

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1850

Chapter 392, Laws of 1997

(partial veto)

55th Legislature
1997 Regular Session

LONG-TERM CARE REORGANIZATION AND STANDARDS OF CARE REFORM ACT

EFFECTIVE DATE: 7/27/97 - Except section 403 which becomes effective 5/16/97

Passed by the House April 27, 1997
Yeas 97 Nays 1

CLYDE BALLARD
Speaker of the
House of Representatives

Passed by the Senate April 27, 1997
Yeas 48 Nays 0

BRAD OWEN
President of the Senate

Approved May 16, 1997, with the exception of sections 104, 204, 207, 208, 305, 501, 505, 506, 530(1) and 530(3), which are vetoed.

GARY LOCKE
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 1850** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 16, 1997 - 3:18 p.m.

Secretary of State
State of Washington

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1850

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1997 Regular Session

State of Washington

55th Legislature

1997 Regular Session

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

Read first time 04/05/97.

1 AN ACT Relating to the long-term care reorganization and standards
2 of care reform act; amending RCW 70.129.010, 70.129.030, 70.129.110,
3 70.129.150, 74.39A.030, 74.39A.040, 74.39A.050, 74.39A.060, 70.129.105,
4 74.42.030, 74.42.450, 43.20B.080, 74.34.010, 74.39A.170, 70.128.175,
5 9A.42.010, 9A.42.050, 9A.42.020, 9A.42.030, 9A.44.010, 9A.44.050,
6 9A.44.100, 18.130.200, 43.43.842, 70.124.020, 70.124.040, 70.124.070,
7 74.34.020, 43.43.832, 43.20A.710, 18.52C.010, 18.52C.020, and
8 18.52C.040; reenacting and amending RCW 18.130.040; adding a new
9 section to chapter 74.39A RCW; adding a new section to chapter 70.124
10 RCW; adding new sections to chapter 74.34 RCW; adding new sections to
11 chapter 18.20 RCW; adding a new section to chapter 43.20B RCW; adding
12 a new section to chapter 43.70 RCW; adding a new section to chapter
13 18.51 RCW; adding new sections to chapter 9A.42 RCW; adding a new
14 section to chapter 43.43 RCW; creating new sections; repealing RCW
15 74.39.030, 74.39.040, 74.39A.005, and 74.39A.008; and declaring an
16 emergency.

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

18

PART I

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

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

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

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

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

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

32 (1) "Adult family home" means a home licensed under chapter 70.128
33 RCW.

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

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

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

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

14 (6) "Department" means the department of social and health
15 services.

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

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

32 (9) "Home and community services" means adult family homes, in-home
33 services, and other services administered or provided by contract by
34 the department directly or through contract with area agencies on aging
35 or similar services provided by facilities and agencies licensed by the
36 department.

37 (10) "Long-term care" is synonymous with chronic care and means
38 care and supports delivered indefinitely, intermittently, or over a
39 sustained time to persons of any age disabled by chronic mental or

1 physical illness, disease, chemical dependency, or a medical condition
2 that is permanent, not reversible or curable, or is long-lasting and
3 severely limits their mental or physical capacity for self-care. The
4 use of this definition is not intended to expand the scope of services,
5 care, or assistance by any individuals, groups, residential care
6 settings, or professions unless otherwise expressed by law.

7 (11) "Nursing home" means a facility licensed under chapter 18.51
8 RCW.

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

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

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

21 (2) *The committee shall elect a chair and vice-chair. The chair*
22 *shall be a member of the senate in even-numbered years and a member of*
23 *the house of representatives in odd-numbered years. The vice-chair*
24 *shall be a member of the senate in odd-numbered years and a member of*
25 *the house of representatives in even-numbered years.*

26 (3) *The committee shall:*

27 (a) *Review the need for reorganization and reform of long-term care*
28 *administration and service delivery;*

29 (b) *Review all quality standards developed, revised, and enforced*
30 *by the department;*

31 (c) *In cooperation with the department of social and health*
32 *services, develop suggestions to simplify, reduce, or eliminate*
33 *unnecessary rules, procedures, and burdensome paperwork that prove to*
34 *be barriers to providing effective coordination or high quality direct*
35 *services;*

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

1 (e) List all nonmeans tested programs and activities funded by the
2 federal older Americans act and state funded senior citizens act or
3 other such state funded programs and recommend how to integrate such
4 services into existing long-term care programs for the functionally
5 disabled;

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

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

11 (h) Describe current facilities and services that provide long-term
12 care to all types of chronically disabled individuals in the state
13 including Revised Code of Washington requirements, Washington
14 Administrative Code rules, allowable occupancy, typical clientele,
15 discharge practices, agency oversight, rates, eligibility requirements,
16 entry process, social and health services and other services provided,
17 staffing standards, and physical plant standards;

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

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

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

26 (l) Identify opportunities for consolidation between categories of
27 care; and

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

30 *Sec. 104 was vetoed. See message at end of chapter.

31 PART II

32 QUALITY STANDARDS AND COMPLAINT ENFORCEMENT

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

35 (1) An employee who is a whistleblower and who as a result of being
36 a whistleblower has been subjected to workplace reprisal or retaliatory
37 action, has the remedies provided under chapter 49.60 RCW. RCW

1 4.24.500 through 4.24.520, providing certain protection to persons who
2 communicate to government agencies, apply to complaints made under this
3 section. The identity of a whistleblower who complains, in good faith,
4 to the department about suspected abuse, neglect, financial
5 exploitation, or abandonment by any person in a nursing home, state
6 hospital, or adult family home may remain confidential if requested.
7 The identity of the whistleblower shall subsequently remain
8 confidential unless the department determines that the complaint was
9 not made in good faith.

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

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

20 (c) The presumption is rebutted by a functional assessment
21 conducted by the department that shows that the resident's needs cannot
22 be met by the reasonable accommodations of the facility due to the
23 increased needs of the resident.

24 (3) For the purposes of this section:

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

30 (b) "Workplace reprisal or retaliatory action" means, but is not
31 limited to: Denial of adequate staff to perform duties; frequent staff
32 changes; frequent and undesirable office changes; refusal to assign
33 meaningful work; unwarranted and unsubstantiated report of misconduct
34 under Title 18 RCW; letters of reprimand or unsatisfactory performance
35 evaluations; demotion; denial of employment; or a supervisor or
36 superior encouraging coworkers to behave in a hostile manner toward the
37 whistleblower; and

38 (c) "Reasonable accommodation" by a facility to the needs of a
39 prospective or current resident has the meaning given to this term

1 under the federal Americans with disabilities act of 1990, 42 U.S.C.
2 Sec. 12101 et seq. and other applicable federal or state
3 antidiscrimination laws and regulations.

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

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

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

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

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

31 (1) An employee or contractor who is a whistleblower and who as a
32 result of being a whistleblower has been subjected to workplace
33 reprisal or retaliatory action, has the remedies provided under chapter
34 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection
35 to persons who communicate to government agencies, apply to complaints
36 made under this section. The identity of a whistleblower who
37 complains, in good faith, to the department about suspected abuse,
38 neglect, exploitation, or abandonment by any person in a boarding home

1 licensed or required to be licensed pursuant to chapter 18.20 RCW or a
2 veterans' home pursuant to chapter 72.36 RCW or care provided in a
3 boarding home or a veterans' home by any person associated with a
4 hospice, home care, or home health agency licensed under chapter 70.127
5 RCW or other in-home provider may remain confidential if requested.
6 The identity of the whistleblower shall subsequently remain
7 confidential unless the department determines that the complaint was
8 not made in good faith.

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

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

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

24 (3) For the purposes of this section:

25 (a) "Whistleblower" means a resident or a person with a mandatory
26 duty to report under this chapter, or any person licensed under Title
27 18 RCW, who in good faith reports alleged abuse, neglect, exploitation,
28 or abandonment to the department, or the department of health, or to a
29 law enforcement agency;

30 (b) "Workplace reprisal or retaliatory action" means, but is not
31 limited to: Denial of adequate staff to perform duties; frequent staff
32 changes; frequent and undesirable office changes; refusal to assign
33 meaningful work; unwarranted and unsubstantiated report of misconduct
34 under Title 18 RCW; letters of reprimand or unsatisfactory performance
35 evaluations; demotion; denial of employment; or a supervisor or
36 superior encouraging coworkers to behave in a hostile manner toward the
37 whistleblower. The protections provided to whistleblowers under this
38 chapter shall not prevent a nursing home, state hospital, boarding
39 home, or adult family home from: (i) Terminating, suspending, or

1 disciplining a whistleblower for other lawful purposes; or (ii) for
2 facilities licensed under chapter 70.128 RCW, reducing the hours of
3 employment or terminating employment as a result of the demonstrated
4 inability to meet payroll requirements. The department shall determine
5 if the facility cannot meet payroll in cases in which a whistleblower
6 has been terminated or had hours of employment reduced because of the
7 inability of a facility to meet payroll; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (1) *The facility must inform the resident both orally and in*
24 *writing in a language that the resident understands of his or her*
25 *rights and all rules and regulations governing resident conduct and*
26 *responsibilities during the stay in the facility. The notification*
27 *must be made prior to or upon admission. Receipt of the information*
28 *must be acknowledged in writing.*

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

30 (a) *Upon an oral or written request, to access all records*
31 *pertaining to himself or herself including clinical records within*
32 *twenty-four hours; and*

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

37 (3) *The facility shall only admit or retain individuals whose needs*
38 *it can safely and appropriately serve in the facility with appropriate*

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

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

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

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

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

4 (5) Notification of changes.

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

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

11 (ii) A significant change in the resident's physical, mental, or
12 psychosocial status (i.e., a deterioration in health, mental, or
13 psychosocial status in either life-threatening conditions or clinical
14 complications).

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

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

19 (ii) A decision to transfer or discharge the resident from the
20 facility.

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

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

26 *Sec. 204 was vetoed. See message at end of chapter.

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

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

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

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

35 (c) The health of individuals in the facility would otherwise be
36 endangered;

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

1 (e) The facility ceases to operate.

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

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

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

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

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

17 ~~((e))~~ (d) Include in the notice the items described in subsection
18 ~~((4))~~ (5) of this section.

19 ~~((3))~~ (4)(a) Except when specified in this subsection, the notice
20 of transfer ~~((of {or}))~~ or discharge required under subsection ~~((2))~~
21 (3) of this section must be made by the facility at least thirty days
22 before the resident is transferred or discharged.

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

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

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

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

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

30 ~~((4))~~ (5) The written notice specified in subsection ~~((2))~~ (3)
31 of this section must include the following:

32 (a) The reason for transfer or discharge;

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

34 (c) The location to which the resident is transferred or
35 discharged;

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

38 (e) For residents with developmental disabilities, the mailing
39 address and telephone number of the agency responsible for the

1 protection and advocacy of developmentally disabled individuals
2 established under part C of the developmental disabilities assistance
3 and bill of rights act; and

4 (f) For residents who are mentally ill, the mailing address and
5 telephone number of the agency responsible for the protection and
6 advocacy of mentally ill individuals established under the protection
7 and advocacy for mentally ill individuals act.

8 ~~((+5))~~ (6) A facility must provide sufficient preparation and
9 orientation to residents to ensure safe and orderly transfer or
10 discharge from the facility.

11 ~~((+6))~~ (7) A resident discharged in violation of this section has
12 the right to be readmitted immediately upon the first availability of
13 a gender-appropriate bed in the facility.

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

16 (1) Prior to admission, all long-term care facilities or nursing
17 facilities licensed under chapter 18.51 RCW that require payment of an
18 admissions fee, deposit, or a minimum stay fee, by or on behalf of a
19 person seeking ~~((admissions [admission]))~~ admission to the long-term
20 care facility or nursing facility, shall provide the resident, or his
21 or her representative, full disclosure in writing ~~((of the long-term
22 care facility or nursing facility's schedule of charges for items and
23 services provided by the facility and))~~ in a language the resident or
24 his or her representative understands, a statement of the amount of any
25 admissions fees, deposits, prepaid charges, or minimum stay fees. The
26 facility shall also disclose to the person, or his or her
27 representative, the facility's advance notice or transfer requirements,
28 prior to admission. In addition, the long-term care facility or
29 nursing facility shall also fully disclose in writing prior to
30 admission what portion of the deposits, admissions fees, prepaid
31 charges, or minimum stay fees will be refunded to the resident or his
32 or her representative if the resident leaves the long-term care
33 facility or nursing facility. Receipt of the disclosures required
34 under this subsection must be acknowledged in writing. If the facility
35 does not provide these disclosures, the deposits, admissions fees,
36 prepaid charges, or minimum stay fees may not be kept by the facility.
37 If a resident ~~((, during the first thirty days of residence,))~~ dies or
38 is hospitalized or is transferred to another facility for more

1 appropriate care and does not return to the original facility, the
2 facility shall refund any deposit or charges already paid less the
3 facility's per diem rate for the days the resident actually resided or
4 reserved or retained a bed in the facility notwithstanding any minimum
5 stay policy or discharge notice requirements, except that the facility
6 may retain an additional amount to cover its reasonable, actual
7 expenses incurred as a result of a private-pay resident's move, not to
8 exceed five days' per diem charges, unless the resident has given
9 advance notice in compliance with the admission agreement. All long-
10 term care facilities or nursing facilities covered under this section
11 are required to refund any and all refunds due the resident or
12 (~~their~~) his or her representative within thirty days from the
13 resident's date of discharge from the facility. Nothing in this
14 section applies to provisions in contracts negotiated between a nursing
15 facility or long-term care facility and a certified health plan, health
16 or disability insurer, health maintenance organization, managed care
17 organization, or similar entities.

18 (2) Where a long-term care facility or nursing facility requires
19 the execution of an admission contract by or on behalf of an individual
20 seeking admission to the facility, the terms of the contract shall be
21 consistent with the requirements of this section, and the terms of an
22 admission contract by a long-term care facility shall be consistent
23 with the requirements of this chapter.

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

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

29 (2) *In expanding home and community services, the department shall:*
30 *(a) Take full advantage of federal funding available under Title XVIII*
31 *and Title XIX of the federal social security act, including home*
32 *health, adult day care, waiver options, and state plan services; and*
33 *(b) be authorized to use funds available under its community options*
34 *program entry system waiver granted under section 1915(c) of the*
35 *federal social security act to expand the availability of in-home,*
36 *adult residential care, adult family homes, enhanced adult residential*
37 *care, and assisted living services. By June 30, 1997, the department*
38 *shall undertake to reduce the nursing home medicaid census by at least*

1 one thousand six hundred by assisting individuals who would otherwise
2 require nursing facility services to obtain services of their choice,
3 including assisted living services, enhanced adult residential care,
4 and other home and community services. The department shall make
5 reasonable efforts to contract for at least one hundred eighty state
6 clients who would otherwise be served in nursing facilities or in
7 assisted living to instead be served in enhanced adult residential care
8 settings by June 30, 1999. If a resident, or his or her legal
9 representative, objects to a discharge decision initiated by the
10 department, the resident shall not be discharged if the resident has
11 been assessed and determined to require nursing facility services. In
12 contracting with nursing homes and boarding homes for enhanced adult
13 residential care placements, neither the department nor the department
14 of health shall ((not)) require, by contract or through other means,
15 structural modifications to existing building construction.

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

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

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

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

3 **Sec. 207 was vetoed. See message at end of chapter.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 *Sec. 208 was vetoed. See message at end of chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (a) The facility;

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

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

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

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

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

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

37 (a) The reason for the discharge;

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

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

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

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

19 **PART III**

20 **ESTATE RECOVERY CONSUMER DISCLOSURE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 *Sec. 305 was vetoed. See message at end of chapter.

27 PART IV
28 ADULT FAMILY HOMES

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

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

34 (a) "Adult family home" means a regular family abode ((of)) in
35 which a person or persons ((providing)) provides personal care, special
36 care, room, and board to more than one but not more than six adults who

1 are not related by blood or marriage to the person or persons providing
2 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 and public and private utility rate purposes.
10 Adult family homes shall be a permitted use in all areas zoned for
11 residential or commercial purposes, including areas zoned for single
12 family dwellings.

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

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

PART V

MISCELLANEOUS PROVISIONS

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

17 *Sec. 501 was vetoed. See message at end of chapter.

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

1 mental health services regulations, chapter 275-57 WAC. If funded, the
2 study shall identify the gaps in current ombuds and advocacy services,
3 and develop a cost assessment for implementation of a comprehensive
4 umbrella of ombuds and advocacy services. If funded, the department of
5 community, trade, and economic development shall report to the
6 appropriate committees of the house of representatives and the senate
7 by January 10, 1998.

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

36 NEW SECTION. **Sec. 504.** Any section or provision of this act that
37 may be susceptible to more than one construction shall be interpreted

1 in favor of the construction most likely to comply with federal laws
2 entitling this state to receive federal funds for the various programs
3 of the department of health or the department of social and health
4 services. If any section of this act is found to be in conflict with
5 federal requirements that are a prescribed condition of the allocation
6 of federal funds to the state, or to any departments or agencies
7 thereof, the conflicting part is declared to be inoperative solely to
8 the extent of the conflict. The rules issued under this act shall meet
9 federal requirements that are a necessary condition to the receipt of
10 federal funds by the state.

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

13 *The department of health, and the disciplining authorities as*
14 *agents of the department of social and health services for purposes of*
15 *this section in cooperation with the department of social and health*
16 *services, shall implement a nursing home resident protection program in*
17 *accordance with guidelines established by the federal health care*
18 *financing administration. The department of social and health services*
19 *shall retain authority to review and investigate all allegations of*
20 *nursing home resident neglect, abuse, and misappropriation of resident*
21 *property. If the department of social and health services makes a*
22 *preliminary determination, based upon credible evidence and an*
23 *investigation by the department, that a licensed, certified, or*
24 *registered health care provider listed in RCW 18.130.040 and used by*
25 *the nursing home to provide services to a resident, except for a*
26 *certified or registered nursing assistant, has neglected or abused a*
27 *resident or misappropriated a resident's property, the department of*
28 *social and health services shall immediately refer its determination*
29 *regarding the individual to the appropriate disciplining authority, as*
30 *defined in chapter 18.130 RCW. The disciplining authority shall pursue*
31 *administrative adjudicatory or disciplinary proceedings according to*
32 *federal timelines and requirements, and consistent with the*
33 *administrative procedure act, chapter 34.05 RCW. Meeting federal*
34 *requirements for the resident protection program shall not compromise*
35 *due process protections when state disciplining authorities take*
36 *actions against health professionals regulated under the uniform*
37 *disciplinary act, chapter 18.130 RCW. The secretary of social and*
38 *health services shall have access to all information concerning any*

1 complaint referred under the resident protection program to the
2 secretary of health and the other disciplining authorities. If the
3 department of social and health services determines that the
4 disciplining authority has failed to meet the applicable requirements
5 of federal law for the resident protection program, jurisdiction on the
6 individual case shall revert to the secretary of social and health
7 services for actions under the federal law, which shall not interfere
8 with the action under the uniform disciplinary act. The secretary of
9 social and health services and the secretary of health shall enter into
10 an interagency agreement to implement the provisions of this section.
11 A finding of fact, stipulated finding of fact, agreed order, or final
12 order issued by the disciplining authority that finds the individual
13 health care provider guilty of neglect, abuse, or misappropriation of
14 resident property shall be promptly reported to the department of
15 social and health services.

16 *Sec. 505 was vetoed. See message at end of chapter.

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

19 The department of social and health services shall retain authority
20 to review and investigate all allegations of nursing home resident
21 neglect, abuse, and misappropriation of resident property. The
22 department of social and health services in cooperation with the
23 department of health and disciplining authorities shall implement a
24 nursing home resident protection program according to guidelines
25 established by the federal health care financing administration. The
26 department of social and health services, as the federally responsible
27 state agency, shall conduct or coordinate the conduct of the most
28 appropriate and timely review and investigation of all credible
29 allegations of nursing home resident neglect, abuse, and
30 misappropriation of resident property. If the department of social and
31 health services makes a preliminary determination, based upon credible
32 evidence and an investigation by the department, that a licensed,
33 certified, or registered health care provider listed in RCW 18.130.040
34 and used by the nursing home to provide services to a resident, except
35 for a certified or registered nursing assistant, has neglected or
36 abused a resident or misappropriated a resident's property, the
37 department of social and health services shall immediately refer its
38 determination regarding the individual to the department of health or

1 *disciplining authority, as defined in RCW 18.130.020. The disciplining*
2 *authority shall pursue administrative adjudicatory or disciplinary*
3 *proceedings according to federal timelines and requirements, and*
4 *consistent with the administrative procedure act, chapter 34.05 RCW.*
5 *When the department of social and health services determines such*
6 *proceeding does not meet federal timelines and requirements, the*
7 *department of social and health services shall have the authority to*
8 *take federally required actions. Other individuals used by a nursing*
9 *home, including certified and registered nursing assistants, with a*
10 *preliminary determination of neglect, abuse, or misappropriation of*
11 *resident property shall receive notice and the right to an*
12 *administrative fair hearing from the department of social and health*
13 *services according to federal timelines and requirements. An*
14 *individual with a finding of fact, stipulated finding of fact, agreed*
15 *order, or final order issued by the department of social and health*
16 *services or the disciplining authority that finds the individual guilty*
17 *of neglect, abuse, or misappropriation of resident property shall not*
18 *be employed in the care of and have unsupervised access to vulnerable*
19 *adults, as defined in chapter 74.34 RCW. Upon receipt from the*
20 *disciplining authority of a finding of fact, stipulated finding of*
21 *fact, agreed order, or final order that finds the individual health*
22 *care provider guilty of neglect, abuse, or misappropriation of resident*
23 *property, the department of social and health services shall report*
24 *this information to the nursing home where the incident occurred, the*
25 *long-term care facility where the individual works, if different, and*
26 *other entities serving vulnerable adults upon request by the entity.*
27 **Sec. 506 was vetoed. See message at end of chapter.*

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

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

1 those guilty of such abuse or neglect. It is the intent of the
2 legislature that a person who, in good faith, is furnished Christian
3 Science treatment by a duly accredited Christian Science practitioner
4 in lieu of medical care is not considered deprived of medically
5 necessary health care or abandoned. Prosecutions under this chapter
6 shall be consistent with the rules of evidence, including hearsay,
7 under law.

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

10 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 As used in this chapter:

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

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

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

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

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

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

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

36 (6) "Forcible compulsion" means physical force which overcomes
37 resistance, or a threat, express or implied, that places a person in

1 fear of death or physical injury to herself or himself or another
2 person, or in fear that she or he or another person will be kidnapped.

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

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

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

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

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

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

26 (10) "Developmentally disabled," for purposes of RCW
27 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a
28 developmental disability as defined in RCW 71A.10.020.

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

34 (12) "Mentally disordered person" for the purposes of RCW
35 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental
36 disorder" as defined in RCW 71.05.020(2).

37 (13) "Chemically dependent person" for purposes of RCW
38 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically
39 dependent" as defined in RCW 70.96A.020(4).

1 (14) "Health care provider" for purposes of RCW 9A.44.050 and
2 9A.44.100 means a person who is, holds himself or herself out to be, or
3 provides services as if he or she were: (a) A member of a health care
4 profession under chapter 18.130 RCW; or (b) registered or certified
5 under chapter 18.19 RCW, regardless of whether the health care provider
6 is licensed, certified, or registered by the state.

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

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

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

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

26 (a) By forcible compulsion;

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

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

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

1 (e) When the victim is a resident of a facility for mentally
2 disordered or chemically dependent persons and the perpetrator is a
3 person who is not married to the victim and has supervisory authority
4 over the victim; or

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

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

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

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

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

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

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

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

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

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

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

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

1 (1) This chapter applies only to the secretary and the boards and
2 commissions having jurisdiction in relation to the professions licensed
3 under the chapters specified in this section. This chapter does not
4 apply to any business or profession not licensed under the chapters
5 specified in this section.

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

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

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

10 (iii) Midwives licensed under chapter 18.50 RCW;

11 (iv) Ocularists licensed under chapter 18.55 RCW;

12 (v) Massage operators and businesses licensed under chapter 18.108
13 RCW;

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

15 (vii) Acupuncturists licensed under chapter 18.06 RCW;

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

18 (ix) Respiratory care practitioners certified under chapter 18.89
19 RCW;

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

21 (xi) Persons registered as nursing pool operators under chapter
22 18.52C RCW;

23 (xii) Nursing assistants registered or certified under chapter
24 ((18.79)) 18.88A RCW;

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

26 (xiv) Dietitians and nutritionists certified under chapter 18.138
27 RCW;

28 (xv) Sex offender treatment providers certified under chapter
29 18.155 RCW;

30 (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW
31 18.71.205;

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

34 (xviii) Denturists licensed under chapter 18.30 RCW.

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

37 (i) The podiatric medical board as established in chapter 18.22
38 RCW;

1 (ii) The chiropractic quality assurance commission as established
2 in chapter 18.25 RCW;

3 (iii) The dental quality assurance commission as established in
4 chapter 18.32 RCW;

5 (iv) The board of hearing and speech as established in chapter
6 18.35 RCW;

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

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

11 (vii) The board of osteopathic medicine and surgery as established
12 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
13 18.57A RCW;

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

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

19 (x) The board of physical therapy as established in chapter 18.74
20 RCW;

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

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

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

27 (xiv) The veterinary board of governors as established in chapter
28 18.92 RCW.

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

37 (4) All disciplining authorities shall adopt procedures to ensure
38 substantially consistent application of this chapter, the Uniform

1 Disciplinary Act, among the disciplining authorities listed in
2 subsection (2) of this section.

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

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

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

10 (1)(a) The secretary of social and health services and the
11 secretary of health shall adopt additional requirements for the
12 licensure or relicensure of agencies ~~((or))~~, facilities ~~((which))~~, and
13 licensed individuals who provide care and treatment to vulnerable
14 adults, including nursing pools registered under chapter 18.52C RCW.
15 These additional requirements shall ensure that any person associated
16 with a licensed agency or facility having ~~((direct—contact))~~
17 unsupervised access with a vulnerable adult shall not have been:
18 ~~((+a))~~ (i) Convicted of a crime against persons as defined in RCW
19 43.43.830, except as provided in this section; ~~((+b))~~ (ii) convicted
20 of crimes relating to financial exploitation as defined in RCW
21 43.43.830, except as provided in this section; ~~((+c))~~ (iii) found in
22 any disciplinary board final decision to have abused a vulnerable adult
23 under RCW 43.43.830; or ~~((+d))~~ (iv) the subject in a protective
24 proceeding under chapter 74.34 RCW.

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

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

36 (a) The offense was simple assault, assault in the fourth degree,
37 or the same offense as it may be renamed, and three or more years have

1 passed between the most recent conviction and the date of application
2 for employment;

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

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

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

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

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

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

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

35 Unless the context requires otherwise, the definitions in this
36 section apply throughout this chapter.

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

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

3 (3) "Practitioner of the healing arts" or "practitioner" means a
4 person licensed by this state to practice podiatric medicine and
5 surgery, optometry, pharmacy, physical therapy, chiropractic, nursing,
6 dentistry, osteopathic medicine and surgery, or medicine and surgery.
7 The term "practitioner" shall include a nurses aide, a nursing home
8 administrator licensed under chapter 18.52 RCW, and a duly accredited
9 Christian Science practitioner: PROVIDED, HOWEVER, That a nursing home
10 patient who is being furnished Christian Science treatment by a duly
11 accredited Christian Science practitioner shall not be considered, for
12 that reason alone, a neglected patient for the purposes of this
13 chapter.

14 (4) "Department" means the state department of social and health
15 services.

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

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

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

27 (8) "Pharmacist" means any registered pharmacist under chapter
28 18.64 RCW, whether acting in an individual capacity or as an employee
29 or agent of any public or private organization or institution.

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

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

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

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

5 (1) Where a report is (~~deemed warranted~~) required under RCW
6 70.124.030, an immediate oral report shall be made by telephone or
7 otherwise to either a law enforcement agency or to the department and,
8 upon request, shall be followed by a report in writing. The reports
9 shall contain the following information, if known:

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

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

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

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

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

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

18 (g) Any evidence of previous injuries, including their nature and
19 extent; and

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

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

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

36 A person who is required to make or to cause to be made a report
37 pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to

1 make such report or fails to cause such report to be made is guilty of
2 a gross misdemeanor.

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

5 A person who is required to make or cause to be made a report under
6 RCW 74.34.030 or 74.34.040 and who knowingly fails to make the report
7 or fails to cause the report to be made is guilty of a gross
8 misdemeanor.

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

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this chapter.

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

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

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

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

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

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

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

33 (8) "Frail elder or vulnerable adult" means a person sixty years of
34 age or older who has the functional, mental, or physical inability to
35 care for himself or herself. "Frail elder or vulnerable adult" shall
36 include persons found incapacitated under chapter 11.88 RCW, or a
37 person who has a developmental disability under chapter 71A.10 RCW, and

1 persons admitted to any long-term care facility that is licensed or
2 required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128
3 RCW, or persons receiving services from home health, hospice, or home
4 care agencies licensed or required to be licensed under chapter 70.127
5 RCW.

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

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

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

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

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

7 (4) The legislature further finds that the department of social and
8 health services ~~((7))~~ must consider the information listed in subsection
9 (1) of this section in the following circumstances:

10 (a) When considering persons for state positions directly
11 responsible for the care, supervision, or treatment of children,
12 developmentally disabled persons, or vulnerable adults ((or))i

13 (b) When licensing ~~((or authorizing such persons or))~~ agencies
14 ~~((pursuant to its authority))~~ or facilities with individuals in
15 positions directly responsible for the care, supervision, or treatment
16 of children, developmentally disabled persons, or vulnerable adults,
17 including but not limited to agencies or facilities licensed under
18 chapter 74.15((7)) or 18.51((7, 18.20, or 72.23)) RCW((7, or any later-
19 enacted statute which purpose is to license or regulate a facility
20 which handles vulnerable adults, must consider the information listed
21 in subsection (1) of this section))i

22 (c) When contracting with individuals or businesses or
23 organizations for the care, supervision, or treatment of children,
24 developmentally disabled persons, or vulnerable adults, including but
25 not limited to services contracted for under chapter 18.20, 18.48,
26 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW. ((However, when
27 necessary))

28 (5) Whenever a state conviction record check is required by state
29 law, persons may be employed or engaged as volunteers or independent
30 contractors on a conditional basis pending completion of the state
31 background investigation. Whenever a national criminal record check
32 through the federal bureau of investigation is required by state law,
33 a person may be employed or engaged as a volunteer or independent
34 contractor on a conditional basis pending completion of the national
35 check. The Washington personnel resources board shall adopt rules to
36 accomplish the purposes of this subsection as it applies to state
37 employees.

38 (6)(a) For purposes of facilitating timely access to criminal
39 background information and to reasonably minimize the number of

1 requests made under this section, recognizing that certain health care
2 providers change employment frequently, health care facilities may,
3 upon request from another health care facility, share copies of
4 completed criminal background inquiry information.

5 (b) Completed criminal background inquiry information may be shared
6 by a willing health care facility only if the following conditions are
7 satisfied: The licensed health care facility sharing the criminal
8 background inquiry information is reasonably known to be the person's
9 most recent employer, no more than twelve months has elapsed from the
10 date the person was last employed at a licensed health care facility to
11 the date of their current employment application, and the criminal
12 background information is no more than two years old.

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

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

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

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

32 (g) For the purposes of this subsection, "health care facility"
33 means a nursing home licensed under chapter 18.51 RCW, a boarding home
34 licensed under chapter 18.20 RCW, or an adult family home licensed
35 under chapter 70.128 RCW.

36 **Sec. 525.** RCW 43.20A.710 and 1993 c 210 s 1 are each amended to
37 read as follows:

1 (1) The secretary shall investigate the conviction records, pending
2 charges or disciplinary board final decisions of:

3 ~~((1))~~ (a) Persons being considered for state employment in
4 positions directly responsible for the supervision, care, or treatment
5 of children or individuals with mental illness or developmental
6 disabilities; and ~~((2))~~

7 (b) Individual providers who are paid by the state for in-home
8 services and hired by individuals with physical disabilities,
9 developmental disabilities, mental illness, or mental impairment,
10 including but not limited to services provided under chapter 74.39A
11 RCW.

12 (2) The investigation may include an examination of state and
13 national criminal identification data ~~((and the child abuse and neglect~~
14 ~~register established under chapter 26.44 RCW. The secretary shall~~
15 ~~provide the results of the state background check on individual~~
16 ~~providers to the individuals with physical disabilities, developmental~~
17 ~~disabilities, mental illness, or mental impairment who hired them and~~
18 ~~to their legal guardians, if any)). The secretary shall use the~~
19 ~~information solely for the purpose of determining the character,~~
20 ~~suitability, and competence of these applicants ((except that in the~~
21 ~~case of individuals with physical disabilities, developmental~~
22 ~~disabilities, mental illness, or mental impairment who employ~~
23 ~~individual providers, the)).~~

24 (3) The secretary shall provide the results of the state background
25 check on individual providers to the individuals with physical
26 disabilities, developmental disabilities, mental illness, or mental
27 impairment or to their legal guardians, if any, for their determination
28 of the character, suitability, and competence of the applicants ((shall
29 be made by the individual with a physical disability, developmental
30 disability, mental illness, or mental impairment)). If an individual
31 elects to hire or retain an individual provider after receiving notice
32 from the department that the applicant has a conviction for an offense
33 that would disqualify the applicant from employment with the
34 department, then the secretary may deny payment for any subsequent
35 services rendered by the disqualified individual provider.

36 (4) Criminal justice agencies shall provide the secretary such
37 information as they may have and that the secretary may require for
38 such purpose. ~~((If necessary, persons may be employed on a conditional~~
39 ~~basis pending completion of the background investigation.))~~

1 **Sec. 526.** RCW 18.52C.010 and 1988 c 243 s 1 are each amended to
2 read as follows:

3 The legislature intends to protect the public's right to high
4 quality health care by assuring that nursing pools employ, procure or
5 refer competent and qualified ((nursing)) health care or long-term care
6 personnel, and that such ((nursing)) personnel are provided to health
7 care facilities, agencies, or individuals in a way to meet the needs of
8 residents and patients.

9 **Sec. 527.** RCW 18.52C.020 and 1991 c 3 s 130 are each amended to
10 read as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this chapter.

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

14 (2) "Health care facility" means a nursing home, hospital, hospice
15 care facility, home health care agency, hospice agency, boarding home,
16 adult family home, group home, or other entity for the delivery of
17 health care or long-term care services, including chore services
18 provided under chapter 74.39A RCW.

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

21 (4) "Nursing pool" means any person engaged in the business of
22 providing, procuring, or referring health care or long-term care
23 personnel for temporary employment in health care facilities, such as
24 licensed nurses or practical nurses, ((and)) nursing assistants, and
25 chore service providers. "Nursing pool" does not include an individual
26 who only engages in providing his or her own services.

27 (5) "Person" includes an individual, firm, corporation,
28 partnership, or association.

29 **Sec. 528.** RCW 18.52C.040 and 1991 c 3 s 132 are each amended to
30 read as follows:

31 (1) The nursing pool shall document that each temporary employee or
32 referred independent contractor provided or referred to health care
33 facilities currently meets the applicable minimum state credentialing
34 requirements.

35 (2) The nursing pool shall not require, as a condition of
36 employment or referral, that employees or independent contractors of
37 the nursing pool recruit new employees or independent contractors for

1 the nursing pool from among the permanent employees of the health care
2 facility to which the nursing pool employee or independent contractor
3 has been assigned or referred.

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

18 (4) The uniform disciplinary act, chapter 18.130 RCW, shall govern
19 the issuance and denial of registration and the discipline of persons
20 registered under this chapter. The secretary shall be the disciplinary
21 authority under this chapter.

22 (5) The nursing pool shall conduct a criminal background check on
23 all employees and independent contractors as required under RCW
24 43.43.842 prior to employment or referral of the employee or
25 independent contractor.

26 NEW SECTION. Sec. 529. A new section is added to chapter 43.43
27 RCW to read as follows:

28 If information is released under this chapter by the state of
29 Washington, the state and its employees: (1) Make no representation
30 that the subject of the inquiry has no criminal record or adverse civil
31 or administrative decisions; (2) make no determination that the subject
32 of the inquiry is suitable for involvement with a business or
33 organization; and (3) are not liable for defamation, invasion of
34 privacy, negligence, or any other claim in connection with any lawful
35 dissemination of information.

36 *NEW SECTION. Sec. 530. The following acts or parts of acts are
37 each repealed:

- 1 (1) RCW 74.39.030 and 1989 c 427 s 11;
2 (2) RCW 74.39.040 and 1989 c 427 s 13;
3 (3) RCW 74.39A.005 and 1993 c 508 s 1; and
4 (4) RCW 74.39A.008 and 1995 1st sp.s. c 18 s 1.
5 *Sec. 530 was partially vetoed. See message at end of chapter.

6 NEW SECTION. **Sec. 531.** Part headings and captions used in this
7 act are not part of the law.

8 NEW SECTION. **Sec. 532.** Section 403 of this act is necessary for
9 the immediate preservation of the public peace, health, or safety, or
10 support of the state government and its existing public institutions,
11 and takes effect immediately.

Passed the House April 27, 1997.

Passed the Senate April 27, 1997.

Approved by the Governor May 16, 1997, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 16, 1997.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 104,
3 204, 207, 208, 305, 501, 505, 506, 530(1) and 530(3), Engrossed Second
4 Substitute House Bill No. 1850 entitled:

5 "AN ACT Relating to the long-term care reorganization and standards
6 of care reform act;"

7 Section 104

8 Section 104 creates a joint legislative committee on long-term care
9 oversight with no termination date. The legislature has always
10 established joint committees by resolution, not by statute. A
11 resolution is the appropriate vehicle to create such a committee. For
12 that reason, I have vetoed section 104.

13 Section 204

14 Section 204 directs the Department of Social and Health Services
15 ("DSHS") to perform, within available funds, comprehensive assessments
16 of the needs and preferences (including all medical history
17 information, level of personal care needs, and service preferences) of
18 all potential residents of long-term care facilities, whether funded by
19 the state or privately. I have vetoed section 204 because no funding
20 was provided for DSHS to perform assessments on privately funded
21 clients.

22 Section 207

1 Section 207 would direct DSHS to make reasonable efforts to
2 contract for at least 180 clients, who would otherwise be served in
3 nursing or assisted living facilities, to instead be served in enhanced
4 adult residential care settings. The section would also tie the
5 payment rate for these enhanced adult residential care clients to a
6 percentage of the statewide average nursing home rate. The 1997-99
7 budget anticipates the Community Options Program Entry System (COPEs)
8 adult residential care program will exceed 800 cases. All of these
9 cases could arguably meet the definition of "enhanced adult residential
10 care", and would thus be eligible for the enhanced rate required under
11 this section. The budget does not provide funds to pay a rate
12 equivalent of 35-40 percent of the nursing home rate for this
13 population.

14 Additionally, tying the payment rate of one community service to
15 the Medicaid nursing home payment rate would create a situation where
16 one community option would receive rate increases in excess of other
17 equally important community services. For these reasons I have vetoed
18 section 207.

19 Section 208

20 Section 208 would allow hospitals the choice not to participate
21 with DSHS in discharge planning. This section weakens the department's
22 ability to comply with the objectives contained in the 1997-99 budget
23 to reduce the Medicaid nursing facility caseload by 480 residents. In
24 cooperating with all hospital discharge planners, department staff are
25 able to initiate financial eligibility determinations and expedite
26 long-term care service authorization and payment. The current
27 partnership between DSHS and hospitals has maximized consumer
28 opportunity to choose the most appropriate long-term care setting. For
29 these reasons I have vetoed section 208.

30 Section 305

31 Section 305 would direct DSHS to report quarterly to all clients on
32 the types of services used, and charges for the services that would be
33 charged against their estates. I have vetoed this section because no
34 funding was provided and it would not be fair to create an expectation
35 for clients that such reports would be issued.

36 Section 501

37 Section 501 would permit the Department of Health ("DOH") to
38 develop a plan for a pilot program for accrediting boarding homes
39 through a nationally recognized private accreditation organization. I
40 know of no recognized accreditation organization that provides
41 accreditation for boarding homes, or intends to begin doing so. Since
42 DOH would be unable to develop the plan, I have vetoed this section.

43 Sections 505 and 506

44 Sections 505 and 506 deal with the nursing home Resident Protection
45 Program operated by DSHS that is part of the Medicaid and Medicare
46 Survey and Certification program. These provisions would require DSHS

1 to refer complaints against licensed, certified or registered health
2 care providers to the appropriate disciplining authority, such as the
3 Nursing Commission or the Medical Quality Assurance Commission, to
4 pursue disciplinary proceedings according to federal timelines and
5 requirements.

6 DSHS has been operating since September 1995 under a corrective
7 action plan with the Health Care Financing Administration ("HCFA")
8 because of the failure of a previous program that was much like the
9 proposal in Sections 505 and 506. That previous program was deemed out
10 of compliance with federal requirements. HCFA would have to approve
11 the changes made to the program by this legislation and has indicated
12 concern about returning to the old system. These sections would not
13 result in improved services to the residents in nursing homes, would
14 require inefficient and duplicative systems, and would be more costly
15 than current service delivery.

16 DSHS and DOH are working together to design a system that enhances
17 the opportunity for swift processing and fair adjudication of
18 complaints of abuse, neglect and misappropriation of resident property.
19 I support this effort and believe it will bring about a more coherent
20 system. For the above reasons, I have vetoed sections 505 and 506.

21 Section 530

22 I have vetoed subsections one and three of Section 530, which are
23 repealers. Subsection 1 repeals the statutory authority for respite
24 care, a valued community care option. Subsection 3 repeals the
25 legislative policy framework that promotes expansion and continuous
26 improvement of home and community services. This is an important part
27 of the overall strategy to provide choices to clients needing long-term
28 care services, and should remain in place.

29 For these reasons, I have vetoed sections 104, 204, 207, 208, 305,
30 501, 505, 506, 530(1) and 530(3) of Engrossed Second Substitute House
31 Bill No. 1850.

32 Sections 213 and 214 of E2SHB 1850 provide for more vigorous
33 inspection of boarding homes and more stringent enforcement once
34 violations are identified. I strongly support these measures to protect
35 the health and safety of boarding home residents. DOH has been
36 authorized in the budget to raise fees to implement this expanded
37 program, and there will need to be expanded appropriation authority in
38 the supplemental budget. I am directing DOH to submit an
39 implementation plan no later than July 1, 1997, outlining how it will
40 phase in the expanded program.

41 With the exception of sections 104, 204, 207, 208, 305, 501, 505,
42 506, 530(1) and 530(3), Engrossed Second Substitute House Bill No. 1850
43 is approved."