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**SUBSTITUTE SENATE BILL 5271**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Health & Long Term Care (originally sponsored by Senators Cleveland, Robinson, Kuderer, Nobles, Wellman, and C. Wilson; by request of Department of Health)

READ FIRST TIME 02/08/23.

1 AN ACT Relating to protecting patients in facilities regulated by  
2 the department of health by establishing uniform enforcement tools;  
3 amending RCW 18.46.010, 18.46.050, 18.46.130, 70.42.010, 70.42.130,  
4 70.42.180, 70.127.010, 70.127.170, 70.127.213, 70.230.010,  
5 70.230.070, 71.12.710, 71.12.500, 70.38.025, 70.38.111, 70.38.260,  
6 70.170.020, 18.64.005, 18.64.011, 18.64.047, 18.64.165, 18.64A.020,  
7 18.64A.060, 69.45.080, 69.43.100, 69.43.140, 69.50.302, 69.50.303,  
8 69.50.304, 69.50.310, 69.50.320, and 69.41.080; reenacting and  
9 amending RCW 71.12.455, 71.24.025, and 71.24.037; adding a new  
10 section to chapter 18.46 RCW; adding new sections to chapter 70.42  
11 RCW; adding new sections to chapter 70.127 RCW; adding a new section  
12 to chapter 70.230 RCW; adding a new section to chapter 71.12 RCW;  
13 adding a new section to chapter 71.24 RCW; adding new sections to  
14 chapter 18.64 RCW; adding a new section to chapter 69.38 RCW; adding  
15 a new section to chapter 69.45 RCW; repealing RCW 18.64.200,  
16 18.64.390, and 69.50.305; and prescribing penalties.

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

18 **Sec. 1.** RCW 18.46.010 and 2000 c 93 s 30 are each amended to  
19 read as follows:

20 (1) "Birthing center" or "childbirth center" means any health  
21 facility, not part of a hospital or in a hospital, that provides

1 facilities and staff to support a birth service to low-risk maternity  
2 clients: PROVIDED, HOWEVER, That this chapter shall not apply to any  
3 hospital approved by the American College of Surgeons, American  
4 Osteopathic Association, or its successor.

5 (2) "Department" means the state department of health.

6 (3) "Immediate jeopardy" means a situation in which the birthing  
7 center's noncompliance with one or more statutory or regulatory  
8 requirements has placed the health and safety of patients in its care  
9 at risk for serious injury, serious harm, serious impairment, or  
10 death.

11 (4) "Low-risk" means normal, uncomplicated prenatal course as  
12 determined by adequate prenatal care and prospects for a normal  
13 uncomplicated birth as defined by reasonable and generally accepted  
14 criteria of maternal and fetal health.

15 ((4)) (5) "Person" means any individual, firm, partnership,  
16 corporation, company, association, or joint stock association, and  
17 the legal successor thereof.

18 **Sec. 2.** RCW 18.46.050 and 1997 c 58 s 823 are each amended to  
19 read as follows:

20 (1) ~~((The department may deny, suspend, or revoke a license in~~  
21 ~~any case in which it finds that there has been failure or refusal to~~  
22 ~~comply with the requirements established under this chapter or the~~  
23 ~~rules adopted under it.~~

24 ~~(2) The department shall immediately suspend the license of a~~  
25 ~~person who has been certified pursuant to RCW 74.20A.320 by the~~  
26 ~~department of social and health services as a person who is not in~~  
27 ~~compliance with a support order or a residential or visitation order.~~  
28 ~~If the person has continued to meet all other requirements for~~  
29 ~~reinstatement during the suspension, reissuance of the license shall~~  
30 ~~be automatic upon the department's receipt of a release issued by the~~  
31 ~~department of social and health services stating that the person is~~  
32 ~~in compliance with the order.~~

33 ~~RCW 43.70.115 governs notice of a license denial, revocation,~~  
34 ~~suspension, or modification and provides the right to an adjudicative~~  
35 ~~proceeding but shall not apply to actions taken under subsection (2)~~  
36 ~~of this section)) In any case in which the department finds that a  
37 birthing center has failed or refused to comply with the requirements  
38 of this chapter, the standards or rules adopted under this chapter,  
39 or other applicable state or federal statutes or rules regulating~~

1 birthing centers, the department may take one or more of the actions  
2 identified in this section, except as otherwise limited in this  
3 section.

4 (a) When the department determines the birthing center has  
5 previously been subject to an enforcement action for the same or  
6 similar type of violation of the same statute or rule, or has been  
7 given any previous statement of deficiency that included the same or  
8 similar type of violation of the same or similar statute or rule, or  
9 when the birthing center failed to correct noncompliance with a  
10 statute or rule by a date established or agreed to by the department,  
11 the department may impose reasonable conditions on a license.  
12 Conditions may include correction within a specified amount of time,  
13 training, or hiring a department-approved consultant if the birthing  
14 center cannot demonstrate to the department that it has access to  
15 sufficient internal expertise. If the department determines that the  
16 violations constitute immediate jeopardy, the conditions may be  
17 imposed immediately in accordance with subsection (2) of this  
18 section.

19 (b) In accordance with the authority the department has under RCW  
20 43.70.095, the department may assess a civil fine of up to \$3,000 per  
21 violation on a birthing center licensed under this chapter when the  
22 department determines the birthing center has previously been subject  
23 to an enforcement action for the same or similar type of violation of  
24 the same statute or rule, or has been given any previous statement of  
25 deficiency that included the same or similar type of violation of the  
26 same or similar statute or rule, or when the birthing center failed  
27 to correct noncompliance with a statute or rule by a date established  
28 or agreed to by the department.

29 (i) Proceeds from these fines may only be used by the department  
30 to offset costs associated with licensing and enforcement of birthing  
31 centers.

32 (ii) The department shall adopt in rules under this chapter  
33 specific fine amounts in relation to the severity of the  
34 noncompliance and at an adequate level to be a deterrent to future  
35 noncompliance.

36 (iii) If a birthing center is aggrieved by the department's  
37 action of assessing civil fines, the licensee has the right to appeal  
38 under RCW 43.70.095.

39 (c) The department may suspend a specific category or categories  
40 of services or care or birthing rooms within the birthing center as

1 related to the violation by imposing a limited stop service. This may  
2 only be done if the department finds that noncompliance results in  
3 immediate jeopardy.

4 (i) Prior to imposing a limited stop service, the department  
5 shall provide a birthing center written notification upon identifying  
6 deficient practices or conditions that constitute an immediate  
7 jeopardy. The birthing center shall have 24 hours from notification  
8 to develop and implement a department-approved plan to correct the  
9 deficient practices or conditions that constitute an immediate  
10 jeopardy. If the deficient practices or conditions that constitute  
11 immediate jeopardy are not verified by the department as having been  
12 corrected within the same 24-hour period, the department may issue  
13 the limited stop service.

14 (ii) When the department imposes a limited stop service, the  
15 birthing center may not provide the services in the category or  
16 categories subject to the limited stop service to any new or existing  
17 patients, unless otherwise allowed by the department, until the  
18 limited stop service is terminated.

19 (iii) The department shall conduct a follow-up inspection within  
20 five business days or within the time period requested by the  
21 birthing center if more than five business days is needed to verify  
22 the violation necessitating the limited stop service has been  
23 corrected.

24 (iv) The limited stop service shall be terminated when:

25 (A) The department verifies the violation necessitating the  
26 limited stop service has been corrected or the department determines  
27 that the birthing center has taken intermediate action to address the  
28 immediate jeopardy; and

29 (B) The birthing center establishes the ability to maintain  
30 correction of the violation previously found deficient.

31 (d) The department may suspend new admissions to the birthing  
32 center by imposing a stop placement. This may only be done if the  
33 department finds that noncompliance results in immediate jeopardy and  
34 is not confined to a specific category or categories of patients or a  
35 specific area of the birthing center.

36 (i) Prior to imposing a stop placement, the department shall  
37 provide a birthing center written notification upon identifying  
38 deficient practices or conditions that constitute an immediate  
39 jeopardy. The birthing center shall have 24 hours from notification  
40 to develop and implement a department-approved plan to correct the

1 deficient practices or conditions that constitute an immediate  
2 jeopardy. If the deficient practices or conditions that constitute  
3 immediate jeopardy are not verified by the department as having been  
4 corrected within the same 24-hour period, the department may issue  
5 the stop placement.

6 (ii) When the department imposes a stop placement, the birthing  
7 center may not admit any new patients until the stop placement is  
8 terminated.

9 (iii) The department shall conduct a follow-up inspection within  
10 five business days or within the time period requested by the  
11 birthing center if more than five business days is needed to verify  
12 the violation necessitating the stop placement has been corrected.

13 (iv) The stop placement shall be terminated when:

14 (A) The department verifies the violation necessitating the stop  
15 placement has been corrected or the department determines that the  
16 birthing center has taken intermediate action to address the  
17 immediate jeopardy; and

18 (B) The birthing center establishes the ability to maintain  
19 correction of the violation previously found deficient.

20 (e) The department may deny an application for a license or  
21 suspend, revoke, or refuse to renew a license.

22 (2) Except as otherwise provided, RCW 43.70.115 governs notice of  
23 actions taken by the department under subsection (1) of this section  
24 and provides the right to an adjudicative proceeding. Adjudicative  
25 proceedings and hearings under this section are governed by the  
26 administrative procedure act, chapter 34.05 RCW. The application for  
27 an adjudicative proceeding must be in writing, state the basis for  
28 contesting the adverse action, include a copy of the department's  
29 notice, be served on and received by the department within 28 days of  
30 the birthing center's receipt of the adverse notice, and be served in  
31 a manner that shows proof of receipt.

32 (3) When the department determines a licensee's noncompliance  
33 results in immediate jeopardy, the department may make the imposition  
34 of conditions on a licensee, a limited stop service, stop placement,  
35 or the suspension of a license effective immediately upon receipt of  
36 the notice by the licensee, pending any adjudicative proceeding.

37 (a) When the department makes the suspension of a license or  
38 imposition of conditions on a license effective immediately, a  
39 licensee is entitled to a show cause hearing before a presiding  
40 officer within 14 days of making the request. The licensee must

1 request the show cause hearing within 28 days of receipt of the  
2 notice of immediate suspension or immediate imposition of conditions.  
3 At the show cause hearing the department has the burden of  
4 demonstrating that more probably than not there is an immediate  
5 jeopardy.

6 (b) At the show cause hearing, the presiding officer may consider  
7 the notice and documents supporting the immediate suspension or  
8 immediate imposition of conditions and the licensee's response and  
9 shall provide the parties with an opportunity to provide documentary  
10 evidence and written testimony, and to be represented by counsel.  
11 Prior to the show cause hearing, the department shall provide the  
12 licensee with all documentation that supports the department's  
13 immediate suspension or imposition of conditions.

14 (c) If the presiding officer determines there is no immediate  
15 jeopardy, the presiding officer may overturn the immediate suspension  
16 or immediate imposition of conditions.

17 (d) If the presiding officer determines there is immediate  
18 jeopardy, the immediate suspension or immediate imposition of  
19 conditions shall remain in effect pending a full hearing.

20 (e) If the presiding officer sustains the immediate suspension or  
21 immediate imposition of conditions, the licensee may request an  
22 expedited full hearing on the merits of the department's action. A  
23 full hearing must be provided within 90 days of the licensee's  
24 request.

25 (4) When the department determines an alleged violation, if true,  
26 would constitute an immediate jeopardy, and the licensee fails to  
27 cooperate with the department's investigation of such an alleged  
28 violation, the department may impose an immediate stop placement,  
29 immediate limited stop service, immediate imposition of conditions,  
30 or immediate suspension.

31 (a) When the department imposes an immediate stop placement,  
32 immediate limited stop service, immediate imposition of conditions,  
33 or immediate suspension for failure to cooperate, a licensee is  
34 entitled to a show cause hearing before a presiding officer within 14  
35 days of making the request. The licensee must request the show cause  
36 hearing within 28 days of receipt of the notice of an immediate stop  
37 placement, immediate limited stop service, immediate imposition of  
38 conditions, or immediate suspension for failure to cooperate. At the  
39 show cause hearing the department has the burden of demonstrating  
40 that more probably than not the alleged violation, if true, would

1 constitute an immediate jeopardy and the licensee failed to cooperate  
2 with the department's investigation.

3 (b) At the show cause hearing, the presiding officer may consider  
4 the notice and documents supporting the immediate stop placement,  
5 immediate limited stop service, immediate imposition of conditions,  
6 or immediate suspension for failure to cooperate, and the licensee's  
7 response and shall provide the parties with an opportunity to provide  
8 documentary evidence and written testimony, and to be represented by  
9 counsel. Prior to the show cause hearing, the department shall  
10 provide the licensee with all documentation that supports the  
11 department's immediate action for failure to cooperate.

12 (c) If the presiding officer determines the alleged violation, if  
13 true, does not constitute an immediate jeopardy or determines that  
14 the licensee cooperated with the department's investigation, the  
15 presiding officer may overturn the immediate action for failure to  
16 cooperate.

17 (d) If the presiding officer determines the allegation, if true,  
18 would constitute an immediate jeopardy and the licensee failed to  
19 cooperate with the department's investigation, the immediate action  
20 for failure to cooperate shall remain in effect pending a full  
21 hearing.

22 (e) If the presiding officer sustains the immediate action for  
23 failure to cooperate, the licensee may request an expedited full  
24 hearing on the merits of the department's action. A full hearing must  
25 be provided within 90 days of the licensee's request.

26 NEW SECTION. Sec. 3. A new section is added to chapter 18.46  
27 RCW to read as follows:

28 (1) The department may give written notice to cease and desist to  
29 any person whom the department has reason to believe is engaged in  
30 the unlicensed operation of a birthing center.

31 (2)(a) Except as otherwise provided in this section, the  
32 requirement to cease and desist unlicensed operation is effective 20  
33 days after the person receives the notice.

34 (b) The department may make the date the action is effective  
35 sooner than 20 days after receipt when necessary to protect the  
36 public health, safety, or welfare. When the department does so, it  
37 shall state the effective date and the reasons supporting the  
38 effective date in the written notice to cease and desist.

1 (3) The person to whom the notice to cease and desist is issued  
2 may request an adjudicative proceeding to contest the notice. The  
3 adjudicative proceeding is governed by the administrative procedure  
4 act, chapter 34.05 RCW. The request for an adjudicative proceeding  
5 must be in writing, state the basis for contesting the notice,  
6 include a copy of the notice, and be served on and received by the  
7 department within 20 days from the date the person receives the  
8 notice to cease and desist.

9 (4) (a) If the department gives a person 20 days' notice to cease  
10 and desist and the person requests an adjudicative proceeding before  
11 its effective date, the department shall not implement the notice  
12 until the final order has been entered. The presiding or reviewing  
13 officer may permit the department to implement part or all of the  
14 notice while the proceedings are pending if the respondent causes an  
15 unreasonable delay in the proceeding, if the circumstances change so  
16 that implementation is in the public interest, or for other good  
17 cause.

18 (b) If the department gives a licensee less than 20 days' notice  
19 to cease and desist and the respondent timely files a request for an  
20 adjudicative proceeding, the department may implement the cease and  
21 desist on the effective date stated in the notice. The presiding or  
22 reviewing officer may order the department to stay implementation of  
23 part or all of the adverse action while the proceedings are pending  
24 if staying implementation is in the public interest or for other good  
25 cause.

26 (5) The department may assess a civil fine not exceeding \$5,000  
27 for each day a person operates a birthing center without a valid  
28 license.

29 (a) The department shall give written notice to the person  
30 against whom it assesses a civil fine.

31 (b) Except as otherwise provided in (c) and (d) of this  
32 subsection, the civil fine is due and payable 20 days after receipt.

33 (c) The person against whom the department assesses a civil fine  
34 has the right to request an adjudicative proceeding. The proceeding  
35 is governed by the administrative procedure act, chapter 34.05 RCW.  
36 The request must be in writing, state the basis for contesting the  
37 fine, include a copy of the notice, be served on and received by the  
38 department within 20 days of the person receiving the notice of civil  
39 fine, and be served in a manner which shows proof of receipt.

1 (d) If the person files a timely and sufficient request for  
2 adjudicative proceeding, the department shall not implement the fine  
3 until the final order has been served.

4 (6) Neither the issuance of a cease and desist order nor payment  
5 of a civil fine shall relieve the person so operating a birthing  
6 center without a license from criminal prosecution, but the remedy of  
7 a cease and desist order or civil fine shall be in addition to any  
8 criminal liability. A final notice to cease and desist is conclusive  
9 proof of unlicensed operation and may be enforced under RCW 7.21.060.  
10 This method of enforcement of the final notice to cease and desist or  
11 civil fine may be used in addition to, or as an alternative to, any  
12 provisions for enforcement of agency orders set out in chapter 34.05  
13 RCW.

14 **Sec. 4.** RCW 18.46.130 and 2000 c 93 s 39 are each amended to  
15 read as follows:

16 (1) Notwithstanding the existence or use of any other remedy, the  
17 department may in the manner provided by law, upon the advice of the  
18 attorney general who shall represent the department in all  
19 proceedings, maintain an action in the name of the state for an  
20 injunction or other process against any person to restrain or prevent  
21 the ~~advertisement~~, operation ((~~o~~)), maintenance, management, or  
22 opening of a birthing center not licensed under this chapter.

23 (2) The injunction shall not relieve the person operating a birth  
24 center without a license from criminal prosecution, or the imposition  
25 of a civil fine under section 3 of this act, but the remedy by  
26 injunction shall be in addition to any criminal liability or civil  
27 fine. A person that violates an injunction issued under this chapter  
28 shall pay a civil penalty, as determined by the court, of not more  
29 than \$25,000, which shall be deposited in the department's local fee  
30 account. For the purpose of this section, the superior court issuing  
31 any injunction shall retain jurisdiction and the cause shall be  
32 continued, and in such cases the attorney general acting in the name  
33 of the state may petition for the recovery of civil penalties. All  
34 finances, forfeitures, and penalties collected or assessed by a court  
35 because of a violation of RCW 18.46.020 shall be deposited in the  
36 department's local fee account.

37 **Sec. 5.** RCW 70.42.010 and 1989 c 386 s 2 are each amended to  
38 read as follows:

1 Unless the context clearly requires otherwise, the definitions in  
2 this section apply throughout this chapter.

3 (1) "Department" means the department of health (~~(if enacted,~~  
4 ~~otherwise the department of social and health services)~~).

5 (2) "Designated test site supervisor" means the available  
6 individual who is responsible for the technical functions of the test  
7 site and who meets the department's qualifications set out in rule by  
8 the department.

9 (3) "Immediate jeopardy" means a situation in which the medical  
10 test site's noncompliance with one or more statutory or regulatory  
11 requirements has placed the health and safety of patients in its care  
12 at risk for serious injury, serious harm, serious impairment, or  
13 death.

14 (4) "Person" means any individual, or any public or private  
15 organization, agent, agency, corporation, firm, association,  
16 partnership, or business.

17 (~~(4)~~) (5) "Proficiency testing program" means an external  
18 service approved by the department which provides samples to evaluate  
19 the accuracy, reliability and performance of the tests at each test  
20 site.

21 (~~(5)~~) (6) "Quality assurance" means a comprehensive set of  
22 policies, procedures, and practices to assure that a test site's  
23 results are accurate and reliable. Quality assurance means a total  
24 program of internal and external quality control, equipment  
25 preventative maintenance, calibration, recordkeeping, and proficiency  
26 testing evaluation, including a written quality assurance plan.

27 (~~(6)~~) (7) "Quality control" means internal written procedures  
28 and day-to-day analysis of laboratory reference materials at each  
29 test site to insure precision and accuracy of test methodology,  
30 equipment, and results.

31 (~~(7)~~) (8) "Test" means any examination or procedure conducted  
32 on a sample taken from the human body, including screening.

33 (~~(8)~~) (9) "Test site" means any facility or site, public or  
34 private, which analyzes materials derived from the human body for the  
35 purposes of health care, treatment, or screening. A test site does  
36 not mean a facility or site, including a residence, where a test  
37 approved for home use by the federal food and drug administration is  
38 used by an individual to test himself or herself without direct  
39 supervision or guidance by another and where this test is not part of  
40 a commercial transaction.

1       **Sec. 6.** RCW 70.42.130 and 1989 c 386 s 14 are each amended to  
2 read as follows:

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

7       (1) Fails or refuses to comply with the requirements of this  
8 chapter (~~(or)~~), the rules or standards adopted under this chapter, or  
9 other applicable state or federal statutes or rules regulating  
10 medical test sites;

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

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

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

18       (5) Willfully prevented or interfered with preservation of  
19 evidence of a known violation of this chapter or the rules adopted  
20 under this chapter; or

21       (6) Misrepresented, or was fraudulent in, any aspect of the  
22 licensee's business.

23       NEW SECTION. **Sec. 7.** A new section is added to chapter 70.42  
24 RCW to read as follows:

25       (1) The department may prohibit a specific category or categories  
26 of services within the medical test site as related to noncompliance  
27 with the requirements of this chapter or the standards or rules  
28 adopted under this chapter by imposing a limited stop service. This  
29 may only be done if the department finds that noncompliance results  
30 in immediate jeopardy.

31       (2) Prior to imposing a limited stop service, the department  
32 shall provide the medical test site a written notification upon  
33 identifying deficient practices or conditions that constitute an  
34 immediate jeopardy. The medical test site shall have 24 hours from  
35 notification to develop and implement a department-approved plan to  
36 correct the deficient practices or conditions that constitute an  
37 immediate jeopardy. If the deficient practices or conditions that  
38 constitute immediate jeopardy are not verified by the department as

1 having been corrected within the same 24-hour period, the department  
2 may issue the limited stop service.

3 (3) When the department imposes a limited stop service, the  
4 medical test site may not perform any new testing in the category or  
5 categories subject to the limited stop service until the limited stop  
6 service is terminated.

7 (4) The department shall conduct a follow-up inspection within  
8 five business days or within the time period requested by the medical  
9 test site if more than five business days is needed to verify the  
10 violation necessitating the limited stop service has been corrected.

11 (5) The limited stop service shall be terminated when:

12 (a) The department verifies the violation necessitating the  
13 limited stop service has been corrected or the department determines  
14 that the medical test site has taken intermediate action to address  
15 the immediate jeopardy; and

16 (b) The medical test site establishes the ability to maintain  
17 correction of the violation previously found deficient.

18 (6) Except as otherwise provided, RCW 43.70.115 governs notice of  
19 actions taken by the department under subsection (1) of this section  
20 and provides the right to an adjudicative proceeding. Adjudicative  
21 proceedings and hearings under this section are governed by the  
22 administrative procedure act, chapter 34.05 RCW. The application for  
23 an adjudicative proceeding must be in writing, state the basis for  
24 contesting the adverse action, include a copy of the department's  
25 notice, be served on and received by the department within 28 days of  
26 the medical test site's receipt of the adverse notice, and be served  
27 in a manner that shows proof of receipt.

28 (7) When the department determines a licensee's noncompliance  
29 results in immediate jeopardy, the department may make the imposition  
30 of conditions on a licensee, a limited stop service, or the  
31 suspension of a license effective immediately upon receipt of the  
32 notice by the licensee, pending any adjudicative proceeding.

33 (a) When the department makes the suspension of a license or  
34 imposition of conditions on a license effective immediately, a  
35 licensee is entitled to a show cause hearing before a presiding  
36 officer within 14 days of making the request. The licensee must  
37 request the show cause hearing within 28 days of receipt of the  
38 notice of immediate suspension or immediate imposition of conditions.  
39 At the show cause hearing the department has the burden of

1 demonstrating that more probably than not there is an immediate  
2 jeopardy.

3 (b) At the show cause hearing, the presiding officer may consider  
4 the notice and documents supporting the immediate suspension or  
5 immediate imposition of conditions and the licensee's response and  
6 shall provide the parties with an opportunity to provide documentary  
7 evidence and written testimony, and to be represented by counsel.  
8 Prior to the show cause hearing, the department shall provide the  
9 licensee with all documentation that supports the department's  
10 immediate suspension or imposition of conditions.

11 (c) If the presiding officer determines there is no immediate  
12 jeopardy, the presiding officer may overturn the immediate suspension  
13 or immediate imposition of conditions.

14 (d) If the presiding officer determines there is immediate  
15 jeopardy, the immediate suspension or immediate imposition of  
16 conditions shall remain in effect pending a full hearing.

17 (e) If the presiding officer sustains the immediate suspension or  
18 immediate imposition of conditions, the licensee may request an  
19 expedited full hearing on the merits of the department's action. A  
20 full hearing must be provided within 90 days of the licensee's  
21 request.

22 (8) When the department determines an alleged violation, if true,  
23 would constitute an immediate jeopardy, and the licensee fails to  
24 cooperate with the department's investigation of such an alleged  
25 violation, the department may impose an immediate limited stop  
26 service, immediate suspension, or immediate imposition of conditions.

27 (a) When the department imposes an immediate limited stop  
28 service, immediate suspension, or immediate imposition of conditions  
29 for failure to cooperate, a licensee is entitled to a show cause  
30 hearing before a presiding officer within 14 days of making the  
31 request. The licensee must request the show cause hearing within 28  
32 days of receipt of the notice of an immediate limited stop service,  
33 immediate suspension, or immediate imposition of conditions for  
34 failure to cooperate. At the show cause hearing the department has  
35 the burden of demonstrating that more probably than not the alleged  
36 violation, if true, would constitute an immediate jeopardy and the  
37 licensee failed to cooperate with the department's investigation.

38 (b) At the show cause hearing, the presiding officer may consider  
39 the notice and documents supporting the immediate limited stop  
40 service, immediate suspension, or immediate imposition of conditions

1 for failure to cooperate, and the licensee's response and shall  
2 provide the parties with an opportunity to provide documentary  
3 evidence and written testimony, and to be represented by counsel.  
4 Prior to the show cause hearing, the department shall provide the  
5 licensee with all documentation that supports the department's  
6 immediate action for failure to cooperate.

7 (c) If the presiding officer determines the alleged violation, if  
8 true, does not constitute an immediate jeopardy or determines that  
9 the licensee cooperated with the department's investigation, the  
10 presiding officer may overturn the immediate action for failure to  
11 cooperate.

12 (d) If the presiding officer determines the allegation, if true,  
13 would constitute an immediate jeopardy and the licensee failed to  
14 cooperate with the department's investigation, the immediate action  
15 for failure to cooperate shall remain in effect pending a full  
16 hearing.

17 (e) If the presiding officer sustains the immediate action for  
18 failure to cooperate, the licensee may request an expedited full  
19 hearing on the merits of the department's action. A full hearing must  
20 be provided within 90 days of the licensee's request.

21 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.42  
22 RCW to read as follows:

23 (1) The department may give written notice to cease and desist to  
24 any person whom the department has reason to believe is engaged in  
25 the unlicensed operation of a medical test site.

26 (2)(a) Except as otherwise provided in this section, the  
27 requirement to cease and desist unlicensed operation is effective 20  
28 days after the person receives the notice.

29 (b) The department may make the date the action is effective  
30 sooner than 20 days after receipt when necessary to protect the  
31 public health, safety, or welfare. When the department does so, it  
32 shall state the effective date and the reasons supporting the  
33 effective date in the written notice to cease and desist.

34 (3) The person to whom the notice to cease and desist is issued  
35 may request an adjudicative proceeding to contest the notice. The  
36 adjudicative proceeding is governed by the administrative procedure  
37 act, chapter 34.05 RCW. The request for an adjudicative proceeding  
38 must be in writing, state the basis for contesting the notice,  
39 include a copy of the notice, and be served on and received by the

1 department within 20 days from the date the person receives the  
2 notice to cease and desist.

3 (4) (a) If the department gives a person 20 days' notice to cease  
4 and desist and the person requests an adjudicative proceeding before  
5 its effective date, the department shall not implement the notice  
6 until the final order has been entered. The presiding or reviewing  
7 officer may permit the department to implement part or all of the  
8 notice while the proceedings are pending if the respondent causes an  
9 unreasonable delay in the proceeding, if the circumstances change so  
10 that implementation is in the public interest, or for other good  
11 cause.

12 (b) If the department gives a licensee less than 20 days' notice  
13 to cease and desist and the respondent timely files a request for an  
14 adjudicative proceeding, the department may implement the cease and  
15 desist on the effective date stated in the notice. The presiding or  
16 reviewing officer may order the department to stay implementation of  
17 part or all of the adverse action while the proceedings are pending  
18 if staying implementation is in the public interest or for other good  
19 cause.

20 (5) The department may assess a civil fine not exceeding \$5,000  
21 for each day a person operates a medical test site without a valid  
22 license.

23 (a) The department shall give written notice to the person  
24 against whom it assesses a civil fine.

25 (b) Except as otherwise provided in (c) and (d) of this  
26 subsection, the civil fine is due and payable 20 days after receipt.

27 (c) The person against whom the department assesses a civil fine  
28 has the right to request an adjudicative proceeding. The proceeding  
29 is governed by the administrative procedure act, chapter 34.05 RCW.  
30 The request must be in writing, state the basis for contesting the  
31 fine, include a copy of the notice, be served on and received by the  
32 department within 20 days of the person receiving the notice of civil  
33 fine, and be served in a manner which shows proof of receipt.

34 (d) If the person files a timely and sufficient request for  
35 adjudicative proceeding, the department shall not implement the fine  
36 until the final order has been served.

37 (6) Neither the issuance of a cease and desist order nor payment  
38 of a civil fine shall relieve the person so operating a medical test  
39 site without a license from criminal prosecution, but the remedy of a  
40 cease and desist order or civil fine shall be in addition to any

1 criminal liability. A final notice to cease and desist is conclusive  
2 proof of unlicensed operation and may be enforced under RCW 7.21.060.  
3 This method of enforcement of the final notice to cease and desist or  
4 civil fine may be used in addition to, or as an alternative to, any  
5 provisions for enforcement of agency orders set out in chapter 34.05  
6 RCW.

7 **Sec. 9.** RCW 70.42.180 and 1989 c 386 s 19 are each amended to  
8 read as follows:

9 (1) Notwithstanding the existence or use of any other remedy, the  
10 department may, in the manner provided by law and upon the advice of  
11 the attorney general, who shall represent the department in the  
12 proceedings, maintain an action in the name of the state for an  
13 injunction or other process against any person to restrain or prevent  
14 the advertising, operating, maintaining, managing, or opening of a  
15 test site without a license under this chapter. It is a misdemeanor  
16 to own, operate, or maintain a test site without a license.

17 (2) The injunction shall not relieve the person operating a  
18 medical test site without a license from criminal prosecution, or the  
19 imposition of a civil fine under section 8 of this act, but the  
20 remedy by injunction shall be in addition to any criminal liability  
21 or civil fine. A person that violates an injunction issued under this  
22 chapter shall pay a civil penalty, as determined by the court, of not  
23 more than \$25,000, which shall be deposited in the department's local  
24 fee account. For the purpose of this section, the superior court  
25 issuing any injunction shall retain jurisdiction and the cause shall  
26 be continued, and in such cases the attorney general acting in the  
27 name of the state may petition for the recovery of civil penalties.  
28 All fines, forfeitures, and penalties collected or assessed by a  
29 court because of a violation of RCW 70.42.020 shall be deposited in  
30 the department's local fee account.

31 **Sec. 10.** RCW 70.127.010 and 2011 c 89 s 13 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) "Administrator" means an individual responsible for managing  
36 the operation of an agency.

37 (2) "Department" means the department of health.

1 (3) "Director of clinical services" means an individual  
2 responsible for nursing, therapy, nutritional, social, and related  
3 services that support the plan of care provided by in-home health and  
4 hospice agencies.

5 (4) "Family" means individuals who are important to, and  
6 designated by, the patient or client and who need not be relatives.

7 (5) "Home care agency" means a person administering or providing  
8 home care services directly or through a contract arrangement to  
9 individuals in places of temporary or permanent residence. A home  
10 care agency that provides delegated tasks of nursing under RCW  
11 18.79.260(3)(e) is not considered a home health agency for the  
12 purposes of this chapter.

13 (6) "Home care services" means nonmedical services and assistance  
14 provided to ill, disabled, or vulnerable individuals that enable them  
15 to remain in their residences. Home care services include, but are  
16 not limited to: Personal care such as assistance with dressing,  
17 feeding, and personal hygiene to facilitate self-care; homemaker  
18 assistance with household tasks, such as housekeeping, shopping, meal  
19 planning and preparation, and transportation; respite care assistance  
20 and support provided to the family; or other nonmedical services or  
21 delegated tasks of nursing under RCW 18.79.260(3)(e).

22 (7) "Home health agency" means a person administering or  
23 providing two or more home health services directly or through a  
24 contract arrangement to individuals in places of temporary or  
25 permanent residence. A person administering or providing nursing  
26 services only may elect to be designated a home health agency for  
27 purposes of licensure.

28 (8) "Home health services" means services provided to ill,  
29 disabled, or vulnerable individuals. These services include but are  
30 not limited to nursing services, home health aide services, physical  
31 therapy services, occupational therapy services, speech therapy  
32 services, respiratory therapy services, nutritional services, medical  
33 social services, and home medical supplies or equipment services.

34 (9) "Home health aide services" means services provided by a home  
35 health agency or a hospice agency under the supervision of a  
36 registered nurse, physical therapist, occupational therapist, or  
37 speech therapist who is employed by or under contract to a home  
38 health or hospice agency. Such care includes ambulation and exercise,  
39 assistance with self-administered medications, reporting changes in

1 patients' conditions and needs, completing appropriate records, and  
2 personal care or homemaker services.

3 (10) "Home medical supplies" or "equipment services" means  
4 diagnostic, treatment, and monitoring equipment and supplies provided  
5 for the direct care of individuals within a plan of care.

6 (11) "Hospice agency" means a person administering or providing  
7 hospice services directly or through a contract arrangement to  
8 individuals in places of temporary or permanent residence under the  
9 direction of an interdisciplinary team composed of at least a nurse,  
10 social worker, physician, spiritual counselor, and a volunteer.

11 (12) "Hospice care center" means a homelike, noninstitutional  
12 facility where hospice services are provided, and that meets the  
13 requirements for operation under RCW 70.127.280.

14 (13) "Hospice services" means symptom and pain management  
15 provided to a terminally ill individual, and emotional, spiritual,  
16 and bereavement support for the individual and family in a place of  
17 temporary or permanent residence, and may include the provision of  
18 home health and home care services for the terminally ill individual.

19 (14) "Immediate jeopardy" means a situation in which the in-home  
20 services agency's noncompliance with one or more statutory or  
21 regulatory requirements has placed the health and safety of patients  
22 in its care at risk for serious injury, serious harm, serious  
23 impairment, or death.

24 (15) "In-home services agency" means a person licensed to  
25 administer or provide home health, home care, hospice services, or  
26 hospice care center services directly or through a contract  
27 arrangement to individuals in a place of temporary or permanent  
28 residence.

29 ((~~15~~)) (16) "Person" means any individual, business, firm,  
30 partnership, corporation, company, association, joint stock  
31 association, public or private agency or organization, or the legal  
32 successor thereof that employs or contracts with two or more  
33 individuals.

34 ((~~16~~)) (17) "Plan of care" means a written document based on  
35 assessment of individual needs that identifies services to meet these  
36 needs.

37 ((~~17~~)) (18) "Quality improvement" means reviewing and  
38 evaluating appropriateness and effectiveness of services provided  
39 under this chapter.

1        ~~((18))~~ (19) "Service area" means the geographic area in which  
2 the department has given prior approval to a licensee to provide home  
3 health, hospice, or home care services.

4        ~~((19))~~ (20) "Social worker" means a person with a degree from a  
5 social work educational program accredited and approved as provided  
6 in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R.  
7 Sec. 418.114 as it existed on January 1, 2012.

8        ~~((20))~~ (21) "Survey" means an inspection conducted by the  
9 department to evaluate and monitor an agency's compliance with this  
10 chapter.

11        **Sec. 11.** RCW 70.127.170 and 2003 c 140 s 10 are each amended to  
12 read as follows:

13        ~~((Pursuant to chapter 34.05 RCW and RCW 70.127.180(3), the  
14 department may deny, restrict, condition, modify, suspend, or revoke  
15 a license under this chapter or, in lieu thereof or in addition  
16 thereto, assess monetary penalties of a civil nature not to exceed  
17 one thousand dollars per violation, or require a refund of any  
18 amounts billed to, and collected from, the consumer or third-party  
19 payor in any case in which it finds that the licensee, or any  
20 applicant, officer, director, partner, managing employee, or owner of  
21 ten percent or more of the applicant's or licensee's assets)) The  
22 department is authorized to take any of the actions identified in  
23 section 12 of this act against an in-home services agency's license  
24 in any case in which it finds that the licensee:~~

25        (1) Failed or refused to comply with the requirements of this  
26 chapter ~~((or the))~~, standards or rules adopted under this chapter, or  
27 other applicable state or federal statutes or rules regulating the  
28 facility or agency;

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

33        (3) Has knowingly or with reason to know made a misrepresentation  
34 of, false statement of, or failed to disclose, a material fact to the  
35 department in an application for the license or any data attached  
36 thereto or in any record required by this chapter or matter under  
37 investigation by the department, or during a survey, or concerning  
38 information requested by the department;

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

4 (5) Willfully prevented, interfered with, or attempted to impede  
5 in any way the work of any representative of the department and the  
6 lawful enforcement of any provision of this chapter. This includes  
7 but is not limited to: Willful misrepresentation of facts during a  
8 survey, investigation, or administrative proceeding or any other  
9 legal action; or use of threats or harassment against any patient,  
10 client, or witness, or use of financial inducements to any patient,  
11 client, or witness to prevent or attempt to prevent him or her from  
12 providing evidence during a survey or investigation, in an  
13 administrative proceeding, or any other legal action involving the  
14 department;

15 (6) Willfully prevented or interfered with any representative of  
16 the department in the preservation of evidence of any violation of  
17 this chapter or the rules adopted under this chapter;

18 (7) Failed to pay any civil monetary penalty assessed by the  
19 department pursuant to this chapter within (~~ten~~) 10 days after the  
20 assessment becomes final;

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

22 (9) Has repeated incidents of personnel performing services  
23 beyond their authorized scope of practice;

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

26 (11) Within the last five years, has been found in a civil or  
27 criminal proceeding to have committed any act that reasonably relates  
28 to the person's fitness to establish, maintain, or administer an  
29 agency or to provide care in the home of another;

30 (12) Was the holder of a license to provide care or treatment to  
31 ill individuals, (~~(disabled, or)~~) vulnerable individuals, or  
32 individuals with disabilities that was denied, restricted, not  
33 renewed, surrendered, suspended, or revoked by a competent authority  
34 in any state, federal, or foreign jurisdiction. A certified copy of  
35 the order, stipulation, or agreement is conclusive evidence of the  
36 denial, restriction, nonrenewal, surrender, suspension, or  
37 revocation;

38 (~~Violated any state or federal statute, or administrative~~  
39 ~~rule regulating the operation of the agency;~~

1       ~~(14)~~) Failed to comply with an order issued by the secretary or  
2       designee;  
3       ~~((15))~~ (14) Aided or abetted the unlicensed operation of an in-  
4       home services agency;  
5       ~~((16))~~ (15) Operated beyond the scope of the in-home services  
6       agency license;  
7       ~~((17))~~ (16) Failed to adequately supervise staff to the extent  
8       that the health or safety of a patient or client was at risk;  
9       ~~((18))~~ (17) Compromised the health or safety of a patient or  
10      client, including, but not limited to, the individual performing  
11      services beyond their authorized scope of practice;  
12      ~~((19))~~ (18) Continued to operate after license revocation,  
13      suspension, or expiration, or operating outside the parameters of a  
14      modified, conditioned, or restricted license;  
15      ~~((20))~~ (19) Failed or refused to comply with chapter 70.02 RCW;  
16      ~~((21))~~ (20) Abused, neglected, abandoned, or financially  
17      exploited a patient or client as these terms are defined in RCW  
18      74.34.020;  
19      ~~((22))~~ (21) Misappropriated the property of an individual;  
20      ~~((23))~~ (22) Is unqualified or unable to operate or direct the  
21      operation of the agency according to this chapter and the rules  
22      adopted under this chapter;  
23      ~~((24))~~ (23) Obtained or attempted to obtain a license by  
24      fraudulent means or misrepresentation; or  
25      ~~((25))~~ (24) Failed to report abuse or neglect of a patient or  
26      client in violation of chapter 74.34 RCW.

27       NEW SECTION.   **Sec. 12.**   A new section is added to chapter 70.127  
28       RCW to read as follows:

29       (1) When the department determines the in-home services agency  
30       has previously been subject to an enforcement action for the same or  
31       similar type of violation of the same statute or rule, or has been  
32       given any previous statement of deficiency that included the same or  
33       similar type of violation of the same or similar statute or rule, or  
34       when the in-home services agency failed to correct noncompliance with  
35       a statute or rule by a date established or agreed to by the  
36       department, the department may impose reasonable conditions on a  
37       license. Conditions may include correction within a specified amount  
38       of time, training, or hiring a department-approved consultant if the  
39       in-home services agency cannot demonstrate to the department that it

1 has access to sufficient internal expertise. If the department  
2 determines that the violations constitute immediate jeopardy, the  
3 conditions may be imposed immediately in accordance with subsection  
4 (5) of this section.

5 (2) (a) In accordance with the authority the department has under  
6 RCW 43.70.095, the department may assess a civil fine of up to \$3,000  
7 per violation on an in-home services agency licensed under this  
8 chapter when the department determines the in-home services agency  
9 has previously been subject to an enforcement action for the same or  
10 similar type of violation of the same statute or rule, or has been  
11 given any previous statement of deficiency that included the same or  
12 similar type of violation of the same or similar statute or rule, or  
13 when the in-home services agency failed to correct noncompliance with  
14 a statute or rule by a date established or agreed to by the  
15 department.

16 (b) Proceeds from these fines may only be used by the department  
17 to offset costs associated with licensing and enforcement of in-home  
18 services agencies.

19 (c) The department shall adopt in rules under this chapter  
20 specific fine amounts in relation to the severity of the  
21 noncompliance and at an adequate level to be a deterrent to future  
22 noncompliance.

23 (d) If a licensee is aggrieved by the department's action of  
24 assessing civil fines, the licensee has the right to appeal under RCW  
25 43.70.095.

26 (3) The department may suspend a specific category or categories  
27 of services or care that the in-home services agency provides as  
28 related to the violation by imposing a limited stop service. This may  
29 only be done if the department finds that noncompliance results in  
30 immediate jeopardy.

31 (a) Prior to imposing a limited stop service, the department  
32 shall provide an in-home services agency written notification upon  
33 identifying deficient practices or conditions that constitute an  
34 immediate jeopardy. The in-home services agency shall have 24 hours  
35 from notification to develop and implement a department-approved plan  
36 to correct the deficient practices or conditions that constitute an  
37 immediate jeopardy. If the deficient practices or conditions that  
38 constitute immediate jeopardy are not verified by the department as  
39 having been corrected within the same 24-hour period, the department  
40 may issue the limited stop service.

1 (b) When the department imposes a limited stop service, the in-  
2 home services agency may not provide the services in the category or  
3 categories subject to the limited stop service to any new or existing  
4 individuals until the limited stop service is terminated.

5 (c) The department shall conduct a follow-up inspection within  
6 five business days or within the time period requested by the in-home  
7 services agency if more than five business days is needed to verify  
8 the violation necessitating the limited stop service has been  
9 corrected.

10 (d) The limited stop service shall be terminated when:

11 (i) The department verifies the violation necessitating the  
12 limited stop service has been corrected or the department determines  
13 that the in-home services agency has taken intermediate action to  
14 address the immediate jeopardy; and

15 (ii) The in-home services agency establishes the ability to  
16 maintain correction of the violation previously found deficient.

17 (4) The department may suspend new admissions to an in-home  
18 services agency that qualifies as a hospice care center by imposing a  
19 stop placement. This may only be done if the department finds that  
20 noncompliance results in immediate jeopardy and is not confined to a  
21 specific category or categories of services or care that the hospice  
22 care center provides.

23 (a) Prior to imposing a stop placement, the department shall  
24 provide an in-home services agency that qualifies as a hospice care  
25 center written notification upon identifying deficient practices or  
26 conditions that constitute an immediate jeopardy. The hospice care  
27 center shall have 24 hours from notification to develop and implement  
28 a department-approved plan to correct the deficient practices or  
29 conditions that constitute an immediate jeopardy. If the deficient  
30 practices or conditions that constitute immediate jeopardy are not  
31 verified by the department as having been corrected within the same  
32 24-hour period, the department may issue the stop placement.

33 (b) When the department imposes a stop placement, the hospice  
34 care center may not admit any new patients until the stop placement  
35 is terminated.

36 (c) The department shall conduct a follow-up inspection within  
37 five business days or within the time period requested by the hospice  
38 care center if more than five business days is needed to verify the  
39 violation necessitating the stop placement has been corrected.

40 (d) The stop placement shall be terminated when:

1 (i) The department verifies the violation necessitating the stop  
2 placement has been corrected or the department determines that the  
3 hospice care center has taken intermediate action to address the  
4 immediate jeopardy; and

5 (ii) The hospice care center establishes the ability to maintain  
6 correction of the violation previously found deficient.

7 (5) The department may deny an application for a license or  
8 suspend, revoke, or refuse to renew a license.

9 NEW SECTION. **Sec. 13.** A new section is added to chapter 70.127  
10 RCW to read as follows:

11 (1) Except as otherwise provided, RCW 43.70.115 governs notice of  
12 the imposition of conditions on a license, a limited stop service,  
13 stop placement, or the suspension, revocation, or refusal to renew a  
14 license and provides the right to an adjudicative proceeding.  
15 Adjudicative proceedings and hearings under this section are governed  
16 by the administrative procedure act, chapter 34.05 RCW. The  
17 application for an adjudicative proceeding must be in writing, state  
18 the basis for contesting the adverse action, include a copy of the  
19 department's notice, be served on and received by the department  
20 within 28 days of the licensee's receipt of the adverse notice, and  
21 be served in a manner that shows proof of receipt.

22 (2) When the department determines a licensee's noncompliance  
23 results in immediate jeopardy, the department may make the imposition  
24 of conditions on a licensee, a limited stop service, stop placement,  
25 or the suspension of a license effective immediately upon receipt of  
26 the notice by the licensee, pending any adjudicative proceeding.

27 (a) When the department makes the suspension of a license or  
28 imposition of conditions on a license effective immediately, a  
29 licensee is entitled to a show cause hearing before a presiding  
30 officer within 14 days of making the request. The licensee must  
31 request the show cause hearing within 28 days of receipt of the  
32 notice of immediate suspension or immediate imposition of conditions.  
33 At the show cause hearing the department has the burden of  
34 demonstrating that more probably than not there is immediate  
35 jeopardy.

36 (b) At the show cause hearing, the presiding officer may consider  
37 the notice and documents supporting the immediate suspension or  
38 immediate imposition of conditions and the licensee's response and  
39 shall provide the parties with an opportunity to provide documentary

1 evidence and written testimony, and to be represented by counsel.  
2 Prior to the show cause hearing, the department shall provide the  
3 licensee with all documentation that supports the department's  
4 immediate suspension or imposition of conditions.

5 (c) If the presiding officer determines there is no immediate  
6 jeopardy, the presiding officer may overturn the immediate suspension  
7 or immediate imposition of conditions.

8 (d) If the presiding officer determines there is immediate  
9 jeopardy, the immediate suspension or immediate imposition of  
10 conditions shall remain in effect pending a full hearing.

11 (e) If the presiding officer sustains the immediate suspension or  
12 immediate imposition of conditions, the licensee may request an  
13 expedited full hearing on the merits of the department's action. A  
14 full hearing must be provided within 90 days of the licensee's  
15 request.

16 (3) When the department determines an alleged violation, if true,  
17 would constitute an immediate jeopardy, and the licensee fails to  
18 cooperate with the department's investigation of such an alleged  
19 violation, the department may impose an immediate stop placement,  
20 immediate limited stop service, immediate imposition of conditions,  
21 or immediate suspension.

22 (a) When the department imposes an immediate stop placement,  
23 immediate limited stop service, immediate imposition of conditions,  
24 or immediate suspension for failure to cooperate, a licensee is  
25 entitled to a show cause hearing before a presiding officer within 14  
26 days of making the request. The licensee must request the show cause  
27 hearing within 28 days of receipt of the notice of an immediate stop  
28 placement, immediate limited stop service, immediate imposition of  
29 conditions, or immediate suspension for failure to cooperate. At the  
30 show cause hearing the department has the burden of demonstrating  
31 that more probably than not the alleged violation, if true, would  
32 constitute an immediate jeopardy and the licensee failed to cooperate  
33 with the department's investigation.

34 (b) At the show cause hearing, the presiding officer may consider  
35 the notice and documents supporting the immediate stop placement,  
36 immediate limited stop service, immediate imposition of conditions,  
37 or immediate suspension for failure to cooperate, and the licensee's  
38 response and shall provide the parties with an opportunity to provide  
39 documentary evidence and written testimony, and to be represented by  
40 counsel. Prior to the show cause hearing, the department shall

1 provide the licensee with all documentation that supports the  
2 department's immediate action for failure to cooperate.

3 (c) If the presiding officer determines the alleged violation, if  
4 true, does not constitute an immediate jeopardy or determines that  
5 the licensee cooperated with the department's investigation, the  
6 presiding officer may overturn the immediate action for failure to  
7 cooperate.

8 (d) If the presiding officer determines the allegation, if true,  
9 would constitute an immediate jeopardy and the licensee failed to  
10 cooperate with the department's investigation, the immediate action  
11 for failure to cooperate shall remain in effect pending a full  
12 hearing.

13 (e) If the presiding officer sustains the immediate action for  
14 failure to cooperate, the licensee may request an expedited full  
15 hearing on the merits of the department's action. A full hearing must  
16 be provided within 90 days of the licensee's request.

17 **Sec. 14.** RCW 70.127.213 and 2000 c 175 s 19 are each amended to  
18 read as follows:

19 (1) The department may (~~issue a notice of intention to issue a~~)  
20 give written notice to cease and desist (~~order~~) to any person whom  
21 the department has reason to believe is engaged in the unlicensed  
22 operation of an in-home services agency. (~~The person to whom the~~  
23 ~~notice of intent is issued may request an adjudicative proceeding to~~  
24 ~~contest the charges. The request for hearing must be filed within~~  
25 ~~twenty days after service of the notice of intent to issue a cease~~  
26 ~~and desist order. The failure to request a hearing constitutes a~~  
27 ~~default, whereupon the department may enter a permanent cease and~~  
28 ~~desist order, which may include a civil fine. All proceedings shall~~  
29 ~~be conducted in accordance with chapter 34.05 RCW.~~

30 ~~(2) If the department makes a final determination that a person~~  
31 ~~has engaged or is engaging in unlicensed operation of an in-home~~  
32 ~~services agency, the department may issue a cease and desist order.~~  
33 ~~In addition, the department may impose a civil fine in an amount not~~  
34 ~~exceeding one thousand dollars for each day upon which the person~~  
35 ~~engaged in unlicensed operation of an in-home services agency. The~~  
36 ~~proceeds of such fines shall be deposited in the department's local~~  
37 ~~fee account.~~

38 ~~(3) If the department makes a written finding of fact that the~~  
39 ~~public interest will be irreparably harmed by delay in issuing an~~

1 order, the department may issue a temporary cease and desist order.  
2 The person receiving a temporary cease and desist order shall be  
3 provided an opportunity for a prompt hearing. The temporary cease and  
4 desist order shall remain in effect until further order of the  
5 department. The failure to request a prompt or regularly scheduled  
6 hearing constitutes a default, whereupon the department may enter a  
7 permanent cease and desist order, which may include a civil fine.

8 (4) Neither the issuance of a cease and desist order nor payment  
9 of a civil fine shall relieve the person so operating an in-home  
10 services agency without a license from criminal prosecution, but the  
11 remedy of a cease and desist order or civil fine shall be in addition  
12 to any criminal liability. The cease and desist order is conclusive  
13 proof of unlicensed operation and may be enforced under RCW 7.21.060.  
14 This method of enforcement of the cease and desist order or civil  
15 fine may be used in addition to, or as an alternative to, any  
16 provisions for enforcement of agency orders set out in chapter 34.05  
17 RCW.) )

18 (2) (a) Except as otherwise provided in this section, the  
19 requirement to cease and desist unlicensed operation is effective 20  
20 days after the person receives the notice.

21 (b) The department may make the date the action is effective  
22 sooner than 20 days after receipt when necessary to protect the  
23 public health, safety, or welfare. When the department does so, it  
24 shall state the effective date and the reasons supporting the  
25 effective date in the written notice to cease and desist.

26 (3) The person to whom the notice to cease and desist is issued  
27 may request an adjudicative proceeding to contest the notice. The  
28 adjudicative proceeding is governed by the administrative procedure  
29 act, chapter 34.05 RCW. The request for an adjudicative proceeding  
30 must be in writing, state the basis for contesting the notice,  
31 include a copy of the notice, and be served on and received by the  
32 department within 20 days from the date the person receives the  
33 notice to cease and desist.

34 (4) (a) If the department gives a person 20 days' notice to cease  
35 and desist and the person requests an adjudicative proceeding before  
36 its effective date, the department shall not implement the notice  
37 until the final order has been entered. The presiding or reviewing  
38 officer may permit the department to implement part or all of the  
39 notice while the proceedings are pending if the respondent causes an  
40 unreasonable delay in the proceeding, if the circumstances change so

1 that implementation is in the public interest, or for other good  
2 cause.

3 (b) If the department gives a licensee less than 20 days' notice  
4 to cease and desist and the respondent timely files a request for an  
5 adjudicative proceeding, the department may implement the cease and  
6 desist on the effective date stated in the notice. The presiding or  
7 reviewing officer may order the department to stay implementation of  
8 part or all of the adverse action while the proceedings are pending  
9 if staying implementation is in the public interest or for other good  
10 cause.

11 (5) The department may assess a civil fine not exceeding \$5,000  
12 for each day a person operates an in-home services agency without a  
13 valid license.

14 (a) The department shall give written notice to the person  
15 against whom it assesses a civil fine.

16 (b) Except as otherwise provided in (c) and (d) of this  
17 subsection, the civil fine is due and payable 20 days after receipt.

18 (c) The person against whom the department assesses a civil fine  
19 has the right to request an adjudicative proceeding. The proceeding  
20 is governed by the administrative procedure act, chapter 34.05 RCW.  
21 The request must be in writing, state the basis for contesting the  
22 fine, include a copy of the notice, be served on and received by the  
23 department within 20 days of the person receiving the notice of civil  
24 fine, and be served in a manner which shows proof of receipt.

25 (d) If the person files a timely and sufficient request for  
26 adjudicative proceeding, the department shall not implement the fine  
27 until the final order has been served.

28 (6) Neither the issuance of a cease and desist order nor payment  
29 of a civil fine shall relieve the person so operating an in-home  
30 services agency without a license from criminal prosecution, but the  
31 remedy of a cease and desist order or civil fine shall be in addition  
32 to any criminal liability. A final notice to cease and desist is  
33 conclusive proof of unlicensed operation and may be enforced under  
34 RCW 7.21.060. This method of enforcement of the final notice to cease  
35 and desist or civil fine may be used in addition to, or as an  
36 alternative to, any provisions for enforcement of agency orders set  
37 out in chapter 34.05 RCW.

38 **Sec. 15.** RCW 70.230.010 and 2011 c 76 s 1 are each amended to  
39 read as follows:

1 The definitions in this section apply throughout this chapter  
2 unless the context clearly requires otherwise.

3 (1) "Ambulatory surgical facility" means any distinct entity that  
4 operates for the primary purpose of providing specialty or  
5 multispecialty outpatient surgical services in which patients are  
6 admitted to and discharged from the facility within (~~twenty-four~~)  
7 24 hours and do not require inpatient hospitalization, whether or not  
8 the facility is certified under Title XVIII of the federal social  
9 security act. An ambulatory surgical facility includes one or more  
10 surgical suites that are adjacent to and within the same building as,  
11 but not in, the office of a practitioner in an individual or group  
12 practice, if the primary purpose of the one or more surgical suites  
13 is to provide specialty or multispecialty outpatient surgical  
14 services, irrespective of the type of anesthesia administered in the  
15 one or more surgical suites. An ambulatory surgical facility that is  
16 adjacent to and within the same building as the office of a  
17 practitioner in an individual or group practice may include a  
18 surgical suite that shares a reception area, restroom, waiting room,  
19 or wall with the office of the practitioner in an individual or group  
20 practice.

21 (2) "Department" means the department of health.

22 (3) "General anesthesia" means a state of unconsciousness  
23 intentionally produced by anesthetic agents, with absence of pain  
24 sensation over the entire body, in which the patient is without  
25 protective reflexes and is unable to maintain an airway.

26 (4) "Immediate jeopardy" means a situation in which the  
27 ambulatory surgical facility's noncompliance with one or more  
28 statutory or regulatory requirements has placed the health and safety  
29 of patients in its care at risk for serious injury, serious harm,  
30 serious impairment, or death.

31 (5) "Person" means an individual, firm, partnership, corporation,  
32 company, association, joint stock association, and the legal  
33 successor thereof.

34 (~~(5)~~) (6) "Practitioner" means any physician or surgeon  
35 licensed under chapter 18.71 RCW, an osteopathic physician or surgeon  
36 licensed under chapter 18.57 RCW, or a podiatric physician or surgeon  
37 licensed under chapter 18.22 RCW.

38 (~~(6)~~) (7) "Secretary" means the secretary of health.

39 (~~(7)~~) (8) "Surgical services" means invasive medical procedures  
40 that:

- 1 (a) Utilize a knife, laser, cautery, cryogenics, or chemicals;  
2 and  
3 (b) Remove, correct, or facilitate the diagnosis or cure of a  
4 disease, process, or injury through that branch of medicine that  
5 treats diseases, injuries, and deformities by manual or operative  
6 methods by a practitioner.

7 **Sec. 16.** RCW 70.230.070 and 2007 c 273 s 8 are each amended to  
8 read as follows:

9 ~~(1) ((The secretary may deny, suspend, or revoke the license of  
10 any ambulatory surgical facility in any case in which he or she finds  
11 the applicant or registered entity knowingly made a false statement  
12 of material fact in the application for the license or any supporting  
13 data in any record required by this chapter or matter under  
14 investigation by the department.~~

15 ~~(2) The secretary shall investigate complaints concerning  
16 operation of an ambulatory surgical facility without a license. The  
17 secretary may issue a notice of intention to issue a cease and desist  
18 order to any person whom the secretary has reason to believe is  
19 engaged in the unlicensed operation of an ambulatory surgical  
20 facility. If the secretary makes a written finding of fact that the  
21 public interest will be irreparably harmed by delay in issuing an  
22 order, the secretary may issue a temporary cease and desist order.  
23 The person receiving a temporary cease and desist order shall be  
24 provided an opportunity for a prompt hearing. The temporary cease and  
25 desist order shall remain in effect until further order of the  
26 secretary. Any person operating an ambulatory surgical facility under  
27 this chapter without a license is guilty of a misdemeanor, and each  
28 day of operation of an unlicensed ambulatory surgical facility  
29 constitutes a separate offense.~~

30 ~~(3) The secretary is authorized to deny, suspend, revoke, or  
31 modify a license or provisional license in any case in which it finds  
32 that there has been a failure or refusal to comply with the  
33 requirements of this chapter or the standards or rules adopted under  
34 this chapter. RCW 43.70.115 governs notice of a license denial,  
35 revocation, suspension, or modification and provides the right to an  
36 adjudicative proceeding.~~

37 ~~(4) Pursuant to chapter 34.05 RCW, the secretary may assess  
38 monetary penalties of a civil nature not to exceed one thousand  
39 dollars per violation.)) The department is authorized to take any of~~

1 the actions identified in this section against an ambulatory surgical  
2 facility's license or provisional license in any case in which it  
3 finds that there has been a failure or refusal to comply with the  
4 requirements of this chapter or the standards or rules adopted under  
5 this chapter.

6 (a) When the department determines the ambulatory surgical  
7 facility has previously been subject to an enforcement action for the  
8 same or similar type of violation of the same statute or rule, or has  
9 been given any previous statement of deficiency that included the  
10 same or similar type of violation of the same or similar statute or  
11 rule, or when the ambulatory surgical facility failed to correct  
12 noncompliance with a statute or rule by a date established or agreed  
13 to by the department, the department may impose reasonable conditions  
14 on a license. Conditions may include correction within a specified  
15 amount of time, training, or hiring a department-approved consultant  
16 if the ambulatory surgical facility cannot demonstrate to the  
17 department that it has access to sufficient internal expertise.

18 (b) (i) In accordance with the authority the department has under  
19 RCW 43.70.095, the department may assess a civil fine of up to \$7,500  
20 per violation on an ambulatory surgical facility licensed under this  
21 chapter when the department determines the ambulatory surgical  
22 facility has previously been subject to an enforcement action for the  
23 same or similar type of violation of the same statute or rule, or has  
24 been given any previous statement of deficiency that included the  
25 same or similar type of violation of the same or similar statute or  
26 rule, or when the ambulatory surgical facility failed to correct  
27 noncompliance with a statute or rule by a date established or agreed  
28 to by the department.

29 (ii) Proceeds from these fines may only be used by the department  
30 to offset costs associated with licensing and enforcement of  
31 ambulatory surgical facilities.

32 (iii) If a licensee is aggrieved by the department's action of  
33 assessing civil fines, the licensee has the right to appeal under RCW  
34 43.70.095.

35 (iv) The department shall adopt in rules under this chapter  
36 specific fine amounts in relation to:

37 (A) The severity of the noncompliance and at an adequate level to  
38 be a deterrent to future noncompliance; and

1 (B) The number of surgical procedures performed by an ambulatory  
2 surgical facility on an annual basis as identified by the facility at  
3 the time of licensure or renewal in the following categories:

4 (I) Performs 1,000 or fewer surgical procedures;

5 (II) Performs between 1,001 and 5,000 surgical procedures; and

6 (III) Performs more than 5,000 surgical procedures.

7 (c) The department may suspend a specific category or categories  
8 of services or care or operating rooms or recovery rooms within the  
9 ambulatory surgical facility as related to the violation by imposing  
10 a limited stop service. This may only be done if the department finds  
11 that noncompliance results in immediate jeopardy.

12 (i) Prior to imposing a limited stop service, the department  
13 shall provide an ambulatory surgical facility written notification  
14 upon identifying deficient practices or conditions that constitute an  
15 immediate jeopardy. The ambulatory surgical facility shall have 24  
16 hours from notification to develop and implement a department-  
17 approved plan to correct the deficient practices or conditions that  
18 constitute an immediate jeopardy. If the deficient practices or  
19 conditions that constitute immediate jeopardy are not verified by the  
20 department as having been corrected within the same 24-hour period,  
21 the department may issue the limited stop service.

22 (ii) When the department imposes a limited stop service, the  
23 ambulatory surgical facility may not provide the services in the  
24 category or categories subject to the limited stop service to any new  
25 or existing individuals, unless otherwise allowed by the department,  
26 until the limited stop service is terminated.

27 (iii) The department shall conduct a follow-up inspection within  
28 five business days or within the time period requested by the  
29 ambulatory surgical facility if more than five business days is  
30 needed to verify the violation necessitating the limited stop service  
31 has been corrected.

32 (iv) The limited stop service shall be terminated when:

33 (A) The department verifies the violation necessitating the  
34 limited stop service has been corrected or the department determines  
35 that the ambulatory surgical facility has taken intermediate action  
36 to address the immediate jeopardy; and

37 (B) The ambulatory surgical facility establishes the ability to  
38 maintain correction of the violation previously found deficient.

39 (d) The department may suspend new admissions to the ambulatory  
40 surgical facility by imposing a stop placement. This may only be done

1 if the department finds that noncompliance results in immediate  
2 jeopardy and is not confined to a specific category or categories of  
3 patients or a specific area of the ambulatory surgical facility.

4 (i) Prior to imposing a stop placement, the department shall  
5 provide an ambulatory surgical facility written notification upon  
6 identifying deficient practices or conditions that constitute an  
7 immediate jeopardy. The ambulatory surgical facility shall have 24  
8 hours from notification to develop and implement a department-  
9 approved plan to correct the deficient practices or conditions that  
10 constitute an immediate jeopardy. If the deficient practices or  
11 conditions that constitute immediate jeopardy are not verified by the  
12 department as having been corrected within the same 24-hour period,  
13 the department may issue the stop placement.

14 (ii) When the department imposes a stop placement, the ambulatory  
15 surgical facility may not admit any new patients until the stop  
16 placement is terminated.

17 (iii) The department shall conduct a follow-up inspection within  
18 five business days or within the time period requested by the  
19 ambulatory surgical facility if more than five business days is  
20 needed to verify the violation necessitating the stop placement has  
21 been corrected.

22 (iv) The stop placement shall be terminated when:

23 (A) The department verifies the violation necessitating the stop  
24 placement has been corrected or the department determines that the  
25 ambulatory surgical facility has taken intermediate action to address  
26 the immediate jeopardy; and

27 (B) The ambulatory surgical facility establishes the ability to  
28 maintain correction of the violation previously found deficient.

29 (e) The department may deny an application for a license or  
30 suspend, revoke, or refuse to renew a license.

31 (2) The secretary may deny, suspend, or revoke the license of any  
32 ambulatory surgical facility in any case in which he or she finds the  
33 applicant or registered entity knowingly made a false statement of  
34 material fact in the application for the license or any supporting  
35 data in any record required by this chapter or matter under  
36 investigation by the department.

37 (3) Except as otherwise provided, RCW 43.70.115 governs notice of  
38 actions taken by the department under this section and provides the  
39 right to an adjudicative proceeding. Adjudicative proceedings and  
40 hearings under this section are governed by the administrative

1 procedure act, chapter 34.05 RCW. The application for an adjudicative  
2 proceeding must be in writing, state the basis for contesting the  
3 adverse action, include a copy of the department's notice, be served  
4 on and received by the department within 28 days of the licensee's  
5 receipt of the adverse notice, and be served in a manner that shows  
6 proof of receipt.

7 (a) When the department determines a licensee's noncompliance  
8 results in immediate jeopardy, the department may make the imposition  
9 of conditions on a licensee, a limited stop service, stop placement,  
10 or the suspension of a license effective immediately upon receipt of  
11 the notice by the licensee, pending any adjudicative proceeding.

12 (b) When the department makes the suspension of a license or  
13 imposition of conditions on a license effective immediately, a  
14 licensee is entitled to a show cause hearing before a presiding  
15 officer within 14 days of making the request. The licensee must  
16 request the show cause hearing within 28 days of receipt of the  
17 notice of immediate suspension or immediate imposition of conditions.  
18 At the show cause hearing the department has the burden of  
19 demonstrating that more probably than not there is an immediate  
20 jeopardy.

21 (c) At the show cause hearing, the presiding officer may consider  
22 the notice and documents supporting the immediate suspension or  
23 immediate imposition of conditions and the licensee's response and  
24 shall provide the parties with an opportunity to provide documentary  
25 evidence and written testimony, and to be represented by counsel.  
26 Prior to the show cause hearing, the department shall provide the  
27 licensee with all documentation that supports the department's  
28 immediate suspension or imposition of conditions.

29 (d) If the presiding officer determines there is no immediate  
30 jeopardy, the presiding officer may overturn the immediate suspension  
31 or immediate imposition of conditions.

32 (e) If the presiding officer determines there is immediate  
33 jeopardy, the immediate suspension or immediate imposition of  
34 conditions shall remain in effect pending a full hearing.

35 (f) If the presiding officer sustains the immediate suspension or  
36 immediate imposition of conditions, the licensee may request an  
37 expedited full hearing on the merits of the department's action. A  
38 full hearing must be provided within 90 days of the licensee's  
39 request.

1       (4) When the department determines an alleged violation, if true,  
2 would constitute an immediate jeopardy, and the licensee fails to  
3 cooperate with the department's investigation of such an alleged  
4 violation, the department may impose an immediate stop placement,  
5 immediate limited stop service, immediate imposition of conditions,  
6 or immediate suspension.

7       (a) When the department imposes an immediate stop placement,  
8 immediate limited stop service, immediate imposition of conditions,  
9 or immediate suspension for failure to cooperate, a licensee is  
10 entitled to a show cause hearing before a presiding officer within 14  
11 days of making the request. The licensee must request the show cause  
12 hearing within 28 days of receipt of the notice of an immediate stop  
13 placement, immediate limited stop service, immediate imposition of  
14 conditions, or immediate suspension for failure to cooperate.

15       (b) At the show cause hearing the department has the burden of  
16 demonstrating that more probably than not the alleged violation, if  
17 true, would constitute an immediate jeopardy and the licensee failed  
18 to cooperate with the department's investigation.

19       (c) At the show cause hearing, the presiding officer may consider  
20 the notice and documents supporting the immediate stop placement,  
21 immediate limited stop service, immediate imposition of conditions,  
22 or immediate suspension for failure to cooperate, and the licensee's  
23 response and shall provide the parties with an opportunity to provide  
24 documentary evidence and written testimony, and to be represented by  
25 counsel. Prior to the show cause hearing, the department shall  
26 provide the licensee with all documentation that supports the  
27 department's immediate action for failure to cooperate.

28       (d) If the presiding officer determines the alleged violation, if  
29 true, does not constitute an immediate jeopardy or determines that  
30 the licensee cooperated with the department's investigation, the  
31 presiding officer may overturn the immediate action for failure to  
32 cooperate.

33       (e) If the presiding officer determines the allegation, if true,  
34 would constitute an immediate jeopardy and the licensee failed to  
35 cooperate with the department's investigation, the immediate action  
36 for failure to cooperate shall remain in effect pending a full  
37 hearing.

38       (f) If the presiding officer sustains the immediate action for  
39 failure to cooperate, the licensee may request an expedited full

1 hearing on the merits of the department's action. A full hearing must  
2 be provided within 90 days of the licensee's request.

3 NEW SECTION. **Sec. 17.** A new section is added to chapter 70.230  
4 RCW to read as follows:

5 (1) The department may give written notice to cease and desist to  
6 any person whom the department has reason to believe is engaged in  
7 the unlicensed operation of an ambulatory surgical facility.

8 (2)(a) Except as otherwise provided in this section, the  
9 requirement to cease and desist unlicensed operation is effective 20  
10 days after the person receives the notice.

11 (b) The department may make the date the action is effective  
12 sooner than 20 days after receipt when necessary to protect the  
13 public health, safety, or welfare. When the department does so, it  
14 shall state the effective date and the reasons supporting the  
15 effective date in the written notice to cease and desist.

16 (3) The person to whom the notice to cease and desist is issued  
17 may request an adjudicative proceeding to contest the notice. The  
18 adjudicative proceeding is governed by the administrative procedure  
19 act, chapter 34.05 RCW. The request for an adjudicative proceeding  
20 must be in writing, state the basis for contesting the notice,  
21 include a copy of the notice, and be served on and received by the  
22 department within 20 days from the date the person receives the  
23 notice to cease and desist.

24 (4)(a) If the department gives a person 20 days' notice to cease  
25 and desist and the person requests an adjudicative proceeding before  
26 its effective date, the department shall not implement the notice  
27 until the final order has been entered. The presiding or reviewing  
28 officer may permit the department to implement part or all of the  
29 notice while the proceedings are pending if the respondent causes an  
30 unreasonable delay in the proceeding, if the circumstances change so  
31 that implementation is in the public interest, or for other good  
32 cause.

33 (b) If the department gives a licensee less than 20 days' notice  
34 to cease and desist and the respondent timely files a request for an  
35 adjudicative proceeding, the department may implement the cease and  
36 desist on the effective date stated in the notice. The presiding or  
37 reviewing officer may order the department to stay implementation of  
38 part or all of the adverse action while the proceedings are pending

1 if staying implementation is in the public interest or for other good  
2 cause.

3 (5) The department may assess a civil fine not exceeding \$5,000  
4 for each day a person operates an ambulatory surgical facility  
5 without a valid license.

6 (a) The department shall give written notice to the person  
7 against whom it assesses a civil fine.

8 (b) Except as otherwise provided in (c) and (d) of this  
9 subsection, the civil fine is due and payable 20 days after receipt.

10 (c) The person against whom the department assesses a civil fine  
11 has the right to request an adjudicative proceeding. The proceeding  
12 is governed by the administrative procedure act, chapter 34.05 RCW.  
13 The request must be in writing, state the basis for contesting the  
14 fine, include a copy of the notice, be served on and received by the  
15 department within 20 days of the person receiving the notice of civil  
16 fine, and be served in a manner which shows proof of receipt.

17 (d) If the person files a timely and sufficient request for  
18 adjudicative proceeding, the department shall not implement the fine  
19 until the final order has been served.

20 (6) Neither the issuance of a cease and desist order nor payment  
21 of a civil fine shall relieve the person so operating an ambulatory  
22 surgical facility without a license from criminal prosecution, but  
23 the remedy of a cease and desist order or civil fine shall be in  
24 addition to any criminal liability. A final notice to cease and  
25 desist is conclusive proof of unlicensed operation and may be  
26 enforced under RCW 7.21.060. This method of enforcement of the final  
27 notice to cease and desist or civil fine may be used in addition to,  
28 or as an alternative to, any provisions for enforcement of agency  
29 orders set out in chapter 34.05 RCW.

30 **Sec. 18.** RCW 71.12.710 and 2020 c 115 s 3 are each amended to  
31 read as follows:

32 (1) In any case in which the department finds that a (~~licensed~~  
33 ~~psychiatric hospital~~) private establishment has failed or refused to  
34 comply with (~~applicable state~~) the requirements of this chapter,  
35 the standards or rules adopted under this chapter, or other  
36 applicable state or federal statutes or (~~regulations~~) rules, the  
37 department may take one or more of the actions identified in this  
38 section, except as otherwise limited in this section.

1 (a) When the department determines the (~~psychiatric hospital~~)  
2 private establishment has previously been subject to an enforcement  
3 action for the same or similar type of violation of the same statute  
4 or rule, or has been given any previous statement of deficiency that  
5 included the same or similar type of violation of the same or similar  
6 statute or rule, or when the (~~psychiatric hospital~~) private  
7 establishment failed to correct noncompliance with a statute or rule  
8 by a date established or agreed to by the department, the department  
9 may impose reasonable conditions on a license. Conditions may include  
10 correction within a specified amount of time, training, or hiring a  
11 department-approved consultant if the (~~hospital~~) private  
12 establishment cannot demonstrate to the department that it has access  
13 to sufficient internal expertise.

14 (b) (i) In accordance with the authority the department has under  
15 RCW 43.70.095, the department may assess a civil fine of up to (~~ten~~  
16 ~~thousand dollars~~) \$10,000 per violation, not to exceed a total fine  
17 of (~~one million dollars~~) \$1,000,000, on a (~~hospital~~) private  
18 establishment licensed under this chapter when the department  
19 determines the (~~psychiatric hospital~~) private establishment has  
20 previously been subject to an enforcement action for the same or  
21 similar type of violation of the same statute or rule, or has been  
22 given any previous statement of deficiency that included the same or  
23 similar type of violation of the same or similar statute or rule, or  
24 when the (~~psychiatric hospital~~) private establishment failed to  
25 correct noncompliance with a statute or rule by a date established or  
26 agreed to by the department.

27 (ii) Proceeds from these fines may only be used by the department  
28 to provide training or technical assistance to (~~psychiatric~~  
29 ~~hospitals and~~) private establishments or to offset costs associated  
30 with licensing (~~psychiatric hospitals~~) private establishments.

31 (iii) The department shall adopt in rules under this chapter  
32 specific fine amounts in relation to the severity of the  
33 noncompliance.

34 (iv) If a licensee is aggrieved by the department's action of  
35 assessing civil fines, the licensee has the right to appeal under RCW  
36 43.70.095.

37 (~~In accordance with RCW 43.70.095, the department may impose~~  
38 ~~civil fines of up to ten thousand dollars for each day a person~~  
39 ~~operates a psychiatric hospital without a valid license. Proceeds~~  
40 ~~from these fines may only be used by the department to provide~~

1 ~~training or technical assistance to psychiatric hospitals and to~~  
2 ~~offset costs associated with licensing psychiatric hospitals.~~

3 ~~(d))~~ The department may suspend new admissions of a specific  
4 category or categories of patients as related to the violation by  
5 imposing a limited stop placement. This may only be done if the  
6 department finds that noncompliance results in immediate jeopardy.

7 (i) Prior to imposing a limited stop placement, the department  
8 shall provide a ~~((psychiatric hospital))~~ private establishment  
9 written notification upon identifying deficient practices or  
10 conditions that constitute an immediate jeopardy, and the  
11 ~~((psychiatric hospital))~~ private establishment shall have ~~((twenty-~~  
12 ~~four))~~ 24 hours from notification to develop and implement a  
13 department-approved plan to correct the deficient practices or  
14 conditions that constitute an immediate jeopardy. If the deficient  
15 practices or conditions that constitute immediate jeopardy are not  
16 verified by the department as having been corrected within the same  
17 ~~((twenty-four))~~ 24-hour period, the department may issue the limited  
18 stop placement.

19 (ii) When the department imposes a limited stop placement, the  
20 ~~((psychiatric hospital))~~ private establishment may not ~~((admit any~~  
21 ~~new patients))~~ accept any new admissions in the category or  
22 categories subject to the limited stop placement until the limited  
23 stop placement order is terminated.

24 (iii) The department shall conduct a follow-up inspection within  
25 five business days or within the time period requested by the  
26 ~~((psychiatric hospital))~~ private establishment if more than five  
27 business days is needed to verify the violation necessitating the  
28 limited stop placement has been corrected.

29 (iv) The limited stop placement shall be terminated when:

30 (A) The department verifies the violation necessitating the  
31 limited stop placement has been corrected or the department  
32 determines that the ~~((psychiatric hospital))~~ private establishment  
33 has taken intermediate action to address the immediate jeopardy; and

34 (B) The ~~((psychiatric hospital))~~ private establishment  
35 establishes the ability to maintain correction of the violation  
36 previously found deficient.

37 ~~((e))~~ (d) The department may suspend all new admissions to the  
38 ~~((psychiatric hospital))~~ private establishment by imposing a stop  
39 placement. This may only be done if the department finds that  
40 noncompliance results in immediate jeopardy and is not confined to a

1 specific category or categories of patients or a specific area of the  
2 (~~psychiatric hospital~~) private establishment.

3 (i) Prior to imposing a stop placement, the department shall  
4 provide a (~~psychiatric hospital~~) private establishment written  
5 notification upon identifying deficient practices or conditions that  
6 constitute an immediate jeopardy, and the (~~psychiatric hospital~~)  
7 private establishment shall have (~~twenty-four~~) 24 hours from  
8 notification to develop and implement a department-approved plan to  
9 correct the deficient practices or conditions that constitute an  
10 immediate jeopardy. If the deficient practices or conditions that  
11 constitute immediate jeopardy are not verified by the department as  
12 having been corrected within the same (~~twenty-four~~) 24-hour period,  
13 the department may issue the stop placement.

14 (ii) When the department imposes a stop placement, the  
15 (~~psychiatric hospital~~) private establishment may not (~~admit any~~  
16 ~~new patients~~) accept any new admissions until the stop placement  
17 order is terminated.

18 (iii) The department shall conduct a follow-up inspection within  
19 five business days or within the time period requested by the  
20 (~~psychiatric hospital~~) private establishment if more than five  
21 business days is needed to verify the violation necessitating the  
22 stop placement has been corrected.

23 (iv) The stop placement order shall be terminated when:

24 (A) The department verifies the violation necessitating the stop  
25 placement has been corrected or the department determines that the  
26 (~~psychiatric hospital~~) private establishment has taken intermediate  
27 action to address the immediate jeopardy; and

28 (B) The (~~psychiatric hospital~~) private establishment  
29 establishes the ability to maintain correction of the violation  
30 previously found deficient.

31 (~~f~~) (e) The department may suspend a specific category or  
32 categories of services within the private establishment as related to  
33 the violation by imposing a limited stop service. This may only be  
34 done if the department finds that noncompliance results in immediate  
35 jeopardy.

36 (i) Prior to imposing a limited stop service, the department  
37 shall provide a private establishment written notification upon  
38 identifying deficient practices or conditions that constitute an  
39 immediate jeopardy. The private establishment shall have 24 hours  
40 from notification to develop and implement a department-approved plan

1 to correct the deficient practices or conditions that constitute an  
2 immediate jeopardy. If the deficient practices or conditions that  
3 constitute immediate jeopardy are not verified by the department as  
4 having been corrected within the same 24-hour period, the department  
5 may issue the limited stop service.

6 (ii) When the department imposes a limited stop service, the  
7 private establishment may not provide the services in the category or  
8 categories subject to the limited stop service to any new or existing  
9 individuals, unless otherwise allowed by the department, until the  
10 limited stop service is terminated.

11 (iii) The department shall conduct a follow-up inspection within  
12 five business days or within the time period requested by the private  
13 establishment if more than five business days is needed to verify the  
14 violation necessitating the limited stop service has been corrected.

15 (iv) The limited stop service shall be terminated when:

16 (A) The department verifies the violation necessitating the  
17 limited stop service has been corrected or the department determines  
18 that the private establishment has taken intermediate action to  
19 address the immediate jeopardy; and

20 (B) The private establishment establishes the ability to maintain  
21 correction of the violation previously found deficient.

22 (f) The department may suspend, revoke, or refuse to renew a  
23 license.

24 (2) (a) Except as otherwise provided, RCW 43.70.115 governs notice  
25 of the imposition of conditions on a license, a limited stop  
26 placement, stop placement, limited stop service, or the suspension,  
27 revocation, or refusal to renew a license and provides the right to  
28 an adjudicative proceeding. Adjudicative proceedings and hearings  
29 under this section are governed by the administrative procedure act,  
30 chapter 34.05 RCW. The application for an adjudicative proceeding  
31 must be in writing, state the basis for contesting the adverse  
32 action, including a copy of the department's notice, be served on and  
33 received by the department within (~~twenty-eight~~) 28 days of the  
34 licensee's receipt of the adverse notice, and be served in a manner  
35 that shows proof of receipt.

36 (b) When the department determines a licensee's noncompliance  
37 results in immediate jeopardy, the department may make the imposition  
38 of conditions on a licensee, a limited stop placement, stop  
39 placement, limited stop service, or the suspension of a license

1 effective immediately upon receipt of the notice by the licensee,  
2 pending any adjudicative proceeding.

3 (i) When the department makes the suspension of a license or  
4 imposition of conditions on a license effective immediately, a  
5 licensee is entitled to a show cause hearing before a presiding  
6 officer within (~~fourteen~~) 14 days of making the request. The  
7 licensee must request the show cause hearing within (~~twenty-eight~~)  
8 28 days of receipt of the notice of immediate suspension or immediate  
9 imposition of conditions. At the show cause hearing the department  
10 has the burden of demonstrating that more probably than not there is  
11 an immediate jeopardy.

12 (ii) At the show cause hearing, the presiding officer may  
13 consider the notice and documents supporting the immediate suspension  
14 or immediate imposition of conditions and the licensee's response and  
15 must provide the parties with an opportunity to provide documentary  
16 evidence and written testimony, and to be represented by counsel.  
17 Prior to the show cause hearing, the department must provide the  
18 licensee with all documentation that supports the department's  
19 immediate suspension or immediate imposition of conditions.

20 (iii) If the presiding officer determines there is no immediate  
21 jeopardy, the presiding officer may overturn the immediate suspension  
22 or immediate imposition of conditions.

23 (iv) If the presiding officer determines there is immediate  
24 jeopardy, the immediate suspension or immediate imposition of  
25 conditions shall remain in effect pending a full hearing.

26 (v) If the secretary sustains the immediate suspension or  
27 immediate imposition of conditions, the licensee may request an  
28 expedited full hearing on the merits of the department's action. A  
29 full hearing must be provided within (~~ninety~~) 90 days of the  
30 licensee's request.

31 (3) When the department determines an alleged violation, if true,  
32 would constitute an immediate jeopardy, and the licensee fails to  
33 cooperate with the department's investigation of such an alleged  
34 violation, the department may impose an immediate stop placement,  
35 immediate limited stop placement, immediate limited stop service,  
36 immediate imposition of conditions, or immediate suspension.

37 (a) When the department imposes an immediate stop placement,  
38 immediate limited stop placement, immediate limited stop service,  
39 immediate imposition of conditions, or immediate suspension for  
40 failure to cooperate, a licensee is entitled to a show cause hearing

1 before a presiding officer within 14 days of making the request. The  
2 licensee must request the show cause hearing within 28 days of  
3 receipt of the notice of an immediate stop placement, immediate  
4 limited stop placement, immediate limited stop service, immediate  
5 imposition of conditions, or immediate suspension for failure to  
6 cooperate. At the show cause hearing the department has the burden of  
7 demonstrating that more probably than not the alleged violation, if  
8 true, would constitute an immediate jeopardy and the licensee failed  
9 to cooperate with the department's investigation.

10 (b) At the show cause hearing, the presiding officer may consider  
11 the notice and documents supporting the immediate stop placement,  
12 immediate limited stop placement, immediate limited stop service,  
13 immediate imposition of conditions, or immediate suspension for  
14 failure to cooperate, and the licensee's response and shall provide  
15 the parties with an opportunity to provide documentary evidence and  
16 written testimony, and to be represented by counsel. Prior to the  
17 show cause hearing, the department shall provide the licensee with  
18 all documentation that supports the department's immediate action for  
19 failure to cooperate.

20 (c) If the presiding officer determines the alleged violation, if  
21 true, does not constitute an immediate jeopardy or determines that  
22 the licensee cooperated with the department's investigation, the  
23 presiding officer may overturn the immediate action for failure to  
24 cooperate.

25 (d) If the presiding officer determines the allegation, if true,  
26 would constitute an immediate jeopardy and the licensee failed to  
27 cooperate with the department's investigation, the immediate action  
28 for failure to cooperate shall remain in effect pending a full  
29 hearing.

30 (e) If the presiding officer sustains the immediate action for  
31 failure to cooperate, the licensee may request an expedited full  
32 hearing on the merits of the department's action. A full hearing must  
33 be provided within 90 days of the licensee's request.

34 **Sec. 19.** RCW 71.12.455 and 2020 c 115 s 6 are each reenacted and  
35 amended to read as follows:

36 The definitions in this section apply throughout this chapter  
37 unless the context clearly requires otherwise.

38 (1) "Department" means the department of health.

1 (2) "Elopement" means any situation in which an admitted patient  
2 of a ~~((psychiatric hospital))~~ private establishment who is  
3 cognitively, physically, mentally, emotionally, and/or chemically  
4 impaired wanders, walks, runs away, escapes, or otherwise leaves a  
5 ~~((psychiatric hospital))~~ private establishment or the grounds of a  
6 ~~((psychiatric hospital))~~ private establishment prior to the patient's  
7 scheduled discharge unsupervised, unnoticed, and without the staff's  
8 knowledge.

9 (3) "~~((Establishment))~~ Private establishment," "establishment,"  
10 and "institution" mean:

11 (a) Every private or county or municipal hospital, including  
12 public hospital districts, ~~((sanitariums,))~~ homes, ~~((psychiatric))~~  
13 behavioral health hospitals, residential treatment facilities, or  
14 other places receiving or caring for any person with ~~((mental~~  
15 ~~illness, mentally incompetent person, or chemically dependent~~  
16 ~~person))~~ a behavioral health or substance use disorder; and

17 (b) Beginning January 1, 2019, facilities providing pediatric  
18 transitional care services.

19 (4) "Immediate jeopardy" means a situation in which the  
20 ~~((psychiatric hospital's))~~ private establishment's noncompliance with  
21 one or more statutory or regulatory requirements has placed the  
22 health and safety of patients in its care at risk for serious injury,  
23 serious harm, serious impairment, or death.

24 (5) "Pediatric transitional care services" means short-term,  
25 temporary, health and comfort services for drug exposed infants  
26 according to the requirements of this chapter and provided in an  
27 establishment licensed by the department ~~((of health))~~.

28 (6) "~~((Psychiatric))~~ Behavioral health hospital" means an  
29 establishment caring for any person with mental illness or substance  
30 use disorder excluding acute care hospitals licensed under chapter  
31 70.41 RCW, state psychiatric hospitals established under chapter  
32 72.23 RCW, and residential treatment facilities as defined in this  
33 section.

34 (7) "Residential treatment facility" means an establishment in  
35 which ~~((twenty-four))~~ 24-hour on-site care is provided for the  
36 evaluation, stabilization, or treatment of residents for substance  
37 use, mental health, co-occurring disorders, or for drug exposed  
38 infants.

39 (8) "Secretary" means the secretary of the department of health.

1 (9) "Technical assistance" means the provision of information on  
2 the state laws and rules applicable to the regulation of  
3 (~~(psychiatric hospitals)~~) private establishments, the process to  
4 apply for a license, and methods and resources to avoid or address  
5 compliance problems. Technical assistance does not include assistance  
6 provided under chapter 43.05 RCW.

7 (10) "Trained caregiver" means a noncredentialed, unlicensed  
8 person trained by the establishment providing pediatric transitional  
9 care services to provide hands-on care to drug exposed infants.  
10 Caregivers may not provide medical care to infants and may only work  
11 under the supervision of an appropriate health care professional.

12 **Sec. 20.** RCW 71.12.500 and 2000 c 93 s 25 are each amended to  
13 read as follows:

14 The department (~~(of health)~~) may at any time examine (~~(and~~  
15 ~~ascertain how far)~~) a licensed private establishment (~~(is conducted~~  
16 ~~in compliance with this chapter, the rules adopted under this~~  
17 ~~chapter, and the requirements of the license therefor. If the~~  
18 ~~interests of the patients of the establishment so demand, the~~  
19 ~~department may, for just and reasonable cause, suspend, modify, or~~  
20 ~~revoke any such license. RCW 43.70.115 governs notice of a license~~  
21 ~~denial, revocation, suspension, or modification and provides the~~  
22 ~~right to an adjudicative proceeding.)) to determine whether it has  
23 failed or refused to comply with the requirements of this chapter,  
24 the standards or rules adopted under this chapter, or other  
25 applicable state or federal statutes or rules regulating private  
26 establishments.~~

27 NEW SECTION. **Sec. 21.** A new section is added to chapter 71.12  
28 RCW to read as follows:

29 (1) The department may give written notice to cease and desist to  
30 any person whom the department has reason to believe is engaged in  
31 the unlicensed operation of a private establishment.

32 (2)(a) Except as otherwise provided in this section, the  
33 requirement to cease and desist unlicensed operation is effective 20  
34 days after the person receives the notice.

35 (b) The department may make the date the action is effective  
36 sooner than 20 days after receipt when necessary to protect the  
37 public health, safety, or welfare. When the department does so, it

1 shall state the effective date and the reasons supporting the  
2 effective date in the written notice to cease and desist.

3 (3) The person to whom the notice to cease and desist is issued  
4 may request an adjudicative proceeding to contest the notice. The  
5 adjudicative proceeding is governed by the administrative procedure  
6 act, chapter 34.05 RCW. The request for an adjudicative proceeding  
7 must be in writing, state the basis for contesting the notice,  
8 include a copy of the notice, and be served on and received by the  
9 department within 20 days from the date the person receives the  
10 notice to cease and desist.

11 (4) (a) If the department gives a person 20 days' notice to cease  
12 and desist and the person requests an adjudicative proceeding before  
13 its effective date, the department shall not implement the notice  
14 until the final order has been entered. The presiding or reviewing  
15 officer may permit the department to implement part or all of the  
16 notice while the proceedings are pending if the respondent causes an  
17 unreasonable delay in the proceeding, if the circumstances change so  
18 that implementation is in the public interest, or for other good  
19 cause.

20 (b) If the department gives a licensee less than 20 days' notice  
21 to cease and desist and the respondent timely files a request for an  
22 adjudicative proceeding, the department may implement the cease and  
23 desist on the effective date stated in the notice. The presiding or  
24 reviewing officer may order the department to stay implementation of  
25 part or all of the adverse action while the proceedings are pending  
26 if staying implementation is in the public interest or for other good  
27 cause.

28 (5) The department may assess a civil fine not exceeding \$5,000  
29 for each day a person operates a private establishment without a  
30 valid license.

31 (a) The department shall give written notice to the person  
32 against whom it assesses a civil fine.

33 (b) Except as otherwise provided in (c) and (d) of this  
34 subsection, the civil fine is due and payable 20 days after receipt.

35 (c) The person against whom the department assesses a civil fine  
36 has the right to request an adjudicative proceeding. The proceeding  
37 is governed by the administrative procedure act, chapter 34.05 RCW.  
38 The request must be in writing, state the basis for contesting the  
39 fine, include a copy of the notice, be served on and received by the

1 department within 20 days of the person receiving the notice of civil  
2 fine, and be served in a manner which shows proof of receipt.

3 (d) If the person files a timely and sufficient request for  
4 adjudicative proceeding, the department shall not implement the fine  
5 until the final order has been served.

6 (6) Neither the issuance of a cease and desist order nor payment  
7 of a civil fine shall relieve the person so operating a private  
8 establishment without a license from criminal prosecution, but the  
9 remedy of a cease and desist order or civil fine shall be in addition  
10 to any criminal liability. A final notice to cease and desist is  
11 conclusive proof of unlicensed operation and may be enforced under  
12 RCW 7.21.060. This method of enforcement of the final notice to cease  
13 and desist or civil fine may be used in addition to, or as an  
14 alternative to, any provisions for enforcement of agency orders set  
15 out in chapter 34.05 RCW.

16 **Sec. 22.** RCW 70.38.025 and 2000 c 175 s 22 are each amended to  
17 read as follows:

18 When used in this chapter, the terms defined in this section  
19 shall have the meanings indicated.

20 (1) "Board of health" means the state board of health created  
21 pursuant to chapter 43.20 RCW.

22 (2) "Capital expenditure" is an expenditure, including a force  
23 account expenditure (i.e., an expenditure for a construction project  
24 undertaken by a nursing home facility as its own contractor) which,  
25 under generally accepted accounting principles, is not properly  
26 chargeable as an expense of operation or maintenance. Where a person  
27 makes an acquisition under lease or comparable arrangement, or  
28 through donation, which would have required review if the acquisition  
29 had been made by purchase, such expenditure shall be deemed a capital  
30 expenditure. Capital expenditures include donations of equipment or  
31 facilities to a nursing home facility which if acquired directly by  
32 such facility would be subject to certificate of need review under  
33 the provisions of this chapter and transfer of equipment or  
34 facilities for less than fair market value if a transfer of the  
35 equipment or facilities at fair market value would be subject to such  
36 review. The cost of any studies, surveys, designs, plans, working  
37 drawings, specifications, and other activities essential to the  
38 acquisition, improvement, expansion, or replacement of any plant or

1 equipment with respect to which such expenditure is made shall be  
2 included in determining the amount of the expenditure.

3 (3) "Continuing care retirement community" means an entity which  
4 provides shelter and services under continuing care contracts with  
5 its members and which sponsors or includes a health care facility or  
6 a health service. A "continuing care contract" means a contract to  
7 provide a person, for the duration of that person's life or for a  
8 term in excess of one year, shelter along with nursing, medical,  
9 health-related, or personal care services, which is conditioned upon  
10 the transfer of property, the payment of an entrance fee to the  
11 provider of such services, or the payment of periodic charges for the  
12 care and services involved. A continuing care contract is not  
13 excluded from this definition because the contract is mutually  
14 terminable or because shelter and services are not provided at the  
15 same location.

16 (4) "Department" means the department of health.

17 (5) "Expenditure minimum" means, for the purposes of the  
18 certificate of need program, (~~one million dollars~~) \$1,000,000  
19 adjusted by the department by rule to reflect changes in the United  
20 States department of commerce composite construction cost index; or a  
21 lesser amount required by federal law and established by the  
22 department by rule.

23 (6) "Health care facility" means hospices, hospice care centers,  
24 hospitals, (~~psychiatric~~) behavioral health hospitals, nursing  
25 homes, kidney disease treatment centers, ambulatory surgical  
26 facilities, and home health agencies, and includes such facilities  
27 when owned and operated by a political subdivision or instrumentality  
28 of the state and such other facilities as required by federal law and  
29 implementing regulations, but does not include any health facility or  
30 institution conducted by and for those who rely exclusively upon  
31 treatment by prayer or spiritual means in accordance with the creed  
32 or tenets of any well-recognized church or religious denomination, or  
33 any health facility or institution operated for the exclusive care of  
34 members of a convent as defined in RCW 84.36.800 or rectory,  
35 monastery, or other institution operated for the care of members of  
36 the clergy. In addition, the term does not include any nonprofit  
37 hospital: (a) Which is operated exclusively to provide health care  
38 services for children; (b) which does not charge fees for such  
39 services; and (c) if not contrary to federal law as necessary to the  
40 receipt of federal funds by the state.

1 (7) "Health maintenance organization" means a public or private  
2 organization, organized under the laws of the state, which:

3 (a) Is a qualified health maintenance organization under Title  
4 XIII, section 1310(d) of the Public Health (~~(Services—[Service])~~)  
5 Service Act; or

6 (b) (i) Provides or otherwise makes available to enrolled  
7 participants health care services, including at least the following  
8 basic health care services: Usual physician services,  
9 hospitalization, laboratory, X-ray, emergency, and preventive  
10 services, and out-of-area coverage; (ii) is compensated (except for  
11 copayments) for the provision of the basic health care services  
12 listed in (b) (i) to enrolled participants by a payment which is paid  
13 on a periodic basis without regard to the date the health care  
14 services are provided and which is fixed without regard to the  
15 frequency, extent, or kind of health service actually provided; and  
16 (iii) provides physicians' services primarily (A) directly through  
17 physicians who are either employees or partners of such organization,  
18 or (B) through arrangements with individual physicians or one or more  
19 groups of physicians (organized on a group practice or individual  
20 practice basis).

21 (8) "Health services" means clinically related (i.e., preventive,  
22 diagnostic, curative, rehabilitative, or palliative) services and  
23 includes alcoholism, drug abuse, and mental health services and as  
24 defined in federal law.

25 (9) "Health service area" means a geographic region appropriate  
26 for effective health planning which includes a broad range of health  
27 services.

28 (10) "Person" means an individual, a trust or estate, a  
29 partnership, a corporation (including associations, joint stock  
30 companies, and insurance companies), the state, or a political  
31 subdivision or instrumentality of the state, including a municipal  
32 corporation or a hospital district.

33 (11) "Provider" generally means a health care professional or an  
34 organization, institution, or other entity providing health care but  
35 the precise definition for this term shall be established by rule of  
36 the department, consistent with federal law.

37 (12) "Public health" means the level of well-being of the general  
38 population; those actions in a community necessary to preserve,  
39 protect, and promote the health of the people for which government is

1 responsible; and the governmental system developed to guarantee the  
2 preservation of the health of the people.

3 (13) "Secretary" means the secretary of health or the secretary's  
4 designee.

5 (14) "Tertiary health service" means a specialized service that  
6 meets complicated medical needs of people and requires sufficient  
7 patient volume to optimize provider effectiveness, quality of  
8 service, and improved outcomes of care.

9 (15) "Hospital" means any health care institution which is  
10 required to qualify for a license under RCW 70.41.020(~~(+2)~~) (8); or  
11 as a (~~(psychiatric)~~) behavioral health hospital under chapter 71.12  
12 RCW.

13 **Sec. 23.** RCW 70.38.111 and 2021 c 277 s 1 are each amended to  
14 read as follows:

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

17 (a) A health maintenance organization or a combination of health  
18 maintenance organizations if (i) the organization or combination of  
19 organizations has, in the service area of the organization or the  
20 service areas of the organizations in the combination, an enrollment  
21 of at least (~~(fifty thousand)~~) 50,000 individuals, (ii) the facility  
22 in which the service will be provided is or will be geographically  
23 located so that the service will be reasonably accessible to such  
24 enrolled individuals, and (iii) at least (~~(seventy-five)~~) 75 percent  
25 of the patients who can reasonably be expected to receive the  
26 tertiary health service will be individuals enrolled with such  
27 organization or organizations in the combination;

28 (b) A health care facility if (i) the facility primarily provides  
29 or will provide inpatient health services, (ii) the facility is or  
30 will be controlled, directly or indirectly, by a health maintenance  
31 organization or a combination of health maintenance organizations  
32 which has, in the service area of the organization or service areas  
33 of the organizations in the combination, an enrollment of at least  
34 (~~(fifty thousand)~~) 50,000 individuals, (iii) the facility is or will  
35 be geographically located so that the service will be reasonably  
36 accessible to such enrolled individuals, and (iv) at least (~~(seventy-~~  
37 ~~five)~~) 75 percent of the patients who can reasonably be expected to  
38 receive the tertiary health service will be individuals enrolled with  
39 such organization or organizations in the combination; or

1 (c) A health care facility (or portion thereof) if (i) the  
2 facility is or will be leased by a health maintenance organization or  
3 combination of health maintenance organizations which has, in the  
4 service area of the organization or the service areas of the  
5 organizations in the combination, an enrollment of at least (~~fifty~~  
6 ~~thousand~~) 50,000 individuals and, on the date the application is  
7 submitted under subsection (2) of this section, at least (~~fifteen~~)  
8 15 years remain in the term of the lease, (ii) the facility is or  
9 will be geographically located so that the service will be reasonably  
10 accessible to such enrolled individuals, and (iii) at least  
11 (~~seventy-five~~) 75 percent of the patients who can reasonably be  
12 expected to receive the tertiary health service will be individuals  
13 enrolled with such organization;  
14 if, with respect to such offering or obligation by a nursing home,  
15 the department has, upon application under subsection (2) of this  
16 section, granted an exemption from such requirement to the  
17 organization, combination of organizations, or facility.

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

22 (a) It has submitted at least (~~thirty~~) 30 days prior to the  
23 offering of services reviewable under RCW 70.38.105(4) (d) an  
24 application for such exemption; and

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

31 (c) The department approves such application. The department  
32 shall approve or disapprove an application for exemption within  
33 (~~thirty~~) 30 days of receipt of a completed application. In the case  
34 of a proposed health care facility (or portion thereof) which has not  
35 begun to provide tertiary health services on the date an application  
36 is submitted under this subsection with respect to such facility (or  
37 portion), the facility (or portion) shall meet the applicable  
38 requirements of subsection (1) of this section when the facility  
39 first provides such services. The department shall approve an

1 application submitted under this subsection if it determines that the  
2 applicable requirements of subsection (1) of this section are met.

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

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

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

20 (4) In the case of a health maintenance organization, an  
21 ambulatory care facility, or a health care facility, which ambulatory  
22 or health care facility is controlled, directly or indirectly, by a  
23 health maintenance organization or a combination of health  
24 maintenance organizations, the department may under the program apply  
25 its certificate of need requirements to the offering of inpatient  
26 tertiary health services to the extent that such offering is not  
27 exempt under the provisions of this section or RCW 70.38.105(7).

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

32 (i) Offers services only to contractual members;

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

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

1 the medicaid program, is liable for costs of care even if the member  
2 depletes his or her personal resources;

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

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

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

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

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

18 (i) It has submitted an application for exemption at least  
19 (~~thirty~~) 30 days prior to commencing construction of, is submitting  
20 an application for the licensure of, or is commencing operation of a  
21 nursing home, whichever comes first; and

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

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

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

38 (7) A rural health care facility licensed under RCW 70.175.100  
39 formerly licensed as a hospital under chapter 70.41 RCW may, within  
40 three years of the effective date of the rural health care facility

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

9 (8) A rural hospital determined to no longer meet critical access  
10 hospital status for state law purposes as a result of participation  
11 in the Washington rural health access preservation pilot identified  
12 by the state office of rural health and formerly licensed as a  
13 hospital under chapter 70.41 RCW may apply to the department to renew  
14 its hospital license and not be subject to the requirements of RCW  
15 70.38.105(4)(a) as the construction, development, or other  
16 establishment of a new hospital, provided there is no increase in the  
17 number of beds previously licensed under chapter 70.41 RCW. If all or  
18 part of a formerly licensed rural hospital is sold, purchased, or  
19 leased during the period the rural hospital does not meet critical  
20 access hospital status as a result of participation in the Washington  
21 rural health access preservation pilot and the new owner or lessor  
22 applies to renew the rural hospital's license, then the sale,  
23 purchase, or lease of part or all of the rural hospital is subject to  
24 the provisions of this chapter.

25 (9)(a) A nursing home that voluntarily reduces the number of its  
26 licensed beds to provide assisted living, licensed assisted living  
27 facility care, adult day care, adult day health, respite care,  
28 hospice, outpatient therapy services, congregate meals, home health,  
29 or senior wellness clinic, or to reduce to one or two the number of  
30 beds per room or to otherwise enhance the quality of life for  
31 residents in the nursing home, may convert the original facility or  
32 portion of the facility back, and thereby increase the number of  
33 nursing home beds to no more than the previously licensed number of  
34 nursing home beds without obtaining a certificate of need under this  
35 chapter, provided the facility has been in continuous operation and  
36 has not been purchased or leased. Any conversion to the original  
37 licensed bed capacity, or to any portion thereof, shall comply with  
38 the same life and safety code requirements as existed at the time the  
39 nursing home voluntarily reduced its licensed beds; unless waivers  
40 from such requirements were issued, in which case the converted beds

1 shall reflect the conditions or standards that then existed pursuant  
2 to the approved waivers.

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

5 (i) Give notice of its intent to preserve conversion options to  
6 the department of health no later than (~~(thirty)~~) 30 days after the  
7 effective date of the license reduction; and

8 (ii) Give notice to the department of health and to the  
9 department of social and health services of the intent to convert  
10 beds back. If construction is required for the conversion of beds  
11 back, the notice of intent to convert beds back must be given, at a  
12 minimum, one year prior to the effective date of license modification  
13 reflecting the restored beds; otherwise, the notice must be given a  
14 minimum of (~~(ninety)~~) 90 days prior to the effective date of license  
15 modification reflecting the restored beds. Prior to any license  
16 modification to convert beds back to nursing home beds under this  
17 section, the licensee must demonstrate that the nursing home meets  
18 the certificate of need exemption requirements of this section.

19 The term "construction," as used in (b)(ii) of this subsection,  
20 is limited to those projects that are expected to equal or exceed the  
21 expenditure minimum amount, as determined under this chapter.

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

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

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

37 (10)(a) The department shall not require a certificate of need  
38 for a hospice agency if:

39 (i) The hospice agency is designed to serve the unique religious  
40 or cultural needs of a religious group or an ethnic minority and

1 commits to furnishing hospice services in a manner specifically aimed  
2 at meeting the unique religious or cultural needs of the religious  
3 group or ethnic minority;

4 (ii) The hospice agency is operated by an organization that:

5 (A) Operates a facility, or group of facilities, that offers a  
6 comprehensive continuum of long-term care services, including, at a  
7 minimum, a licensed, medicare-certified nursing home, assisted  
8 living, independent living, day health, and various community-based  
9 support services, designed to meet the unique social, cultural, and  
10 religious needs of a specific cultural and ethnic minority group;

11 (B) Has operated the facility or group of facilities for at least  
12 (~~ten~~) 10 continuous years prior to the establishment of the hospice  
13 agency;

14 (iii) The hospice agency commits to coordinating with existing  
15 hospice programs in its community when appropriate;

16 (iv) The hospice agency has a census of no more than (~~forty~~) 40  
17 patients;

18 (v) The hospice agency commits to obtaining and maintaining  
19 medicare certification;

20 (vi) The hospice agency only serves patients located in the same  
21 county as the majority of the long-term care services offered by the  
22 organization that operates the agency; and

23 (vii) The hospice agency is not sold or transferred to another  
24 agency.

25 (b) The department shall include the patient census for an agency  
26 exempted under this subsection (10) in its calculations for future  
27 certificate of need applications.

28 (11) To alleviate the need to board psychiatric patients in  
29 emergency departments and increase capacity of hospitals to serve  
30 individuals on (~~ninety~~) 90-day or (~~one hundred eighty~~) 180-day  
31 commitment orders, for the period of time from May 5, 2017, through  
32 June 30, 2023:

33 (a) The department shall suspend the certificate of need  
34 requirement for a hospital licensed under chapter 70.41 RCW that  
35 changes the use of licensed beds to increase the number of beds to  
36 provide psychiatric services, including involuntary treatment  
37 services. A certificate of need exemption under this subsection  
38 (11) (a) shall be valid for two years.

39 (b) The department may not require a certificate of need for:

1 (i) The addition of beds as described in RCW 70.38.260 (2) and  
2 (3); or

3 (ii) The construction, development, or establishment of a  
4 (~~(psychiatric)~~) behavioral health hospital licensed as an  
5 establishment under chapter 71.12 RCW that will have no more than  
6 (~~(sixteen)~~) 16 beds and provide treatment to adults on (~~(ninety)~~) 90  
7 or (~~(one hundred eighty)~~) 180-day involuntary commitment orders, as  
8 described in RCW 70.38.260(4).

9 (12)(a) An ambulatory surgical facility is exempt from all  
10 certificate of need requirements if the facility:

11 (i) Is an individual or group practice and, if the facility is a  
12 group practice, the privilege of using the facility is not extended  
13 to physicians outside the group practice;

14 (ii) Operated or received approval to operate, prior to January  
15 19, 2018; and

16 (iii) Was exempt from certificate of need requirements prior to  
17 January 19, 2018, because the facility either:

18 (A) Was determined to be exempt from certificate of need  
19 requirements pursuant to a determination of reviewability issued by  
20 the department; or

21 (B) Was a single-specialty endoscopy center in existence prior to  
22 January 14, 2003, when the department determined that endoscopy  
23 procedures were surgeries for purposes of certificate of need.

24 (b) The exemption under this subsection:

25 (i) Applies regardless of future changes of ownership, corporate  
26 structure, or affiliations of the individual or group practice as  
27 long as the use of the facility remains limited to physicians in the  
28 group practice; and

29 (ii) Does not apply to changes in services, specialties, or  
30 number of operating rooms.

31 (13) A rural health clinic providing health services in a home  
32 health shortage area as declared by the department pursuant to  
33 C.F.R. Sec. 405.2416 is not subject to certificate of need review  
34 under this chapter.

35 **Sec. 24.** RCW 70.38.260 and 2021 c 277 s 2 are each amended to  
36 read as follows:

37 (1) For a grant awarded during fiscal years 2018 and 2019 by the  
38 department of commerce under this section, hospitals licensed under  
39 chapter 70.41 RCW and (~~(psychiatric)~~) behavioral health hospitals

1 licensed as establishments under chapter 71.12 RCW are not subject to  
2 certificate of need requirements for the addition of the number of  
3 new psychiatric beds indicated in the grant. The department of  
4 commerce may not make a prior approval of a certificate of need  
5 application a condition for a grant application under this  
6 section. The period during which an approved hospital or  
7 (~~psychiatric~~) behavioral health hospital project qualifies for a  
8 certificate of need exemption under this section is two years from  
9 the date of the grant award.

10 (2)(a) Until June 30, 2023, a hospital licensed under chapter  
11 70.41 RCW is exempt from certificate of need requirements for the  
12 addition of new psychiatric beds.

13 (b) A hospital that adds new psychiatric beds under this  
14 subsection (2) must:

15 (i) Notify the department of the addition of new psychiatric  
16 beds. The department shall provide the hospital with a notice of  
17 exemption within (~~thirty~~) 30 days; and

18 (ii) Commence the project within two years of the date of receipt  
19 of the notice of exemption.

20 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must  
21 remain psychiatric beds unless a certificate of need is granted to  
22 change their use or the hospital voluntarily reduces its licensed  
23 capacity.

24 (3)(a) Until June 30, 2023, a (~~psychiatric~~) behavioral health  
25 hospital licensed as an establishment under chapter 71.12 RCW is  
26 exempt from certificate of need requirements for the one-time  
27 addition of up to 30 new psychiatric beds devoted solely for 90-day  
28 and 180-day civil commitment services and for the one-time addition  
29 of up to 30 new voluntary psychiatric beds or involuntary psychiatric  
30 beds for patients on a 120 hour detention or 14-day civil commitment  
31 order, if the hospital makes a commitment to maintain a payer mix of  
32 at least (~~fifty~~) 50 percent medicare and medicaid based on a  
33 calculation using patient days for a period of five consecutive years  
34 after the beds are made available for use by patients, if it  
35 demonstrates to the satisfaction of the department:

36 (i) That its most recent two years of publicly available fiscal  
37 year-end report data as required under RCW 70.170.100 and 43.70.050  
38 reported to the department by the (~~psychiatric~~) behavioral health  
39 hospital, show a payer mix of a minimum of (~~fifty~~) 50 percent  
40 medicare and medicaid based on a calculation using patient days; and

1 (ii) A commitment to maintaining the payer mix in (a) of this  
2 subsection for a period of five consecutive years after the beds are  
3 made available for use by patients.

4 (b) A (~~(psychiatric)~~) behavioral health hospital that adds new  
5 psychiatric beds under this subsection (3) must:

6 (i) Notify the department of the addition of new psychiatric  
7 beds. The department shall provide the (~~(psychiatric)~~) behavioral  
8 health hospital with a notice of exemption within (~~(thirty)~~) 30 days;  
9 and

10 (ii) Commence the project within two years of the date of receipt  
11 of the notice of exemption.

12 (c) Beds granted an exemption under RCW 70.38.111(11)(b) must  
13 remain the types of psychiatric beds indicated to the department in  
14 the original exemption application unless a certificate of need is  
15 granted to change their use or the (~~(psychiatric)~~) behavioral health  
16 hospital voluntarily reduces its licensed capacity.

17 (4)(a) Until June 30, 2023, an entity seeking to construct,  
18 develop, or establish a (~~(psychiatric)~~) behavioral health hospital  
19 licensed as an establishment under chapter 71.12 RCW is exempt from  
20 certificate of need requirements if the proposed (~~(psychiatric)~~)  
21 behavioral health hospital will have no more than (~~(sixteen)~~) 16 beds  
22 and dedicate a portion of the beds to providing treatment to adults  
23 on (~~(ninety)~~) 90 or (~~(one hundred eighty)~~) 180-day involuntary  
24 commitment orders. The (~~(psychiatric)~~) behavioral health hospital may  
25 also provide treatment to adults on a 120 hour detention or 14-day  
26 involuntary commitment order.

27 (b) An entity that seeks to construct, develop, or establish a  
28 (~~(psychiatric)~~) behavioral health hospital under this subsection (4)  
29 must:

30 (i) Notify the department of the addition of construction,  
31 development, or establishment. The department shall provide the  
32 entity with a notice of exemption within (~~(thirty)~~) 30 days; and

33 (ii) Commence the project within two years of the date of receipt  
34 of the notice of exemption.

35 (c) Entities granted an exemption under RCW 70.38.111(11)(b)(ii)  
36 may not exceed (~~(sixteen)~~) 16 beds unless a certificate of need is  
37 granted to increase the (~~(psychiatric)~~) behavioral health hospital's  
38 capacity.

39 (5) This section expires June 30, 2025.

1       **Sec. 25.** RCW 71.24.025 and 2021 c 302 s 402 are each reenacted  
2 and amended to read as follows:

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter.

5       (1) "988 crisis hotline" means the universal telephone number  
6 within the United States designated for the purpose of the national  
7 suicide prevention and mental health crisis hotline system operating  
8 through the national suicide prevention lifeline.

9       (2) "Acutely mentally ill" means a condition which is limited to  
10 a short-term severe crisis episode of:

11       (a) A mental disorder as defined in RCW 71.05.020 or, in the case  
12 of a child, as defined in RCW 71.34.020;

13       (b) Being gravely disabled as defined in RCW 71.05.020 or, in the  
14 case of a child, a gravely disabled minor as defined in RCW  
15 71.34.020; or

16       (c) Presenting a likelihood of serious harm as defined in RCW  
17 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

18       (3) "Alcoholism" means a disease, characterized by a dependency  
19 on alcoholic beverages, loss of control over the amount and  
20 circumstances of use, symptoms of tolerance, physiological or  
21 psychological withdrawal, or both, if use is reduced or discontinued,  
22 and impairment of health or disruption of social or economic  
23 functioning.

24       (4) "Approved substance use disorder treatment program" means a  
25 program for persons with a substance use disorder provided by a  
26 treatment program licensed or certified by the department as meeting  
27 standards adopted under this chapter.

28       (5) "Authority" means the Washington state health care authority.

29       (6) "Available resources" means funds appropriated for the  
30 purpose of providing community behavioral health programs, federal  
31 funds, except those provided according to Title XIX of the Social  
32 Security Act, and state funds appropriated under this chapter or  
33 chapter 71.05 RCW by the legislature during any biennium for the  
34 purpose of providing residential services, resource management  
35 services, community support services, and other behavioral health  
36 services. This does not include funds appropriated for the purpose of  
37 operating and administering the state psychiatric hospitals.

38       (7) "Behavioral health administrative services organization"  
39 means an entity contracted with the authority to administer  
40 behavioral health services and programs under RCW 71.24.381,

1 including crisis services and administration of chapter 71.05 RCW,  
2 the involuntary treatment act, for all individuals in a defined  
3 regional service area.

4 (8) "Behavioral health aide" means a counselor, health educator,  
5 and advocate who helps address individual and community-based  
6 behavioral health needs, including those related to alcohol, drug,  
7 and tobacco abuse as well as mental health problems such as grief,  
8 depression, suicide, and related issues and is certified by a  
9 community health aide program of the Indian health service or one or  
10 more tribes or tribal organizations consistent with the provisions of  
11 25 U.S.C. Sec. 16161 and RCW 43.71B.010 (7) and (8).

12 (9) "Behavioral health provider" means a person licensed under  
13 chapter 18.57, 18.71, 18.71A, 18.83, 18.205, 18.225, or 18.79 RCW, as  
14 it applies to registered nurses and advanced registered nurse  
15 practitioners.

16 (10) "Behavioral health services" means mental health services as  
17 described in this chapter and chapter 71.36 RCW and substance use  
18 disorder treatment services as described in this chapter that,  
19 depending on the type of service, are provided by licensed or  
20 certified behavioral health agencies, behavioral health providers, or  
21 integrated into other health care providers.

22 (11) "Child" means a person under the age of (~~eighteen~~) 18  
23 years.

24 (12) "Chronically mentally ill adult" or "adult who is  
25 chronically mentally ill" means an adult who has a mental disorder  
26 and meets at least one of the following criteria:

27 (a) Has undergone two or more episodes of hospital care for a  
28 mental disorder within the preceding two years; or

29 (b) Has experienced a continuous (~~psychiatric~~) behavioral  
30 health hospitalization or residential treatment exceeding six months'  
31 duration within the preceding year; or

32 (c) Has been unable to engage in any substantial gainful activity  
33 by reason of any mental disorder which has lasted for a continuous  
34 period of not less than (~~twelve~~) 12 months. "Substantial gainful  
35 activity" shall be defined by the authority by rule consistent with  
36 Public Law 92-603, as amended.

37 (13) "Clubhouse" means a community-based program that provides  
38 rehabilitation services and is licensed or certified by the  
39 department.

1 (14) "Community behavioral health program" means all  
2 expenditures, services, activities, or programs, including reasonable  
3 administration and overhead, designed and conducted to prevent or  
4 treat substance use disorder, mental illness, or both in the  
5 community behavioral health system.

6 (15) "Community behavioral health service delivery system" means  
7 public, private, or tribal agencies that provide services  
8 specifically to persons with mental disorders, substance use  
9 disorders, or both, as defined under RCW 71.05.020 and receive  
10 funding from public sources.

11 (16) "Community support services" means services authorized,  
12 planned, and coordinated through resource management services  
13 including, at a minimum, assessment, diagnosis, emergency crisis  
14 intervention available (~~(twenty-four)~~) 24 hours, seven days a week,  
15 prescreening determinations for persons who are mentally ill being  
16 considered for placement in nursing homes as required by federal law,  
17 screening for patients being considered for admission to residential  
18 services, diagnosis and treatment for children who are acutely  
19 mentally ill or severely emotionally or behaviorally disturbed  
20 discovered under screening through the federal Title XIX early and  
21 periodic screening, diagnosis, and treatment program, investigation,  
22 legal, and other nonresidential services under chapter 71.05 RCW,  
23 case management services, psychiatric treatment including medication  
24 supervision, counseling, psychotherapy, assuring transfer of relevant  
25 patient information between service providers, recovery services, and  
26 other services determined by behavioral health administrative  
27 services organizations.

28 (17) "Consensus-based" means a program or practice that has  
29 general support among treatment providers and experts, based on  
30 experience or professional literature, and may have anecdotal or case  
31 study support, or that is agreed but not possible to perform studies  
32 with random assignment and controlled groups.

33 (18) "County authority" means the board of county commissioners,  
34 county council, or county executive having authority to establish a  
35 behavioral health administrative services organization, or two or  
36 more of the county authorities specified in this subsection which  
37 have entered into an agreement to establish a behavioral health  
38 administrative services organization.

39 (19) "Crisis call center hub" means a state-designated center  
40 participating in the national suicide prevention lifeline network to

1 respond to statewide or regional 988 calls that meets the  
2 requirements of RCW 71.24.890.

3 (20) "Crisis stabilization services" means services such as 23-  
4 hour crisis stabilization units based on the living room model,  
5 crisis stabilization units as provided in RCW 71.05.020, triage  
6 facilities as provided in RCW 71.05.020, short-term respite  
7 facilities, peer-run respite services, and same-day walk-in  
8 behavioral health services, including within the overall crisis  
9 system components that operate like hospital emergency departments  
10 that accept all walk-ins, and ambulance, fire, and police drop-offs.

11 (21) "Department" means the department of health.

12 (22) "Designated crisis responder" has the same meaning as in RCW  
13 71.05.020.

14 (23) "Director" means the director of the authority.

15 (24) "Drug addiction" means a disease characterized by a  
16 dependency on psychoactive chemicals, loss of control over the amount  
17 and circumstances of use, symptoms of tolerance, physiological or  
18 psychological withdrawal, or both, if use is reduced or discontinued,  
19 and impairment of health or disruption of social or economic  
20 functioning.

21 (25) "Early adopter" means a regional service area for which all  
22 of the county authorities have requested that the authority purchase  
23 medical and behavioral health services through a managed care health  
24 system as defined under RCW 71.24.380(~~(+6)~~) (7).

25 (26) "Emerging best practice" or "promising practice" means a  
26 program or practice that, based on statistical analyses or a well  
27 established theory of change, shows potential for meeting the  
28 evidence-based or research-based criteria, which may include the use  
29 of a program that is evidence-based for outcomes other than those  
30 listed in subsection (27) of this section.

31 (27) "Evidence-based" means a program or practice that has been  
32 tested in heterogeneous or intended populations with multiple  
33 randomized, or statistically controlled evaluations, or both; or one  
34 large multiple site randomized, or statistically controlled  
35 evaluation, or both, where the weight of the evidence from a systemic  
36 review demonstrates sustained improvements in at least one outcome.  
37 "Evidence-based" also means a program or practice that can be  
38 implemented with a set of procedures to allow successful replication  
39 in Washington and, when possible, is determined to be cost-  
40 beneficial.

1       (28) "Immediate jeopardy" means a situation in which the licensed  
2 or certified behavioral health agency's noncompliance with one or  
3 more statutory or regulatory requirements has placed the health and  
4 safety of patients in its care at risk for serious injury, serious  
5 harm, serious impairment, or death.

6       (29) "Indian health care provider" means a health care program  
7 operated by the Indian health service or by a tribe, tribal  
8 organization, or urban Indian organization as those terms are defined  
9 in the Indian health care improvement act (25 U.S.C. Sec. 1603).

10       (~~(29)~~) (30) "Intensive behavioral health treatment facility"  
11 means a community-based specialized residential treatment facility  
12 for individuals with behavioral health conditions, including  
13 individuals discharging from or being diverted from state and local  
14 hospitals, whose impairment or behaviors do not meet, or no longer  
15 meet, criteria for involuntary inpatient commitment under chapter  
16 71.05 RCW, but whose care needs cannot be met in other community-  
17 based placement settings.

18       (~~(30)~~) (31) "Licensed or certified behavioral health agency"  
19 means:

20       (a) An entity licensed or certified according to this chapter or  
21 chapter 71.05 RCW;

22       (b) An entity deemed to meet state minimum standards as a result  
23 of accreditation by a recognized behavioral health accrediting body  
24 recognized and having a current agreement with the department; or

25       (c) An entity with a tribal attestation that it meets state  
26 minimum standards for a licensed or certified behavioral health  
27 agency.

28       (~~(31)~~) (32) "Licensed physician" means a person licensed to  
29 practice medicine or osteopathic medicine and surgery in the state of  
30 Washington.

31       (~~(32)~~) (33) "Long-term inpatient care" means inpatient services  
32 for persons committed for, or voluntarily receiving intensive  
33 treatment for, periods of (~~(ninety)~~) 90 days or greater under chapter  
34 71.05 RCW. "Long-term inpatient care" as used in this chapter does  
35 not include: (a) Services for individuals committed under chapter  
36 71.05 RCW who are receiving services pursuant to a conditional  
37 release or a court-ordered less restrictive alternative to detention;  
38 or (b) services for individuals voluntarily receiving less  
39 restrictive alternative treatment on the grounds of the state  
40 hospital.

1        ~~((33))~~ (34) "Managed care organization" means an organization,  
2 having a certificate of authority or certificate of registration from  
3 the office of the insurance commissioner, that contracts with the  
4 authority under a comprehensive risk contract to provide prepaid  
5 health care services to enrollees under the authority's managed care  
6 programs under chapter 74.09 RCW.

7        ~~((34))~~ (35) "Mental health peer-run respite center" means a  
8 peer-run program to serve individuals in need of voluntary, short-  
9 term, noncrisis services that focus on recovery and wellness.

10       ~~((35))~~ (36) Mental health "treatment records" include  
11 registration and all other records concerning persons who are  
12 receiving or who at any time have received services for mental  
13 illness, which are maintained by the department of social and health  
14 services or the authority, by behavioral health administrative  
15 services organizations and their staffs, by managed care  
16 organizations and their staffs, or by treatment facilities.  
17 "Treatment records" do not include notes or records maintained for  
18 personal use by a person providing treatment services for the  
19 entities listed in this subsection, or a treatment facility if the  
20 notes or records are not available to others.

21       ~~((36))~~ (37) "Mentally ill persons," "persons who are mentally  
22 ill," and "the mentally ill" mean persons and conditions defined in  
23 subsections (2), (12), ~~((44))~~ (45), and ~~((45))~~ (46) of this  
24 section.

25       ~~((37))~~ (38) "Mobile rapid response crisis team" means a team  
26 that provides professional on-site community-based intervention such  
27 as outreach, de-escalation, stabilization, resource connection, and  
28 follow-up support for individuals who are experiencing a behavioral  
29 health crisis, that shall include certified peer counselors as a best  
30 practice to the extent practicable based on workforce availability,  
31 and that meets standards for response times established by the  
32 authority.

33       ~~((38))~~ (39) "Recovery" means a process of change through which  
34 individuals improve their health and wellness, live a self-directed  
35 life, and strive to reach their full potential.

36       ~~((39))~~ (40) "Research-based" means a program or practice that  
37 has been tested with a single randomized, or statistically controlled  
38 evaluation, or both, demonstrating sustained desirable outcomes; or  
39 where the weight of the evidence from a systemic review supports

1 sustained outcomes as described in subsection (27) of this section  
2 but does not meet the full criteria for evidence-based.

3 ~~((40))~~ (41) "Residential services" means a complete range of  
4 residences and supports authorized by resource management services  
5 and which may involve a facility, a distinct part thereof, or  
6 services which support community living, for persons who are acutely  
7 mentally ill, adults who are chronically mentally ill, children who  
8 are severely emotionally disturbed, or adults who are seriously  
9 disturbed and determined by the behavioral health administrative  
10 services organization or managed care organization to be at risk of  
11 becoming acutely or chronically mentally ill. The services shall  
12 include at least evaluation and treatment services as defined in  
13 chapter 71.05 RCW, acute crisis respite care, long-term adaptive and  
14 rehabilitative care, and supervised and supported living services,  
15 and shall also include any residential services developed to service  
16 persons who are mentally ill in nursing homes, residential treatment  
17 facilities, assisted living facilities, and adult family homes, and  
18 may include outpatient services provided as an element in a package  
19 of services in a supported housing model. Residential services for  
20 children in out-of-home placements related to their mental disorder  
21 shall not include the costs of food and shelter, except for  
22 children's long-term residential facilities existing prior to January  
23 1, 1991.

24 ~~((41))~~ (42) "Resilience" means the personal and community  
25 qualities that enable individuals to rebound from adversity, trauma,  
26 tragedy, threats, or other stresses, and to live productive lives.

27 ~~((42))~~ (43) "Resource management services" mean the planning,  
28 coordination, and authorization of residential services and community  
29 support services administered pursuant to an individual service plan  
30 for: (a) Adults and children who are acutely mentally ill; (b) adults  
31 who are chronically mentally ill; (c) children who are severely  
32 emotionally disturbed; or (d) adults who are seriously disturbed and  
33 determined by a behavioral health administrative services  
34 organization or managed care organization to be at risk of becoming  
35 acutely or chronically mentally ill. Such planning, coordination, and  
36 authorization shall include mental health screening for children  
37 eligible under the federal Title XIX early and periodic screening,  
38 diagnosis, and treatment program. Resource management services  
39 include seven day a week, ~~((twenty-four))~~ 24 hour a day availability  
40 of information regarding enrollment of adults and children who are

1 mentally ill in services and their individual service plan to  
2 designated crisis responders, evaluation and treatment facilities,  
3 and others as determined by the behavioral health administrative  
4 services organization or managed care organization, as applicable.

5 ~~((43))~~ (44) "Secretary" means the secretary of the department  
6 of health.

7 ~~((44))~~ (45) "Seriously disturbed person" means a person who:

8 (a) Is gravely disabled or presents a likelihood of serious harm  
9 to himself or herself or others, or to the property of others, as a  
10 result of a mental disorder as defined in chapter 71.05 RCW;

11 (b) Has been on conditional release status, or under a less  
12 restrictive alternative order, at some time during the preceding two  
13 years from an evaluation and treatment facility or a state mental  
14 health hospital;

15 (c) Has a mental disorder which causes major impairment in  
16 several areas of daily living;

17 (d) Exhibits suicidal preoccupation or attempts; or

18 (e) Is a child diagnosed by a mental health professional, as  
19 defined in chapter 71.34 RCW, as experiencing a mental disorder which  
20 is clearly interfering with the child's functioning in family or  
21 school or with peers or is clearly interfering with the child's  
22 personality development and learning.

23 ~~((45))~~ (46) "Severely emotionally disturbed child" or "child  
24 who is severely emotionally disturbed" means a child who has been  
25 determined by the behavioral health administrative services  
26 organization or managed care organization, if applicable, to be  
27 experiencing a mental disorder as defined in chapter 71.34 RCW,  
28 including those mental disorders that result in a behavioral or  
29 conduct disorder, that is clearly interfering with the child's  
30 functioning in family or school or with peers and who meets at least  
31 one of the following criteria:

32 (a) Has undergone inpatient treatment or placement outside of the  
33 home related to a mental disorder within the last two years;

34 (b) Has undergone involuntary treatment under chapter 71.34 RCW  
35 within the last two years;

36 (c) Is currently served by at least one of the following child-  
37 serving systems: Juvenile justice, child-protection/welfare, special  
38 education, or developmental disabilities;

39 (d) Is at risk of escalating maladjustment due to:

1 (i) Chronic family dysfunction involving a caretaker who is  
2 mentally ill or inadequate;

3 (ii) Changes in custodial adult;

4 (iii) Going to, residing in, or returning from any placement  
5 outside of the home, for example, (~~psychiatric~~) behavioral health  
6 hospital, short-term inpatient, residential treatment, group or  
7 foster home, or a correctional facility;

8 (iv) Subject to repeated physical abuse or neglect;

9 (v) Drug or alcohol abuse; or

10 (vi) Homelessness.

11 (~~(46)~~) (47) "State minimum standards" means minimum  
12 requirements established by rules adopted and necessary to implement  
13 this chapter by:

14 (a) The authority for:

15 (i) Delivery of mental health and substance use disorder  
16 services; and

17 (ii) Community support services and resource management services;

18 (b) The department of health for:

19 (i) Licensed or certified behavioral health agencies for the  
20 purpose of providing mental health or substance use disorder programs  
21 and services, or both;

22 (ii) Licensed behavioral health providers for the provision of  
23 mental health or substance use disorder services, or both; and

24 (iii) Residential services.

25 (~~(47)~~) (48) "Substance use disorder" means a cluster of  
26 cognitive, behavioral, and physiological symptoms indicating that an  
27 individual continues using the substance despite significant  
28 substance-related problems. The diagnosis of a substance use disorder  
29 is based on a pathological pattern of behaviors related to the use of  
30 the substances.

31 (~~(48)~~) (49) "Tribe," for the purposes of this section, means a  
32 federally recognized Indian tribe.

33 **Sec. 26.** RCW 71.24.037 and 2019 c 446 s 23 and 2019 c 325 s 1007  
34 are each reenacted and amended to read as follows:

35 (1) The secretary shall license or certify any agency or facility  
36 that: (a) Submits payment of the fee established under RCW 43.70.110  
37 and 43.70.250; and (b) submits a complete application that  
38 demonstrates the ability to comply with requirements for operating

1 and maintaining an agency or facility in statute or rule(~~(; and (e)~~  
2 ~~successfully completes the prelicensure inspection requirement)~~).

3 (2) The secretary shall establish by rule minimum standards for  
4 licensed or certified behavioral health agencies that must, at a  
5 minimum, establish: (a) Qualifications for staff providing services  
6 directly to persons with mental disorders, substance use disorders,  
7 or both; (b) the intended result of each service; and (c) the rights  
8 and responsibilities of persons receiving behavioral health services  
9 pursuant to this chapter and chapters 71.34 and (~~(chapter)~~) 71.05  
10 RCW. The secretary shall provide for deeming of licensed or certified  
11 behavioral health agencies as meeting state minimum standards as a  
12 result of accreditation by a recognized behavioral health accrediting  
13 body recognized and having a current agreement with the department.

14 (~~(3) (The department shall review reports or other information~~  
15 ~~alleging a failure to comply with this chapter or the standards and~~  
16 ~~rules adopted under this chapter and may initiate investigations and~~  
17 ~~enforcement actions based on those reports.~~

18 (~~(4) The department shall conduct inspections of agencies and~~  
19 ~~facilities, including reviews of records and documents required to be~~  
20 ~~maintained under this chapter or rules adopted under this chapter.~~

21 (~~(5) The department may suspend, revoke, limit, restrict, or~~  
22 ~~modify an approval, or refuse to grant approval, for failure to meet~~  
23 ~~the provisions of this chapter, or the standards adopted under this~~  
24 ~~chapter. RCW 43.70.115 governs notice of a license or certification~~  
25 ~~denial, revocation, suspension, or modification and provides the~~  
26 ~~right to an adjudicative proceeding.~~

27 (~~(6))~~) No licensed or certified behavioral health (~~(service~~  
28 ~~provider)) agency may advertise or represent itself as a licensed or  
29 certified behavioral health (~~(service provider)) agency if approval  
30 has not been granted or has been denied, suspended, revoked, or  
31 canceled.~~~~

32 (~~((7))~~) (4) Licensure or certification as a behavioral health  
33 (~~(service provider)) agency is effective for one calendar year from~~  
34 the date of issuance of the license or certification. The license or  
35 certification must specify the types of services provided by the  
36 behavioral health (~~(service provider)) agency that meet the standards  
37 adopted under this chapter. Renewal of a license or certification  
38 must be made in accordance with this section for initial approval and  
39 in accordance with the standards set forth in rules adopted by the  
40 secretary.~~

1       ~~((8))~~ (5) Licensure or certification as a licensed or certified  
2 behavioral health ~~((service provider))~~ agency must specify the types  
3 of services provided that meet the standards adopted under this  
4 chapter. Renewal of a license or certification must be made in  
5 accordance with this section for initial approval and in accordance  
6 with the standards set forth in rules adopted by the secretary.

7       ~~((9))~~ (6) The department shall develop a process by which a  
8 provider may obtain dual licensure as an evaluation and treatment  
9 facility and secure withdrawal management and stabilization facility.

10       ~~((10))~~ (7) Licensed or certified behavioral health ~~((service  
11 providers))~~ agencies may not provide types of services for which the  
12 licensed or certified behavioral health ~~((service provider))~~ agency  
13 has not been certified. Licensed or certified behavioral health  
14 ~~((service providers))~~ agencies may provide services for which  
15 approval has been sought and is pending, if approval for the services  
16 has not been previously revoked or denied.

17       ~~((11) The department periodically shall inspect licensed or  
18 certified behavioral health service providers at reasonable times and  
19 in a reasonable manner.~~

20       ~~(12) Upon petition of the department and after a hearing held  
21 upon reasonable notice to the facility, the superior court may issue  
22 a warrant to an officer or employee of the department authorizing him  
23 or her to enter and inspect at reasonable times, and examine the  
24 books and accounts of, any licensed or certified behavioral health  
25 service provider refusing to consent to inspection or examination by  
26 the department or which the department has reasonable cause to  
27 believe is operating in violation of this chapter.~~

28       ~~(13))~~ (8) The department shall maintain and periodically publish  
29 a current list of licensed or certified behavioral health ~~((service  
30 providers))~~ agencies.

31       ~~((14) Each licensed or certified behavioral health service  
32 provider shall file with the department or the authority upon  
33 request, data, statistics, schedules, and information the department  
34 or the authority reasonably requires. A licensed or certified  
35 behavioral health service provider that without good cause fails to  
36 furnish any data, statistics, schedules, or information as requested,  
37 or files fraudulent returns thereof, may have its license or  
38 certification revoked or suspended.~~

39       ~~(15) The authority shall use the data provided in subsection (14)  
40 of this section to evaluate each program that admits children to~~

1 inpatient substance use disorder treatment upon application of their  
2 parents. The evaluation must be done at least once every twelve  
3 months. In addition, the authority shall randomly select and review  
4 the information on individual children who are admitted on  
5 application of the child's parent for the purpose of determining  
6 whether the child was appropriately placed into substance use  
7 disorder treatment based on an objective evaluation of the child's  
8 condition and the outcome of the child's treatment.

9 (16) Any settlement agreement entered into between the department  
10 and licensed or certified behavioral health service providers to  
11 resolve administrative complaints, license or certification  
12 violations, license or certification suspensions, or license or  
13 certification revocations may not reduce the number of violations  
14 reported by the department unless the department concludes, based on  
15 evidence gathered by inspectors, that the licensed or certified  
16 behavioral health service provider did not commit one or more of the  
17 violations.

18 (17) In cases in which a behavioral health service provider that  
19 is in violation of licensing or certification standards attempts to  
20 transfer or sell the behavioral health service provider to a family  
21 member, the transfer or sale may only be made for the purpose of  
22 remedying license or certification violations and achieving full  
23 compliance with the terms of the license or certification. Transfers  
24 or sales to family members are prohibited in cases in which the  
25 purpose of the transfer or sale is to avoid liability or reset the  
26 number of license or certification violations found before the  
27 transfer or sale. If the department finds that the owner intends to  
28 transfer or sell, or has completed the transfer or sale of, ownership  
29 of the behavioral health service provider to a family member solely  
30 for the purpose of resetting the number of violations found before  
31 the transfer or sale, the department may not renew the behavioral  
32 health service provider's license or certification or issue a new  
33 license or certification to the behavioral health service provider.) )

34 NEW SECTION. **Sec. 27.** A new section is added to chapter 71.24  
35 RCW to read as follows:

36 (1) The department shall review reports or other information  
37 alleging a failure to comply with this chapter or the standards and  
38 rules adopted under this chapter and may initiate investigations and  
39 enforcement actions based on those reports.

1 (2) The department shall conduct inspections of licensed or  
2 certified behavioral health agencies, including reviews of records  
3 and documents required to be maintained under this chapter or rules  
4 adopted under this chapter.

5 (3) Each licensed or certified behavioral health agency shall  
6 file with the department or the authority upon request data,  
7 statistics, schedules, medical records, and other information the  
8 department or the authority reasonably requires. A licensed or  
9 certified behavioral health agency that without good cause fails to  
10 furnish any data, statistics, schedules, or information as requested,  
11 or files fraudulent returns thereof, may have its license or  
12 certification revoked or suspended.

13 (4) The authority shall use the data provided in subsection (3)  
14 of this section to evaluate each program that admits children to  
15 inpatient substance use disorder treatment upon application of their  
16 parents. The evaluation shall be done at least once every 12 months.  
17 In addition, the authority shall randomly select and review the  
18 information on individual children who are admitted on application of  
19 the child's parent for the purpose of determining whether the child  
20 was appropriately placed into substance use disorder treatment based  
21 on an objective evaluation of the child's condition and the outcome  
22 of the child's treatment.

23 (5) Any settlement agreement entered into between the department  
24 and licensed or certified behavioral health agencies to resolve  
25 administrative complaints, license or certification violations,  
26 license or certification suspensions, or license or certification  
27 revocations may not reduce the number of violations reported by the  
28 department unless the department concludes, based on evidence  
29 gathered by inspectors, that the licensed or certified behavioral  
30 health agency did not commit one or more of the violations.

31 (6) In cases in which a licensed or certified behavioral health  
32 agency that is in violation of licensing or certification standards  
33 attempts to transfer or sell the behavioral health agency to a family  
34 member, the transfer or sale may only be made for the purpose of  
35 remedying license or certification violations and achieving full  
36 compliance with the terms of the license or certification. Transfers  
37 or sales to family members are prohibited in cases in which the  
38 purpose of the transfer or sale is to avoid liability or reset the  
39 number of license or certification violations found before the  
40 transfer or sale. If the department finds that the owner intends to

1 transfer or sell, or has completed the transfer or sale of, ownership  
2 of the behavioral health agency to a family member solely for the  
3 purpose of resetting the number of violations found before the  
4 transfer or sale, the department may not renew the behavioral health  
5 agency's license or certification or issue a new license or  
6 certification to the behavioral health provider.

7 (7) In any case in which the department finds that a licensed or  
8 certified behavioral health agency has failed or refused to comply  
9 with the requirements of this chapter or the standards or rules  
10 adopted under this chapter, the department may take one or more of  
11 the actions identified in this section, except as otherwise limited  
12 in this section.

13 (a) When the department determines the licensed or certified  
14 behavioral health agency has previously been subject to an  
15 enforcement action for the same or similar type of violation of the  
16 same statute or rule, or has been given any previous statement of  
17 deficiency that included the same or similar type of violation of the  
18 same or similar statute or rule, or when the licensed or certified  
19 behavioral health agency failed to correct noncompliance with a  
20 statute or rule by a date established or agreed to by the department,  
21 the department may impose reasonable conditions on a license.  
22 Conditions may include correction within a specified amount of time,  
23 training, or hiring a department-approved consultant if the licensed  
24 or certified behavioral health agency cannot demonstrate to the  
25 department that it has access to sufficient internal expertise.

26 (b) (i) In accordance with the department's authority under RCW  
27 43.70.095, the department may assess a civil fine of up to \$3,000 per  
28 violation on a licensed or certified behavioral health agency when  
29 the department determines the licensed or certified behavioral health  
30 agency has previously been subject to an enforcement action for the  
31 same or similar type of violation of the same statute or rule, or has  
32 been given any previous statement of deficiency that included the  
33 same or similar type of violation of the same or similar statute or  
34 rule, or when the licensed or certified behavioral health agency  
35 failed to correct noncompliance with a statute or rule by a date  
36 established or agreed to by the department.

37 (ii) Proceeds from these fines may only be used by the department  
38 to provide training or technical assistance to licensed or certified  
39 behavioral health agencies and to offset costs associated with

1 licensing, certification, or enforcement of behavioral health  
2 agencies.

3 (iii) The department shall adopt in rules under this chapter  
4 specific fine amounts in relation to the severity of the  
5 noncompliance and at an adequate level to be a deterrent to future  
6 noncompliance.

7 (iv) If a licensee is aggrieved by the department's action of  
8 assessing civil fines, the licensee has the right to appeal under RCW  
9 43.70.095.

10 (c) The department may suspend new intake or admission of a  
11 specific category or categories of individuals receiving behavioral  
12 health services as related to the violation by imposing a limited  
13 stop placement. This may only be done if the department finds that  
14 noncompliance results in immediate jeopardy.

15 (i) Prior to imposing a limited stop placement, the department  
16 shall provide a licensed or certified behavioral health agency  
17 written notification upon identifying deficient practices or  
18 conditions that constitute an immediate jeopardy, and the licensed or  
19 certified behavioral health agency shall have 24 hours from  
20 notification to develop and implement a department-approved plan to  
21 correct the deficient practices or conditions that constitute an  
22 immediate jeopardy. If the deficient practices or conditions that  
23 constitute immediate jeopardy are not verified by the department as  
24 having been corrected within the same 24-hour period, the department  
25 may issue the limited stop placement.

26 (ii) When the department imposes a limited stop placement, the  
27 licensed or certified behavioral health agency may not accept any new  
28 individuals in the category or categories subject to the limited stop  
29 placement until the limited stop placement is terminated.

30 (iii) The department shall conduct a follow-up inspection within  
31 five business days or within the time period requested by the  
32 licensed or certified behavioral health agency if more than five  
33 business days is needed to verify the violation necessitating the  
34 limited stop placement has been corrected.

35 (iv) The limited stop placement shall be terminated when:

36 (A) The department verifies the violation necessitating the  
37 limited stop placement has been corrected or the department  
38 determines that the licensed or certified behavioral health agency  
39 has taken intermediate action to address the immediate jeopardy; and

1 (B) The licensed or certified behavioral health agency  
2 establishes the ability to maintain correction of the violation  
3 previously found deficient.

4 (d) The department may suspend new intake or admission of  
5 individuals receiving behavioral health services as related to the  
6 violation by imposing a stop placement. This may only be done if the  
7 department finds that noncompliance results in immediate jeopardy and  
8 is not confined to a specific category or categories of individuals.

9 (i) Prior to imposing a stop placement, the department shall  
10 provide a licensed or certified behavioral health agency written  
11 notification upon identifying deficient practices or conditions that  
12 constitute an immediate jeopardy. The licensed or certified  
13 behavioral health agency shall have 24 hours from notification to  
14 develop and implement a department-approved plan to correct the  
15 deficient practices or conditions that constitute an immediate  
16 jeopardy. If the deficient practices or conditions that constitute an  
17 immediate jeopardy are not verified by the department as having been  
18 corrected within the same 24-hour period, the department may issue  
19 the stop placement.

20 (ii) When the department imposes a stop placement, the licensed  
21 or certified behavioral health agency may not accept any new  
22 individuals receiving behavioral health services until the stop  
23 placement is terminated.

24 (iii) The department shall conduct a follow-up inspection within  
25 five business days or within the time period requested by the  
26 licensed or certified behavioral health agency if more than five  
27 business days is needed to verify the violation necessitating the  
28 stop placement has been corrected.

29 (iv) The stop placement shall be terminated when:

30 (A) The department verifies the violation necessitating the stop  
31 placement has been corrected or the department determines that the  
32 licensed or certified behavioral health agency has taken intermediate  
33 action to address the immediate jeopardy; and

34 (B) The licensed or certified behavioral health agency  
35 establishes the ability to maintain correction of the violation  
36 previously found deficient.

37 (e) The department may suspend a specific category or categories  
38 of behavioral health services as related to the violation by imposing  
39 a limited stop service. This may only be done if the department finds  
40 that noncompliance results in immediate jeopardy.

1 (i) Prior to imposing a limited stop service, the department  
2 shall provide a licensed or certified behavioral health agency  
3 written notification upon identifying deficient practices or  
4 conditions that constitute an immediate jeopardy. The licensed or  
5 certified behavioral health agency shall have 24 hours from  
6 notification to develop and implement a department-approved plan to  
7 correct the deficient practices or conditions that constitute an  
8 immediate jeopardy. If the deficient practices or conditions that  
9 constitute immediate jeopardy are not verified by the department as  
10 having been corrected within the same 24-hour period, the department  
11 may issue the limited stop service.

12 (ii) When the department imposes a limited stop service, the  
13 licensed or certified behavioral health agency may not provide the  
14 services in the category or categories subject to the limited stop  
15 service to any new or existing individuals, unless otherwise allowed  
16 by the department, until the limited stop service is terminated.

17 (iii) The department shall conduct a follow-up inspection within  
18 five business days or within the time period requested by the  
19 licensed or certified behavioral health agency if more than five  
20 business days is needed to verify the violation necessitating the  
21 limited stop service has been corrected.

22 (iv) The limited stop service shall be terminated when:

23 (A) The department verifies the violation necessitating the  
24 limited stop service has been corrected or the department determines  
25 that the licensed or certified behavioral health agency has taken  
26 intermediate action to address the immediate jeopardy; and

27 (B) The licensed or certified behavioral health agency  
28 establishes the ability to maintain correction of the violation  
29 previously found deficient.

30 (f) The department may suspend, revoke, or refuse to renew a  
31 license.

32 (8) (a) Except as otherwise provided, RCW 43.70.115 governs notice  
33 of the imposition of conditions on a license, a limited stop  
34 placement, stop placement, limited stop service, or the suspension,  
35 revocation, or refusal to renew a license and provides the right to  
36 an adjudicative proceeding. Adjudicative proceedings and hearings  
37 under this section are governed by the administrative procedure act,  
38 chapter 34.05 RCW. The application for an adjudicative proceeding  
39 must be in writing, state the basis for contesting the adverse  
40 action, include a copy of the department's notice, be served on and

1 received by the department within 28 days of the licensee's receipt  
2 of the adverse notice, and be served in a manner that shows proof of  
3 receipt.

4 (b) When the department determines a licensee's noncompliance  
5 results in immediate jeopardy, the department may make the imposition  
6 of conditions on a licensee, a limited stop placement, stop  
7 placement, limited stop service, or the suspension of a license  
8 effective immediately upon receipt of the notice by the licensee,  
9 pending any adjudicative proceeding.

10 (i) When the department makes the suspension of a license or  
11 imposition of conditions on a license effective immediately, a  
12 licensee is entitled to a show cause hearing before a presiding  
13 officer within 14 days of making the request. The licensee must  
14 request the show cause hearing within 28 days of receipt of the  
15 notice of immediate suspension or immediate imposition of conditions.  
16 At the show cause hearing the department has the burden of  
17 demonstrating that more probably than not there is an immediate  
18 jeopardy.

19 (ii) At the show cause hearing, the presiding officer may  
20 consider the notice and documents supporting the immediate suspension  
21 or immediate imposition of conditions and the licensee's response and  
22 shall provide the parties with an opportunity to provide documentary  
23 evidence and written testimony, and to be represented by counsel.  
24 Prior to the show cause hearing, the department shall provide the  
25 licensee with all documentation that supports the department's  
26 immediate suspension or immediate imposition of conditions.

27 (iii) If the presiding officer determines there is no immediate  
28 jeopardy, the presiding officer may overturn the immediate suspension  
29 or immediate imposition of conditions.

30 (iv) If the presiding officer determines there is immediate  
31 jeopardy, the immediate suspension or immediate imposition of  
32 conditions shall remain in effect pending a full hearing.

33 (v) If the secretary sustains the immediate suspension or  
34 immediate imposition of conditions, the licensee may request an  
35 expedited full hearing on the merits of the department's action. A  
36 full hearing must be provided within 90 days of the licensee's  
37 request.

38 (9) When the department determines an alleged violation, if true,  
39 would constitute an immediate jeopardy, and the licensee fails to  
40 cooperate with the department's investigation of such an alleged

1 violation, the department may impose an immediate limited stop  
2 placement, immediate stop placement, immediate limited stop service,  
3 immediate imposition of conditions, or immediate suspension.

4 (a) When the department imposes an immediate limited stop  
5 placement, immediate stop placement, immediate limited stop service,  
6 immediate imposition of conditions, or immediate suspension for  
7 failure to cooperate, a licensee is entitled to a show cause hearing  
8 before a presiding officer within 14 days of making the request. The  
9 licensee must request the show cause hearing within 28 days of  
10 receipt of the notice of an immediate limited stop placement,  
11 immediate stop placement, immediate limited stop service, immediate  
12 imposition of conditions, or immediate suspension for failure to  
13 cooperate. At the show cause hearing the department has the burden of  
14 demonstrating that more probably than not the alleged violation, if  
15 true, would constitute an immediate jeopardy and the licensee failed  
16 to cooperate with the department's investigation.

17 (b) At the show cause hearing, the presiding officer may consider  
18 the notice and documents supporting the immediate limited stop  
19 placement, immediate stop placement, immediate limited stop service,  
20 immediate imposition of conditions, or immediate suspension for  
21 failure to cooperate, and the licensee's response and shall provide  
22 the parties with an opportunity to provide documentary evidence and  
23 written testimony, and to be represented by counsel. Prior to the  
24 show cause hearing, the department shall provide the licensee with  
25 all documentation that supports the department's immediate action for  
26 failure to cooperate.

27 (c) If the presiding officer determines the alleged violation, if  
28 true, does not constitute an immediate jeopardy or determines that  
29 the licensee cooperated with the department's investigation, the  
30 presiding officer may overturn the immediate action for failure to  
31 cooperate.

32 (d) If the presiding officer determines the allegation, if true,  
33 would constitute an immediate jeopardy and the licensee failed to  
34 cooperate with the department's investigation, the immediate action  
35 for failure to cooperate shall remain in effect pending a full  
36 hearing.

37 (e) If the presiding officer sustains the immediate action for  
38 failure to cooperate, the licensee may request an expedited full  
39 hearing on the merits of the department's action. A full hearing must  
40 be provided within 90 days of the licensee's request.

1       **Sec. 28.** RCW 70.170.020 and 2022 c 197 s 1 are each amended to  
2 read as follows:

3       As used in this chapter:

4       (1) "Department" means department of health.

5       (2) "Hospital" means any health care institution which is  
6 required to qualify for a license under RCW 70.41.020(8); or as a  
7 (~~psychiatric~~) behavioral health hospital under chapter 71.12 RCW.

8       (3) "Secretary" means secretary of health.

9       (4) "Charity care" means medically necessary hospital health care  
10 rendered to indigent persons when third-party coverage, if any, has  
11 been exhausted, to the extent that the persons are unable to pay for  
12 the care or to pay deductibles or coinsurance amounts required by a  
13 third-party payer, as determined by the department.

14       (5) "Indigent persons" are those patients or their guarantors who  
15 qualify for charity care pursuant to RCW 70.170.060(5) based on the  
16 federal poverty level, adjusted for family size, and who have  
17 exhausted any third-party coverage.

18       (6) "Third-party coverage" means an obligation on the part of an  
19 insurance company, health care service contractor, health maintenance  
20 organization, group health plan, government program, tribal health  
21 benefits, or health care sharing ministry as defined in 26 U.S.C.  
22 Sec. 5000A to pay for the care of covered patients and services, and  
23 may include settlements, judgments, or awards actually received  
24 related to the negligent acts of others which have resulted in the  
25 medical condition for which the patient has received hospital health  
26 care service. The pendency of such settlements, judgments, or awards  
27 must not stay hospital obligations to consider an eligible patient  
28 for charity care.

29       (7) "Special studies" means studies which have not been funded  
30 through the department's biennial or other legislative  
31 appropriations.

32       **Sec. 29.** RCW 18.64.005 and 2022 c 240 s 15 are each amended to  
33 read as follows:

34       The commission shall:

35       (1) Regulate the practice of pharmacy and enforce all laws placed  
36 under its jurisdiction;

37       (2) Prepare or determine the nature of, and supervise the grading  
38 of, examinations for applicants for pharmacists' licenses;

- 1           (3) Establish the qualifications for licensure of pharmacists or  
2 pharmacy interns;
- 3           (4) Conduct hearings for the revocation or suspension of  
4 licenses, permits, registrations, certificates, or any other  
5 authority to practice granted by the commission, which hearings may  
6 also be conducted by an administrative law judge appointed under  
7 chapter 34.12 RCW or a presiding officer designated by the  
8 commission. The commission may authorize the secretary, or their  
9 designee, to serve as the presiding officer for any disciplinary  
10 proceedings of the commission (~~authorized under this chapter~~). The  
11 presiding officer shall not vote on or make any final decision in  
12 cases pertaining to standards of practice or where clinical expertise  
13 is necessary. All functions performed by the presiding officer shall  
14 be subject to chapter 34.05 RCW;
- 15           (5) Issue subpoenas and administer oaths in connection with any  
16 hearing, or disciplinary proceeding held under this chapter or any  
17 other chapter assigned to the commission;
- 18           (6) Assist the regularly constituted enforcement agencies of this  
19 state in enforcing all laws pertaining to drugs, controlled  
20 substances, and the practice of pharmacy, or any other laws or rules  
21 under its jurisdiction;
- 22           (7) Promulgate rules for the dispensing, distribution,  
23 wholesaling, and manufacturing of drugs and devices and the practice  
24 of pharmacy for the protection and promotion of the public health,  
25 safety, and welfare. Violation of any such rules shall constitute  
26 grounds for (~~refusal~~) denial of an application, assessment of a  
27 civil fine, imposition of a limited stop service, imposition of  
28 reasonable conditions, suspension, (~~or~~) revocation, or modification  
29 of licenses or any other authority to practice issued by the  
30 commission;
- 31           (8) Adopt rules establishing and governing continuing education  
32 requirements for pharmacists and other licensees applying for renewal  
33 of licenses under this chapter;
- 34           (9) Be immune, collectively and individually, from suit in any  
35 action, civil or criminal, based upon any disciplinary proceedings or  
36 other official acts performed as members of the commission. Such  
37 immunity shall apply to employees of the department when acting in  
38 the course of disciplinary proceedings;

1 (10) Suggest strategies for preventing, reducing, and eliminating  
2 drug misuse, diversion, and abuse, including professional and public  
3 education, and treatment of persons misusing and abusing drugs;

4 (11) Conduct or encourage educational programs to be conducted to  
5 prevent the misuse, diversion, and abuse of drugs for health care  
6 practitioners and licensed or certified health care facilities;

7 (12) Monitor trends of drug misuse, diversion, and abuse and make  
8 periodic reports to disciplinary boards of licensed health care  
9 practitioners and education, treatment, and appropriate law  
10 enforcement agencies regarding these trends;

11 (13) Enter into written agreements with all other state and  
12 federal agencies with any responsibility for controlling drug misuse,  
13 diversion, or abuse and with health maintenance organizations, health  
14 care service contractors, and health care providers to assist and  
15 promote coordination of agencies responsible for ensuring compliance  
16 with controlled substances laws and to monitor observance of these  
17 laws and cooperation between these agencies. The department of social  
18 and health services, the department of labor and industries, and any  
19 other state agency including licensure disciplinary boards, shall  
20 refer all apparent instances of over-prescribing by practitioners and  
21 all apparent instances of legend drug overuse to the department. The  
22 department shall also encourage such referral by health maintenance  
23 organizations, health service contractors, and health care providers;

24 (14) Whenever the workload of the commission requires, request  
25 that the secretary appoint pro tempore members. While serving as  
26 members pro tempore persons have all the powers, duties, and  
27 immunities, and are entitled to the emoluments, including travel  
28 expenses, of the commission.

29 **Sec. 30.** RCW 18.64.011 and 2021 c 78 s 1 are each amended to  
30 read as follows:

31 The definitions in this section apply throughout this chapter  
32 unless the context clearly requires otherwise.

33 (1) "Administer" means the direct application of a drug or  
34 device, whether by injection, inhalation, ingestion, or any other  
35 means, to the body of a patient or research subject.

36 (2) "Business licensing system" means the mechanism established  
37 by chapter 19.02 RCW by which business licenses, endorsed for  
38 individual state-issued licenses, are issued and renewed utilizing a

1 business license application and a business license expiration date  
2 common to each renewable license endorsement.

3 (3) "Chart order" means a lawful order for a drug or device  
4 entered on the chart or medical record of an inpatient or resident of  
5 an institutional facility by a practitioner or his or her designated  
6 agent.

7 (4) "Closed door long-term care pharmacy" means a pharmacy that  
8 provides pharmaceutical care to a defined and exclusive group of  
9 patients who have access to the services of the pharmacy because they  
10 are treated by or have an affiliation with a long-term care facility  
11 or hospice program, and that is not a retailer of goods to the  
12 general public.

13 (5) "Commission" means the pharmacy quality assurance commission.

14 (6) "Compounding" means the act of combining two or more  
15 ingredients in the preparation of a prescription. Reconstitution and  
16 mixing of (a) sterile products according to federal food and drug  
17 administration-approved labeling does not constitute compounding if  
18 prepared pursuant to a prescription and administered immediately or  
19 in accordance with package labeling, and (b) nonsterile products  
20 according to federal food and drug administration-approved labeling  
21 does not constitute compounding if prepared pursuant to a  
22 prescription.

23 (7) "Controlled substance" means a drug or substance, or an  
24 immediate precursor of such drug or substance, so designated under or  
25 pursuant to the provisions of chapter 69.50 RCW.

26 (8) "Deliver" or "delivery" means the actual, constructive, or  
27 attempted transfer from one person to another of a drug or device,  
28 whether or not there is an agency relationship.

29 (9) "Department" means the department of health.

30 (10) "Device" means instruments, apparatus, and contrivances,  
31 including their components, parts, and accessories, intended (a) for  
32 use in the diagnosis, cure, mitigation, treatment, or prevention of  
33 disease in human beings or other animals, or (b) to affect the  
34 structure or any function of the body of human beings or other  
35 animals.

36 (11) "Dispense" means the interpretation of a prescription or  
37 order for a drug, biological, or device and, pursuant to that  
38 prescription or order, the proper selection, measuring, compounding,  
39 labeling, or packaging necessary to prepare that prescription or  
40 order for delivery.

1 (12) "Distribute" means the delivery of a drug or device other  
2 than by administering or dispensing.

3 (13) "Drug" and "devices" do not include surgical or dental  
4 instruments or laboratory materials, gas and oxygen, therapy  
5 equipment, X-ray apparatus or therapeutic equipment, their component  
6 parts or accessories, or equipment, instruments, apparatus, or  
7 contrivances used to render such articles effective in medical,  
8 surgical, or dental treatment, or for use or consumption in or for  
9 mechanical, industrial, manufacturing, or scientific applications or  
10 purposes. "Drug" also does not include any article or mixture covered  
11 by the Washington pesticide control act (chapter 15.58 RCW), as  
12 enacted or hereafter amended, nor medicated feed intended for and  
13 used exclusively as a feed for animals other than human beings.

14 (14) "Drugs" means:

15 (a) Articles recognized in the official United States  
16 pharmacopoeia or the official homeopathic pharmacopoeia of the United  
17 States;

18 (b) Substances intended for use in the diagnosis, cure,  
19 mitigation, treatment, or prevention of disease in human beings or  
20 other animals;

21 (c) Substances (other than food) intended to affect the structure  
22 or any function of the body of human beings or other animals; or

23 (d) Substances intended for use as a component of any substances  
24 specified in (a), (b), or (c) of this subsection, but not including  
25 devices or their component parts or accessories.

26 (15) "Health care entity" means an organization that provides  
27 health care services in a setting that is not otherwise licensed by  
28 the state to acquire or possess legend drugs. Health care entity  
29 includes a freestanding outpatient surgery center, a residential  
30 treatment facility, and a freestanding cardiac care center. "Health  
31 care entity" does not include an individual practitioner's office or  
32 a multipractitioner clinic, regardless of ownership, unless the owner  
33 elects licensure as a health care entity. "Health care entity" also  
34 does not include an individual practitioner's office or  
35 multipractitioner clinic identified by a hospital on a pharmacy  
36 application or renewal pursuant to RCW 18.64.043.

37 (16) "Hospice program" means a hospice program certified or paid  
38 by medicare under Title XVIII of the federal social security act, or  
39 a hospice program licensed under chapter 70.127 RCW.

1 (17) "Institutional facility" means any organization whose  
2 primary purpose is to provide a physical environment for patients to  
3 obtain health care services including, but not limited to, services  
4 in a hospital, long-term care facility, hospice program, mental  
5 health facility, drug abuse treatment center, residential  
6 habilitation center, or a local, state, or federal correction  
7 facility.

8 (18) "Labeling" means the process of preparing and affixing a  
9 label to any drug or device container. The label must include all  
10 information required by current federal and state law and pharmacy  
11 rules.

12 (19) "Legend drugs" means any drugs which are required by any  
13 applicable federal or state law or regulation to be dispensed on  
14 prescription only or are restricted to use by practitioners only.

15 (20) "Long-term care facility" means a nursing home licensed  
16 under chapter 18.51 RCW, an assisted living facility licensed under  
17 chapter 18.20 RCW, or an adult family home licensed under chapter  
18 70.128 RCW.

19 (21) "Manufacture" means the production, preparation,  
20 propagation, compounding, or processing of a drug or other substance  
21 or device or the packaging or repackaging of such substance or  
22 device, or the labeling or relabeling of the commercial container of  
23 such substance or device, but does not include the activities of a  
24 practitioner who, as an incident to his or her administration or  
25 dispensing such substance or device in the course of his or her  
26 professional practice, personally prepares, compounds, packages, or  
27 labels such substance or device. "Manufacture" includes the  
28 distribution of a licensed pharmacy compounded drug product to other  
29 state licensed persons or commercial entities for subsequent resale  
30 or distribution, unless a specific product item has approval of the  
31 commission. The term does not include:

32 (a) The activities of a licensed pharmacy that compounds a  
33 product on or in anticipation of an order of a licensed practitioner  
34 for use in the course of their professional practice to administer to  
35 patients, either personally or under their direct supervision;

36 (b) The practice of a licensed pharmacy when repackaging  
37 commercially available medication in small, reasonable quantities for  
38 a practitioner legally authorized to prescribe the medication for  
39 office use only;

1 (c) The distribution of a drug product that has been compounded  
2 by a licensed pharmacy to other appropriately licensed entities under  
3 common ownership or control of the facility in which the compounding  
4 takes place; or

5 (d) The delivery of finished and appropriately labeled compounded  
6 products dispensed pursuant to a valid prescription to alternate  
7 delivery locations, other than the patient's residence, when  
8 requested by the patient, or the prescriber to administer to the  
9 patient, or to another licensed pharmacy to dispense to the patient.

10 (22) "Manufacturer" means a person, corporation, or other entity  
11 engaged in the manufacture of drugs or devices.

12 (23) "Nonlegend" or "nonprescription" drugs means any drugs which  
13 may be lawfully sold without a prescription.

14 (24) "Person" means an individual, corporation, government,  
15 governmental subdivision or agency, business trust, estate, trust,  
16 partnership or association, or any other legal entity.

17 (25) "Pharmacist" means a person duly licensed by the commission  
18 to engage in the practice of pharmacy.

19 (26) "Pharmacy" means every place properly licensed by the  
20 commission where the practice of pharmacy is conducted.

21 (27) "Poison" does not include any article or mixture covered by  
22 the Washington pesticide control act (chapter 15.58 RCW), as enacted  
23 or hereafter amended.

24 (28) "Practice of pharmacy" includes the practice of and  
25 responsibility for: Interpreting prescription orders; the  
26 compounding, dispensing, labeling, administering, and distributing of  
27 drugs and devices; the monitoring of drug therapy and use; the  
28 initiating or modifying of drug therapy in accordance with written  
29 guidelines or protocols previously established and approved for his  
30 or her practice by a practitioner authorized to prescribe drugs; the  
31 participating in drug utilization reviews and drug product selection;  
32 the proper and safe storing and distributing of drugs and devices and  
33 maintenance of proper records thereof; the providing of information  
34 on legend drugs which may include, but is not limited to, the  
35 advising of therapeutic values, hazards, and the uses of drugs and  
36 devices.

37 (29) "Practitioner" means a physician, dentist, veterinarian,  
38 nurse, or other person duly authorized by law or rule in the state of  
39 Washington to prescribe drugs.

1 (30) "Prescription" means an order for drugs or devices issued by  
2 a practitioner duly authorized by law or rule in the state of  
3 Washington to prescribe drugs or devices in the course of his or her  
4 professional practice for a legitimate medical purpose.

5 (31) "Secretary" means the secretary of health or the secretary's  
6 designee.

7 (32) "Shared pharmacy services" means a system that allows a  
8 participating pharmacist or pharmacy pursuant to a request from  
9 another participating pharmacist or pharmacy to process or fill a  
10 prescription or drug order, which may include but is not necessarily  
11 limited to preparing, packaging, labeling, data entry, compounding  
12 for specific patients, dispensing, performing drug utilization  
13 reviews, conducting claims adjudication, obtaining refill  
14 authorizations, reviewing therapeutic interventions, or reviewing  
15 chart orders.

16 (33) "Wholesaler" means a corporation, individual, or other  
17 entity which buys drugs or devices for resale and distribution to  
18 corporations, individuals, or entities other than consumers.

19 (34) "Directed plan of correction" means a plan devised by the  
20 commission that includes specific actions that must be taken to  
21 correct identified unresolved deficiencies with time frames to  
22 complete them.

23 (35) "Immediate jeopardy" means a situation in which a licensee's  
24 noncompliance with one or more statutory or regulatory requirements  
25 has placed the health and safety of individuals or animals at risk  
26 for serious injury, serious harm, serious impairment, or death.

27 (36) "License," "licensing," and "licensure" shall be deemed  
28 equivalent to the terms "approval," "credential," "certificate,"  
29 "certification," "permit," and "registration" and an "exemption"  
30 issued under chapter 69.50 RCW.

31 (37) "Plan of correction" means a proposal devised by the  
32 applicant or licensee that includes specific actions that must be  
33 taken to correct identified unresolved deficiencies with the time  
34 frames to complete them.

35 (38) "Statement of deficiency" means a written statement of the  
36 deficiencies prepared by the commission, or its designee, identifying  
37 one or more violations of law. The report clearly identifies the  
38 specific law or rule that has been violated along with a description  
39 of the reasons for noncompliance.

1        NEW SECTION.    **Sec. 31.**    A new section is added to chapter 18.64  
2    RCW to read as follows:

3        This section governs the denial of an application for a license  
4    or the suspension, revocation, or modification of a license issued by  
5    the commission. This section does not govern actions taken under  
6    chapter 18.130 RCW.

7        (1) The commission shall give written notice of the denial of an  
8    application for a license to the applicant or its agent. The form,  
9    contents, and service of the notice shall comply with this chapter  
10   and the procedural rules adopted by the commission.

11       (2) The commission shall give written notice of revocation,  
12   suspension, or modification of a license to the licensee or its  
13   agent. The form, contents, and service of the notice shall comply  
14   with this chapter and the procedural rules adopted by the commission.

15       (3) Except as otherwise provided in this chapter, revocation,  
16   suspension, or modification is effective 28 days after the licensee  
17   or the agent receives the notice.

18       (a) The commission may make the date the action is effective  
19   later than 28 days after receipt. If the commission does so, it shall  
20   state the effective date in the written notice given to the licensee  
21   or its agent.

22       (b) The commission may make the date the action is effective  
23   sooner than 28 days after receipt when necessary to protect the  
24   public health, safety, or welfare. When the commission does so, it  
25   shall state the effective date and the reasons supporting the  
26   effective date in the written notice given to the licensee or its  
27   agent.

28       (4) Except for licensees suspended for noncompliance with a child  
29   support order under chapter 74.20A RCW, a license applicant or  
30   licensee who is aggrieved by a commission denial, revocation,  
31   suspension, or modification has the right to an adjudicative  
32   proceeding. The proceeding is governed by the administrative  
33   procedure act, chapter 34.05 RCW. The form, contents, and service of  
34   the application for an adjudicative hearing must comply with this  
35   chapter and with the procedural rules adopted by the commission and  
36   must be served on and received by the commission within 28 days of  
37   the applicant or licensee receiving the notice.

38       (5) (a) If the commission gives a licensee 28 or more days' notice  
39   of revocation, suspension, or modification and the licensee files an  
40   appeal before its effective date, the commission shall not implement

1 the adverse action until the final order has been entered. The  
2 commission may implement part or all of the adverse action while the  
3 proceedings are pending if the appellant causes an unreasonable delay  
4 in the proceeding, if the circumstances change so that implementation  
5 is in the public interest, or for other good cause.

6 (b) If the commission gives a licensee less than 28 days' notice  
7 of revocation, suspension, or modification and the licensee timely  
8 files a sufficient appeal, the commission may implement the adverse  
9 action on the effective date stated in the notice. The commission may  
10 stay implementation of part or all of the adverse action while the  
11 proceedings are pending if staying implementation is in the public  
12 interest or for other good cause.

13 (6) The commission may accept the surrender of the licensee's  
14 license. A licensee whose surrender has been accepted may not  
15 petition for reinstatement of its surrendered license.

16 NEW SECTION. **Sec. 32.** A new section is added to chapter 18.64  
17 RCW to read as follows:

18 This section governs the assessment of a civil fine against a  
19 licensee issued by the commission. This section does not govern  
20 actions taken under chapter 18.130 RCW.

21 (1) The commission shall give written notice to the licensee or  
22 its agent against whom it assesses a civil fine. The form, contents,  
23 and service of the notice shall comply with this chapter and the  
24 procedural rules adopted by the commission.

25 (2) The civil fine is due and payable 28 days after receipt by  
26 the licensee or its agent. The commission may make the date the fine  
27 is due later than 28 days after receipt by the licensee or its agent.  
28 When the commission does so, it shall state the date the fine is due  
29 in the written notice given to the licensee against whom it assesses  
30 the fine.

31 (3) The licensee against whom the commission assesses a civil  
32 fine has the right to an adjudicative proceeding. The proceeding is  
33 governed by the administrative procedure act, chapter 34.05 RCW. The  
34 form, contents, and service of the application for an adjudicative  
35 hearing must comply with this chapter and the procedural rules  
36 adopted by the commission and must be served on and received by the  
37 commission within 28 days of the licensee receiving the notice.

1        NEW SECTION.    **Sec. 33.**    A new section is added to chapter 18.64

2    RCW to read as follows:

3        This section does not govern actions taken under chapter 18.130  
4    RCW.

5        (1) The commission is authorized to take any of the actions  
6    identified in this section against licenses, registrations, permits,  
7    or other credentials or approvals issued by the commission under this  
8    chapter and chapters 18.64A, 69.38, 69.41, 69.43, 69.45, and 69.50  
9    RCW in any case in which it finds the licensee has failed or refused  
10   to comply with any state or federal statute or administrative rule  
11   regulating the license in question including, but not limited to,  
12   Title 69 RCW, this chapter, chapter 18.64A RCW, and administrative  
13   rules adopted by the commission, except as otherwise limited in this  
14   section.

15        (a) When the commission determines a licensee has previously been  
16   subject to an enforcement action for the same or similar type of  
17   violation of the same or similar statute or rule, or has been given  
18   any previous statement of deficiency that included the same or  
19   similar type of violation of the same or similar statute or rule, or  
20   when the licensee failed to correct noncompliance with a statute or  
21   rule by a date established or agreed to by the commission, the  
22   commission may impose reasonable conditions on a license. Conditions  
23   may include correction within a specified amount of time, a directed  
24   plan of correction, training, or hiring a commission-approved  
25   consultant if the licensee cannot demonstrate to the commission that  
26   it has access to sufficient internal expertise. If the commission  
27   determines the violations constitute immediate jeopardy, the  
28   conditions may be imposed immediately in accordance with subsection  
29   (2)(b) of this section.

30        (b)(i) In accordance with the commission's authority under  
31   section 32 of this act, the commission may assess a civil fine of up  
32   to \$10,000 per violation, not to exceed a total fine of \$1,000,000,  
33   on a licensee when the commission determines the licensee has  
34   previously been subject to an enforcement action for the same or  
35   similar type of violation of the same or similar statute or rule, or  
36   has been given any previous statement of deficiency that included the  
37   same or similar type of violation of the same or similar statute or  
38   rule, or when a licensee failed to correct noncompliance with a  
39   statute or rule by a date established or agreed to by the commission.

1 (ii) Proceeds from these fines may only be used by the commission  
2 to provide training or technical assistance to licensees and to  
3 offset costs associated with licensing and enforcement.

4 (iii) The commission shall adopt in rules under this chapter to  
5 establish specific fine amounts in relation to:

6 (A) The severity of the noncompliance and at an adequate level to  
7 be a deterrent to future noncompliance; and

8 (B) The operation size of the licensee.

9 (iv) If a licensee is aggrieved by the commission's action of  
10 assessing civil fines, the licensee has the right to appeal under  
11 section 32 of this act.

12 (c) The commission may restrict the ability of a licensee to  
13 engage in a specific service related to a violation by imposing a  
14 limited stop service. This may only be done if the commission finds  
15 that noncompliance results in immediate jeopardy.

16 (i) Prior to imposing a limited stop service, the commission  
17 shall provide a licensee written notification upon identifying  
18 deficient practices or conditions that constitute an immediate  
19 jeopardy. The licensee shall have 24 hours from notification to  
20 develop and implement a commission-approved plan to correct the  
21 deficient practices or conditions that constitute an immediate  
22 jeopardy. If the deficient practices or conditions that constitute  
23 immediate jeopardy are not verified by the commission as having been  
24 corrected within the same 24-hour period, the commission may issue  
25 the limited stop service.

26 (ii) When the commission imposes a limited stop service, the  
27 licensee may not provide the services subject to the limited stop  
28 service, unless otherwise allowed by the commission, until the  
29 limited stop service order is terminated.

30 (iii) The commission shall conduct a follow-up inspection within  
31 five business days or within the time period requested by the  
32 licensee if more than five business days is needed to verify the  
33 violation necessitating the limited stop service has been corrected.

34 (iv) The limited stop service shall be terminated when:

35 (A) The commission verifies the violation necessitating the  
36 limited stop service has been corrected or the commission determines  
37 that the licensee has taken intermediate action to address the  
38 immediate jeopardy; and

39 (B) The licensee establishes the ability to maintain correction  
40 of the violation previously found deficient.

1 (d) The commission may deny an application, or suspend, revoke,  
2 or modify a license.

3 (2) (a) Except as otherwise provided, sections 31 and 32 of this  
4 act govern notices of actions taken by the commission under  
5 subsection (1) of this section and provides the right to an  
6 adjudicative proceeding. Adjudicative proceedings and hearings under  
7 this section are governed by the administrative procedure act,  
8 chapter 34.05 RCW.

9 (b) When the commission determines a licensee's noncompliance  
10 results in immediate jeopardy, the commission may make the imposition  
11 of conditions on a licensee, a limited stop service, or the  
12 suspension or modification of a license effective immediately upon  
13 receipt of the notice by the licensee, pending any adjudicative  
14 proceeding.

15 (i) When the commission makes the suspension or modification of a  
16 license or imposition of conditions on a license effective  
17 immediately, a licensee is entitled to a show cause hearing before a  
18 hearing panel of the commission within 14 days of making the request.  
19 The licensee must request the show cause hearing within 28 days of  
20 receipt of the notice. At the show cause hearing the commission has  
21 the burden of demonstrating that more probably than not there is an  
22 immediate jeopardy.

23 (ii) At the show cause hearing, the commission may consider the  
24 notice and documents supporting the immediate imposition of  
25 conditions on a licensee, or the suspension or modification of a  
26 license, and the licensee's response, and shall provide the parties  
27 with an opportunity to provide documentary evidence and written  
28 testimony, and to be represented by counsel. Prior to the show cause  
29 hearing, the commission shall provide the licensee with all  
30 documentation that supports the commission's immediate imposition of  
31 conditions on a licensee or suspension or modification of a license.

32 (iii) If the hearing panel of the commission determines there is  
33 no immediate jeopardy, the hearing panel of the commission may  
34 overturn the immediate suspension or modification of the license or  
35 immediate imposition of conditions.

36 (iv) If the hearing panel of the commission determines there is  
37 immediate jeopardy, the immediate suspension or modification of the  
38 license or immediate imposition of conditions shall remain in effect  
39 pending a full hearing.

1 (v) If the commission sustains the immediate suspension or  
2 modification of the license or immediate imposition of conditions,  
3 the licensee may request an expedited full hearing on the merits. A  
4 full hearing must be provided within 90 days of the licensee's  
5 request, unless otherwise stipulated by the parties.

6 (3) The commission may take action under subsection (1) of this  
7 section against a nonresident pharmacy for failure to comply with any  
8 requirement of RCW 18.64.350 through 18.64.400, conduct that caused  
9 injury to a resident of this state, or conduct that resulted in  
10 adverse action against the nonresident pharmacy by a federal agency  
11 or the regulatory or licensing agency in the state in which the  
12 nonresident pharmacy is located.

13 (4) When the commission determines an alleged violation, if true,  
14 would constitute an immediate jeopardy, and the licensee fails to  
15 cooperate with the commission's investigation of such an alleged  
16 violation, the commission may impose an immediate limited stop  
17 service, immediate imposition of conditions, or immediate suspension  
18 or modification of a license.

19 (a) When the commission imposes an immediate limited stop  
20 service, immediate imposition of conditions, or immediate suspension  
21 or modification of a license for failure to cooperate, a licensee is  
22 entitled to a show cause hearing before a presiding officer within 14  
23 days of making the request. The licensee must request the show cause  
24 hearing within 28 days of receipt of the notice of an immediate  
25 limited stop service, immediate imposition of conditions, or  
26 immediate suspension or modification of a license for failure to  
27 cooperate. At the show cause hearing the commission has the burden of  
28 demonstrating that more probably than not the alleged violation, if  
29 true, would constitute an immediate jeopardy and the licensee failed  
30 to cooperate with the commission's investigation.

31 (b) At the show cause hearing, the presiding officer may consider  
32 the notice and documents supporting the immediate limited stop  
33 service, immediate imposition of conditions, or immediate suspension  
34 or modification of a license for failure to cooperate, and the  
35 licensee's response and shall provide the parties with an opportunity  
36 to provide documentary evidence and written testimony, and to be  
37 represented by counsel. Prior to the show cause hearing, the  
38 commission shall provide the licensee with all documentation that  
39 supports the commission's immediate action for failure to cooperate.

1 (c) If the presiding officer determines the alleged violation, if  
2 true, does not constitute an immediate jeopardy or determines that  
3 the licensee cooperated with the commission's investigation, the  
4 presiding officer may overturn the immediate action for failure to  
5 cooperate.

6 (d) If the presiding officer determines the allegation, if true,  
7 would constitute an immediate jeopardy and the licensee failed to  
8 cooperate with the commission's investigation, the immediate action  
9 for failure to cooperate shall remain in effect pending a full  
10 hearing.

11 (e) If the presiding officer sustains the immediate action for  
12 failure to cooperate, the licensee may request an expedited full  
13 hearing on the merits of the commission's action. A full hearing must  
14 be provided within 90 days of the licensee's request.

15 NEW SECTION. **Sec. 34.** A new section is added to chapter 18.64  
16 RCW to read as follows:

17 This section does not govern actions taken under chapter 18.130  
18 RCW.

19 (1) A licensee whose license has been suspended under this  
20 chapter may petition the commission for reinstatement after an  
21 interval as determined by the commission in the order. The commission  
22 shall hold hearings on the petition. The commission may deny the  
23 petition or may order reinstatement of the licensee's license. The  
24 commission may impose terms and conditions in the order of  
25 reinstatement.

26 (2) A licensee whose license has been suspended for noncompliance  
27 with a support order or visitation order under RCW 74.20A.320 may  
28 petition for reinstatement at any time by providing the commission a  
29 release issued by the department of social and health services  
30 stating that the person is in compliance with the order. If the  
31 person has continued to meet all other requirements for reinstatement  
32 during the suspension, the commission shall automatically reissue the  
33 person's license upon receipt of the release, and payment of a  
34 reinstatement fee, if any.

35 NEW SECTION. **Sec. 35.** A new section is added to chapter 18.64  
36 RCW to read as follows:

1 The uniform disciplinary act, chapter 18.130 RCW, governs  
2 unlicensed practice of persons required to obtain a license under  
3 this chapter.

4 **Sec. 36.** RCW 18.64.047 and 2013 c 19 s 10 are each amended to  
5 read as follows:

6 (1) Any itinerant vendor or any peddler of any nonprescription  
7 drug or preparation for the treatment of disease or injury, shall pay  
8 a registration fee determined by the secretary on a date to be  
9 determined by the secretary as provided in RCW 43.70.250 and  
10 43.70.280. The department may issue a registration to such vendor on  
11 an approved application made to the department.

12 (2) Any itinerant vendor or peddler who shall vend or sell, or  
13 offer to sell to the public any such nonprescription drug or  
14 preparation without having registered to do so as provided in this  
15 section, is guilty of a misdemeanor and each sale or offer to sell  
16 shall constitute a separate offense.

17 (3) In event the registration fee remains unpaid on the date due,  
18 no renewal or new registration shall be issued except upon compliance  
19 with administrative procedures, administrative requirements, and fees  
20 determined as provided in RCW 43.70.250 and 43.70.280. This  
21 registration shall not authorize the sale of legend drugs or  
22 controlled substances.

23 (4) An itinerant vendor may purchase products containing any  
24 detectable quantity of ephedrine, pseudoephedrine, or  
25 phenylpropanolamine, or their salts, isomers, or salts of isomers  
26 only from a wholesaler licensed by the department under RCW 18.64.046  
27 or from a manufacturer licensed by the department under RCW  
28 18.64.045. The commission shall issue a warning to an itinerant  
29 vendor who violates this subsection, and may suspend or revoke the  
30 registration of the vendor for a subsequent violation.

31 (5) An itinerant vendor who has purchased products containing any  
32 detectable quantity of ephedrine, pseudoephedrine, or  
33 phenylpropanolamine, or their salts, isomers, or salts of isomers, in  
34 a suspicious transaction as defined in RCW 69.43.035, is subject to  
35 the following requirements:

36 (a) The itinerant vendor may not sell any quantity of ephedrine,  
37 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
38 salts of isomers, if the total monthly sales of these products exceed  
39 (~~ten~~) 10 percent of the vendor's total prior monthly sales of

1 nonprescription drugs in March through October. In November through  
2 February, the vendor may not sell any quantity of ephedrine,  
3 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
4 salts of isomers, if the total monthly sales of these products exceed  
5 (~~twenty~~) 20 percent of the vendor's total prior monthly sales of  
6 nonprescription drugs. For purposes of this section, "monthly sales"  
7 means total dollars paid by buyers. (~~The commission may suspend or~~  
8 ~~revoke the registration of an itinerant vendor who violates this~~  
9 ~~subsection.~~)

10 (b) The itinerant vendor shall maintain inventory records of the  
11 receipt and disposition of nonprescription drugs, utilizing existing  
12 inventory controls if an auditor or investigator can determine  
13 compliance with (a) of this subsection, and otherwise in the form and  
14 manner required by the commission. The records must be available for  
15 inspection by the commission or any law enforcement agency and must  
16 be maintained for two years. The commission may suspend or revoke the  
17 registration of an itinerant vendor who violates this subsection. For  
18 purposes of this subsection, "disposition" means the return of  
19 product to the wholesaler or distributor.

20 **Sec. 37.** RCW 18.64.165 and 2016 c 81 s 10 are each amended to  
21 read as follows:

22 (~~The commission shall have the power to refuse, suspend, or~~  
23 ~~revoke the license of any manufacturer, wholesaler, pharmacy,~~  
24 ~~shopkeeper, itinerant vendor, peddler, poison distributor, health~~  
25 ~~care entity, or precursor chemical distributor~~) In addition to any  
26 other grounds, the commission may take action against a license  
27 issued under this chapter and chapters 18.64A, 69.38, 69.41, 69.43,  
28 69.45, and 69.50 RCW, except nonresident pharmacies, upon proof that:

29 (1) The license was procured through fraud, misrepresentation, or  
30 deceit;

31 (2) Except as provided in RCW 9.97.020, the licensee has violated  
32 or has permitted any employee to violate any of the laws of this  
33 state or the United States relating to drugs, controlled substances,  
34 cosmetics, or nonprescription drugs, or has violated any of the rules  
35 and regulations of the commission or has been convicted of a felony.

36 **Sec. 38.** RCW 18.64A.020 and 2013 c 19 s 33 are each amended to  
37 read as follows:

1 (1) (a) The commission shall adopt, in accordance with chapter  
2 34.05 RCW, rules fixing the classification and qualifications and the  
3 educational and training requirements for persons who may be employed  
4 as pharmacy technicians or who may be enrolled in any pharmacy  
5 technician training program. Such rules shall provide that:

6 (i) Licensed pharmacists shall supervise the training of pharmacy  
7 technicians;

8 (ii) Training programs shall assure the competence of pharmacy  
9 technicians to aid and assist pharmacy operations. Training programs  
10 shall consist of instruction and/or practical training; and

11 (iii) Pharmacy technicians shall complete continuing education  
12 requirements established in rule by the commission.

13 (b) Such rules may include successful completion of examinations  
14 for applicants for pharmacy technician certificates. If such  
15 examination rules are adopted, the commission shall prepare or  
16 determine the nature of, and supervise the grading of the  
17 examinations. The commission may approve an examination prepared or  
18 administered by a private testing agency or association of licensing  
19 authorities.

20 (2) The commission may disapprove or revoke approval of any  
21 training program for failure to conform to commission rules. In the  
22 case of the disapproval or revocation of approval of a training  
23 program by the commission, a hearing shall be conducted in accordance  
24 with ((RCW 18.64.160)) section 31 of this act, and appeal may be  
25 taken in accordance with the administrative procedure act, chapter  
26 34.05 RCW.

27 **Sec. 39.** RCW 18.64A.060 and 2013 c 19 s 38 are each amended to  
28 read as follows:

29 No pharmacy licensed in this state shall utilize the services of  
30 pharmacy ancillary personnel without approval of the commission.

31 Any pharmacy licensed in this state may apply to the commission  
32 for permission to use the services of pharmacy ancillary personnel.  
33 The application shall be accompanied by a fee and shall comply with  
34 administrative procedures and administrative requirements set  
35 pursuant to RCW 43.70.250 and 43.70.280, shall detail the manner and  
36 extent to which the pharmacy ancillary personnel would be used and  
37 supervised, and shall provide other information in such form as the  
38 secretary may require.

1 The commission may approve or reject such applications. In  
2 addition, the commission may modify the proposed utilization of  
3 pharmacy ancillary personnel and approve the application as modified.  
4 Whenever it appears to the commission that pharmacy ancillary  
5 personnel are being utilized in a manner inconsistent with the  
6 approval granted, the commission may withdraw such approval. In the  
7 event a hearing is requested upon the rejection of an application, or  
8 upon the withdrawal of approval, a hearing shall be conducted in  
9 accordance with (~~chapter 18.64 RCW, as now or hereafter amended,~~)  
10 section 31 of this act and appeal may be taken in accordance with the  
11 administrative procedure act, chapter 34.05 RCW.

12 NEW SECTION. **Sec. 40.** A new section is added to chapter 69.38  
13 RCW to read as follows:

14 Chapter 18.64 RCW governs the denial of licenses and the  
15 discipline of persons licensed under this chapter. The uniform  
16 disciplinary act, chapter 18.130 RCW, governs unlicensed practice of  
17 persons required to obtain a license under this chapter.

18 **Sec. 41.** RCW 69.45.080 and 2013 c 19 s 84 are each amended to  
19 read as follows:

20 (1) The manufacturer is responsible for the actions and conduct  
21 of its representatives with regard to drug samples.

22 (~~(2) (The commission may hold a public hearing to examine a  
23 possible violation and may require a designated representative of the  
24 manufacturer to attend.~~

25 (~~(3) If a manufacturer fails to comply with this chapter following  
26 notification by the commission, the commission may impose a civil  
27 penalty of up to five thousand dollars. The commission shall take no  
28 action to impose any civil penalty except pursuant to a hearing held  
29 in accordance with chapter 34.05 RCW.~~

30 (~~(4))~~) Chapter 18.64 RCW governs the denial of licenses and the  
31 discipline of persons registered under this chapter.

32 (3) Specific drug samples which are distributed in this state in  
33 violation of this chapter, following notification by the commission,  
34 shall be subject to seizure following the procedures set out in RCW  
35 69.41.060.

36 NEW SECTION. **Sec. 42.** A new section is added to chapter 69.45  
37 RCW to read as follows:

1 The uniform disciplinary act, chapter 18.130 RCW, governs  
2 unlicensed practice of persons required to obtain a registration  
3 under this chapter.

4 **Sec. 43.** RCW 69.43.100 and 2013 c 19 s 74 are each amended to  
5 read as follows:

6 ~~((The pharmacy quality assurance commission shall have the power  
7 to refuse, suspend, or revoke the permit of any manufacturer or  
8 wholesaler))~~ In addition to any other grounds, the pharmacy quality  
9 assurance commission may take action against a permit issued under  
10 this chapter upon proof that:

11 (1) The permit was procured through fraud, misrepresentation, or  
12 deceit;

13 (2) The permittee has violated or has permitted any employee to  
14 violate any of the laws of this state relating to drugs, controlled  
15 substances, cosmetics, or nonprescription drugs, or has violated any  
16 of the rules and regulations of the pharmacy quality assurance  
17 commission.

18 **Sec. 44.** RCW 69.43.140 and 2013 c 19 s 78 are each amended to  
19 read as follows:

20 (1) ~~((In addition to the other penalties provided for in this  
21 chapter or in chapter 18.64 RCW, the pharmacy quality assurance  
22 commission may impose a civil penalty, not to exceed ten thousand  
23 dollars for each violation, on any licensee or registrant who has  
24 failed to comply with this chapter or the rules adopted under this  
25 chapter. In the case of a continuing violation, every day the  
26 violation continues shall be considered a separate violation))~~  
27 Chapter 18.64 RCW governs the denial of permits and the discipline of  
28 permits issued under this chapter. The uniform disciplinary act,  
29 chapter 18.130 RCW, governs unlicensed practice of persons required  
30 to obtain a permit under this chapter.

31 (2) The pharmacy quality assurance commission may waive ~~((the  
32 suspension or revocation of a license or registration))~~ action taken  
33 under chapter 18.64 RCW against a permit issued under this chapter  
34 ~~((18.64 RCW, or waive any civil penalty under this chapter,))~~ if the  
35 ~~((licensee or registrant))~~ permittee establishes that he or she acted  
36 in good faith to prevent violations of this chapter, and the  
37 violation occurred despite the licensee's or registrant's exercise of  
38 due diligence. In making such a determination, the pharmacy quality

1 assurance commission may consider evidence that an employer trained  
2 employees on how to sell, transfer, or otherwise furnish substances  
3 specified in RCW 69.43.010(1) in accordance with applicable laws.

4 **Sec. 45.** RCW 69.50.302 and 2013 c 19 s 98 are each amended to  
5 read as follows:

6 (a) Every person who manufactures, distributes, or dispenses any  
7 controlled substance within this state or who proposes to engage in  
8 the manufacture, distribution, or dispensing of any controlled  
9 substance within this state, shall obtain annually a registration  
10 issued by the ((department)) commission in accordance with the  
11 commission's rules.

12 (b) A person registered by the ((department)) commission under  
13 this chapter to manufacture, distribute, dispense, or conduct  
14 research with controlled substances may possess, manufacture,  
15 distribute, dispense, or conduct research with those substances to  
16 the extent authorized by the registration and in conformity with this  
17 Article.

18 (c) The following persons need not register and may lawfully  
19 possess controlled substances under this chapter:

20 (1) An agent or employee of any registered manufacturer,  
21 distributor, or dispenser of any controlled substance if the agent or  
22 employee is acting in the usual course of business or employment.  
23 This exemption shall not include any agent or employee distributing  
24 sample controlled substances to practitioners without an order;

25 (2) A common or contract carrier or warehouse operator, or an  
26 employee thereof, whose possession of any controlled substance is in  
27 the usual course of business or employment;

28 (3) An ultimate user or a person in possession of any controlled  
29 substance pursuant to a lawful order of a practitioner or in lawful  
30 possession of a substance included in Schedule V.

31 (d) The commission may waive by rule the requirement for  
32 registration of certain manufacturers, distributors, or dispensers  
33 upon finding it consistent with the public health and safety.  
34 Personal practitioners licensed or registered in the state of  
35 Washington under the respective professional licensing acts shall not  
36 be required to be registered under this chapter unless the specific  
37 exemption is denied pursuant to ((RCW 69.50.305)) sections 31 and 33  
38 of this act for violation of any provisions of this chapter.

1 (e) A separate registration is required at each principal place  
2 of business or professional practice where the applicant  
3 manufactures, distributes, or dispenses controlled substances.

4 (f) The department, at the direction of the commission, may  
5 inspect the establishment of a registrant or applicant for  
6 registration in accordance with rules adopted by the commission.

7 **Sec. 46.** RCW 69.50.303 and 2013 c 19 s 99 are each amended to  
8 read as follows:

9 (a) The (~~department~~) commission shall register an applicant to  
10 manufacture (~~or~~), distribute, dispense, or conduct research with  
11 controlled substances included in RCW 69.50.204, 69.50.206,  
12 69.50.208, 69.50.210, and 69.50.212 unless the commission determines  
13 that the issuance of that registration would be inconsistent with the  
14 public interest. In determining the public interest, the commission  
15 shall consider the following factors:

16 (1) maintenance of effective controls against diversion of  
17 controlled substances into other than legitimate medical, scientific,  
18 research, or industrial channels;

19 (2) compliance with applicable state and local law;

20 (3) promotion of technical advances in the art of manufacturing  
21 controlled substances and the development of new substances;

22 (4) any convictions of the applicant under any laws of another  
23 country or federal or state laws relating to any controlled  
24 substance;

25 (5) past experience in the manufacture or distribution of  
26 controlled substances, and the existence in the applicant's  
27 establishment of effective controls against diversion of controlled  
28 substances into other than legitimate medical, scientific, research,  
29 or industrial channels;

30 (6) furnishing by the applicant of false or fraudulent material  
31 in any application filed under this chapter;

32 (7) suspension or revocation of the applicant's federal  
33 registration to manufacture, distribute, or dispense controlled  
34 substances as authorized by federal law; and

35 (8) any other factors relevant to and consistent with the public  
36 health and safety.

37 (b) Registration under subsection (a) of this section does not  
38 entitle a registrant to manufacture or distribute controlled

1 substances included in Schedule I or II other than those specified in  
2 the registration.

3 (c) Practitioners must be registered, or exempted under RCW  
4 69.50.302(d), to dispense any controlled substances or to conduct  
5 research with controlled substances included in Schedules II through  
6 V if they are authorized to dispense or conduct research under the  
7 law of this state. The commission need not require separate  
8 registration under this Article for practitioners engaging in  
9 research with nonnarcotic substances included in Schedules II through  
10 V where the registrant is already registered under this Article in  
11 another capacity. Practitioners registered under federal law to  
12 conduct research with substances included in Schedule I may conduct  
13 research with substances included in Schedule I within this state  
14 upon furnishing the commission evidence of that federal registration.

15 (d) A manufacturer or distributor registered under the federal  
16 Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., may submit a  
17 copy of the federal application as an application for registration as  
18 a manufacturer or distributor under this section. The commission may  
19 require a manufacturer or distributor to submit information in  
20 addition to the application for registration under the federal act.

21 **Sec. 47.** RCW 69.50.304 and 2013 c 19 s 100 are each amended to  
22 read as follows:

23 (a) ~~((A))~~ This chapter and chapter 18.64 RCW govern the denial of  
24 registrations and the discipline of registrations issued under RCW  
25 69.50.303. The uniform disciplinary act, chapter 18.130 RCW, governs  
26 unlicensed practice of persons required to obtain a registration  
27 under this chapter.

28 (b) In addition to any other grounds, the commission may take  
29 action against the registration, or exemption from registration,  
30 under RCW 69.50.303 to manufacture, distribute, ~~((or))~~ dispense, or  
31 conduct research with a controlled substance ~~((may be suspended or~~  
32 revoked by the commission)) upon finding that the registrant has:

33 (1) furnished false or fraudulent material information in any  
34 application filed under this chapter;

35 (2) been convicted of a felony under any state or federal law  
36 relating to any controlled substance;

37 (3) had the registrant's federal registration suspended or  
38 revoked and is no longer authorized by federal law to manufacture,

1 distribute, ~~((e))~~ dispense, or conduct research with controlled  
2 substances; or

3 (4) committed acts that would render registration under RCW  
4 69.50.303 inconsistent with the public interest as determined under  
5 that section.

6 ~~((b))~~ (c) The commission may limit revocation or suspension of  
7 a registration to the particular controlled substance or schedule of  
8 controlled substances, with respect to which grounds for revocation  
9 or suspension exist.

10 ~~((e))~~ (d) If the commission suspends or revokes a registration,  
11 all controlled substances owned or possessed by the registrant at the  
12 time of suspension or the effective date of the revocation order may  
13 be placed under seal. No disposition may be made of substances under  
14 seal until the time for taking an appeal has elapsed or until all  
15 appeals have been concluded unless a court, upon application, orders  
16 the sale of perishable substances and the deposit of the proceeds of  
17 the sale with the court. Upon a revocation order becoming final, all  
18 controlled substances may be forfeited to the state.

19 ~~((d))~~ (e) The ~~((department))~~ commission may seize or place  
20 under seal any controlled substance owned or possessed by a  
21 registrant whose registration has expired or who has ceased to  
22 practice or do business in the manner contemplated by the  
23 registration. The controlled substance must be held for the benefit  
24 of the registrant or the registrant's successor in interest. The  
25 ~~((department))~~ commission shall notify a registrant, or the  
26 registrant's successor in interest, who has any controlled substance  
27 seized or placed under seal, of the procedures to be followed to  
28 secure the return of the controlled substance and the conditions  
29 under which it will be returned. The ~~((department))~~ commission may  
30 not dispose of any controlled substance seized or placed under seal  
31 under this subsection until the expiration of ~~((one hundred eighty))~~  
32 180 days after the controlled substance was seized or placed under  
33 seal. The costs incurred by the ~~((department))~~ commission in seizing,  
34 placing under seal, maintaining custody, and disposing of any  
35 controlled substance under this subsection may be recovered from the  
36 registrant, any proceeds obtained from the disposition of the  
37 controlled substance, or from both. Any balance remaining after the  
38 costs have been recovered from the proceeds of any disposition must  
39 be delivered to the registrant or the registrant's successor in  
40 interest.

1       ~~((e))~~ (f) The ~~((department))~~ commission shall promptly notify  
2 the drug enforcement administration of all orders restricting,  
3 suspending, or revoking registration and all forfeitures of  
4 controlled substances.

5       **Sec. 48.** RCW 69.50.310 and 2013 c 19 s 104 are each amended to  
6 read as follows:

7       On and after September 21, 1977, a humane society and animal  
8 control agency may apply to the ~~((department))~~ commission for  
9 registration pursuant to the applicable provisions of this chapter  
10 for the sole purpose of being authorized to purchase, possess, and  
11 administer sodium pentobarbital to euthanize injured, sick, homeless,  
12 or unwanted domestic pets and animals. Any agency so registered shall  
13 not permit a person to administer sodium pentobarbital unless such  
14 person has demonstrated adequate knowledge of the potential hazards  
15 and proper techniques to be used in administering this drug.

16       The ~~((department))~~ commission may issue a limited registration to  
17 carry out the provisions of this section. ~~((The commission shall  
18 promulgate such rules as it deems necessary to insure strict  
19 compliance with the provisions of this section. The commission may  
20 suspend or revoke registration upon determination that the person  
21 administering sodium pentobarbital has not demonstrated adequate  
22 knowledge as herein provided. This authority is granted in addition  
23 to any other power to suspend or revoke registration as provided by  
24 law.))~~ Chapter 18.64 RCW governs the denial of licenses and the  
25 discipline of registrations issued under this chapter. The uniform  
26 disciplinary act, chapter 18.130 RCW, governs unlicensed practice of  
27 persons required to obtain a registration under this chapter.

28       **Sec. 49.** RCW 69.50.320 and 2013 c 19 s 106 are each amended to  
29 read as follows:

30       The department of fish and wildlife may apply to the ~~((department  
31 of health))~~ commission for registration pursuant to the applicable  
32 provisions of this chapter to purchase, possess, and administer  
33 controlled substances for use in chemical capture programs. The  
34 department of fish and wildlife must not permit a person to  
35 administer controlled substances unless the person has demonstrated  
36 adequate knowledge of the potential hazards and proper techniques to  
37 be used in administering controlled substances.

1       The (~~department of health~~) commission may issue a limited  
2 registration to carry out the provisions of this section. The  
3 commission may adopt rules to ensure strict compliance with the  
4 provisions of this section. The commission, in consultation with the  
5 department of fish and wildlife, must by rule add or remove  
6 additional controlled substances for use in chemical capture  
7 programs. (~~The~~) Chapter 18.64 RCW governs the denial of licenses  
8 and the discipline of registrations issued under this chapter. The  
9 uniform disciplinary act, chapter 18.130 RCW, governs unlicensed  
10 practice of persons required to obtain a registration under this  
11 chapter. In addition to any other grounds, the commission (~~shall~~)  
12 may suspend or revoke a registration issued under this chapter upon  
13 determination that the person administering controlled substances has  
14 not demonstrated adequate knowledge as required by this section.  
15 (~~This authority is granted in addition to any other power to suspend~~  
16 ~~or revoke registration as provided by law.~~)

17       **Sec. 50.** RCW 69.41.080 and 2013 c 19 s 57 are each amended to  
18 read as follows:

19       Humane societies and animal control agencies registered with the  
20 (~~pharmacy quality assurance~~) commission under chapter 69.50 RCW and  
21 authorized to euthanize animals may purchase, possess, and administer  
22 approved legend drugs for the sole purpose of sedating animals prior  
23 to euthanasia, when necessary, and for use in chemical capture  
24 programs. For the purposes of this section, "approved legend drugs"  
25 means those legend drugs designated by the commission by rule as  
26 being approved for use by such societies and agencies for animal  
27 sedating or capture and does not include any substance regulated  
28 under chapter 69.50 RCW. Any society or agency so registered shall  
29 not permit persons to administer any legend drugs unless such person  
30 has demonstrated to the satisfaction of the commission adequate  
31 knowledge of the potential hazards involved in and the proper  
32 techniques to be used in administering the drugs.

33       The commission shall promulgate rules to regulate the purchase,  
34 possession, and administration of legend drugs by such societies and  
35 agencies and to insure strict compliance with the provisions of this  
36 section. Such rules shall require that the storage, inventory  
37 control, administration, and recordkeeping for approved legend drugs  
38 conform to the standards adopted by the commission under chapter  
39 69.50 RCW to regulate the use of controlled substances by such

1 societies and agencies. ((The)) Chapter 18.64 RCW governs the denial  
2 of licenses and the discipline of registrations issued under chapter  
3 69.50 RCW. The uniform disciplinary act, chapter 18.130 RCW, governs  
4 unlicensed practice of persons required to obtain a registration  
5 under this chapter. In addition to any other grounds, the commission  
6 may suspend or revoke a registration issued under chapter 69.50 RCW  
7 upon a determination by the commission that the person administering  
8 legend drugs has not demonstrated adequate knowledge as herein  
9 provided. ((This authority is granted in addition to any other power  
10 to suspend or revoke a registration as provided by law.))

11 NEW SECTION. **Sec. 51.** The following acts or parts of acts are  
12 each repealed:

13 (1) RCW 18.64.200 (Refusal, suspension, and revocation of other  
14 licenses—Appeal procedure) and 2013 c 19 s 15, 1963 c 38 s 11, & 1909  
15 c 213 s 11;

16 (2) RCW 18.64.390 (Nonresident pharmacies—Violations—Penalties)  
17 and 2013 c 19 s 23 & 1991 c 87 s 5; and

18 (3) RCW 69.50.305 (Procedure for denial, suspension, or  
19 revocation of registration) and 2013 c 19 s 101 & 1971 ex.s. c 308 s  
20 69.50.305.

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