimbursement for long-term care services
11 paid for by the state; and

12 (5) States that for purposes of the contract, the procedures in RCW
13 18.39.250(11)(b) shall control such recoupment.

14 **Sec. 64.** RCW 74.42.450 and 1979 ex.s. c 211 s 45 are each amended
15 to read as follows:

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

18 (a) The facility;

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

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

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

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

36 (4) If a resident chooses to remain in the nursing facility, the
37 department shall respect that choice, provided that if the resident is

1 a medicaid recipient, the resident continues to require a nursing
2 facility level of care.

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

11 (a) The reason for the discharge;

12 (b) A statement that the resident has the right to appeal the
13 discharge; and

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

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

20 **Sec. 65.** RCW 68.46.050 and 1973 1st ex.s. c 68 s 5 are each
21 amended to read as follows:

22 (1) A bank, trust company, or savings and loan association
23 designated as the depository of prearrangement funds shall permit
24 withdrawal by a cemetery authority of all funds deposited under any
25 specific prearrangement contract plus interest accrued thereon, under
26 the following circumstances and conditions:

27 ((+1)) (a) If the cemetery authority files a verified statement
28 with the depository that the prearrangement merchandise and services
29 covered by a contract have been furnished and delivered in accordance
30 therewith; or

31 ((+2)) (b) If the cemetery authority files a verified statement
32 that a specific prearrangement contract has been canceled in accordance
33 with its terms.

34 (2) The department of social and health services shall notify the
35 cemetery authority maintaining a prearrangement trust fund regulated by
36 this chapter that the department has a claim on the estate of a
37 beneficiary for long-term care services. Such notice shall be renewed
38 at least every three years. The cemetery authority upon becoming aware

1 of the death of a beneficiary shall give notice to the department of
2 social and health services, office of financial recovery, who shall
3 file any claim there may be within thirty days of the notice.

4 **Sec. 66.** RCW 70.129.040 and 1994 c 214 s 5 are each amended to
5 read as follows:

6 (1) The resident has the right to manage his or her financial
7 affairs, and the facility may not require residents to deposit their
8 personal funds with the facility.

9 (2) Upon written authorization of a resident, if the facility
10 agrees to manage the resident's personal funds, the facility must hold,
11 safeguard, manage, and account for the personal funds of the resident
12 deposited with the facility as specified in this section.

13 ~~((+3))~~ (a) The facility must deposit a resident's personal funds in
14 excess of one hundred dollars in an interest-bearing account or
15 accounts that is separate from any of the facility's operating
16 accounts, and that credits all interest earned on residents' funds to
17 that account. In pooled accounts, there must be a separate accounting
18 for each resident's share.

19 (b) The facility must maintain a resident's personal funds that do
20 not exceed one hundred dollars in a noninterest-bearing account,
21 interest-bearing account, or petty cash fund.

22 ~~((+4))~~ (3) The facility must establish and maintain a system that
23 assures a full and complete and separate accounting of each resident's
24 personal funds entrusted to the facility on the resident's behalf.

25 (a) The system must preclude any commingling of resident funds with
26 facility funds or with the funds of any person other than another
27 resident.

28 (b) The individual financial record must be available on request to
29 the resident or his or her legal representative.

30 ~~((+5))~~ (4) Upon the death of a resident with a personal fund
31 deposited with the facility the facility must convey within forty-five
32 days the resident's funds, and a final accounting of those funds, to
33 the individual or probate jurisdiction administering the resident's
34 estate; but in the case of a resident who received long-term care
35 services paid for by the state, the funds and accounting shall be sent
36 to the state of Washington, department of social and health services,
37 office of financial recovery. The department shall establish a release
38 procedure for use for burial expenses.

1 **Sec. 67.** RCW 43.20B.080 and 1994 c 21 s 3 are each amended to read
2 as follows:

3 (1) The department shall file liens, seek adjustment, or otherwise
4 effect recovery for medical assistance correctly paid on behalf of an
5 individual as required by this chapter and 42 U.S.C. Sec. 1396p.

6 (2) Liens may be adjusted by foreclosure in accordance with chapter
7 61.12 RCW.

8 (3) In the case of an individual who was fifty-five years ((or
9 {of})) of age or older when the individual received medical assistance,
10 the department shall seek adjustment or recovery from the individual's
11 estate, and from nonprobate assets of the individual as defined by RCW
12 11.02.005 except property passing through a community property
13 agreement, but only for medical assistance consisting of nursing
14 facility services, home and community-based services, other services
15 that the department determines to be appropriate, and related hospital
16 and prescription drug services. Recovery from the individual's estate,
17 including foreclosure of liens imposed under this section, shall be
18 undertaken as soon as practicable, consistent with the requirements of
19 42 U.S.C. Sec. 1396p.

20 ((+3)) (4)(a) The department shall establish procedures consistent
21 with standards established by the federal department of health and
22 human services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery
23 when such recovery would work an undue hardship.

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

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

31 **Sec. 68.** RCW 74.42.020 and 1982 c 120 s 1 are each amended to read
32 as follows:

33 The standards in RCW 74.42.030 through 74.42.570 are the minimum
34 standards for facilities licensed under chapter 18.51 RCW: PROVIDED,
35 HOWEVER, That RCW 74.42.040, 74.42.140 through 74.42.280, 74.42.300,
36 74.42.360, 74.42.370, 74.42.380, 74.42.420 (2), (4), (5), (6) and (7),
37 74.42.430(3), 74.42.450 (2) and (3), 74.42.520, 74.42.530, 74.42.540,
38 74.42.570, and 74.42.580 shall not apply to ((Christian—Science

1 ~~sanatoria facilities operated and listed or certified by The First~~
2 ~~Church of Christ, Scientist, in Boston, Massachusetts))~~ any nursing
3 home or institution conducted for those who rely upon treatment by
4 prayer or spiritual means in accordance with the creed or tenets of any
5 well-recognized church or religious denomination, or for any nursing
6 home or institution operated for the exclusive care of members of a
7 convent as defined in RCW 84.36.800 or rectory, monastery, or other
8 institution operated for the care of members of the clergy.

9 NEW SECTION. **Sec. 69.** A new section is added to chapter 74.46 RCW
10 to read as follows:

11 Upon the death of a resident with a personal fund deposited with
12 the facility, the facility must convey within forty-five days the
13 resident's funds, and a final accounting of those funds, to the
14 individual or probate jurisdiction administering the resident's estate;
15 but in the case of a resident who received long-term care services, the
16 funds and accounting shall be sent to the state of Washington,
17 department of social and health services, office of financial recovery.
18 The department shall establish a release procedure for use for burial
19 expenses.

20 **Sec. 70.** RCW 74.46.450 and 1993 sp.s. c 13 s 9 are each amended to
21 read as follows:

22 (1) Prospective reimbursement rates for a new contractor will be
23 established within sixty days following receipt by the department of
24 the properly completed projected budget required by RCW 74.46.670.
25 Such reimbursement rates will become effective as of the effective date
26 of the contract and shall remain in effect until adjusted or reset as
27 provided in this chapter.

28 (2) Such reimbursement rates will be based on the contractor's
29 projected cost of operations and on costs and payment rates of the
30 prior contractor, if any, or of other contractors in comparable
31 circumstances.

32 (3) For nursing facilities receiving original certificate of need
33 approval prior to June 30, 1988, and commencing operations on or after
34 January 1, 1995, the department shall base initial nursing services,
35 food, administrative, and operational rate components on such component
36 rates immediately above the median for facilities in the same county.

1 Property and return on investment rate components shall be established
2 as provided in this chapter.

3 (4) If a properly completed budget is not received at least sixty
4 days prior to the effective date of the contract, the department will
5 establish preliminary rates based on the other factors specified in
6 subsection (2) of this section. These preliminary rates will remain in
7 effect until adjusted or reset as provided in this chapter.

8 ~~((+4))~~ (5) The department is authorized to develop policies and
9 procedures in rule to address the computation of rates for the first
10 and second fiscal years of each biennium, including steps necessary to
11 prorate rate adjustments for economic trends and conditions as
12 authorized in RCW 74.46.420, for contractors having less than twelve
13 months of cost report data for the prior calendar year.

14 **Sec. 71.** RCW 70.38.111 and 1993 c 508 s 5 are each amended to read
15 as follows:

16 (1) The department shall not require a certificate of need for the
17 offering of an inpatient tertiary health service by:

18 (a) A health maintenance organization or a combination of health
19 maintenance organizations if (i) the organization or combination of
20 organizations has, in the service area of the organization or the
21 service areas of the organizations in the combination, an enrollment of
22 at least fifty thousand individuals, (ii) the facility in which the
23 service will be provided is or will be geographically located so that
24 the service will be reasonably accessible to such enrolled individuals,
25 and (iii) at least seventy-five percent of the patients who can
26 reasonably be expected to receive the tertiary health service will be
27 individuals enrolled with such organization or organizations in the
28 combination;

29 (b) A health care facility if (i) the facility primarily provides
30 or will provide inpatient health services, (ii) the facility is or will
31 be controlled, directly or indirectly, by a health maintenance
32 organization or a combination of health maintenance organizations which
33 has, in the service area of the organization or service areas of the
34 organizations in the combination, an enrollment of at least fifty
35 thousand individuals, (iii) the facility is or will be geographically
36 located so that the service will be reasonably accessible to such
37 enrolled individuals, and (iv) at least seventy-five percent of the
38 patients who can reasonably be expected to receive the tertiary health

1 service will be individuals enrolled with such organization or
2 organizations in the combination; or

3 (c) A health care facility (or portion thereof) if (i) the facility
4 is or will be leased by a health maintenance organization or
5 combination of health maintenance organizations which has, in the
6 service area of the organization or the service areas of the
7 organizations in the combination, an enrollment of at least fifty
8 thousand individuals and, on the date the application is submitted
9 under subsection (2) of this section, at least fifteen years remain in
10 the term of the lease, (ii) the facility is or will be geographically
11 located so that the service will be reasonably accessible to such
12 enrolled individuals, and (iii) at least seventy-five percent of the
13 patients who can reasonably be expected to receive the tertiary health
14 service will be individuals enrolled with such organization;
15 if, with respect to such offering or obligation by a nursing home, the
16 department has, upon application under subsection (2) of this section,
17 granted an exemption from such requirement to the organization,
18 combination of organizations, or facility.

19 (2) A health maintenance organization, combination of health
20 maintenance organizations, or health care facility shall not be exempt
21 under subsection (1) of this section from obtaining a certificate of
22 need before offering a tertiary health service unless:

23 (a) It has submitted at least thirty days prior to the offering of
24 services reviewable under RCW 70.38.105(4)(d) an application for such
25 exemption; and

26 (b) The application contains such information respecting the
27 organization, combination, or facility and the proposed offering or
28 obligation by a nursing home as the department may require to determine
29 if the organization or combination meets the requirements of subsection
30 (1) of this section or the facility meets or will meet such
31 requirements; and

32 (c) The department approves such application. The department shall
33 approve or disapprove an application for exemption within thirty days
34 of receipt of a completed application. In the case of a proposed
35 health care facility (or portion thereof) which has not begun to
36 provide tertiary health services on the date an application is
37 submitted under this subsection with respect to such facility (or
38 portion), the facility (or portion) shall meet the applicable
39 requirements of subsection (1) of this section when the facility first

1 provides such services. The department shall approve an application
2 submitted under this subsection if it determines that the applicable
3 requirements of subsection (1) of this section are met.

4 (3) A health care facility (or any part thereof) with respect to
5 which an exemption was granted under subsection (1) of this section may
6 not be sold or leased and a controlling interest in such facility or in
7 a lease of such facility may not be acquired and a health care facility
8 described in (1)(c) which was granted an exemption under subsection (1)
9 of this section may not be used by any person other than the lessee
10 described in (1)(c) unless:

11 (a) The department issues a certificate of need approving the sale,
12 lease, acquisition, or use; or

13 (b) The department determines, upon application, that (i) the
14 entity to which the facility is proposed to be sold or leased, which
15 intends to acquire the controlling interest, or which intends to use
16 the facility is a health maintenance organization or a combination of
17 health maintenance organizations which meets the requirements of
18 (1)(a)(i), and (ii) with respect to such facility, meets the
19 requirements of (1)(a) (ii) or (iii) or the requirements of (1)(b) (i)
20 and (ii).

21 (4) In the case of a health maintenance organization, an ambulatory
22 care facility, or a health care facility, which ambulatory or health
23 care facility is controlled, directly or indirectly, by a health
24 maintenance organization or a combination of health maintenance
25 organizations, the department may under the program apply its
26 certificate of need requirements only to the offering of inpatient
27 tertiary health services and then only to the extent that such offering
28 is not exempt under the provisions of this section.

29 (5)(a) The department shall not require a certificate of need for
30 the construction, development, or other establishment of a nursing
31 home, or the addition of beds to an existing nursing home, that is
32 owned and operated by a continuing care retirement community that:

33 (i) Offers services only to contractual members;

34 (ii) Provides its members a contractually guaranteed range of
35 services from independent living through skilled nursing, including
36 some assistance with daily living activities;

37 (iii) Contractually assumes responsibility for the cost of services
38 exceeding the member's financial responsibility under the contract, so
39 that no third party, with the exception of insurance purchased by the

1 retirement community or its members, but including the medicaid
2 program, is liable for costs of care even if the member depletes his or
3 her personal resources;

4 (iv) Has offered continuing care contracts and operated a nursing
5 home continuously since January 1, 1988, or has obtained a certificate
6 of need to establish a nursing home;

7 (v) Maintains a binding agreement with the state assuring that
8 financial liability for services to members, including nursing home
9 services, will not fall upon the state;

10 (vi) Does not operate, and has not undertaken a project that would
11 result in a number of nursing home beds in excess of one for every four
12 living units operated by the continuing care retirement community,
13 exclusive of nursing home beds; and

14 (vii) Has obtained a professional review of pricing and long-term
15 solvency within the prior five years which was fully disclosed to
16 members.

17 (b) A continuing care retirement community shall not be exempt
18 under this subsection from obtaining a certificate of need unless:

19 (i) It has submitted an application for exemption at least thirty
20 days prior to commencing construction of, is submitting an application
21 for the licensure of, or is commencing operation of a nursing home,
22 whichever comes first; and

23 (ii) The application documents to the department that the
24 continuing care retirement community qualifies for exemption.

25 (c) The sale, lease, acquisition, or use of part or all of a
26 continuing care retirement community nursing home that qualifies for
27 exemption under this subsection shall require prior certificate of need
28 approval to qualify for licensure as a nursing home unless the
29 department determines such sale, lease, acquisition, or use is by a
30 continuing care retirement community that meets the conditions of (a)
31 of this subsection.

32 (6) A rural hospital, as defined by the department, reducing the
33 number of licensed beds to become a rural primary care hospital under
34 the provisions of Part A Title XVIII of the Social Security Act Section
35 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction
36 of beds licensed under chapter 70.41 RCW, increase the number of
37 licensed beds to no more than the previously licensed number without
38 being subject to the provisions of this chapter.

1 (7) A rural health care facility licensed under RCW 70.175.100
2 formerly licensed as a hospital under chapter 70.41 RCW may, within
3 three years of the effective date of the rural health care facility
4 license, apply to the department for a hospital license and not be
5 subject to the requirements of RCW 70.38.105(4)(a) as the construction,
6 development, or other establishment of a new hospital, provided there
7 is no increase in the number of beds previously licensed under chapter
8 70.41 RCW and there is no redistribution in the number of beds used for
9 acute care or long-term care, the rural health care facility has been
10 in continuous operation, and the rural health care facility has not
11 been purchased or leased.

12 (8)(a) A nursing home that voluntarily reduces the number of its
13 licensed beds to provide assisted living, licensed boarding home care,
14 adult day care, adult day health, respite care, hospice, outpatient
15 therapy services, congregate meals, home health, or senior wellness
16 clinic, or to reduce to one or two the number of beds per room or to
17 otherwise enhance the quality of life for residents in the nursing
18 home, may convert the original facility or portion of the facility
19 back, and thereby increase the number of nursing home beds to no more
20 than the previously licensed number of nursing home beds without
21 ((being subject to the provisions of this chapter except under RCW
22 70.38.105(4)(d)) obtaining a certificate of need under this chapter,
23 provided the facility has been in continuous operation and has not been
24 purchased or leased. Any conversion to the original licensed bed
25 capacity, or to any portion thereof, shall comply with the same life
26 and safety code requirements as existed at the time the nursing home
27 voluntarily reduced its licensed beds; unless waivers from such
28 requirements were issued, in which case the converted beds shall
29 reflect the conditions or standards that then existed pursuant to the
30 approved waivers.

31 (b) To convert beds back to nursing home beds under this
32 subsection, the nursing home must:

33 (i) Give notice of its intent to preserve conversion options to the
34 department of health no later than thirty days after the effective date
35 of the license reduction; and

36 (ii) Give notice to the department of health and to the department
37 of social and health services of the intent to convert beds back. If
38 construction is required for the conversion of beds back, the notice of
39 intent to convert beds back must be given no later than two years prior

1 to the effective date of license modification reflecting the restored
2 beds; otherwise, the notice must be given no later than one year prior
3 to the effective date of license modification reflecting the restored
4 beds.

5 (c) Conversion of beds back under this subsection must be completed
6 no later than four years after the effective date of the license
7 reduction. However, for good cause shown, the four-year period for
8 conversion may be extended by the department of health for one
9 additional four-year period.

10 (d) Nursing home beds that have been voluntarily reduced under this
11 section shall be counted as available nursing home beds for the purpose
12 of evaluating need under RCW 70.38.115(2)(a) and (k) so long as the
13 facility retains the ability to convert them back to nursing home use
14 under the terms of this section.

15 (e) When a building owner has secured an interest in the nursing
16 home beds, which are intended to be voluntarily reduced by the licensee
17 under (a) of this subsection, the applicant shall provide the
18 department with a written statement indicating the building owner's
19 approval of the bed reduction.

20 **Sec. 72.** RCW 70.38.115 and 1993 c 508 s 6 are each amended to read
21 as follows:

22 (1) Certificates of need shall be issued, denied, suspended, or
23 revoked by the designee of the secretary in accord with the provisions
24 of this chapter and rules of the department which establish review
25 procedures and criteria for the certificate of need program.

26 (2) Criteria for the review of certificate of need applications,
27 except as provided in subsection (3) of this section for health
28 maintenance organizations, shall include but not be limited to
29 consideration of the following:

30 (a) The need that the population served or to be served by such
31 services has for such services;

32 (b) The availability of less costly or more effective alternative
33 methods of providing such services;

34 (c) The financial feasibility and the probable impact of the
35 proposal on the cost of and charges for providing health services in
36 the community to be served;

37 (d) In the case of health services to be provided, (i) the
38 availability of alternative uses of project resources for the provision

1 of other health services, (ii) the extent to which such proposed
2 services will be accessible to all residents of the area to be served,
3 and (iii) the need for and the availability in the community of
4 services and facilities for osteopathic and allopathic physicians and
5 their patients. The department shall consider the application in terms
6 of its impact on existing and proposed institutional training programs
7 for doctors of osteopathy and medicine at the student, internship, and
8 residency training levels;

9 (e) In the case of a construction project, the costs and methods of
10 the proposed construction, including the cost and methods of energy
11 provision, and the probable impact of the construction project reviewed
12 (i) on the cost of providing health services by the person proposing
13 such construction project and (ii) on the cost and charges to the
14 public of providing health services by other persons;

15 (f) The special needs and circumstances of osteopathic hospitals,
16 nonallopathic services and children's hospitals;

17 (g) Improvements or innovations in the financing and delivery of
18 health services which foster cost containment and serve to promote
19 quality assurance and cost-effectiveness;

20 (h) In the case of health services proposed to be provided, the
21 efficiency and appropriateness of the use of existing services and
22 facilities similar to those proposed;

23 (i) In the case of existing services or facilities, the quality of
24 care provided by such services or facilities in the past;

25 (j) In the case of hospital certificate of need applications,
26 whether the hospital meets or exceeds the regional average level of
27 charity care, as determined by the secretary; and

28 (k) In the case of nursing home applications:

29 (i) The availability of other nursing home beds in the planning
30 area to be served; and

31 (ii) The availability of other services in the community to be
32 served. Data used to determine the availability of other services will
33 include but not be limited to data provided by the department of social
34 and health services.

35 (3) A certificate of need application of a health maintenance
36 organization or a health care facility which is controlled, directly or
37 indirectly, by a health maintenance organization, shall be approved by
38 the department if the department finds:

1 (a) Approval of such application is required to meet the needs of
2 the members of the health maintenance organization and of the new
3 members which such organization can reasonably be expected to enroll;
4 and

5 (b) The health maintenance organization is unable to provide,
6 through services or facilities which can reasonably be expected to be
7 available to the organization, its health services in a reasonable and
8 cost-effective manner which is consistent with the basic method of
9 operation of the organization and which makes such services available
10 on a long-term basis through physicians and other health professionals
11 associated with it.

12 A health care facility, or any part thereof, with respect to which
13 a certificate of need was issued under this subsection may not be sold
14 or leased and a controlling interest in such facility or in a lease of
15 such facility may not be acquired unless the department issues a
16 certificate of need approving the sale, acquisition, or lease.

17 (4) Until the final expiration of the state health plan as provided
18 under RCW 70.38.919, the decision of the department on a certificate of
19 need application shall be consistent with the state health plan in
20 effect, except in emergency circumstances which pose a threat to the
21 public health. The department in making its final decision may issue
22 a conditional certificate of need if it finds that the project is
23 justified only under specific circumstances. The conditions shall
24 directly relate to the project being reviewed. The conditions may be
25 released if it can be substantiated that the conditions are no longer
26 valid and the release of such conditions would be consistent with the
27 purposes of this chapter.

28 (5) Criteria adopted for review in accordance with subsection (2)
29 of this section may vary according to the purpose for which the
30 particular review is being conducted or the type of health service
31 reviewed.

32 (6) The department shall specify information to be required for
33 certificate of need applications. Within fifteen days of receipt of
34 the application, the department shall request additional information
35 considered necessary to the application or start the review process.
36 Applicants may decline to submit requested information through written
37 notice to the department, in which case review starts on the date of
38 receipt of the notice. Applications may be denied or limited because
39 of failure to submit required and necessary information.

1 (7) Concurrent review is for the purpose of comparative analysis
2 and evaluation of competing or similar projects in order to determine
3 which of the projects may best meet identified needs. Categories of
4 projects subject to concurrent review include at least new health care
5 facilities, new services, and expansion of existing health care
6 facilities. The department shall specify time periods for the
7 submission of applications for certificates of need subject to
8 concurrent review, which shall not exceed ninety days. Review of
9 concurrent applications shall start fifteen days after the conclusion
10 of the time period for submission of applications subject to concurrent
11 review. Concurrent review periods shall be limited to one hundred
12 fifty days, except as provided for in rules adopted by the department
13 authorizing and limiting amendment during the course of the review, or
14 for an unresolved pivotal issue declared by the department.

15 (8) Review periods for certificate of need applications other than
16 those subject to concurrent review shall be limited to ninety days.
17 Review periods may be extended up to thirty days if needed by a review
18 agency, and for unresolved pivotal issues the department may extend up
19 to an additional thirty days. A review may be extended in any case if
20 the applicant agrees to the extension.

21 (9) The department or its designee, shall conduct a public hearing
22 on a certificate of need application if requested unless the review is
23 expedited or subject to emergency review. The department by rule shall
24 specify the period of time within which a public hearing must be
25 requested and requirements related to public notice of the hearing,
26 procedures, recordkeeping and related matters.

27 (10)(a) Any applicant denied a certificate of need or whose
28 certificate of need has been suspended or revoked has the right to an
29 adjudicative proceeding. The proceeding is governed by chapter 34.05
30 RCW, the Administrative Procedure Act.

31 (b) Any health care facility or health maintenance organization
32 that: (i) Provides services similar to the services provided by the
33 applicant and under review pursuant to this subsection; (ii) is located
34 within the applicant's health service area; and (iii) testified or
35 submitted evidence at a public hearing held pursuant to subsection (9)
36 of this section, shall be provided an opportunity to present oral or
37 written testimony and argument in a proceeding under this subsection:
38 PROVIDED, That the health care facility or health maintenance

1 organization had, in writing, requested to be informed of the
2 department's decisions.

3 (c) If the department desires to settle with the applicant prior to
4 the conclusion of the adjudicative proceeding, the department shall so
5 inform the health care facility or health maintenance organization and
6 afford them an opportunity to comment, in advance, on the proposed
7 settlement.

8 (11) An amended certificate of need shall be required for the
9 following modifications of an approved project:

10 (a) A new service requiring review under this chapter;

11 (b) An expansion of a service subject to review beyond that
12 originally approved;

13 (c) An increase in bed capacity;

14 (d) A significant reduction in the scope of a nursing home project
15 without a commensurate reduction in the cost of the nursing home
16 project, or a cost increase (as represented in bids on a nursing home
17 construction project or final cost estimates acceptable to the person
18 to whom the certificate of need was issued) if the total of such
19 increases exceeds twelve percent or fifty thousand dollars, whichever
20 is greater, over the maximum capital expenditure approved. The review
21 of reductions or cost increases shall be restricted to the continued
22 conformance of the nursing home project with the review criteria
23 pertaining to financial feasibility and cost containment.

24 (12) An application for a certificate of need for a nursing home
25 capital expenditure which is determined by the department to be
26 required to eliminate or prevent imminent safety hazards or correct
27 violations of applicable licensure and accreditation standards shall be
28 approved.

29 ~~(13) ((In the case of an application for a certificate of need to~~
30 ~~replace existing nursing home beds, all criteria must be met on the~~
31 ~~same basis as an application for a certificate of need for a new~~
32 ~~nursing home, except that the need criteria shall be deemed met if the~~
33 ~~applicant is an existing licensee who proposes to replace existing beds~~
34 ~~that the licensee has operated for at least one year with the same or~~
35 ~~fewer number of beds in the same planning area))~~ (a) Replacement of
36 existing nursing home beds in the same planning area by an existing
37 licensee who has operated the beds for at least one year shall not
38 require a certificate of need under this chapter. The licensee shall
39 give written notice of its intent to replace the existing nursing home

1 beds to the department and shall provide the department with
2 information as may be required pursuant to rule. Replacement of the
3 beds by a party other than the licensee is subject to certificate of
4 need review under this chapter, except as otherwise permitted by
5 subsection (14) of this section.

6 (b) When an entire nursing home ceases operation, ((its beds shall
7 be treated as existing nursing home beds for purposes of replacement))
8 the licensee or any other party who has secured an interest in the beds
9 may reserve his or her interest in the beds for eight years or until a
10 certificate of need to replace them is issued, whichever occurs first.
11 However, the nursing home, licensee, or any other party who has secured
12 an interest in the beds must give notice of its intent to retain the
13 beds to the department of health no later than thirty days after the
14 effective date of the facility's closure. Certificate of need review
15 shall be required for any party who has reserved the nursing home beds
16 except that the need criteria shall be deemed met when the applicant is
17 the licensee who had operated the beds for at least one year, who has
18 operated the beds for at least one year immediately preceding the
19 reservation of the beds, and who is replacing the beds in the same
20 planning area.

21 (14) In the event that a licensee, who has provided the department
22 with notice of his or her intent to replace nursing home beds under
23 subsection (13)(a) of this section, engages in unprofessional conduct
24 or becomes unable to practice with reasonable skill and safety by
25 reason of mental or physical condition, pursuant to chapter 18.130 RCW,
26 or dies, the building owner shall be permitted to complete the nursing
27 home bed replacement project, provided the building owner has secured
28 an interest in the beds.

29 **Sec. 73. RCW 70.38.125 and 1989 1st ex.s. c 9 s 606 are each*
30 *amended to read as follows:*

31 *(1) A certificate of need shall be valid for two years. One six-*
32 *month extension may be made if it can be substantiated that substantial*
33 *and continuing progress toward commencement of the project has been*
34 *made as defined by regulations to be adopted pursuant to this chapter.*
35 *An additional extension of up to sixty months shall be made if the*
36 *project is located in an eligible area, as defined under RCW 82.60.020,*
37 *or is located in an economically distressed area.*

1 (2) A project for which a certificate of need has been issued shall
2 be commenced during the validity period for the certificate of need.

3 (3) The department shall monitor the approved projects to assure
4 conformance with certificates of need that have been issued. Rules and
5 regulations adopted shall specify when changes in the project require
6 reevaluation of the project. The department may require applicants to
7 submit periodic progress reports on approved projects or other
8 information as may be necessary to effectuate its monitoring
9 responsibilities.

10 (4) The secretary, in the case of a new health facility, shall not
11 issue any license unless and until a prior certificate of need shall
12 have been issued by the department for the offering or development of
13 such new health facility.

14 (5) Any person who engages in any undertaking which requires
15 certificate of need review without first having received from the
16 department either a certificate of need or an exception granted in
17 accordance with this chapter shall be liable to the state in an amount
18 not to exceed one hundred dollars a day for each day of such
19 unauthorized offering or development. Such amounts of money shall be
20 recoverable in an action brought by the attorney general on behalf of
21 the state in the superior court of any county in which the unauthorized
22 undertaking occurred. Any amounts of money so recovered by the
23 attorney general shall be deposited in the state general fund.

24 (6) The department may bring any action to enjoin a violation or
25 the threatened violation of the provisions of this chapter or any rules
26 and regulations adopted pursuant to this chapter, or may bring any
27 legal proceeding authorized by law, including but not limited to the
28 special proceedings authorized in Title 7 RCW, in the superior court in
29 the county in which such violation occurs or is about to occur, or in
30 the superior court of Thurston county.

31 *Sec. 73 was vetoed. See message at end of chapter.

32 NEW SECTION. **Sec. 74.** If any part of this act is found to be in
33 conflict with federal requirements that are a prescribed condition to
34 the allocation of federal funds to the state, the conflicting part of
35 this act is inoperative solely to the extent of the conflict and with
36 respect to the agencies directly affected, and this finding does not
37 affect the operation of the remainder of this act in its application to
38 the agencies concerned. The rules under this act shall meet federal

1 requirements that are a necessary condition to the receipt of federal
2 funds by the state.

3 NEW SECTION. **Sec. 75.** The department of social and health
4 services shall develop and pilot, for eighteen months, an on-line
5 computer based information system consistent with the information needs
6 outlined in section 3 of this act. The department shall, by December
7 1, 1996, report to the appropriations committee of the house of
8 representatives and the ways and means committee of the senate on the
9 success of the pilot in meeting the information requirements for
10 hospitals outlined in this section.

11 **Sec. 76.** RCW 48.85.010 and 1993 c 492 s 458 are each amended to
12 read as follows:

13 The department of social and health services shall ~~((from July 1,~~
14 ~~1993, to July 1, 1998))~~, in conjunction with the office of the
15 insurance commissioner, coordinate a ((pilot)) long-term care insurance
16 program entitled the Washington long-term care partnership, whereby
17 private insurance and medicaid funds shall be used to finance long-term
18 care. ((This program must allow for the exclusion of an individual's
19 assets, as approved by the federal health care financing
20 administration, in a determination of the individual's eligibility for
21 medicaid; the amount of any medicaid payment; or any subsequent
22 recovery by the state for a payment for medicaid services to the extent
23 such assets are protected by a long term care insurance policy or
24 contract governed by chapter 48.84 RCW and meeting the criteria
25 prescribed in this chapter.)) For individuals purchasing a long-term
26 care insurance policy or contract governed by chapter 48.84 RCW and
27 meeting the criteria prescribed in this chapter, and any other terms as
28 specified by the office of the insurance commissioner and the
29 department of social and health services, this program shall allow for
30 the exclusion of some or all of the individual's assets in
31 determination of medicaid eligibility as approved by the federal health
32 care financing administration.

33 **Sec. 77.** RCW 48.85.020 and 1993 c 492 s 459 are each amended to
34 read as follows:

35 The department of social and health services shall seek approval
36 ~~((and a waiver of appropriate federal medicaid regulations))~~ from the

1 federal health care financing administration to allow the protection of
2 an individual's assets as provided in this chapter. The department
3 shall adopt all rules necessary to implement the Washington long-term
4 care partnership program, which rules shall permit the exclusion of all
5 or some of an individual's assets in a manner specified by the
6 department in a determination of medicaid eligibility to the extent
7 that private long-term care insurance provides payment or benefits for
8 services ~~((that medicaid would approve or cover for medicaid~~
9 ~~recipients))~~.

10 **Sec. 78.** RCW 48.85.030 and 1993 c 492 s 460 are each amended to
11 read as follows:

12 (1) The insurance commissioner shall adopt rules defining the
13 criteria that long-term care insurance policies must meet to satisfy
14 the requirements of this chapter. The rules shall provide that all
15 long-term care insurance policies purchased for the purposes of this
16 chapter:

17 (a) Be guaranteed renewable;

18 (b) Provide coverage for ~~((home and community-based services and))~~
19 nursing home care and provide coverage for an alternative plan of care
20 benefit as defined by the commissioner;

21 (c) Provide optional coverage for home and community-based
22 services. Such home and community-based services shall be included in
23 the coverage unless rejected in writing by the applicant;

24 (d) Provide automatic inflation protection or similar coverage for
25 any policyholder through the age of seventy-nine and made optional at
26 age eighty to protect the policyholder from future increases in the
27 cost of long-term care;

28 ~~((d))~~ (e) Not require prior hospitalization or confinement in a
29 nursing home as a prerequisite to receiving long-term care benefits;
30 and

31 ~~((e))~~ (f) Contain at least a six-month grace period that permits
32 reinstatement of the policy or contract retroactive to the date of
33 termination if the policy or contract holder's nonpayment of premiums
34 arose as a result of a cognitive impairment suffered by the policy or
35 contract holder as certified by a physician.

36 (2) Insurers offering long-term care policies for the purposes of
37 this chapter shall demonstrate to the satisfaction of the insurance
38 commissioner that they:

- 1 (a) Have procedures to provide notice to each purchaser of the
2 long-term care consumer education program;
- 3 (b) Offer case management services;
- 4 (c) Have procedures that provide for the keeping of individual
5 policy records and procedures for the explanation of coverage and
6 benefits identifying those payments or services available under the
7 policy that meet the purposes of this chapter;
- 8 (d) Agree to provide the insurance commissioner, on or before
9 September 1 of each year, an annual report containing (~~the following~~)
10 information(~~:~~
- 11 ~~(i) The number of policies issued and of the policies issued, that~~
12 ~~number sorted by issue age;~~
- 13 ~~(ii) To the extent possible, the financial circumstance of the~~
14 ~~individuals covered by such policies;~~
- 15 ~~(iii) The total number of claims paid; and~~
- 16 ~~(iv) Of the number of claims paid, the number paid for nursing home~~
17 ~~care, for home care services, and community-based services)) derived~~
- 18 from the long-term care partnership long-term care insurance uniform
19 data set as specified by the office of the insurance commissioner.

20 **Sec. 79.** RCW 48.85.040 and 1993 c 492 s 461 are each amended to
21 read as follows:

22 The insurance commissioner(~~, in conjunction with~~) shall, with the
23 cooperation of the department of social and health services and members
24 of the long-term care insurance industry, (~~shall~~) develop a consumer
25 education program designed to educate consumers as to the need for
26 long-term care, methods for financing long-term care, the availability
27 of long-term care insurance, and the availability and eligibility
28 requirements of the asset protection program provided under this
29 chapter.

30 **Sec. 80.** RCW 48.85.050 and 1993 c 492 s 462 are each amended to
31 read as follows:

32 By January 1 of each year until 1998, the insurance commissioner,
33 in conjunction with the department of social and health services, shall
34 report to the legislature on the progress of the asset protection
35 program. The report shall include:

- 36 (1) The success of the agencies in implementing the program;

1 (2) The number of insurers offering long-term care policies meeting
2 the criteria for asset protection;

3 (3) The number, age, and financial circumstances of individuals
4 purchasing long-term care policies meeting the criteria for asset
5 protection;

6 (4) The number of individuals seeking consumer information
7 services;

8 (5) The extent and type of benefits paid by insurers offering
9 policies meeting the criteria for asset protection;

10 (6) Estimates of the impact of the program on present and future
11 medicaid expenditures;

12 (7) The cost-effectiveness of the program; and

13 (8) A determination regarding the appropriateness of continuing the
14 program.

15 **Sec. 81.** RCW 74.09.585 and 1989 c 87 s 7 are each amended to read
16 as follows:

17 (1) The department shall establish standards consistent with
18 section 1917 of the social security act in determining the period of
19 ineligibility for medical assistance due to the transfer of resources.

20 (2) There shall be no penalty imposed for the transfer of assets
21 that are excluded in a determination of the individual's eligibility
22 for medicaid to the extent such assets are protected by the long-term
23 care insurance policy or contract pursuant to chapter 48.85 RCW.

24 (3) The department may waive a period of ineligibility if the
25 department determines that denial of eligibility would work an undue
26 hardship.

27 **Sec. 82.** RCW 74.34.010 and 1984 c 97 s 7 are each amended to read
28 as follows:

29 The legislature finds that frail elders and vulnerable adults may
30 be subjected to abuse, neglect, exploitation, or abandonment. The
31 legislature finds that there are a number of adults sixty years of age
32 or older who lack the ability to perform or obtain those services
33 necessary to maintain or establish their well-being. The legislature
34 finds that many frail elders and vulnerable adults have health problems
35 that place them in a dependent position. The legislature further finds
36 that a significant number of frail elders and vulnerable adults have

1 mental and verbal limitations that leave them vulnerable and incapable
2 of asking for help and protection.

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

7 It is the intent of the legislature to assist frail elders and
8 vulnerable adults by providing these persons with the protection of the
9 courts and with the least-restrictive services, such as home care, and
10 by preventing or reducing inappropriate institutional care. The
11 legislature finds that it is in the interests of the public health,
12 safety, and welfare of the people of the state to provide a procedure
13 for identifying these vulnerable persons and providing the services and
14 remedies necessary for their well-being.

15 **Sec. 83.** RCW 74.34.100 and 1986 c 187 s 4 are each amended to read
16 as follows:

17 The legislature finds that frail elders and vulnerable adults~~((7))~~
18 ~~who are ((physically or emotionally)) abused, neglected, abandoned, or~~
19 ~~((financially)) exploited may need the protection of the courts. The~~
20 legislature further finds that many of these elderly or vulnerable
21 persons may be homebound or otherwise may be unable to represent
22 themselves in court or to retain legal counsel in order to obtain the
23 relief available to them under this chapter.

24 It is the intent of the legislature to improve access to the courts
25 for victims of abuse, neglect, exploitation, and abandonment in order
26 to better protect the state's frail elderly and vulnerable adults.

27 **Sec. 84.** RCW 74.34.020 and 1984 c 97 s 8 are each amended to read
28 as follows:

29 Unless the context clearly requires otherwise, the definitions in
30 this section apply throughout this chapter.

31 (1) "Abandonment" means ~~((leaving a))~~ action or inaction by a
32 person or entity with a duty of care for a frail elder or a vulnerable
33 adult that leaves the vulnerable ((adult)) person without the means or
34 ability to obtain necessary food, clothing, shelter, or health care.

35 (2) "Abuse" means ~~((an))~~ a nonaccidental act of physical or mental
36 mistreatment or injury, or sexual mistreatment, which harms ((or
37 threatens)) a person through action or inaction by another individual.

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

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

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

10 (6) "Neglect" means a pattern of conduct ~~((resulting))~~ or inaction
11 by a person or entity with a duty of care for a frail elder or
12 vulnerable adult that results in the deprivation of care necessary to
13 maintain ((minimum)) the vulnerable person's physical ((and)) or mental
14 health.

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

16 (8) "Frail elder or vulnerable adult" means a person sixty years of
17 age or older who has the functional, mental, or physical inability to
18 care for himself or herself. "Frail elder or vulnerable adult" shall
19 include persons found incapacitated under chapter 11.88 RCW, or a
20 person who has a developmental disability under chapter 71A.10 RCW, and
21 persons admitted to any long-term care facility that is licensed or
22 required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128
23 RCW, or persons receiving services from home health, hospice, or home
24 care agencies licensed or required to be licensed under chapter 70.127
25 RCW.

26 NEW SECTION. Sec. 85. A new section is added to chapter 74.34 RCW
27 to read as follows:

28 (1) In addition to other remedies available under the law, a frail
29 elder or vulnerable adult or a person age eighteen or older who has
30 been subjected to abuse, neglect, exploitation, or abandonment either
31 while residing in a long-term care facility or in the case of a person
32 in the care of a home health, hospice, or home care agency, residing at
33 home, shall have a cause of action for damages on account of his or her
34 injuries, pain and suffering, and loss of property sustained thereby.
35 This action shall be available where the defendant is or was a
36 corporation, trust, unincorporated association, partnership,
37 administrator, employee, agent, officer, partner, or director of a
38 long-term care facility, such as a nursing home or boarding home, that

1 is licensed or required to be licensed under chapter 18.20, 18.51,
2 72.36, or 70.128 RCW, or of a home health, hospice, or home care agency
3 licensed or required to be licensed under chapter 70.127 RCW, as now or
4 subsequently designated.

5 (2) It is the intent of the legislature, however, that where there
6 is a dispute about the care or treatment of a frail elder or vulnerable
7 adult, the parties should use the least formal means available to try
8 to resolve the dispute. Where feasible, parties are encouraged but not
9 mandated to employ direct discussion with the health care provider, use
10 of the long-term care ombudsman or other intermediaries, and, when
11 necessary, recourse through licensing or other regulatory authorities.

12 (3) In an action brought under this section, a prevailing plaintiff
13 shall be awarded his or her actual damages, together with the costs of
14 the suit, including a reasonable attorney's fee. The term "costs"
15 includes, but is not limited to, the reasonable fees for a guardian,
16 guardian ad litem, and experts, if any, that may be necessary to the
17 litigation of a claim brought under this section.

18 NEW SECTION. **Sec. 86.** A new section is added to chapter 74.34 RCW
19 to read as follows:

20 A petition for an order for protection or an action for damages
21 under this chapter may be brought by the plaintiff, or where necessary,
22 by his or her family members and/or guardian or legal fiduciary, or as
23 otherwise provided under this chapter. The death of the plaintiff
24 shall not deprive the court of jurisdiction over a petition or claim
25 brought under this chapter. Upon petition, after the death of the
26 vulnerable person, the right to initiate or maintain the action shall
27 be transferred to the executor or administrator of the deceased, for
28 the benefit of the surviving spouse, child or children, or other heirs
29 set forth in chapter 4.20 RCW.

30 **Sec. 87.** RCW 74.34.070 and 1984 c 97 s 13 are each amended to read
31 as follows:

32 In responding to reports of abuse, exploitation, neglect, or
33 abandonment under this chapter, the department shall provide
34 information to the (~~elderly person~~) frail elder or vulnerable adult
35 on protective services available to the person and inform the person of
36 the right to refuse such services. The department shall develop
37 cooperative agreements with community-based agencies servicing the

1 abused elderly and vulnerable adults. The agreements shall cover such
2 subjects as the appropriate roles and responsibilities of the
3 department and community-based agencies in identifying and responding
4 to reports of ((elderly)) abuse, the provision of case-management
5 services, standardized data collection procedures, and related
6 coordination activities.

7 **Sec. 88.** RCW 74.34.030 and 1986 c 187 s 1 are each amended to read
8 as follows:

9 Any person, including but not limited to, financial institutions or
10 attorneys, having reasonable cause to believe that a vulnerable adult
11 has suffered abuse, exploitation, neglect, or abandonment, or is
12 otherwise in need of protective services may report such information to
13 the department. Any police officer, social worker, employee of the
14 department, a social service, welfare, mental health, or health agency,
15 including but not limited to home health, hospice, and home care
16 agencies licensed under chapter 70.127 RCW, congregate long-term care
17 facility, including but not limited to adult family homes licensed
18 under chapter 70.128 RCW, boarding homes licensed under chapter 18.20
19 RCW, and nursing homes licensed under chapter 18.51 RCW, or assisted
20 living services pursuant to RCW 74.39A.010, or health care provider
21 licensed under Title 18 RCW, including but not limited to doctors,
22 nurses, psychologists, and pharmacists, having reasonable cause to
23 believe that a vulnerable adult has suffered abuse, exploitation,
24 neglect, or abandonment, shall make an immediate oral report of such
25 information to the department and shall report such information in
26 writing to the department within ten calendar days of receiving the
27 information.

28 NEW SECTION. **Sec. 89.** RCW 74.34.100 is recodified as RCW
29 74.34.015.

30 **Sec. 90.** RCW 74.46.020 and 1993 sp.s. c 13 s 1 are each amended to
31 read as follows:

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

34 (1) "Accrual method of accounting" means a method of accounting in
35 which revenues are reported in the period when they are earned,

1 regardless of when they are collected, and expenses are reported in the
2 period in which they are incurred, regardless of when they are paid.

3 (2) "Ancillary care" means those services required by the
4 individual, comprehensive plan of care provided by qualified
5 therapists.

6 (3) "Appraisal" means the process of estimating the fair market
7 value or reconstructing the historical cost of an asset acquired in a
8 past period as performed by a professionally designated real estate
9 appraiser with no pecuniary interest in the property to be appraised.
10 It includes a systematic, analytic determination and the recording and
11 analyzing of property facts, rights, investments, and values based on
12 a personal inspection and inventory of the property.

13 (4) "Arm's-length transaction" means a transaction resulting from
14 good-faith bargaining between a buyer and seller who are not related
15 organizations and have adverse positions in the market place. Sales or
16 exchanges of nursing home facilities among two or more parties in which
17 all parties subsequently continue to own one or more of the facilities
18 involved in the transactions shall not be considered as arm's-length
19 transactions for purposes of this chapter. Sale of a nursing home
20 facility which is subsequently leased back to the seller within five
21 years of the date of sale shall not be considered as an arm's-length
22 transaction for purposes of this chapter.

23 (5) "Assets" means economic resources of the contractor, recognized
24 and measured in conformity with generally accepted accounting
25 principles.

26 (6) "Bad debts" means amounts considered to be uncollectable from
27 accounts and notes receivable.

28 (7) "Beds" means the number of set-up beds in the facility, not to
29 exceed the number of licensed beds.

30 (8) "Beneficial owner" means:

31 (a) Any person who, directly or indirectly, through any contract,
32 arrangement, understanding, relationship, or otherwise has or shares:

33 (i) Voting power which includes the power to vote, or to direct the
34 voting of such ownership interest; and/or

35 (ii) Investment power which includes the power to dispose, or to
36 direct the disposition of such ownership interest;

37 (b) Any person who, directly or indirectly, creates or uses a
38 trust, proxy, power of attorney, pooling arrangement, or any other
39 contract, arrangement, or device with the purpose or effect of

1 divesting himself of beneficial ownership of an ownership interest or
2 preventing the vesting of such beneficial ownership as part of a plan
3 or scheme to evade the reporting requirements of this chapter;

4 (c) Any person who, subject to subparagraph (b) of this subsection,
5 has the right to acquire beneficial ownership of such ownership
6 interest within sixty days, including but not limited to any right to
7 acquire:

8 (i) Through the exercise of any option, warrant, or right;

9 (ii) Through the conversion of an ownership interest;

10 (iii) Pursuant to the power to revoke a trust, discretionary
11 account, or similar arrangement; or

12 (iv) Pursuant to the automatic termination of a trust,
13 discretionary account, or similar arrangement;

14 except that, any person who acquires an ownership interest or power
15 specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c)
16 with the purpose or effect of changing or influencing the control of
17 the contractor, or in connection with or as a participant in any
18 transaction having such purpose or effect, immediately upon such
19 acquisition shall be deemed to be the beneficial owner of the ownership
20 interest which may be acquired through the exercise or conversion of
21 such ownership interest or power;

22 (d) Any person who in the ordinary course of business is a pledgee
23 of ownership interest under a written pledge agreement shall not be
24 deemed to be the beneficial owner of such pledged ownership interest
25 until the pledgee has taken all formal steps necessary which are
26 required to declare a default and determines that the power to vote or
27 to direct the vote or to dispose or to direct the disposition of such
28 pledged ownership interest will be exercised; except that:

29 (i) The pledgee agreement is bona fide and was not entered into
30 with the purpose nor with the effect of changing or influencing the
31 control of the contractor, nor in connection with any transaction
32 having such purpose or effect, including persons meeting the conditions
33 set forth in subparagraph (b) of this subsection; and

34 (ii) The pledgee agreement, prior to default, does not grant to the
35 pledgee:

36 (A) The power to vote or to direct the vote of the pledged
37 ownership interest; or

38 (B) The power to dispose or direct the disposition of the pledged
39 ownership interest, other than the grant of such power(s) pursuant to

1 a pledge agreement under which credit is extended and in which the
2 pledgee is a broker or dealer.

3 (9) "Capitalization" means the recording of an expenditure as an
4 asset.

5 (10) "Contractor" means an entity which contracts with the
6 department to provide services to medical care recipients in a facility
7 and which entity is responsible for operational decisions.

8 (11) "Department" means the department of social and health
9 services (DSHS) and its employees.

10 (12) "Depreciation" means the systematic distribution of the cost
11 or other basis of tangible assets, less salvage, over the estimated
12 useful life of the assets.

13 (13) "Direct care supplies" means medical, pharmaceutical, and
14 other supplies required for the direct nursing and ancillary care of
15 medical care recipients.

16 (14) "Entity" means an individual, partnership, corporation, or any
17 other association of individuals capable of entering enforceable
18 contracts.

19 (15) "Equity" means the net book value of all tangible and
20 intangible assets less the recorded value of all liabilities, as
21 recognized and measured in conformity with generally accepted
22 accounting principles.

23 (16) "Facility" means a nursing home licensed in accordance with
24 chapter 18.51 RCW, excepting nursing homes certified as institutions
25 for mental diseases, or that portion of a hospital licensed in
26 accordance with chapter 70.41 RCW which operates as a nursing home.

27 (17) "Fair market value" means the replacement cost of an asset
28 less observed physical depreciation on the date for which the market
29 value is being determined.

30 (18) "Financial statements" means statements prepared and presented
31 in conformity with generally accepted accounting principles including,
32 but not limited to, balance sheet, statement of operations, statement
33 of changes in financial position, and related notes.

34 (19) "Generally accepted accounting principles" means accounting
35 principles approved by the financial accounting standards board (FASB).

36 (20) "Generally accepted auditing standards" means auditing
37 standards approved by the American institute of certified public
38 accountants (AICPA).

1 (21) "Goodwill" means the excess of the price paid for a business
2 over the fair market value of all other identifiable, tangible, and
3 intangible assets acquired.

4 (22) "Historical cost" means the actual cost incurred in acquiring
5 and preparing an asset for use, including feasibility studies,
6 architect's fees, and engineering studies.

7 (23) "Imprest fund" means a fund which is regularly replenished in
8 exactly the amount expended from it.

9 (24) "Joint facility costs" means any costs which represent
10 resources which benefit more than one facility, or one facility and any
11 other entity.

12 (25) "Lease agreement" means a contract between two parties for the
13 possession and use of real or personal property or assets for a
14 specified period of time in exchange for specified periodic payments.
15 Elimination (due to any cause other than death or divorce) or addition
16 of any party to the contract, expiration, or modification of any lease
17 term in effect on January 1, 1980, or termination of the lease by
18 either party by any means shall constitute a termination of the lease
19 agreement. An extension or renewal of a lease agreement, whether or
20 not pursuant to a renewal provision in the lease agreement, shall be
21 considered a new lease agreement. A strictly formal change in the
22 lease agreement which modifies the method, frequency, or manner in
23 which the lease payments are made, but does not increase the total
24 lease payment obligation of the lessee, shall not be considered
25 modification of a lease term.

26 (26) "Medical care program" means medical assistance provided under
27 RCW 74.09.500 or authorized state medical care services.

28 (27) "Medical care recipient" or "recipient" means an individual
29 determined eligible by the department for the services provided in
30 chapter 74.09 RCW.

31 (28) "Net book value" means the historical cost of an asset less
32 accumulated depreciation.

33 (29) "Net invested funds" means the net book value of tangible
34 fixed assets employed by a contractor to provide services under the
35 medical care program, including land, buildings, and equipment as
36 recognized and measured in conformity with generally accepted
37 accounting principles, plus an allowance for working capital which
38 shall be five percent of the product of the per patient day rate

1 multiplied by the prior calendar year reported total patient days of
2 each contractor.

3 (30) "Operating lease" means a lease under which rental or lease
4 expenses are included in current expenses in accordance with generally
5 accepted accounting principles.

6 (31) "Owner" means a sole proprietor, general or limited partners,
7 and beneficial interest holders of five percent or more of a
8 corporation's outstanding stock.

9 (32) "Ownership interest" means all interests beneficially owned by
10 a person, calculated in the aggregate, regardless of the form which
11 such beneficial ownership takes.

12 (33) "Patient day" or "~~((client))~~ resident day" means a calendar
13 day of care provided to a nursing facility resident, which will include
14 the day of admission and exclude the day of discharge; except that,
15 when admission and discharge occur on the same day, one day of care
16 shall be deemed to exist. A "client day" or "recipient day" means a
17 calendar day of care provided to a medical care recipient determined
18 eligible by the department for services provided under chapter 74.09
19 RCW, subject to the same conditions regarding admission and discharge
20 applicable to a patient day or resident day of care.

21 (34) "Professionally designated real estate appraiser" means an
22 individual who is regularly engaged in the business of providing real
23 estate valuation services for a fee, and who is deemed qualified by a
24 nationally recognized real estate appraisal educational organization on
25 the basis of extensive practical appraisal experience, including the
26 writing of real estate valuation reports as well as the passing of
27 written examinations on valuation practice and theory, and who by
28 virtue of membership in such organization is required to subscribe and
29 adhere to certain standards of professional practice as such
30 organization prescribes.

31 (35) "Qualified therapist" means:

32 (a) An activities specialist who has specialized education,
33 training, or experience as specified by the department;

34 (b) An audiologist who is eligible for a certificate of clinical
35 competence in audiology or who has the equivalent education and
36 clinical experience;

37 (c) A mental health professional as defined by chapter 71.05 RCW;

38 (d) A mental retardation professional who is either a qualified
39 therapist or a therapist approved by the department who has had

1 specialized training or one year's experience in treating or working
2 with the mentally retarded or developmentally disabled;

3 (e) A social worker who is a graduate of a school of social work;

4 (f) A speech pathologist who is eligible for a certificate of
5 clinical competence in speech pathology or who has the equivalent
6 education and clinical experience;

7 (g) A physical therapist as defined by chapter 18.74 RCW;

8 (h) An occupational therapist who is a graduate of a program in
9 occupational therapy, or who has the equivalent of such education or
10 training; and

11 (i) A respiratory care practitioner certified under chapter 18.89
12 RCW.

13 (36) "Questioned costs" means those costs which have been
14 determined in accordance with generally accepted accounting principles
15 but which may constitute disallowed costs or departures from the
16 provisions of this chapter or rules and regulations adopted by the
17 department.

18 (37) "Rebased rate" or "cost-rebased rate" means a facility-
19 specific rate assigned to a nursing facility for a particular rate
20 period established on desk-reviewed, adjusted costs reported for that
21 facility covering at least six months of a prior calendar year.

22 (38) "Records" means those data supporting all financial statements
23 and cost reports including, but not limited to, all general and
24 subsidiary ledgers, books of original entry, and transaction
25 documentation, however such data are maintained.

26 (~~(38)~~) (39) "Related organization" means an entity which is under
27 common ownership and/or control with, or has control of, or is
28 controlled by, the contractor.

29 (a) "Common ownership" exists when an entity is the beneficial
30 owner of five percent or more ownership interest in the contractor and
31 any other entity.

32 (b) "Control" exists where an entity has the power, directly or
33 indirectly, significantly to influence or direct the actions or
34 policies of an organization or institution, whether or not it is
35 legally enforceable and however it is exercisable or exercised.

36 (~~(39)~~) (40) "Restricted fund" means those funds the principal
37 and/or income of which is limited by agreement with or direction of the
38 donor to a specific purpose.

1 (~~(40)~~) (41) "Secretary" means the secretary of the department of
2 social and health services.

3 (~~(41)~~) (42) "Title XIX" or "Medicaid" means the 1965 amendments
4 to the social security act, P.L. 89-07, as amended.

5 (~~(42)~~) (43) "Physical plant capital improvement" means a
6 capitalized improvement that is limited to an improvement to the
7 building or the related physical plant.

8 **Sec. 91.** RCW 74.46.105 and 1985 c 361 s 10 are each amended to
9 read as follows:

10 Cost reports and patient trust accounts of contractors shall be
11 field audited by the department, either by department staff or by
12 auditors under contract to the department, in accordance with the
13 provisions of this chapter. The department when it deems necessary to
14 assure the accuracy of cost reports may review any underlying financial
15 statements or other records upon which the cost reports are based. The
16 department shall have the authority to accept or reject audits which
17 fail to satisfy the requirements of this section or which are performed
18 by auditors who violate any of the rules of this section. Department
19 audits of the cost reports and patient trust accounts shall be
20 conducted as follows:

21 (1) Each year the department will provide for field audit of the
22 cost report, statistical reports, and patient trust funds, as
23 established by RCW 74.46.700, of all or a sample of reporting
24 facilities selected by profiles of costs, exceptions, contract
25 terminations, upon special requests or other factors determined by the
26 department.

27 (2) Beginning with audits for calendar year (~~(1983, up to one~~
28 ~~hundred percent of contractors cost reports and patient care trust fund~~
29 ~~accounts shall be audited: PROVIDED, That each contractor shall be~~
30 ~~audited at least once in every three year period)) 1993, contractors'
31 cost reports and resident care trust fund accounts shall be audited
32 periodically as determined necessary by the department.~~

33 (3) Facilities (~~(shall be selected for sample audits within one~~
34 ~~hundred twenty days of submission of a correct and complete cost~~
35 ~~report, and)) shall be (~~(so)~~) informed of the department's intent to
36 audit at least ten working days before the commencement of an audit of
37 a facility's cost report or resident trust fund accounts. (~~(Audits so~~
38 ~~scheduled shall be completed within one year of selection.))~~)~~

1 (4) Where an audit for a recent reporting or trust fund period
2 discloses material discrepancies, undocumented costs or mishandling of
3 patient trust funds, auditors may examine prior unaudited periods, for
4 indication of similar material discrepancies, undocumented costs or
5 mishandling of patient trust funds for not more than two reporting
6 periods preceding the facility reporting period selected in the sample.

7 (5) The audit will result in a schedule summarizing appropriate
8 adjustments to the contractor's cost report. These adjustments will
9 include an explanation for the adjustment, the general ledger account
10 or account group, and the dollar amount. Patient trust fund audits
11 shall be reported separately and in accordance with RCW 74.46.700.

12 (6) Audits shall meet generally accepted auditing standards as
13 promulgated by the American institute of certified public accountants
14 and the standards for audit of governmental organizations, programs,
15 activities and functions as published by the comptroller general of the
16 United States. Audits shall be supervised or reviewed by a certified
17 public accountant.

18 (7) No auditor under contract with or employed by the department to
19 perform audits in accordance with the provisions of this chapter shall:

20 (a) Have had direct or indirect financial interest in the
21 ownership, financing or operation of a nursing home in this state
22 during the period covered by the audits;

23 (b) Acquire or commit to acquire any direct or indirect financial
24 interest in the ownership, financing or operation of a nursing home in
25 this state during said auditor's employment or contract with the
26 department;

27 (c) Accept as a client any nursing home in this state during or
28 within two years of termination of said auditor's contract or
29 employment with the department.

30 (8) Audits shall be conducted by auditors who are otherwise
31 independent as determined by the standards of independence established
32 by the American institute of certified public accountants.

33 (9) All audit rules adopted after March 31, 1984, shall be
34 published before the beginning of the cost report year to which they
35 apply.

36 **Sec. 92.** RCW 74.46.115 and 1983 1st ex.s. c 67 s 6 are each
37 amended to read as follows:

1 The office of the state auditor shall (~~annually~~) at least once in
2 every three state fiscal years commencing July 1, 1995, review the
3 performance of the department to ensure that departmental audits are
4 conducted in accordance with generally accepted (~~accounting principles~~
5 ~~and~~) auditing standards.

6 **Sec. 93.** RCW 74.46.160 and 1985 c 361 s 12 are each amended to
7 read as follows:

8 (1) Within one hundred twenty days after receipt of the proposed
9 preliminary settlement, the department shall verify the accuracy of the
10 proposal and shall issue a preliminary settlement report by cost center
11 to the contractor which fully substantiates disallowed costs, refunds,
12 underpayments, or adjustments to the proposed preliminary settlement.

13 (2) After completion of the audit process, including exhaustion or
14 mutual termination of (~~reviews and~~) any administrative appeals (~~of~~)
15 or exception procedure used by the contractor to contest audit findings
16 or determinations, but not including any judicial review available to
17 and commenced by the contractor, the department will submit a final
18 settlement report by cost center to the contractor which fully
19 substantiates disallowed costs, refunds, underpayments, or adjustments
20 to the contractor's cost report. (~~Where the contractor is pursuing~~
21 ~~judicial or administrative review or appeal in good faith regarding~~
22 ~~audit findings or determinations, the department may issue a partial~~
23 ~~final settlement to recover overpayments based on audit adjustments not~~
24 ~~in dispute.))~~

25 **Sec. 94.** RCW 74.46.170 and 1983 1st ex.s. c 67 s 10 are each
26 amended to read as follows:

27 (1) A contractor shall have (~~thirty~~) a period of days, to be
28 established by the department in rule, after the date the preliminary
29 or final settlement report is submitted to the contractor to contest a
30 settlement determination under the administrative appeals or exception
31 procedure established by the department pursuant to RCW 74.46.780. Any
32 such administrative review of a settlement shall be limited to
33 calculation of the settlement or the application of settlement
34 principles and rules, or both, and shall not examine or reexamine
35 payment rate or audit issues. After the (~~thirty-day~~) period
36 established by the department in rule has expired, a preliminary or
37 final settlement will not be subject to review.

1 (2) A preliminary settlement report as issued by the department
2 will become the final settlement report if no audit has been scheduled
3 within twelve calendar months following the department's issuance of a
4 preliminary settlement report to the contractor.

5 (3) A settlement will be reopened if necessary to make adjustments
6 for findings resulting from an audit performed pursuant to RCW
7 74.46.105(4).

8 **Sec. 95.** RCW 74.46.180 and 1993 sp.s. c 13 s 2 are each amended to
9 read as follows:

10 (1) The ~~((state))~~ department shall make payment of any
11 underpayments to which a contractor is entitled as determined by the
12 department under the provisions of this chapter within ~~((thirty))~~ sixty
13 days after the date the preliminary or final settlement report is
14 submitted to the contractor and the department shall pay interest at
15 the rate of one percent per month on any unpaid preliminary or final
16 settlement balance still due the contractor after such time, accruing
17 from sixty days after the preliminary or final settlement report is
18 submitted to the contractor, and no interest shall accrue or be paid
19 for any period prior to this date: PROVIDED, That any increase in a
20 preliminary or final settlement amount due the contractor resulting
21 from a final administrative or judicial decision shall also bear
22 interest until paid at the rate of one percent per month, accruing from
23 sixty days after the preliminary or final settlement was submitted to
24 the contractor. The department shall pay no interest on amounts due a
25 contractor other than amounts determined by preliminary or final
26 settlement as provided in this subsection.

27 (2) A contractor found, under a preliminary or final settlement
28 issued by the department, to have received either overpayments or
29 erroneous payments ~~((under a preliminary or final settlement))~~, to
30 which the contractor is not entitled as determined by the department
31 under the provisions of this chapter, shall refund such erroneous
32 payments or overpayments to the ~~((state))~~ department within ~~((thirty))~~
33 sixty days after the date the preliminary or final settlement report is
34 submitted to the contractor, subject to the provisions of subsections
35 (3), (4), and ~~((+7))~~ (6) of this section, PROVIDED, That for all
36 preliminary or final settlements issued on and after July 1, 1995,
37 regardless of what period a settlement covers, neither a timely filed
38 request to pursue the department's administrative appeals or exception

1 procedure nor commencement of judicial review, as may be available to
2 the contractor in law, contesting the settlement, erroneous payments or
3 overpayments shall delay recovery. A contractor shall pay interest at
4 the rate of one percent per month on any unpaid preliminary or final
5 settlement balance still due the department sixty days after the
6 preliminary or final settlement report is submitted to the contractor,
7 accruing from this date: PROVIDED Further, That the department shall
8 refund interest collected for preliminary and settlement amounts the
9 contractor was entitled to retain as subsequently determined by final
10 administrative or judicial decision.

11 (3) Within the cost centers of nursing services and food, all
12 savings resulting from the respective allowable costs being lower than
13 the respective reimbursement rate paid to the contractor during the
14 report period shall be refunded to the department. However, in
15 computing a preliminary or final settlement, savings in a cost center
16 may be shifted to cover a deficit in another cost center up to the
17 amount of any savings. Not more than twenty percent of the rate in a
18 cost center may be shifted into that cost center and no shifting may be
19 made into the property cost center. There shall be no shifting out of
20 nursing services, and savings in food shall be shifted only to cover
21 deficits in the nursing services cost center. There shall be no
22 shifting from the operational to the administrative cost center.

23 (4) Within the administrative and property cost centers, the
24 contractor shall retain at least fifty percent, but not more than
25 seventy-five percent, of any savings resulting from the respective
26 audited allowable costs being lower than the respective reimbursement
27 rates paid to the contractor during the report period multiplied by the
28 number of authorized medical care client days in which said rates were
29 in effect, except that no savings may be retained if reported costs in
30 the administrative and property cost centers exceed audited allowable
31 costs in these cost areas by a total of ten cents or more per patient
32 day. The secretary, by rule, shall establish the basis for the
33 specific percentages of savings to the contractors. Such rules may
34 provide for differences in the percentages allowed for each cost center
35 to individual facilities based on performance measures related to
36 administrative efficiency.

37 (5) All return on investment rate payments provided by RCW
38 74.46.530 shall be retained by the contractor to the extent net
39 invested funds are substantiated by department field audit. Any

1 industrial insurance dividend or premium discount under RCW 51.16.035
2 shall be retained by the contractor to the extent that such dividend or
3 premium discount is attributable to the contractor's private patients.

4 (6) In the event the contractor fails to make repayment in the time
5 provided in subsection (2) of this section, the department shall
6 either:

7 (a) Deduct the amount of refund due the department, plus any
8 interest accrued under ~~((RCW 43.20B.695))~~ subsection (2) of this
9 section, from payment amounts due the contractor; or

10 (b) In the instance the contract has been terminated, (i) deduct
11 the amount of refund due the department, plus interest assessed at the
12 rate and in the manner provided in ~~((RCW 43.20B.695))~~ subsection (2) of
13 this section, from any payments due; or (ii) recover the amount due,
14 plus any interest assessed under ~~((RCW 43.20B.695,))~~ subsection (2) of
15 this section from security posted with or otherwise obtained by the
16 department or by any other lawful means.

17 ~~((Where the facility is pursuing timely filed judicial or~~
18 ~~administrative remedies in good faith regarding settlement issues, the~~
19 ~~contractor need not refund nor shall the department withhold from the~~
20 ~~facility current payment amounts the department claims to be due from~~
21 ~~the facility but which are specifically disputed by the contractor.))~~
22 For all erroneous payments and overpayments determined by preliminary
23 or final settlements issued before July 1, 1995, and not yet recovered
24 by the department because they are specifically disputed by the
25 contractor in a timely filed administrative or judicial review, if the
26 judicial or administrative remedy sought by the facility is not granted
27 after all appeals are exhausted or mutually terminated, the facility
28 shall make payment of such amounts due plus interest accrued from the
29 date of filing of the appeal, as payable on judgments, within sixty
30 days of the date such decision is made.

31 **Sec. 96.** RCW 74.46.190 and 1983 1st ex.s. c 67 s 12 are each
32 amended to read as follows:

33 (1) The substance of a transaction will prevail over its form.

34 (2) All documented costs which are ordinary, necessary, related to
35 care of medical care recipients, and not expressly unallowable, are to
36 be allowable. Costs of providing ancillary care are allowable, subject
37 to any applicable cost center limit contained in this chapter, provided
38 documentation establishes the costs were incurred for medical care

1 recipients and other sources of payment to which recipients may be
2 legally entitled, such as private insurance or medicare, were first
3 fully utilized.

4 (3) Costs applicable to services, facilities, and supplies
5 furnished to the provider by related organizations are allowable but at
6 the cost to the related organization, provided they do not exceed the
7 price of comparable services, facilities, or supplies that could be
8 purchased elsewhere.

9 (4) Beginning January 1, 1985, the payment for property usage is to
10 be independent of ownership structure and financing arrangements.

11 (5) Beginning July 1, 1995, allowable costs shall not include costs
12 reported by a nursing care provider for a prior period to the extent
13 such costs, due to statutory exemption, will not be incurred by the
14 nursing facility in the period to be covered by the rate.

15 **Sec. 97.** RCW 74.46.410 and 1993 sp.s. c 13 s 6 are each amended to
16 read as follows:

17 (1) Costs will be unallowable if they are not documented,
18 necessary, ordinary, and related to the provision of care services to
19 authorized patients.

20 (2) Unallowable costs include, but are not limited to, the
21 following:

22 (a) Costs of items or services not covered by the medical care
23 program. Costs of such items or services will be unallowable even if
24 they are indirectly reimbursed by the department as the result of an
25 authorized reduction in patient contribution;

26 (b) Costs of services and items provided to recipients which are
27 covered by the department's medical care program but not included in
28 care services established by the department under this chapter;

29 (c) Costs associated with a capital expenditure subject to section
30 1122 approval (part 100, Title 42 C.F.R.) if the department found it
31 was not consistent with applicable standards, criteria, or plans. If
32 the department was not given timely notice of a proposed capital
33 expenditure, all associated costs will be unallowable up to the date
34 they are determined to be reimbursable under applicable federal
35 regulations;

36 (d) Costs associated with a construction or acquisition project
37 requiring certificate of need approval pursuant to chapter 70.38 RCW if
38 such approval was not obtained;

1 (e) Interest costs other than those provided by RCW 74.46.290 on
2 and after January 1, 1985;

3 (f) Salaries or other compensation of owners, officers, directors,
4 stockholders, and others associated with the contractor or home office,
5 except compensation paid for service related to patient care;

6 (g) Costs in excess of limits or in violation of principles set
7 forth in this chapter;

8 (h) Costs resulting from transactions or the application of
9 accounting methods which circumvent the principles of the cost-related
10 reimbursement system set forth in this chapter;

11 (i) Costs applicable to services, facilities, and supplies
12 furnished by a related organization in excess of the lower of the cost
13 to the related organization or the price of comparable services,
14 facilities, or supplies purchased elsewhere;

15 (j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX
16 recipients are allowable if the debt is related to covered services, it
17 arises from the recipient's required contribution toward the cost of
18 care, the provider can establish that reasonable collection efforts
19 were made, the debt was actually uncollectible when claimed as
20 worthless, and sound business judgment established that there was no
21 likelihood of recovery at any time in the future;

22 (k) Charity and courtesy allowances;

23 (l) Cash, assessments, or other contributions, excluding dues, to
24 charitable organizations, professional organizations, trade
25 associations, or political parties, and costs incurred to improve
26 community or public relations;

27 (m) Vending machine expenses;

28 (n) Expenses for barber or beautician services not included in
29 routine care;

30 (o) Funeral and burial expenses;

31 (p) Costs of gift shop operations and inventory;

32 (q) Personal items such as cosmetics, smoking materials, newspapers
33 and magazines, and clothing, except those used in patient activity
34 programs;

35 (r) Fund-raising expenses, except those directly related to the
36 patient activity program;

37 (s) Penalties and fines;

38 (t) Expenses related to telephones, televisions, radios, and
39 similar appliances in patients' private accommodations;

1 (u) Federal, state, and other income taxes;
2 (v) Costs of special care services except where authorized by the
3 department;
4 (w) Expenses of key-man insurance and other insurance or retirement
5 plans not made available to all employees;
6 (x) Expenses of profit-sharing plans;
7 (y) Expenses related to the purchase and/or use of private or
8 commercial airplanes which are in excess of what a prudent contractor
9 would expend for the ordinary and economic provision of such a
10 transportation need related to patient care;
11 (z) Personal expenses and allowances of owners or relatives;
12 (aa) All expenses of maintaining professional licenses or
13 membership in professional organizations;
14 (bb) Costs related to agreements not to compete;
15 (cc) Amortization of goodwill;
16 (dd) Expenses related to vehicles which are in excess of what a
17 prudent contractor would expend for the ordinary and economic provision
18 of transportation needs related to patient care;
19 (ee) Legal and consultant fees in connection with a fair hearing
20 against the department where a decision is rendered in favor of the
21 department or where otherwise the determination of the department
22 stands;
23 (ff) Legal and consultant fees of a contractor or contractors in
24 connection with a lawsuit against the department;
25 (gg) Lease acquisition costs and other intangibles not related to
26 patient care;
27 (hh) All rental or lease costs other than those provided in RCW
28 74.46.300 on and after January 1, 1985;
29 (ii) Postsurvey charges incurred by the facility as a result of
30 subsequent inspections under RCW 18.51.050 which occur beyond the first
31 postsurvey visit during the certification survey calendar year;
32 (jj) Compensation paid for any purchased nursing care services,
33 including registered nurse, licensed practical nurse, and nurse
34 assistant services, obtained through service contract arrangement in
35 excess of the amount of compensation paid for such hours of nursing
36 care service had they been paid at the average hourly wage, including
37 related taxes and benefits, for in-house nursing care staff of like
38 classification at the same nursing facility, as reported in the most
39 recent cost report period;

1 (kk) For all partial or whole rate periods after July 17, 1984,
2 costs of land and depreciable assets that cannot be reimbursed under
3 the Deficit Reduction Act of 1984 and implementing state statutory and
4 regulatory provisions;

5 (ll) Costs reported by the contractor for a prior period to the
6 extent such costs, due to statutory exemption, will not be incurred by
7 the contractor in the period to be covered by the rate.

8 NEW SECTION. Sec. 98. A new section is added to chapter 74.46 RCW
9 to read as follows:

10 The legislature intends to adopt a new system for establishing
11 nursing home payment rates no later than July 1, 1998. Any payments to
12 nursing homes for services provided after June 30, 1998, shall be based
13 on the new system. The system shall include case-mix reimbursement
14 methods for paying for nursing services and shall match payments to
15 patient care needs, while providing incentives for cost control and
16 efficiency. To that end:

17 (1) In consultation with nursing facility provider associations,
18 consumer groups, and the legislative budget committee, the department
19 of social and health services shall design and develop alternative
20 methods for matching nursing facility payments to patient care needs,
21 while providing incentives for cost control and efficiency.

22 (2) The department shall report to the fiscal and health care
23 policy committees of the legislature on the projected benefits and
24 costs of these alternative methods by October 15th of 1995, 1996, and
25 1997. The October 1996 report shall additionally include a recommended
26 time line for implementing the new payment system no later than July 1,
27 1998.

28 (3) The following acts or parts of acts, as now existing or
29 hereafter amended, are each repealed, effective June 30, 1998:

30 (a) RCW 74.46.420 and 1993 sp.s. c 13 s 7, 1985 c 361 s 18, 1983
31 1st ex.s. c 67 s 18, & 1980 c 177 s 42;

32 (b) RCW 74.46.430 and 1993 sp.s. c 13 s 8, 1987 2nd ex.s. c 1 s 2,
33 1987 c 476 s 2, 1983 1st ex.s. c 67 s 19, & 1980 c 177 s 43;

34 (c) RCW 74.46.440 and 1989 c 372 s 16 & 1980 c 177 s 44;

35 (d) RCW 74.46.450 and 1993 sp.s. c 13 s 9, 1983 1st ex.s. c 67 s
36 20, & 1980 c 177 s 45;

- 1 (e) RCW 74.46.460 and 1993 sp.s. c 13 s 10, 1987 c 476 s 3, 1985 c
2 361 s 15, 1983 1st ex.s. c 67 s 21, 1981 1st ex.s. c 2 s 5, & 1980 c
3 177 s 46;
- 4 (f) RCW 74.46.465 and 1987 c 476 s 8;
- 5 (g) RCW 74.46.470 and 1993 sp.s. c 13 s 11, 1987 c 476 s 4, 1983
6 1st ex.s. c 67 s 22, & 1980 c 177 s 47;
- 7 (h) RCW 74.46.481 and 1993 sp.s. c 13 s 12, 1991 sp.s. c 8 s 16,
8 1990 c 207 s 1, 1987 c 476 s 5, & 1983 1st ex.s. c 67 s 24;
- 9 (i) RCW 74.46.490 and 1993 sp.s. c 13 s 13, 1983 1st ex.s. c 67 s
10 25, 1981 1st ex.s. c 2 s 6, & 1980 c 177 s 49;
- 11 (j) RCW 74.46.500 and 1993 sp.s. c 13 s 14, 1992 c 182 s 1, & 1980
12 c 177 s 50;
- 13 (k) RCW 74.46.505 and 1993 sp.s. c 13 s 15;
- 14 (l) RCW 74.46.510 and 1993 sp.s. c 13 s 16 & 1980 c 177 s 51;
- 15 (m) RCW 74.46.530 and 1993 sp.s. c 13 s 17, 1991 sp.s. c 8 s 17,
16 1985 c 361 s 17, 1983 1st ex.s. c 67 s 28, 1981 1st ex.s. c 2 s 7, &
17 1980 c 177 s 53;
- 18 (n) RCW 74.46.540 and 1980 c 177 s 54;
- 19 (o) RCW 74.46.550 and 1983 1st ex.s. c 67 s 29 & 1980 c 177 s 55;
- 20 (p) RCW 74.46.560 and 1983 1st ex.s. c 67 s 30 & 1980 c 177 s 56;
- 21 (q) RCW 74.46.570 and 1983 1st ex.s. c 67 s 31 & 1980 c 177 s 57;
- 22 (r) RCW 74.46.580 and 1983 1st ex.s. c 67 s 32 & 1980 c 177 s 58;
- 23 and
- 24 (s) RCW 74.46.590 and 1980 c 177 s 59.

25 **Sec. 99.** RCW 74.46.420 and 1993 sp.s. c 13 s 7 are each amended to
26 read as follows:

27 The following principles are inherent in RCW 74.46.430 through
28 74.46.590:

29 (1) ~~((Reimbursement))~~ Effective July 1, 1995, through June 30,
30 1998, nursing facility payment rates will be set or adjusted for
31 economic trends and conditions annually and prospectively on a per
32 ((patient)) resident day basis ((on a two-year cycle corresponding to
33 each state biennium; and)), in accordance with the principles and
34 methods set forth in this chapter, to take effect July 1st of each
35 year.

36 (2) ~~((The rates, in the nursing services, food, administrative, and~~
37 ~~operational cost centers, shall be adjusted downward or upward when set~~
38 ~~effective July 1 of the first fiscal year of the two-year rate setting~~

1 cycle and adjusted again downward or upward effective July 1 of the
2 second fiscal year of the rate setting cycle for economic trends and
3 conditions)) July 1, 1995, component rates in the nursing services,
4 food, administrative, and operational cost centers shall be cost-
5 rebased utilizing desk-reviewed and adjusted costs reported for
6 calendar year 1994, for all nursing facilities submitting at least six
7 months of cost data. Such component rates for July 1, 1995, shall also
8 be adjusted downward or upward for economic trends and conditions as
9 provided in this section. Component rates in property and return on
10 investment (ROI) shall be reset annually as provided in this chapter.

11 (3) The July 1, 1995, component rates ((for the first year of each
12 biennium)) in the nursing services, food, administrative, and
13 operational cost centers shall be adjusted for economic trends and
14 conditions by the change in the implicit price deflator for personal
15 consumption expenditures index published by the bureau of labor
16 statistics of the United States department of labor (IPD index). The
17 period used to measure the IPD increase or decrease to be applied to
18 these ((first year biennial)) July 1, 1995, rate((s)) components shall
19 be ((the)) calendar year ((preceding the July 1 commencement of the
20 state biennium)) 1994.

21 (4) ((The July 1 rates for the second year of each biennium shall
22 be adjusted)) July 1, 1996, component rates in the nursing services,
23 food, administrative, and operational cost centers shall not be cost-
24 rebased, but shall be the component rates assigned to each nursing
25 facility in effect on June 30, 1996, adjusted downward or upward for
26 economic trends and conditions by the change in the nursing home input
27 price index without capital costs published by the health care
28 financing administration of the department of health and human
29 services((,)) (HCFA index((, however, any increase shall be multiplied
30 by one and one-half))) . The period to be used to measure the HCFA
31 index increase ((to be multiplied by one and one half and applied)) or
32 decrease to be applied to these ((second year biennial)) June 30, 1996,
33 component rates shall ((also)) be ((the)) calendar year ((preceding the
34 July 1 commencement of the state biennium: PROVIDED, However, That in
35 the event the change in the HCFA index measured over the following
36 calendar year, the one terminating six months after the start of the
37 state biennium, is twenty five percent greater or less than the change
38 in the HCFA index measured over the calendar year preceding
39 commencement of the state biennium, the department shall use the HCFA

1 ~~index increase multiplied by one and one half or decrease in such~~
2 ~~following calendar year to inflate or decrease nursing facilities'~~
3 ~~nursing services, food, administrative, and operational rates for July~~
4 ~~1 of the second biennial year)) 1994.~~

5 (5) July 1, 1997, component rates in the nursing services, food,
6 administrative, and operational cost centers shall not be cost-rebased,
7 but shall be the component rates assigned to each nursing facility in
8 effect on June 30, 1997, adjusted downward or upward for economic
9 trends and conditions by the change in the nursing home input price
10 index without capital costs published by the health care financing
11 administration of the department of health and human services (HCFA
12 index), multiplied by a factor of 1.25. The period to be used to
13 measure the HCFA increase or decrease to be applied to these rate
14 components for July 1, 1997, rate setting shall be calendar year 1996.

15 (6) If either the implicit price deflator (IPD) index or the health
16 care financing administration (HCFA) index specified in this section
17 ceases to be published in the future, the department shall select ((by
18 rule)) and use in its place or their place one or more measures of
19 change from the same or an alternate source or sources ((for))
20 utilizing the same or comparable time periods specified in this
21 section.

22 **Sec. 100.** RCW 74.46.430 and 1993 sp.s. c 13 s 8 are each amended
23 to read as follows:

24 (1) The department, as provided by this chapter, will determine
25 prospective ~~((cost-related reimbursement))~~ payment rates for services
26 provided to medical care recipients. Each rate so determined shall
27 represent the contractor's maximum compensation within each cost center
28 and for return on investment for each ((patient)) resident day for such
29 medical care recipient.

30 (2) ~~((As required,))~~ The department may modify such maximum per
31 ~~((patient))~~ resident day rates, consistent with this chapter, pursuant
32 to the administrative ((review provisions of)) appeals or exception
33 procedure authorized by RCW 74.46.780.

34 (3) For July 1, 1995, and all following rates, the maximum
35 prospective ((reimbursement)) component payment rates for the nursing
36 services, food, administrative, operational, and property cost centers,
37 and the return on investment (ROI) component rate for each nursing
38 facility shall be established based upon a minimum licensed bed

1 facility occupancy level of ~~((eighty-five))~~ ninety percent, except for
2 rate adjustments as provided for in RCW 74.46.460(6).

3 (4) The minimum ninety percent facility occupancy shall be used to
4 calculate individual rates, to calculate the median cost limits (MCLs)
5 for the metropolitan statistical area (MSA) and nonmetropolitan
6 statistical area (non-MSA) peer groups, and to array facilities by
7 costs in calculating the variable return portion of the return on
8 investment rate component (ROI).

9 (5) All contractors shall be required to adjust and maintain wages
10 for all employees to a minimum hourly wage of four dollars and seventy-
11 six cents per hour beginning January 1, 1988, and five dollars and
12 fifteen cents per hour beginning January 1, 1989.

13 **Sec. 101.** RCW 74.46.450 and 1993 sp.s. c 13 s 9 are each amended
14 to read as follows:

15 (1) Prospective reimbursement rates for a new contractor, as
16 defined by the department in rule, will be established within sixty
17 days following receipt by the department of the properly completed
18 projected budget required by RCW 74.46.670. Such reimbursement rates
19 will become effective as of the effective date of the contract and
20 shall remain in effect until ~~((adjusted or))~~ the new contractor's rate
21 in all cost areas can be reset ~~((as provided in this chapter))~~
22 effective July 1st using a cost report of that contractor containing at
23 least six months' data from the prior calendar year, regardless of
24 whether reported costs for other contractors for the prior calendar
25 year in question will be used to rebase their July 1st rates.

26 (2) Such reimbursement rates will be based on ~~((the contractor's~~
27 ~~projected cost of operations and on costs and))~~ payment rates of the
28 prior contractor, if any, or of other contractors in comparable
29 circumstances.

30 (3) ~~((If a properly completed budget is not received at least sixty~~
31 ~~days prior to the effective date of the contract,))~~ The department will
32 establish ~~((preliminary))~~ a new contractor's initial component rates
33 based on the ~~((other))~~ factors specified in subsections (2) and (4) of
34 this section. These ~~((preliminary))~~ initial rates will remain in
35 effect until adjusted or reset as provided in this chapter.

36 (4) The department is authorized to develop policies and procedures
37 in rule ~~((to address the computation of rates for the first and second~~
38 ~~fiscal years of each biennium, including steps necessary to prorate~~

1 ~~rate adjustments for economic trends and conditions as authorized in~~
2 ~~RCW 74.46.420, for contractors having less than twelve months of cost~~
3 ~~report data for the prior calendar year)) that comply with the policies~~
4 ~~and purposes of this chapter to establish factors by which a new~~
5 ~~contractor's rate will be set, for example, occupancy level or~~
6 ~~proration of rate adjustments for economic trends and conditions as~~
7 ~~authorized in RCW 74.46.420. However, a new contractor, whose medicaid~~
8 ~~contract was effective in calendar year 1994; and whose nursing~~
9 ~~facility occupancy during calendar year 1994 increased by at least five~~
10 ~~percent over that of the prior owner, shall have its July 1995 rate for~~
11 ~~nursing services, food, administrative, operational, and property cost~~
12 ~~centers, and the return on investment (ROI) based upon a minimum~~
13 ~~facility occupancy of eighty-five percent.~~

14 **Sec. 102.** RCW 74.46.460 and 1993 sp.s. c 13 s 10 are each amended
15 to read as follows:

16 (1) Each contractor's ~~((reimbursement))~~ nursing services, food,
17 administrative, and operational component payment rates will be
18 ~~((determined or))~~ adjusted for economic trends and conditions
19 prospectively at least once during each calendar year, as provided in
20 this chapter, to be effective July 1st((-)): PROVIDED, That except for
21 the rates of new contractors as defined by the department, a
22 ~~((contractor's))~~ nursing facility's cost-rebased rate for ((the first
23 fiscal year of each biennium)) July 1, 1995, must be established upon
24 ~~((its))~~ the facility's own ((prior calendar period)) cost report of at
25 least six months of adjusted and/or audited cost data from the calendar
26 year 1994.

27 (2) Subject to the provisions of subsections (3) through (6) of
28 this section, rates may be adjusted ((as determined)) by the department
29 at the request of the nursing facility to cover the medicaid share of
30 incremental costs necessary to address and take into account variations
31 in the distribution of all medicaid and nonmedicaid patient
32 classifications or changes in all medicaid or nonmedicaid patient
33 characteristics from the prior reporting year, program changes required
34 by the department, or changes in staffing levels at a facility required
35 by the department. Rates may also be adjusted to cover costs
36 associated with placing a nursing home in receivership which costs are
37 not covered by the rate of the former contractor, including:
38 Compensation of the receiver, reasonable expenses of receivership and

1 transition of control, and costs incurred by the receiver in carrying
2 out court instructions or rectifying deficiencies found. Rates shall
3 be adjusted as provided in this section for any capitalized additions
4 or replacements made as a condition for licensure or certification.
5 Rates shall be adjusted as provided in this section for capitalized
6 improvements done under RCW 74.46.465.

7 (3) Except for rate adjustments granted for economic trends and
8 conditions as authorized in this chapter to be effective each July 1st,
9 all rate adjustments granted by the department for any other purpose,
10 including those granted for capitalized additions or replacements or
11 for staffing, whether made or not made as a condition of licensure or
12 certification, shall be limited in total amount each fiscal year to the
13 total current legislative appropriation, if any, specifically made to
14 fund the medicaid share of such adjustments for the fiscal year.

15 (4) The department is authorized to adopt rules to ensure that
16 funding granted for additional staffing will be cost-effective in
17 providing increased quantity and quality of services to nursing
18 facility residents and to ensure that spending limitations will not be
19 exceeded.

20 (5) Funds disbursed representing rate adjustments granted under
21 authority of this section and not spent by the contractor for the
22 purposes granted are subject to immediate recovery by the department by
23 means of recoupment from current contract payments or any other means
24 authorized by law and contractors shall pay interest on such unused or
25 misused funds at the rate of one percent per month from the date of
26 disbursal to the date of recovery. If a contractor requests an
27 administrative review of a department recovery action under rules
28 established under RCW 74.46.780, such request shall not stay recoupment
29 from current facility contract payments or other recovery.

30 (6) All rate component adjustments to fund the medicaid share of
31 nursing facility new construction or refurbishing projects costing in
32 excess of one million two hundred thousand dollars, or projects
33 requiring state or federal approval, shall be based upon a minimum
34 facility occupancy of eighty-five percent for the nursing services,
35 food, administrative, operational, and property cost centers, and the
36 return on investment (ROI), during the initial rate period in which the
37 adjustment is granted, and shall be based upon a minimum facility
38 occupancy of ninety percent for the nursing services, food,

1 administrative, operational, and property cost centers, and the return
2 on investment (ROI), for all rate periods thereafter.

3 **Sec. 103.** RCW 74.46.470 and 1993 sp.s. c 13 s 11 are each amended
4 to read as follows:

5 (1) A contractor's (~~reimbursement~~) nursing facility per resident
6 day component rates for medical care recipients (~~will~~) shall be
7 determined as provided in this chapter utilizing net invested funds and
8 desk-reviewed cost report data within the following cost centers:

9 (a) Nursing services;

10 (b) Food;

11 (c) Administrative;

12 (d) Operational; and

13 (e) Property.

14 (2) There shall be for the time period January 1988 through June
15 1990 only an enhancement cost center established to reimburse
16 contractors for specific legislatively authorized enhancements for
17 nonadministrative wages and benefits to ensure that such enhancements
18 are used exclusively for the legislatively authorized purposes. For
19 purposes of settlement, funds appropriated to this cost center shall
20 only be used for expenditures for which the legislative authorization
21 is granted. Such funds may be used only in the following
22 circumstances:

23 (a) The contractor has increased expenditures for which legislative
24 authorization is granted to at least the highest level paid in any of
25 the last three cost years, plus, beginning July 1, 1987, any percentage
26 inflation adjustment as was granted each year under RCW 74.46.495; and

27 (b) All funds shifted from the enhancement cost center are shown to
28 have been expended for legislatively authorized enhancements.

29 (3) If the contractor does not spend the amount appropriated to
30 this cost center in the legislatively authorized manner, then the
31 amounts not appropriately spent shall be recouped at preliminary or
32 final settlement pursuant to RCW 74.46.160.

33 (4) For purposes of this section, "nonadministrative wages and
34 benefits" means wages and payroll taxes paid with respect to, and the
35 employer share of the cost of benefits provided to, employees in job
36 classes specified in an appropriation, which may not include
37 administrators, assistant administrators, or administrators in
38 training.

1 (5) Amounts expended in the enhancement cost center in excess of
2 the minimum wage established under RCW 74.46.430 are subject to all
3 provisions contained in this chapter.

4 **Sec. 104.** RCW 74.46.481 and 1993 sp.s. c 13 s 12 are each amended
5 to read as follows:

6 (1) The nursing services cost center shall include for reporting
7 and audit purposes all costs related to the direct provision of nursing
8 and related care, including fringe benefits and payroll taxes for the
9 nursing and related care personnel, and the cost of nursing supplies.
10 The department shall adopt by administrative rule a definition of
11 "related care". For rates effective after June 30, 1991, nursing
12 services costs, as reimbursed within this chapter, shall not include
13 costs of any purchased nursing care services, including registered
14 nurse, licensed practical nurse, and nurse assistant services, obtained
15 through service contract arrangement in excess of the amount of
16 compensation paid for such hours of nursing care service had they been
17 paid at the average hourly wage, including related taxes and benefits,
18 for in-house nursing care staff of like classification at the same
19 nursing facility, as reported in the most recent cost report period.

20 (2) The department shall adopt through administrative rules a
21 method for establishing a nursing services cost center rate consistent
22 with the principles stated in this section.

23 (3) Utilizing regression or other statistical technique, the
24 department shall determine a reasonable limit on facility nursing staff
25 taking into account facility patient characteristics. For purposes of
26 this section, facility nursing staff refers to registered nurses,
27 licensed practical nurses and nursing assistants employed by the
28 facility or obtained through temporary labor contract arrangements.
29 Effective January 1, 1988, the hours associated with the training of
30 nursing assistants and the supervision of that training for nursing
31 assistants shall not be included in the calculation of facility nursing
32 staff. In selecting a measure of patient characteristics, the
33 department shall take into account:

34 (a) The correlation between alternative measures and facility
35 nursing staff; and

36 (b) The cost of collecting information for and computation of a
37 measure.

1 If regression is used, the limit shall be set at predicted nursing
2 staff plus 1.75 regression standard errors. If another statistical
3 method is utilized, the limit shall be set at a level corresponding to
4 1.75 standard errors above predicted staffing computed according to a
5 regression procedure. A regression calculated shall be effective for
6 the entire biennium.

7 (4) No facility shall receive reimbursement for nursing staff
8 levels in excess of the limit. However, nursing staff levels
9 established under subsection (3) of this section shall not apply to the
10 nursing services cost center reimbursement rate only for the pilot
11 facility especially designed to meet the needs of persons living with
12 AIDS as defined by RCW 70.24.017 and specifically authorized for this
13 purpose under the 1989 amendment to the Washington state health plan.

14 (5) (~~Every two years when rates are set at the beginning of each~~
15 ~~new biennium~~) For July 1, 1995, rate setting only, the department
16 shall divide into two peer groups nursing facilities located in the
17 state of Washington providing services to medicaid residents: (a)
18 Those facilities located within a metropolitan statistical area as
19 defined and determined by the United States office of management and
20 budget or other applicable federal office (MSA) and (b) those not
21 located in such an area (non-MSA). The facilities in each peer group
22 shall then be arrayed from lowest to highest by magnitude of per
23 (~~patient~~) resident day desk-reviewed, adjusted nursing services cost
24 from the (~~prior~~) 1994 calendar report year, regardless of whether any
25 such adjustments are contested by the nursing facility, and the median
26 or fiftieth percentile cost for each peer group shall be determined.
27 Nursing services component rates for facilities within each peer group
28 (~~for the first year of the biennium~~) shall be set at the lower of the
29 facility's desk-reviewed, adjusted per (~~patient~~) resident day nursing
30 services cost from the (~~prior~~) 1994 report period or the median cost
31 for the facility's peer group, utilizing the same calendar year report
32 data plus twenty-five percent. This rate shall be reduced or inflated
33 as authorized by RCW 74.46.420. However, the per patient day peer
34 group median cost plus twenty-five percent limit shall not apply to the
35 nursing services cost center reimbursement rate only for the pilot
36 facility especially designed to meet the needs of persons living with
37 AIDS as defined by RCW 70.24.017 and specifically authorized for this
38 purpose under the 1989 amendment to the Washington state health plan.

1 (6) ~~((If a nursing facility is impacted by the limit authorized in~~
2 ~~subsection (5) of this section, it shall not receive a prospective rate~~
3 ~~in nursing services for July 1, 1993, less than the same facility's~~
4 ~~prospective rate in nursing services as of June 30, 1993, adjusted by~~
5 ~~any increase in the implicit price deflator for personal consumption~~
6 ~~expenditures, IPD index, as measured over the period authorized by RCW~~
7 ~~74.46.420(3).~~

8 ~~(7))~~ For rates effective July 1, 1996, a nursing facility's
9 noncost-rebased component rate in nursing services ((for the second
10 year of each biennium)) shall be that facility's nursing services
11 component rate ((as of July 1 of the first year of that biennium))
12 existing on June 30, 1996, reduced or inflated as authorized by RCW
13 74.46.420. ((The alternating procedures prescribed in this section for
14 a facility's two July 1 nursing services rates occurring within each
15 biennium shall be followed in the same order for each succeeding
16 biennium.)) The July 1, 1996, nursing services component rate used to
17 calculate the return on investment (ROI) component rate shall be the
18 inflated prospective nursing services rate as of June 30, 1996,
19 excluding any rate increases granted pursuant to RCW 74.46.460.

20 (7) For rates effective July 1, 1997, a nursing facility's noncost-
21 rebased component rate in nursing services shall be that facility's
22 nursing services component rate existing on June 30, 1997, reduced or
23 inflated as authorized by RCW 74.46.420. The July 1, 1997, nursing
24 services component rate used to calculate the return on investment
25 (ROI) component rate shall be the inflated prospective nursing services
26 rate as of June 30, 1997, excluding any rate increases granted pursuant
27 to RCW 74.46.460.

28 (8) Median cost~~((s))~~ limits for peer groups shall be calculated
29 initially for July 1, 1995, rate setting as provided in this chapter on
30 the basis of ((the most recent)) adjusted 1994 nursing services cost
31 report information available to the department prior to the calculation
32 of the new rates for July 1, 1995 ((of the first fiscal year of each
33 biennium)), regardless of whether the adjustments are contested or
34 subject to pending administrative or judicial review. Median costs for
35 peer groups shall be recalculated as provided in this chapter on the
36 basis of the most recent adjusted cost information available to the
37 department on October 31, 1995 ((of the first fiscal year of each
38 biennium)), and shall apply retroactively to ((the prior)) July 1,
39 1995, rates, regardless of whether the adjustments are contested or

1 subject to pending administrative or judicial review. Median cost((s))
2 limits, once calculated using October 31, 1995, adjusted cost
3 information shall not be adjusted to reflect subsequent administrative
4 or judicial rulings, whether final or not.

5 (9) The department is authorized to determine on a systematic basis
6 facilities with unmet patient care service needs. The department may
7 increase the nursing services cost center prospective rate for a
8 facility beyond the level determined in accordance with subsection (6)
9 of this section if the facility's actual and reported nursing staffing
10 is one standard error or more below predicted staffing as determined
11 according to the method selected pursuant to subsection (3) of this
12 section and the facility has unmet patient care service needs:
13 PROVIDED, That prospective rate increases authorized by this subsection
14 shall be funded only from legislative appropriations made for this
15 purpose during the periods authorized by such appropriations or other
16 laws and the increases shall be conditioned on specified improvements
17 in patient care at such facilities.

18 (10) The department shall establish a method for identifying
19 patients with exceptional care requirements and a method for
20 establishing or negotiating on a consistent basis rates for such
21 patients.

22 (11) The department, in consultation with interested parties, shall
23 adopt rules to establish the criteria the department will use in
24 reviewing any requests by a contractor for a prospective rate
25 adjustment to be used to increase the number of nursing staff. These
26 rules shall also specify the time period for submission and review of
27 staffing requests: PROVIDED, That a decision on a staffing request
28 shall not take longer than sixty days from the date the department
29 receives such a complete request. In establishing the criteria, the
30 department may consider, but is not limited to, the following:

31 (a) Increases in debility levels of contractors' residents
32 determined in accordance with the department's assessment and reporting
33 procedures and requirements utilizing the minimum data set;

34 (b) Staffing patterns for similar facilities in the same peer
35 group;

36 (c) Physical plant of contractor; and

37 (d) Survey, inspection of care, and department consultation
38 results.

1 **Sec. 105.** RCW 74.46.490 and 1993 sp.s. c 13 s 13 are each amended
2 to read as follows:

3 (1) The food cost center shall include for reporting purposes all
4 costs for bulk and raw food and beverages purchased for the dietary
5 needs of medical care recipients.

6 (2) ~~((Every two years when rates are set at the beginning of each
7 new biennium))~~ For July 1, 1995, rate setting only, the department
8 shall divide into two peer groups nursing facilities located in the
9 state of Washington providing services to medicaid residents: (a)
10 Those facilities located within a metropolitan statistical area as
11 defined and determined by the United States office of management and
12 budget or other applicable federal office (MSA) and (b) those not
13 located in such an area (non-MSA). The facilities in each peer group
14 shall then be arrayed from lowest to highest by magnitude of per
15 ~~((patient))~~ resident day desk-reviewed, adjusted food cost from the
16 ~~((prior))~~ 1994 calendar report year, regardless of whether any such
17 adjustments are contested by the nursing facility, and the median or
18 fiftieth percentile cost for each peer group shall be determined. Food
19 component rates for facilities within each peer group ~~((for the first
20 year of the biennium))~~ shall be set at the lower of the facility's
21 desk-reviewed, adjusted per ~~((patient))~~ resident day food cost from the
22 ~~((prior))~~ 1994 report period or the median cost for the facility's peer
23 group, using the same calendar year report data, plus twenty-five
24 percent. This rate shall be reduced or inflated as authorized by RCW
25 74.46.420.

26 (3) For rates effective July 1, 1996, a nursing facility's noncost-
27 rebased food component rate ~~((for the second year of each biennium))~~
28 shall be that facility's food component rate ~~((as of July 1 of the
29 first year of that biennium))~~ existing on June 30, 1996, reduced or
30 inflated as authorized by RCW 74.46.420. ~~((The alternating procedures
31 prescribed in this section for a facility's two July 1 food rates
32 occurring within each biennium shall be followed in the same order for
33 each succeeding biennium.))~~ The July 1, 1996, food component rate used
34 to calculate the return on investment (ROI) component rate shall be the
35 inflated prospective food component rate as of June 30, 1996, excluding
36 any rate increases granted pursuant to RCW 74.46.460.

37 (4) For rates effective July 1, 1997, a nursing facility's noncost-
38 rebased food component rate shall be that facility's food component
39 rate existing on June 30, 1997, reduced or inflated as authorized by

1 RCW 74.46.420. The July 1, 1997, food component rate used to calculate
2 the return on investment (ROI) component rate shall be the inflated
3 prospective food component rate as of June 30, 1997, excluding any rate
4 increases granted pursuant to RCW 74.46.460.

5 ~~((4))~~ (5) Median cost~~((s))~~ limits for peer groups shall be
6 calculated initially for July 1, 1995, rate setting as provided in this
7 chapter on the basis of ~~((the most recent))~~ adjusted 1994 food cost
8 report information available to the department prior to the calculation
9 of the new rates for July 1, 1995 ~~((of the first fiscal year of each~~
10 ~~biennium))~~, regardless of whether the adjustments are contested or
11 subject to pending administrative or judicial review. Median costs for
12 peer groups shall be recalculated as provided in this chapter on the
13 basis of the most recent adjusted cost information available to the
14 department on October 31, 1995 ~~((of the first fiscal year of each~~
15 ~~biennium))~~, and shall apply retroactively to ~~((the prior))~~ July 1,
16 1995, rates, regardless of whether the adjustments are contested or
17 subject to pending administrative or judicial review. Median cost~~((s))~~
18 limits, once calculated utilizing October 31, 1995, adjusted cost
19 information, shall not be adjusted to reflect subsequent administrative
20 or judicial rulings, whether final or not.

21 **Sec. 106.** RCW 74.46.500 and 1993 sp.s. c 13 s 14 are each amended
22 to read as follows:

23 (1) The administrative cost center shall include for cost reporting
24 purposes all administrative, oversight, and management costs whether
25 facility on-site or allocated in accordance with a department-approved
26 joint-cost allocation methodology. Such costs shall be identical to
27 the cost report line item costs categorized under "general and
28 administrative" in the "administration and operations" combined cost
29 center existing prior to January 1, 1993, except for nursing supplies
30 and purchased medical records.

31 (2) ~~((Every two years when rates are set at the beginning of each~~
32 ~~new biennium))~~ For July 1, 1995, rate setting only, the department
33 shall divide into two peer groups nursing facilities located in the
34 state of Washington providing services to medicaid residents: (a)
35 Those facilities located within a metropolitan statistical area as
36 defined and determined by the United States office of management and
37 budget or other applicable federal office (MSA) and (b) those not
38 located in such an area (non-MSA). The facilities in each peer group

1 shall then be arrayed from lowest to highest by magnitude of per
2 ~~((patient))~~ resident day desk-reviewed, adjusted administrative cost
3 from the ~~((prior))~~ 1994 calendar report year, regardless of whether any
4 such adjustments are contested by the nursing facility, and the median
5 or fiftieth percentile cost for each peer group shall be determined.
6 Administrative component rates for facilities within each peer group
7 ~~((for the first year of the biennium))~~ shall be set at the lower of the
8 facility's desk-reviewed, adjusted per ~~((patient))~~ resident day
9 administrative cost from the ~~((prior))~~ 1994 report period or the median
10 cost for the facility's peer group, utilizing the same calendar year
11 report data, plus ten percent. This rate shall be reduced or inflated
12 as authorized by RCW 74.46.420.

13 (3) For rates effective July 1, 1996, a nursing facility's noncost-
14 rebased administrative component rate ~~((for the second year of each~~
15 ~~biennium))~~ shall be that facility's administrative component rate ~~((as~~
16 ~~of July 1 of the first year of that biennium))~~ existing on June 30,
17 1996, reduced or inflated as authorized by RCW 74.46.420. ~~((The~~
18 ~~alternating procedures prescribed in this section for a facility's two~~
19 ~~July 1 administrative rates occurring within each biennium shall be~~
20 ~~followed in the same order for each succeeding biennium.))~~ The July 1,
21 1996, administrative component rate used to calculate the return on
22 investment (ROI) component rate shall be the inflated prospective
23 administrative component rate as of June 30, 1996, excluding any rate
24 increases granted pursuant to RCW 74.46.460.

25 (4) For rates effective July 1, 1997, a nursing facility's noncost-
26 rebased administrative component rate shall be that facility's
27 administrative component rate existing on June 30, 1997, reduced or
28 inflated as authorized by RCW 74.46.420. The July 1, 1997,
29 administrative component rate used to calculate the return on
30 investment (ROI) component rate shall be the inflated prospective
31 administrative component rate as of June 30, 1997, excluding any rate
32 increases granted pursuant to RCW 74.46.460.

33 ~~((+4))~~ (5) Median cost ~~((s))~~ limits for peer groups shall be
34 calculated initially for July 1, 1995, rate setting as provided in this
35 chapter on the basis of ~~((the most recent))~~ adjusted 1994
36 administrative cost report information available to the department
37 prior to the calculation of the new rates for July 1, 1995 ~~((of the~~
38 ~~first fiscal year of each biennium))~~, regardless of whether the
39 adjustments are contested or subject to pending administrative or

1 judicial review. Median costs for peer groups shall be recalculated as
2 provided in this chapter on the basis of the most recent adjusted cost
3 information available to the department on October 31, 1995 (~~of the~~
4 ~~first fiscal year of each biennium~~), and shall apply retroactively to
5 (~~the prior~~) July 1, 1995, rates, regardless of whether the
6 adjustments are contested or subject to pending administrative or
7 judicial review. Median cost(~~s~~) limits, once calculated utilizing
8 October 31, 1995, adjusted cost information, shall not be adjusted to
9 reflect subsequent administrative or judicial rulings, whether final or
10 not.

11 **Sec. 107.** RCW 74.46.505 and 1993 sp.s. c 13 s 15 are each amended
12 to read as follows:

13 (1) The operational cost center shall include for cost reporting
14 purposes all allowable costs of the daily operation of the facility not
15 included in nursing services and related care, food, administrative, or
16 property costs, whether such costs are facility on-site or allocated in
17 accordance with a department-approved joint-cost allocation
18 methodology.

19 (2) (~~Every two years when rates are set at the beginning of each~~
20 ~~new biennium~~) For July 1, 1995, rate setting only, the department
21 shall divide into two peer groups nursing facilities located in the
22 state of Washington providing services to medicaid residents: (a)
23 Those facilities located within a metropolitan statistical area as
24 defined and determined by the United States office of management and
25 budget or other applicable federal office (MSA) and (b) those not
26 located in such an area (non-MSA). The facilities in each peer group
27 shall then be arrayed from lowest to highest by magnitude of per
28 (~~patient~~) resident day desk-reviewed, adjusted operational cost from
29 the (~~prior~~) 1994 calendar report year, regardless of whether any such
30 adjustments are contested by the nursing facility, and the median or
31 fiftieth percentile cost for each peer group shall be determined.
32 Operational component rates for facilities within each peer group (~~for~~
33 ~~the first year of the biennium~~) shall be set at the lower of the
34 facility's desk-reviewed, adjusted per (~~patient~~) resident day
35 operational cost from the (~~prior~~) 1994 report period or the median
36 cost for the facility's peer group, utilizing the same calendar year
37 report data, plus twenty-five percent. This rate shall be reduced or
38 inflated as authorized by RCW 74.46.420.

1 (3) For rates effective July 1, 1996, a nursing facility's noncost-
2 rebased operational component rate ((for the second year of each
3 biennium)) shall be that facility's operational component rate ((as of
4 July 1 of the first year of that biennium)) existing on June 30, 1996,
5 reduced or inflated as authorized by RCW 74.46.420. ((The alternating
6 procedures prescribed in this section for a facility's two July 1
7 operational rates occurring within each biennium shall be followed in
8 the same order for each succeeding biennium.)) The July 1, 1996,
9 operational component rate used to calculate the return on investment
10 (ROI) component rate shall be the inflated prospective operational
11 component rate as of June 30, 1996, excluding any rate increases
12 granted pursuant to RCW 74.46.460.

13 (4) For rates effective July 1, 1997, a nursing facility's noncost-
14 rebased operational component rate shall be that facility's operational
15 component rate existing on June 30, 1997, reduced or inflated as
16 authorized by RCW 74.46.420. The July 1, 1997, operational component
17 rate used to calculate the return on investment (ROI) component rate
18 shall be the inflated prospective operational component rate as of June
19 30, 1997, excluding any rate increases granted pursuant to RCW
20 74.46.460.

21 ~~((4))~~ (5) Median cost((s)) limits for peer groups shall be
22 calculated initially for July 1, 1995, rate setting as provided in this
23 chapter on the basis of ((the most recent)) adjusted 1994 operational
24 cost report information available to the department prior to the
25 calculation of the new rate for July 1, 1995 ((of the first fiscal year
26 of each biennium)), regardless of whether the adjustments are contested
27 or subject to pending administrative or judicial review. Median costs
28 for peer groups shall be recalculated as provided in this chapter on
29 the basis of the most recent adjusted cost information available to the
30 department on October 31, 1995 ((of the first fiscal year of each
31 biennium)), and shall apply retroactively to ((the prior)) July 1,
32 1995, rates, regardless of whether the adjustments are contested or
33 subject to pending administrative or judicial review. Median cost((s))
34 limits, once calculated utilizing October 31, 1995, adjusted cost
35 information, shall not be adjusted to reflect subsequent administrative
36 or judicial rulings, whether final or not.

37 **Sec. 108.** RCW 74.46.510 and 1993 sp.s. c 13 s 16 are each amended
38 to read as follows:

1 (1) The property cost center rate for each facility shall be
2 determined by dividing the sum of the reported allowable prior period
3 actual depreciation, subject to RCW 74.46.310 through 74.46.380,
4 adjusted for any capitalized additions or replacements approved by the
5 department, and the retained savings from such cost center, as provided
6 in RCW 74.46.180, by the greater of a facility's total ((patient))
7 resident days for the facility in the prior period or resident days as
8 calculated on ninety or eighty-five percent facility occupancy as
9 applicable. If a capitalized addition or retirement of an asset will
10 result in a different licensed bed capacity during the ensuing period,
11 the prior period total ((patient)) resident days used in computing the
12 property cost center rate shall be adjusted to anticipated ((patient))
13 resident day level.

14 (2) A nursing facility's property rate shall be rebased annually,
15 effective July 1, in accordance with this section and this chapter
16 ~~((regardless of whether the rate is for the first or second year of the~~
17 ~~biennium))~~.

18 (3) When a certificate of need for a new facility is requested, the
19 department, in reaching its decision, shall take into consideration
20 per-bed land and building construction costs for the facility which
21 shall not exceed a maximum to be established by the secretary.

22 **Sec. 109.** RCW 74.46.530 and 1993 sp.s. c 13 s 17 are each amended
23 to read as follows:

24 (1) The department shall establish for each medicaid nursing
25 facility a return on investment (ROI) rate composed of two parts: A
26 financing allowance and a variable return allowance. The financing
27 allowance part of a facility's return on investment component rate
28 shall be rebased annually, effective July 1, in accordance with the
29 provisions of this section and this chapter~~((, regardless of whether~~
30 ~~the rate is for the first or second year of the biennium))~~.

31 (a) The financing allowance shall be determined by multiplying the
32 net invested funds of each facility by .10, and dividing by the
33 ~~((contractor's))~~ greater of a nursing facility's total ((patient))
34 resident days from the most recent cost report period or resident days
35 calculated on ninety percent or eighty-five percent facility occupancy
36 as applicable. If a capitalized addition or retirement of an asset
37 will result in a different licensed bed capacity during the ensuing
38 period, the prior period total ((patient)) resident days used in

1 computing the financing and variable return allowances shall be
2 adjusted to the anticipated (~~(patient)~~) resident day level.

3 (b) In computing the portion of net invested funds representing the
4 net book value of tangible fixed assets, the same assets, depreciation
5 bases, lives, and methods referred to in RCW 74.46.330, 74.46.350,
6 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets,
7 shall be utilized, except that the capitalized cost of land upon which
8 the facility is located and such other contiguous land which is
9 reasonable and necessary for use in the regular course of providing
10 (~~(patient)~~) resident care shall also be included. Subject to
11 provisions and limitations contained in this chapter, for land
12 purchased by owners or lessors before July 18, 1984, capitalized cost
13 of land shall be the buyer's capitalized cost. For all partial or
14 whole rate periods after July 17, 1984, if the land is purchased after
15 July 17, 1984, capitalized cost shall be that of the owner of record on
16 July 17, 1984, or buyer's capitalized cost, whichever is lower. In the
17 case of leased facilities where the net invested funds are unknown or
18 the contractor is unable to provide necessary information to determine
19 net invested funds, the secretary shall have the authority to determine
20 an amount for net invested funds based on an appraisal conducted
21 according to RCW 74.46.360(1).

22 (c) In determining the variable return allowance:

23 (~~(Every two years at the start of each new biennium)~~) For July
24 1, 1995, rate setting only, the department, without utilizing peer
25 groups, (~~(will)~~) shall first rank all facilities in numerical order
26 from highest to lowest according to their per (~~(patient)~~) resident day
27 adjusted or audited, or both, allowable costs for nursing services,
28 food, administrative, and operational costs combined for the
29 (~~(previous)~~) 1994 calendar year cost report period.

30 (ii) The department shall then compute the variable return
31 allowance by multiplying the appropriate percentage amounts, which
32 shall not be less than one percent and not greater than four percent,
33 by the sum of the facility's nursing services, food, administrative,
34 and operational rate components. The percentage amounts will be based
35 on groupings of facilities according to the rankings prescribed in (i)
36 of this subsection (1)(c). The percentages calculated and assigned
37 will remain the same for the (~~(next)~~) variable return allowance paid in
38 (~~(the second year of the biennium)~~) all July 1, 1996, and July 1, 1997,
39 rates as well. Those groups of facilities with lower per diem costs

1 shall receive higher percentage amounts than those with higher per diem
2 costs.

3 (d) The sum of the financing allowance and the variable return
4 allowance shall be the return on investment rate for each facility, and
5 shall be added to the prospective rates of each contractor as
6 determined in RCW 74.46.450 through 74.46.510.

7 (e) In the case of a facility which was leased by the contractor as
8 of January 1, 1980, in an arm's-length agreement, which continues to be
9 leased under the same lease agreement, and for which the annualized
10 lease payment, plus any interest and depreciation expenses associated
11 with contractor-owned assets, for the period covered by the prospective
12 rates, divided by the contractor's total (~~(patient)~~) resident days,
13 minus the property cost center determined according to RCW 74.46.510,
14 is more than the return on investment rate determined according to
15 subsection (1)(d) of this section, the following shall apply:

16 (i) The financing allowance shall be recomputed substituting the
17 fair market value of the assets as of January 1, 1982, as determined by
18 the department of general administration through an appraisal
19 procedure, less accumulated depreciation on the lessor's assets since
20 January 1, 1982, for the net book value of the assets in determining
21 net invested funds for the facility. A determination by the department
22 of general administration of fair market value shall be final unless
23 the procedure used to make such determination is shown to be arbitrary
24 and capricious.

25 (ii) The sum of the financing allowance computed under subsection
26 (1)(e)(i) of this section and the variable allowance shall be compared
27 to the annualized lease payment, plus any interest and depreciation
28 associated with contractor-owned assets, for the period covered by the
29 prospective rates, divided by the contractor's total (~~(patient)~~)
30 resident days, minus the property cost center rate determined according
31 to RCW 74.46.510. The lesser of the two amounts shall be called the
32 alternate return on investment rate.

33 (iii) The return on investment rate determined according to
34 subsection (1)(d) of this section or the alternate return on investment
35 rate, whichever is greater, shall be the return on investment rate for
36 the facility and shall be added to the prospective rates of the
37 contractor as determined in RCW 74.46.450 through 74.46.510.

38 (f) In the case of a facility which was leased by the contractor as
39 of January 1, 1980, in an arm's-length agreement, if the lease is

1 renewed or extended pursuant to a provision of the lease, the treatment
2 provided in subsection (1)(e) of this section shall be applied except
3 that in the case of renewals or extensions made subsequent to April 1,
4 1985, reimbursement for the annualized lease payment shall be no
5 greater than the reimbursement for the annualized lease payment for the
6 last year prior to the renewal or extension of the lease.

7 (2) Each biennium, beginning in 1985, the secretary shall review
8 the adequacy of return on investment rates in relation to anticipated
9 requirements for maintaining, reducing, or expanding nursing care
10 capacity. The secretary shall report the results of such review to the
11 legislature and make recommendations for adjustments in the return on
12 investment rates utilized in this section, if appropriate.

13 **Sec. 110.** RCW 74.46.560 and 1983 1st ex.s. c 67 s 30 are each
14 amended to read as follows:

15 The department will notify each contractor in writing of its
16 prospective (~~reimbursement~~) payment rates by the effective dates of
17 the rates. Unless otherwise specified at the time it is issued,
18 (~~the~~) a rate will be effective from the first day of the month in
19 which it is issued until a new rate becomes effective. If a rate is
20 changed as the result of an appeals or exception procedure established
21 in accordance with RCW 74.46.780, it will be effective as of the date
22 the appealed rate became effective.

23 **Sec. 111.** RCW 74.46.570 and 1983 1st ex.s. c 67 s 31 are each
24 amended to read as follows:

25 (1) Prospective rates are subject to adjustment by the department
26 as a result of errors or omissions by the department or by the
27 contractor. The department will notify the contractor in writing of
28 each adjustment and of the effective date of the adjustment, and of any
29 amount due to the department or to the contractor as a result of the
30 rate adjustment.

31 (2) If a contractor claims an error or omission based upon
32 incorrect cost reporting, amended cost report pages shall be prepared
33 and submitted by the contractor. Amended pages shall be accompanied by
34 a certification signed by the licensed administrator of the nursing
35 facility and a written justification explaining why the amendment is
36 necessary. The certification and justification shall meet such
37 criteria as are adopted by the department. Such amendments may be used

1 to revise a prospective rate but shall not be used to revise a
2 settlement if submitted after commencement of the field audit. All
3 changes determined to be material by the department shall be subject to
4 field audit. If changes are found to be incorrect or otherwise
5 unacceptable, any rate adjustment based thereon shall be null and void
6 and resulting payments or payment increases shall be subject to refund.

7 (3) The contractor shall pay an amount owed the department
8 resulting from an error or omission as determined by the department on
9 or after July 1, 1995, or commence repayment in accordance with a
10 schedule determined and agreed to in writing by the department, within
11 sixty days after receipt of notification of the rate adjustment(~~(7~~
12 ~~unless the contractor contests the department's determination in~~
13 ~~accordance with the procedures set forth in RCW 74.46.780. If the~~
14 ~~determination is contested, the contractor shall pay or commence~~
15 ~~repayment within sixty days after completion of these proceedings)).~~
16 If a refund as determined by the department is not paid when due, the
17 amount thereof may be deducted from current payments by the department.
18 However, neither a timely filed request to pursue the department's
19 administrative appeals or exception procedure nor commencement of
20 judicial review, as may be available to the contractor in law, shall
21 delay recovery.

22 (4) The department shall pay any amount owed the contractor as a
23 result of a rate adjustment within thirty days after the contractor is
24 notified of the rate adjustment.

25 (5) No adjustments will be made to a rate more than one hundred
26 twenty days after the final audit narrative and summary for the period
27 the rate was effective is sent to the contractor or, if no audit is
28 held, more than one hundred twenty days after the preliminary
29 settlement becomes the final settlement, except when a settlement is
30 reopened as provided in RCW 74.46.170(3).

31 **Sec. 112.** RCW 74.46.640 and 1983 1st ex.s. c 67 s 34 are each
32 amended to read as follows:

33 (1) Payments to a contractor may be withheld by the department in
34 each of the following circumstances:

35 (a) A required report is not properly completed and filed by the
36 contractor within the appropriate time period, including any approved
37 extension. Payments will be released as soon as a properly completed
38 report is received;

1 (b) State auditors, department auditors, or authorized personnel in
2 the course of their duties are refused access to a nursing (~~(home)~~)
3 facility or are not provided with existing appropriate records.
4 Payments will be released as soon as such access or records are
5 provided;

6 (c) A refund in connection with a preliminary or final settlement
7 or rate adjustment is not paid by the contractor when due. The amount
8 withheld will be limited to the unpaid amount of the refund and any
9 accumulated interest owed to the department as authorized by this
10 chapter; (~~and~~)

11 (d) Payment for the final (~~(thirty)~~) sixty days of service under a
12 contract will be held in the absence of adequate alternate security
13 acceptable to the department pending final settlement when the contract
14 is terminated; and

15 (e) Payment for services at any time during the contract period in
16 the absence of adequate alternate security acceptable to the
17 department, if a contractor's net medicaid overpayment liability for
18 one or more nursing facilities or other debt to the department, as
19 determined by preliminary settlement, final settlement, civil fines
20 imposed by the department, third-party liabilities or other source,
21 reaches or exceeds fifty thousand dollars, whether subject to good
22 faith dispute or not, and for each subsequent increase in liability
23 reaching or exceeding twenty-five thousand dollars. Payments will be
24 released as soon as practicable after acceptable security is provided
25 or refund to the department is made.

26 (2) No payment will be withheld until written notification of the
27 suspension is provided to the contractor, stating the reason
28 (~~(therefor)~~) for the withholding, except that neither a request to
29 pursue the administrative appeals or exception procedure established by
30 the department in rule nor commencement of judicial review, as may be
31 available to the contractor in law, shall delay suspension of payment.

32 **Sec. 113.** RCW 74.46.690 and 1985 c 361 s 3 are each amended to
33 read as follows:

34 (1) When a facility contract is terminated for any reason, the old
35 contractor shall submit final reports as required by RCW 74.46.040.

36 (2) Upon notification of a contract termination, the department
37 shall determine by preliminary or final settlement calculations the
38 amount of any overpayments made to the contractor, including

1 overpayments disputed by the contractor. If preliminary or final
2 settlements are unavailable for any period up to the date of contract
3 termination, the department shall make a reasonable estimate of any
4 overpayment or underpayments for such periods. The reasonable estimate
5 shall be based upon prior period settlements, available audit findings,
6 the projected impact of prospective rates, and other information
7 available to the department. The department shall also determine and
8 add in the total of all other debts owed to the department regardless
9 of source, including, but not limited to, interest owed to the
10 department as authorized by this chapter, civil fines imposed by the
11 department, or third-party liabilities.

12 (3) The old contractor shall provide security, in a form deemed
13 adequate by the department, ~~((in))~~ equal to the total amount of
14 determined and estimated overpayments and all other debts from any
15 source, whether or not the overpayments are the subject of good faith
16 dispute. Security shall consist of:

17 (a) Withheld payments due the contractor; or

18 (b) A surety bond issued by a bonding company acceptable to the
19 department; or

20 (c) An assignment of funds to the department; or

21 (d) Collateral acceptable to the department; or

22 (e) A purchaser's assumption of liability for the prior
23 contractor's overpayment; ~~((or))~~

24 (f) A promissory note secured by a deed of trust; or

25 (g) Any combination of (a), (b), (c), (d), ~~((or))~~ (e), or (f) of
26 this subsection.

27 (4) A surety bond or assignment of funds shall:

28 (a) Be at least equal in amount to determined or estimated
29 overpayments, whether or not the subject of good faith dispute, minus
30 withheld payments;

31 (b) Be issued or accepted by a bonding company or financial
32 institution licensed to transact business in Washington state;

33 (c) Be for a term, as determined by the department, sufficient to
34 ensure effectiveness after final settlement and the exhaustion of any
35 administrative appeals or exception procedure and judicial remedies, as
36 may be available to and sought by the contractor, regarding payment,
37 settlement, civil fine, interest assessment, or other debt issues:

38 PROVIDED, That the bond or assignment shall initially be for a term of
39 at least five years, and shall be forfeited if not renewed thereafter

1 in an amount equal to any remaining combined overpayment (~~((in dispute))~~)
2 and debt liability as determined by the department;

3 (d) Provide that the full amount of the bond or assignment, or
4 both, shall be paid to the department if a properly completed final
5 cost report is not filed in accordance with this chapter, or if
6 financial records supporting this report are not preserved and made
7 available to the auditor; and

8 (e) Provide that an amount equal to any recovery the department
9 determines is due from the contractor (~~((at))~~) from settlement or from
10 any other source of debt to the department, but not exceeding the
11 amount of the bond and assignment, shall be paid to the department if
12 the contractor does not pay the refund and debt within sixty days
13 following receipt of written demand (~~((or the conclusion of~~
14 ~~administrative or judicial proceedings to contest settlement issues))~~)
15 for payment from the department to the contractor.

16 (5) The department shall release any payment withheld as security
17 if alternate security is provided under subsection (3) of this section
18 in an amount equivalent to determined and estimated overpayments.

19 (6) If the total of withheld payments, bonds, and assignments is
20 less than the total of determined and estimated overpayments, the
21 unsecured amount of such overpayments shall be a debt due the state and
22 shall become a lien against the real and personal property of the
23 contractor from the time of filing by the department with the county
24 auditor of the county where the contractor resides or owns property,
25 and the lien claim has preference over the claims of all unsecured
26 creditors.

27 (7) The contractor shall file a properly completed final cost
28 report in accordance with the requirements of this chapter, which shall
29 be audited by the department. A final settlement shall be determined
30 within ninety days following completion of the audit process, including
31 completion of any administrative appeals or exception procedure review
32 of the audit requested by the contractor, but not including completion
33 of any judicial review available to and commenced by the contractor.

34 (8) Following determination of settlement for all periods, security
35 held pursuant to this section shall be released to the contractor after
36 all overpayments, erroneous payments, and debts determined in
37 connection with final settlement, or otherwise, including accumulated
38 interest owed the department, have been paid by the contractor. (~~((If~~
39 ~~the contractor contests the settlement determination in accordance with~~

1 ~~RCW 74.46.170, the department shall hold the security, not to exceed~~
2 ~~the amount of estimated unrecovered overpayments being contested,~~
3 ~~pending completion of the administrative appeal process.))~~

4 (9) If, after calculation of settlements for any periods, it is
5 determined that overpayments exist in excess of the value of security
6 held by the state, the department may seek recovery of these additional
7 overpayments as provided by law.

8 ~~((If a contract is terminated solely in order for the same~~
9 ~~owner to contract with the department to deliver services to another~~
10 ~~classification of medical care recipients at the same facility, the~~
11 ~~contractor is not required to submit final cost reports, and security~~
12 ~~shall not be required))~~ Regardless of whether a contractor intends to
13 terminate its medicaid contracts, if a contractor's net medicaid
14 overpayments and erroneous payments for one or more settlement periods,
15 and for one or more nursing facilities, combined with debts due the
16 department, reaches or exceeds a total of fifty thousand dollars, as
17 determined by preliminary settlement, final settlement, civil fines
18 imposed by the department, third-party liabilities or by any other
19 source, whether such amounts are subject to good faith dispute or not,
20 the department shall demand and obtain security equivalent to the total
21 of such overpayments, erroneous payments, and debts and shall obtain
22 security for each subsequent increase in liability reaching or
23 exceeding twenty-five thousand dollars. Such security shall meet the
24 criteria in subsections (3) and (4) of this section, except that the
25 department shall not accept an assumption of liability. The department
26 shall withhold all or portions of a contractor's current contract
27 payments or impose liens, or both, if security acceptable to the
28 department is not forthcoming. The department shall release a
29 contractor's withheld payments or lift liens, or both, if the
30 contractor subsequently provides security acceptable to the department.
31 This subsection shall apply to all overpayments and erroneous payments
32 determined by preliminary or final settlements issued on or after July
33 1, 1995, regardless of what payment periods the settlements may cover
34 and shall apply to all debts owed the department from any source,
35 including interest debts, which become due on or after July 1, 1995.

36 **Sec. 114.** RCW 74.46.770 and 1983 1st ex.s. c 67 s 39 are each
37 amended to read as follows:

1 (1) For all nursing facility medicaid payment rates effective on or
2 after July 1, 1995, and for all settlements and audits issued on or
3 after July 1, 1995, regardless of what periods the settlements or
4 audits may cover, if a contractor wishes to contest the way in which a
5 rule ((or contract provision)) relating to the ((prospective cost-
6 related reimbursement)) medicaid payment rate system was applied to the
7 contractor by the department, it shall ((first)) pursue the
8 ((administrative review process set forth in)) appeals or exception
9 procedure established by the department in rule authorized by RCW
10 74.46.780.

11 (2) ~~((The administrative review and fair hearing process in RCW~~
12 ~~74.46.780 need not be exhausted if a contractor wishes to challenge the~~
13 ~~legal validity of a statute, rule, or contract provision.)) If a~~
14 contractor wishes to challenge the legal validity of a statute, rule,
15 or contract provision or wishes to bring a challenge based in whole or
16 in part on federal law, including but not limited to issues of
17 procedural or substantive compliance with the federal medicaid minimum
18 payment standard for long-term care facility services, the appeals or
19 exception procedure established by the department in rule may not be
20 used for these purposes. This prohibition shall apply regardless of
21 whether the contractor wishes to obtain a decision or ruling on an
22 issue of validity or federal compliance or wishes only to make a record
23 for the purpose of subsequent judicial review.

24 (3) If a contractor wishes to challenge the legal validity of a
25 statute, rule, or contract provision relating to the medicaid payment
26 rate system, or wishes to bring a challenge based in whole or in part
27 on federal law, it must bring such action de novo in a court of proper
28 jurisdiction as may be provided by law.

29 **Sec. 115.** RCW 74.46.780 and 1989 c 175 s 159 are each amended to
30 read as follows:

31 ~~((1) Within twenty-eight days after a contractor is notified of an~~
32 ~~action or determination it wishes to challenge, the contractor shall~~
33 ~~request in writing that the secretary review such determination. The~~
34 ~~request shall be signed by the contractor or the licensed administrator~~
35 ~~of the facility, shall identify the challenged determination and the~~
36 ~~date thereof, and shall state as specifically as practicable the~~
37 ~~grounds for its contention that the determination was erroneous.~~

1 Copies of any documentation on which the contractor intends to rely to
2 support its position shall be included with the request.

3 (2) After receiving a request meeting the above criteria, the
4 secretary or his designee will contact the contractor to schedule a
5 conference for the earliest mutually convenient time. The conference
6 shall be scheduled for no later than ninety days after a properly
7 completed request is received unless both parties agree in writing to
8 a specified later date.

9 (3) The contractor and appropriate representatives of the
10 department shall attend the conference. In addition, representatives
11 selected by the contractor may attend and participate. The contractor
12 shall provide to the department in advance of the conference any
13 documentation on which it intends to rely to support its contentions.
14 The parties shall clarify and attempt to resolve the issues at the
15 conference. If additional documentation is needed to resolve the
16 issues, a second session of the conference shall be scheduled for not
17 later than twenty eight days after the initial session unless both
18 parties agree in writing to a specific later date.

19 (4) A written decision by the secretary will be furnished to the
20 contractor within sixty days after the conclusion of the conference.

21 (5) If the contractor desires review of an adverse decision of the
22 secretary, it shall within twenty eight days following receipt of such
23 decision file a written application for an adjudicative proceeding.
24 The proceeding is governed by chapter 34.05 RCW, the Administrative
25 Procedure Act.)) For all nursing facility medicaid payment rates
26 effective on or after July 1, 1995, and for all audits completed and
27 settlements issued on or after July 1, 1995, regardless of what periods
28 the payment rates, audits, or settlements may cover, the department
29 shall establish in rule, consistent with federal requirements for
30 nursing facilities participating in the medicaid program, an appeals or
31 exception procedure that allows individual nursing care providers an
32 opportunity to submit additional evidence and receive prompt
33 administrative review of payment rates with respect to such issues as
34 the department deems appropriate.

35 **Sec. 116.** 1995 c 260 s 12 (uncodified) is amended to read as
36 follows:

37 Sections 7 through 11 of this act shall take effect ((January))
38 July 1, 1996.

1 **Sec. 117.** RCW 70.128.120 and 1995 c 260 s 5 are each amended to
2 read as follows:

3 An adult family home provider shall have the following minimum
4 qualifications:

5 (1) Twenty-one years of age or older;

6 (2) Good moral and responsible character and reputation;

7 (3) Literacy;

8 (4) Management and administrative ability to carry out the
9 requirements of this chapter;

10 (5) Satisfactory completion of department-approved initial training
11 and continuing education training as specified by the department in
12 rule;

13 (6) Satisfactory completion of department-approved, or equivalent,
14 special care training before a provider may provide special care
15 services to a resident;

16 (7) Not been convicted of any crime listed in RCW 43.43.830 and
17 43.43.842; and

18 (8) Effective July 1, 1996, registered with the department of
19 health.

20 NEW SECTION. **Sec. 118.** If any part of this act is found to be in
21 conflict with federal requirements that are a prescribed condition to
22 the allocation of federal funds to the state, the conflicting part of
23 this act is inoperative solely to the extent of the conflict and with
24 respect to the agencies directly affected, and this finding does not
25 affect the operation of the remainder of this act in its application to
26 the agencies concerned. The rules under this act shall meet federal
27 requirements that are a necessary condition to the receipt of federal
28 funds by the state.

29 NEW SECTION. **Sec. 119.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

33 NEW SECTION. **Sec. 120.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of the
35 state government and its existing public institutions, and shall take
36 effect July 1, 1995.

Passed the House May 18, 1995.
Passed the Senate May 22, 1995.
Approved by the Governor June 15, 1995, with the exception of
certain items which were vetoed.
Filed in Office of Secretary of State June 15, 1995.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 11,
3 42, and 73, Engrossed Second Substitute House Bill No. 1908 entitled:
4 "AN ACT Relating to long-term care;"

5 Engrossed Second Substitute House Bill No. 1908 is far-reaching
6 legislation representing the efforts of many to reform Washington's
7 Long Term Care service delivery system. The legislature's efforts to
8 expand options for individuals who could be served in community
9 settings, improve the quality of care for those being served in
10 community programs, and revise the nursing facility payment system are
11 to be applauded.

12 Section 11 directs the Legislative Budget Committee (LBC) to
13 develop a working plan for long term care reform by December 12, 1995.
14 The LBC is to design an integrated, single point of entry system for
15 the delivery of services to all users of long term care. This plan is
16 directed to implement many of the findings included in the report
17 completed by the Long Term Care Commission in 1991. In the intervening
18 years the legislature has not chosen to adopt the recommendations of
19 the Long Term Care Commission regarding integration of services. One
20 of the primary reasons this proposal was not adopted was that it would
21 have significant cost. Because of the wide array of long-term care
22 issues which were addressed in this legislation, this section did not
23 receive full public scrutiny in the 1995 legislative session. I would
24 like to see more debate on the topic before such a major undertaking
25 goes forward.

26 Section 42 extends the requirements for the Department of Social
27 and Health Services (DSHS) to inspect nursing homes from every 12
28 months to at least every 18 months. Additionally, DSHS is prevented
29 from conducting nursing facility inspections for 12 months after a
30 citation-free inspection. This prohibition violates federal
31 requirements that the state inspect facilities any time there is reason
32 to believe a facility may be providing substandard care. While I am
33 vetoing this section, I am directing DSHS to use its resources
34 efficiently and to not inspect citation-free facilities more frequently
35 than every 12 months unless it has cause to believe problems have
36 developed in the interim.

37 Section 73 provides nursing homes an additional extension of up to
38 60 months to apply for a Certificate of Need if the facility is located
39 in an economically distressed area. Because the Certificate of Need
40 considers financial feasibility, an extension would not necessarily
41 make financing easier to obtain in an economically distressed area.
42 Additionally, facilities in operation could utilize the Certificate of
43 Need to minimize competition.

44 For these reasons, I have vetoed sections 11, 42, and 73 of
45 Engrossed Second Substitute House Bill No. 1908.

46 With the exception of sections 11, 42, and 73, Engrossed Second
47 Substitute House Bill No. 1908 is approved."