
SUBSTITUTE HOUSE BILL 1850

State of Washington

55th Legislature

1997 Regular Session

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

Read first time 03/05/97.

1 AN ACT Relating to the long-term care reorganization and standards
2 of care reform act; amending RCW 70.129.030, 70.129.110, 70.129.150,
3 74.39A.030, 74.39A.040, 74.39A.050, 74.39A.060, 70.129.105, 74.42.030,
4 43.20B.080, 74.34.010, 74.39A.170, 18.20.040, and 70.128.175;
5 reenacting and amending RCW 18.130.040; adding a new section to chapter
6 43.20A RCW; adding a new section to chapter 18.20 RCW; adding a new
7 section to chapter 70.124 RCW; adding new sections to chapter 74.34
8 RCW; adding a new section to chapter 43.20B RCW; adding a new chapter
9 to Title 43 RCW; adding a new chapter to Title 18 RCW; creating new
10 sections; repealing RCW 74.39.001, 74.39.005, 74.39.030, 74.39.040,
11 74.39A.005, 74.39A.007, and 74.39A.008; prescribing penalties;
12 providing expiration dates; and declaring an emergency.

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

14 **PART I**
15 **CREATING THE DIVISION OF LONG-TERM CARE SERVICES**

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

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

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

21 The legislature further finds that the public demands that
22 long-term care services be safe, client and family-centered, and
23 designed to encourage individual dignity, autonomy, and development of
24 the fullest human potential at home or in other residential settings,
25 whenever practicable. To accomplish this, the legislature recognizes
26 the immediate need to administer long-term care services for persons
27 with functional disabilities through a separate, integrated, and
28 comprehensive long-term care division.

29 It is the intent of this chapter to establish a new division within
30 the department of social and health services, known as the division of
31 long-term care services, which is mandated to coordinate client-
32 centered, long-term care services in a way that increases safety,
33 accountability, and quality, minimizes administrative cost, eliminates
34 unnecessarily complex administrative barriers, minimizes program and
35 service duplication, and maximizes the use of financial resources in
36 directly meeting the needs of persons of all ages with chronic
37 functional limitations.

1 NEW SECTION. **Sec. 103.** DEFINITIONS. Unless the context clearly
2 requires otherwise, the definitions in this section apply throughout
3 this chapter.

4 (1) "Adult family home" means a home licensed under chapter 70.128
5 RCW.

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

9 (3) "Assisted living services" means services provided by a
10 boarding home that has a contract with the department under RCW
11 74.39A.010 and the resident is housed in a private apartment-like unit.

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

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

22 (6) "Department" means the department of social and health
23 services.

24 (7) "Division" means the division of long-term care services in the
25 department of social and health services.

26 (8) "Enhanced adult residential care" means services provided by a
27 boarding home that is licensed under chapter 18.20 RCW and that has a
28 contract with the department under RCW 74.39A.010.

29 (9) "Functionally disabled person" is synonymous with chronic
30 functionally disabled and means a person who because of a recognized
31 chronic physical or mental condition or disease is impaired to the
32 extent of being dependent upon others for direct care, support,
33 supervision, or monitoring to perform activities of daily living.
34 "Activities of daily living", in this context, means self-care
35 abilities related to personal care such as bathing, eating, using the
36 toilet, dressing, and transfer. Instrumental activities of daily
37 living may also be used to assess a person's functional abilities as
38 they are related to the mental capacity to perform activities in the

1 home and the community such as cooking, shopping, house cleaning, doing
2 laundry, working, and managing personal finances.

3 (10) "Home and community services" means adult family homes, group
4 homes, intensive tenant support, boarding homes, in-home services, and
5 other services administered by the department directly or through
6 contract with area agencies on aging or similar services provided by
7 facilities and agencies licensed by the department.

8 (11) "Long-term care" is synonymous with chronic care and means
9 care and supports delivered indefinitely, intermittently, or over a
10 sustained time to persons of any age disabled by chronic mental or
11 physical illness, disease, or a medical condition that is permanent,
12 not reversible or curable, or is long-lasting and severely limits their
13 mental or physical capacity for self-care. The use of this definition
14 is not intended to expand the scope of services, care, or assistance by
15 any individuals, groups, residential care settings, or professions
16 unless otherwise expressed by law.

17 (12) "Nursing home" means a facility licensed under chapter 18.51
18 RCW.

19 (13) "Secretary" means the secretary of social and health services.

20 (14) "Tribally licensed boarding home" means a boarding home
21 licensed by a federally recognized Indian tribe which home provides
22 services similar to boarding homes licensed under chapter 18.20 RCW.

23 NEW SECTION. **Sec. 104.** DUTIES AND RESPONSIBILITIES. The division
24 has, but is not limited to, the following duties and responsibilities:

25 (1) Provide long-term care services to functionally disabled
26 persons within available funding, in the most safe, cost-effective, and
27 appropriate residential environment consistent with the person's
28 measurable needs, exceptional or special care needs, and individual
29 preferences;

30 (2) Establish and implement a consistent definition of appropriate
31 and integrated roles and responsibilities for state and local
32 government, regional organizations, provider groups, families, and
33 private volunteers in the planning, administration, financing, and
34 delivery of long-term care services;

35 (3) Continually develop, implement, and monitor safety and quality
36 standards for all levels of care and assistance;

37 (4) Provide, to the extent funding is available, accessible and
38 affordable technical assistance that will enable persons who are

1 disabled, their families, and local communities to have greater
2 participation and control in the planning, administration, and
3 provision of long-term care services;

4 (5) Promote the active and meaningful involvement of families,
5 volunteers, and advocacy groups throughout all levels of care;

6 (6) Promote the development of a coordinated education and training
7 system for long-term care that is relevant to the needs of the client,
8 and includes special care needs resulting from Alzheimer and other
9 dementia disorders, Parkinson's, Huntington's, chemical addiction,
10 multiple sclerosis, developmental disabilities, spinal cord injuries,
11 traumatic head injury, and incontinence. It should be accessible and
12 affordable for all providers and designed to improve client safety and
13 the highest quality of services in accordance with the intent of this
14 chapter and recommendations provided by the stakeholder committee
15 established in section 107 of this act. In an effort to improve access
16 to training and education, especially for rural communities, and reduce
17 costs, the coordinated system of long-term care education should
18 include the use of distance learning using satellite technology
19 coordinated through community colleges or other entities, as defined by
20 the department, and the development and use of other innovative types
21 of learning strategies;

22 (7) Promote options for seeking and obtaining public and private
23 alternative funding for long-term care services, such as federal
24 waivers and demonstration projects that will allow for the most
25 effective use of federal medicaid and medicare funding, long-term care
26 insurance options as part of overall health care insurance benefits,
27 innovative social health maintenance organization models or other
28 managed care models that are designed to encourage economic
29 efficiencies and better coordinate care between acute and chronic long-
30 term care, and a uniform fee copayment scale collected by the
31 department for client participation in state-funded, long-term care
32 programs for the elderly, which does not include clients of the
33 subdivisions of developmental disabilities and mental health; and

34 (8) Consider other issues deemed appropriate by the governor,
35 legislature, secretary, or the committee established in section 107 of
36 this act that are consistent with the objectives set forth in this
37 chapter and allocated in the budget.

1 NEW SECTION. **Sec. 105.** (1) No additional state employees shall be
2 hired as a result of establishing the division, however the department
3 may hire or assign additional employees to monitor facilities licensed
4 under chapter 18.20 RCW and shall maintain sufficient employees to
5 adequately monitor all long-term care facilities if funds are
6 allocated.

7 (2) Any funds saved because of the elimination of management level
8 positions within the new division shall be redirected to direct long-
9 term care services and quality assurance and complaint investigations
10 provided by the department.

11 NEW SECTION. **Sec. 106.** GUIDING PRINCIPLES. The division shall
12 provide leadership and coordination in identifying and resolving
13 barriers to receiving safe, client and family-centered, long-term care
14 services in accordance with the following principles:

15 (1) Clear lines of balanced authority and coordination that avoid
16 duplications and fragmentation within and between subelements of the
17 department for service delivery, financing, and quality assurance;

18 (2) A simplified organizational design promoting accessibility,
19 responsiveness, and accountability to persons receiving services and
20 their families, the legislature, and the general public;

21 (3) A coordinated organizational structure for managing the
22 division's programs and activities that is client-centered and
23 encourages consistent joint working agreements with and between all
24 long-term care programs;

25 (4) Decentralized authority and responsibility, with clear
26 accountability;

27 (5) Effective strategies for implementing and enforcing long-term
28 care quality standards and educational and training standards;

29 (6) Expert advice and information on chronic long-term care issues
30 to families, providers, and the executive and legislative branches of
31 state government;

32 (7) Uniform, active, and fair enforcement of rules;

33 (8) Effective coordination, cooperation, and innovation by
34 facilitating the meaningful participation of persons with functional
35 disabilities and their families, employees, vendors, elements of the
36 civil society, community advocates, and other federal, state, and local
37 governmental agencies in the planning, development, and implementation
38 of programs and services consistent with the intent of this chapter;

1 (9) A fair and realistic system for measuring both short-range and
2 long-range progress; and

3 (10) Continually striving to simplify, reduce, or eliminate
4 unnecessary rules, procedures, and burdensome paperwork that prove to
5 be barriers to providing effective coordination or high quality direct
6 services.

7 NEW SECTION. **Sec. 107.** DEPARTMENTAL COMMITTEE ON LONG-TERM CARE
8 REORGANIZATION. A departmental committee on long-term care
9 reorganization, hereafter referred to in this section as the committee,
10 shall be appointed by the secretary as soon as practical, but not later
11 than July 1, 1997.

12 The committee shall be composed of high-ranking administrators of
13 departmental programs that are being transferred to the division to be
14 selected by the secretary and a related direct service employee, who
15 shall be nominated to the secretary by the appropriate employee
16 organizations. The assistant secretary of the division shall be the
17 chair of the committee.

18 The committee shall establish technical advisory panels composed of
19 balanced representation of all types of persons served by the division
20 to provide expert technical assistance on matters necessary to
21 implement this act.

22 The committee has the following duties:

23 (1) Ensure that all appropriate interests participate in the
24 departmental reorganization activities;

25 (2) Oversee the development, revision, implementation, and
26 enforcement of all quality assurance measures;

27 (3) Report the following to the appropriate committees of the
28 legislature, no later than December 1, 1997:

29 (a) Methods of cost-efficiencies that can be used to reallocate
30 funds to unmet needs in direct services;

31 (b) List all nonmeans tested programs and activities funded by the
32 federal older Americans act and state funded senior citizens act or
33 other such state funded programs and recommend how to integrate such
34 services into the new division to conform with the intent of chapter
35 . . . , Laws of 1997 (this act);

36 (c) Methods to establish a single point of entry for service
37 eligibility and delivery for functionally disabled persons;

1 (d) An analysis of the desirability and feasibility of establishing
2 a voucher-type, pilot project;

3 (e) Present recommendations provided by the department of
4 community, trade, and economic development to establish a long-term
5 care ombudsman program that will cover all persons who are functionally
6 disabled;

7 (f) Necessary modifications of the case management system and
8 management information systems to fully implement chapter . . . , Laws
9 of 1997 (this act);

10 (g) Federal waivers necessary to implement chapter . . . , Laws of
11 1997 (this act); and

12 (h) Recommend legislation necessary to implement changes proposed
13 by the committee to the joint legislative committee on long-term care
14 oversight;

15 (4) The department shall make the committee recommendations
16 available to the public in a timely manner and report quarterly to the
17 joint legislative committee on long-term care oversight established in
18 section 108 of this act.

19 This section expires March 1, 2001.

20 NEW SECTION. **Sec. 108.** JOINT LEGISLATIVE COMMITTEE ON LONG-TERM
21 CARE OVERSIGHT. (1) There is created a joint legislative committee on
22 long-term care oversight. The committee shall consist of: (a) Three
23 members of the senate appointed by the president of the senate, two of
24 whom shall be members of the majority party and one of whom shall be a
25 member of the minority party; and (b) three members of the house of
26 representatives, two of whom shall be members of the majority party and
27 one of whom shall be a member of the minority party.

28 (2) The committee shall elect a chair and vice-chair. The chair
29 shall be a member of the senate in even-numbered years and a member of
30 the house of representatives in odd-numbered years. The vice-chair
31 shall be a member of the senate in odd-numbered years and a member of
32 the house of representatives in even-numbered years.

33 (3) The committee shall:

34 (a) Review all reorganization and reform activities necessary to
35 implement chapter . . . , Laws of 1997 (this act);

36 (b) Review all quality standards developed, revised, and enforced
37 by the department;

- 1 (c) Initiate or review studies relevant to the issues of
2 administration, delivery, and quality of long-term care services;
3 (d) Review all rules proposed by the department to ensure
4 consistency with the intent, guiding principles, and duties and
5 responsibilities of the division;
6 (e) Report to the legislature the progress on reorganization and
7 reform consistent with chapter . . . , Laws of 1997 (this act);
8 (f) Act upon the recommendations of the reorganization and
9 oversight stakeholders committee; and
10 (g) Prepare legislation necessary to implement the intent of
11 chapter . . . , Laws of 1997 (this act).
12 (4) This section expires March 1, 2001.

13 **PART II**

14 **FUNCTIONS TRANSFERRED TO THE DIVISION OF LONG-TERM CARE SERVICES**

15 NEW SECTION. **Sec. 201.** A new section is added to chapter 43.20A
16 RCW to read as follows:

17 The department shall establish a division of long-term care
18 services. The department shall transfer the following programs and
19 services, and the programs and services related to boarding homes under
20 chapter 18.20 RCW that were transferred to the department under section
21 202 of this act, and related management and support services to the
22 division of long-term care services:

- 23 Title 71 RCW - Mental illness programs;
24 Title 71A RCW - Developmental disabilities;
25 Chapter 72.06 RCW - Mental health;
26 Chapter 72.23 RCW - Public and private facilities for mentally ill;
27 Chapter 72.25 RCW - Nonresident mentally ill, sexual psychopaths,
28 and psychopathic delinquents--Deportation transportation;
29 Chapter 72.27 RCW - Interstate compact on mental health;
30 Chapter 72.29 RCW - Multi-use facilities for the mentally or
31 physically handicapped or the mentally ill;
32 Chapter 70.10 RCW - Comprehensive community health centers;
33 Chapter 70.82 RCW - Cerebral palsy program;
34 Chapter 70.124 RCW - Abuse of patients--Nursing homes, state
35 hospitals;
36 Chapter 70.128 RCW - Adult family homes;
37 Chapter 70.129 RCW - Long-term care resident rights;

1 Chapter 74.26 RCW - Services for children with multiple handicaps;
2 Chapter 74.34 RCW - Abuse of vulnerable adults;
3 Chapter 74.36 RCW - Funding for community programs for the aging;
4 Chapter 74.39 RCW - Long-term care service options;
5 Chapter 74.41 RCW - Respite care services;
6 Chapter 74.42 RCW - Nursing homes--Resident care, operating
7 standards;
8 Chapter 74.46 RCW - Nursing home auditing and cost reimbursement
9 act of 1980;
10 Chapter 74.39A RCW - Long-term care services options--Expansion;
11 Chapter 18.48 RCW - Adult family homes;
12 Chapter 18.51 RCW - Nursing homes; and
13 Chapter 10.77 RCW - Criminally insane.

14 NEW SECTION. **Sec. 202.** A new section is added to chapter 18.20
15 RCW to read as follows:

16 (1) All powers, duties, and functions of the department of health
17 pertaining to boarding homes are transferred to the department of
18 social and health services. All references to the secretary or the
19 department of health in the Revised Code of Washington shall be
20 construed to mean the secretary or the department of social and health
21 services when referring to the functions transferred in this section.

22 (2)(a) All reports, documents, surveys, books, records, files,
23 papers, or written material in the possession of the department of
24 health pertaining to the powers, functions, and duties transferred
25 shall be delivered to the custody of the department of social and
26 health services. All cabinets, furniture, office equipment, motor
27 vehicles, and other tangible property employed by the department of
28 health in carrying out the powers, functions, and duties transferred
29 shall be made available to the department of social and health
30 services. All funds, credits, or other assets held in connection with
31 the powers, functions, and duties transferred shall be assigned to the
32 department of social and health services.

33 (b) Any appropriations made to the department of health for
34 carrying out the powers, functions, and duties transferred shall, on
35 the effective date of this section, be transferred and credited to the
36 department of social and health services.

37 (c) Whenever any question arises as to the transfer of any
38 personnel, funds, books, documents, records, papers, files, equipment,

1 or other tangible property used or held in the exercise of the powers
2 and the performance of the duties and functions transferred, the
3 director of financial management shall make a determination as to the
4 proper allocation and certify the same to the state agencies concerned.

5 (3) All employees of the department of health engaged in performing
6 the powers, functions, and duties transferred are transferred to the
7 jurisdiction of the department of social and health services. All
8 employees classified under chapter 41.06 RCW, the state civil service
9 law, are assigned to the department of social and health services to
10 perform their usual duties upon the same terms as formerly, without any
11 loss of rights, subject to any action that may be appropriate
12 thereafter in accordance with the laws and rules governing state civil
13 service.

14 (4) All rules and all pending business before the department of
15 health pertaining to the powers, functions, and duties transferred
16 shall be continued and acted upon by the department of social and
17 health services. All existing contracts and obligations shall remain
18 in full force and shall be performed by the department of social and
19 health services.

20 (5) The transfer of the powers, duties, functions, and personnel of
21 the department of health shall not affect the validity of any act
22 performed before the effective date of this section.

23 (6) If apportionments of budgeted funds are required because of the
24 transfers directed by this section, the director of financial
25 management shall certify the apportionments to the agencies affected,
26 the state auditor, and the state treasurer. Each of these shall make
27 the appropriate transfer and adjustments in funds and appropriation
28 accounts and equipment records in accordance with the certification.

29 (7) Nothing contained in this section may be construed to alter any
30 existing collective bargaining unit or the provisions of any existing
31 collective bargaining agreement until the agreement has expired or
32 until the bargaining unit has been modified by action of the personnel
33 board as provided by law.

34 **PART III**

35 **QUALITY STANDARDS AND COMPLAINT ENFORCEMENT**

36 NEW SECTION. **Sec. 301.** A new section is added to chapter 70.124
37 RCW to read as follows:

1 (1) An employee who is a whistleblower and who as a result of being
2 a whistleblower has been subjected to workplace reprisal or retaliatory
3 action, has the remedies provided under chapter 49.60 RCW. RCW
4 4.24.500 through 4.24.520, providing certain protection to persons who
5 communicate to government agencies, apply to complaints made under this
6 section. The identity of a whistleblower who complains, in good faith,
7 to the department about suspected abuse, neglect, financial
8 exploitation, or abandonment by any person in a nursing home, state
9 hospital, boarding home, or adult family home may remain confidential
10 if requested. The identity of the whistleblower shall subsequently
11 remain confidential unless the department determines that the complaint
12 was not made in good faith.

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

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

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

27 (3) For the purposes of this section:

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

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

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

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

18 (6) The department shall develop remedies that discourage
19 whistleblowers who report complaints that are made in bad faith or for
20 retaliatory purposes.

21 NEW SECTION. **Sec. 302.** A new section is added to chapter 74.34
22 RCW to read as follows:

23 (1) An employee who is a whistleblower and who as a result of being
24 a whistleblower has been subjected to workplace reprisal or retaliatory
25 action, has the remedies provided under chapter 49.60 RCW. RCW
26 4.24.500 through 4.24.520, providing certain protection to persons who
27 communicate to government agencies, apply to complaints made under this
28 section. The identity of a whistleblower who complains, in good faith,
29 to the department about suspected abuse, neglect, exploitation, or
30 abandonment by any person in a boarding home licensed or required to be
31 licensed pursuant to chapter 18.20 RCW may remain confidential if
32 requested. The identity of the whistleblower shall subsequently remain
33 confidential unless the department determines that the complaint was
34 not made in good faith.

35 (2)(a) An attempt to expel a resident from a boarding home, or any
36 type of discriminatory treatment of a resident by whom, or upon whose
37 behalf, a complaint substantiated by the department has been submitted
38 to the department or any proceeding instituted under or related to this

1 chapter within one year of the filing of the complaint or the
2 institution of the action, raises a rebuttable presumption that the
3 action was in retaliation for the filing of the complaint.

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

6 (c) The presumption is rebutted by a functional assessment
7 conducted by the department that shows that the resident's needs cannot
8 be met by the reasonable accommodations of the facility due to the
9 increased needs of the resident.

10 (3) For the purposes of this section:

11 (a) "Whistleblower" means a resident or employee of a boarding
12 home, or any person licensed under Title 18 RCW, who in good faith
13 reports alleged abuse or neglect to the department or to a law
14 enforcement agency; and

15 (b) "Workplace reprisal or retaliatory action" means, but is not
16 limited to: Denial of adequate staff to perform duties; frequent staff
17 changes; frequent and undesirable office changes; refusal to assign
18 meaningful work; unwarranted and unsubstantiated report of misconduct
19 under Title 18 RCW; letters of reprimand or unsatisfactory performance
20 evaluations; demotion; denial of employment; or a supervisor or
21 superior encouraging coworkers to behave in a hostile manner toward the
22 whistleblower. The protections provided to whistleblowers under this
23 chapter shall not prevent a nursing home, state hospital, boarding
24 home, or adult family home from: (i) Terminating, suspending, or
25 disciplining a whistleblower for other lawful purposes; or (ii) for
26 facilities with fewer than six residents, reducing the hours of
27 employment or terminating employment as a result of the demonstrated
28 inability to meet payroll requirements. The department shall determine
29 if the facility cannot meet payroll in cases in which a whistleblower
30 has been terminated or had hours of employment reduced because of the
31 inability of a facility to meet payroll.

32 (4) This section does not prohibit a boarding home from exercising
33 its authority to terminate, suspend, or discipline any employee who
34 engages in workplace reprisal or retaliatory action against a
35 whistleblower. The protections provided to whistleblowers under this
36 chapter shall not prevent a whistleblower from being terminated,
37 suspended, or disciplined for other lawful purposes.

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

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

11 **Sec. 303.** RCW 70.129.030 and 1994 c 214 s 4 are each amended to
12 read as follows:

13 (1) The facility must inform the resident both orally and in
14 writing in a language that the resident understands of his or her
15 rights and all rules and regulations governing resident conduct and
16 responsibilities during the stay in the facility. The notification
17 must be made prior to or upon admission. Receipt of the information
18 must be acknowledged in writing.

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

20 (a) Upon an oral or written request, to access all records
21 pertaining to himself or herself including clinical records within
22 twenty-four hours; and

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

27 (3) The facility shall only admit or maintain individuals whose
28 needs it can safely and appropriately serve in the facility with
29 current staff or through the provision of reasonable accommodations
30 within the scope of its license or contract and required by state or
31 federal law. Except in cases of emergency, facilities shall not admit
32 a medicaid eligible individual before obtaining a comprehensive
33 assessment of the resident's needs and preferences. The assessment
34 shall contain, unless unavailable despite the best efforts of the
35 facility and other interested parties and with existing funds, the
36 following information: Recent medical history; necessary and
37 prohibited medications; a medical professional's diagnosis; significant
38 known behaviors or symptoms that may cause concern or require special

1 care; mental illness except where protected by confidentiality laws;
2 level of personal care needs; activities and service preferences; and
3 preferences regarding issues important to the potential resident, such
4 as food and daily routine. The facility must inform each resident in
5 writing in a language the resident or his or her representative
6 understands before (~~, or at the time of~~) admission, and at least once
7 every twenty-four months thereafter, of: (a) Services, items, and
8 activities customarily available in the facility or arranged for by the
9 facility; (b) charges for those services, items, and activities
10 including charges for services, items, and activities not covered by
11 the facility's per diem rate or applicable public benefit programs; and
12 (c) the rules of facility operations required under RCW 70.129.140(2).
13 Each resident and his or her representative must be informed in writing
14 in advance of changes in the availability or the charges for services,
15 items, or activities, or of changes in the facility's rules. Except in
16 unusual circumstances, thirty days' advance notice must be given prior
17 to the change. However, for facilities licensed for six or fewer
18 residents, if there has been a substantial and continuing change in the
19 resident's condition necessitating substantially greater or lesser
20 services, items, or activities, then the charges for those services,
21 items, or activities may be changed upon fourteen days advance written
22 notice.

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

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

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

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

33 (5) Notification of changes.

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

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

1 (ii) A significant change in the resident's physical, mental, or
2 psychosocial status (i.e., a deterioration in health, mental, or
3 psychosocial status in either life-threatening conditions or clinical
4 complications).

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

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

9 (ii) A decision to transfer or discharge the resident from the
10 facility.

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

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

16 **Sec. 304.** RCW 70.129.110 and 1994 c 214 s 12 are each amended to
17 read as follows:

18 (1) The facility must permit each resident to remain in the
19 facility, and not transfer or discharge the resident from the facility
20 unless:

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

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

24 (c) The health of individuals in the facility would otherwise be
25 endangered;

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

28 (e) The facility ceases to operate.

29 (2) All long-term care facilities shall fully disclose to potential
30 residents who are medicaid eligible or their legal representative the
31 service capabilities of the facility prior to admission to the
32 facility. If the care needs of the potential resident are in excess of
33 the facility's service capabilities, the department shall identify
34 other care settings or residential care options consistent with federal
35 law.

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

1 (a) First attempt through reasonable accommodations, within the
2 scope of its license or contract, to avoid the transfer or discharge,
3 unless agreed to by the resident;

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

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

9 ~~((e))~~ (d) Include in the notice the items described in subsection
10 ~~((4))~~ (5) of this section.

11 ~~((3))~~ (4)(a) Except when specified in this subsection, the notice
12 of transfer ~~((of {or}))~~ or discharge required under subsection ~~((2))~~
13 (3) of this section must be made by the facility at least thirty days
14 before the resident is transferred or discharged.

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

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

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

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

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

22 ~~((4))~~ (5) The written notice specified in subsection ~~((2))~~ (3)
23 of this section must include the following:

24 (a) The reason for transfer or discharge;

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

26 (c) The location to which the resident is transferred or
27 discharged;

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

30 (e) For residents with developmental disabilities, the mailing
31 address and telephone number of the agency responsible for the
32 protection and advocacy of developmentally disabled individuals
33 established under part C of the developmental disabilities assistance
34 and bill of rights act; and

35 (f) For residents who are mentally ill, the mailing address and
36 telephone number of the agency responsible for the protection and
37 advocacy of mentally ill individuals established under the protection
38 and advocacy for mentally ill individuals act.

1 (~~(5)~~) (6) A facility must provide sufficient preparation and
2 orientation to residents to ensure safe and orderly transfer or
3 discharge from the facility.

4 (~~(6)~~) (7) A resident discharged in violation of this section has
5 the right to be readmitted immediately upon the first availability of
6 a gender-appropriate bed in the facility.

7 **Sec. 305.** RCW 70.129.150 and 1994 c 214 s 16 are each amended to
8 read as follows:

9 (1) Prior to admission, all long-term care facilities or nursing
10 facilities licensed under chapter 18.51 RCW that require payment of an
11 admissions fee, deposit, advance notice before transferring from the
12 facility, or a minimum stay fee, by or on behalf of a person seeking
13 (~~(admissions [admission])~~) admission to the long-term care facility or
14 nursing facility, shall provide the resident, or his or her
15 representative, full disclosure in writing (~~(of the long-term care~~
16 ~~facility or nursing facility's schedule of charges for items and~~
17 ~~services provided by the facility and)~~) in a language the resident or
18 his or her representative understands, a statement of the amount of any
19 admissions fees, deposits, prepaid charges, or minimum stay fees. In
20 addition, the long-term care facility or nursing facility shall also
21 fully disclose in writing prior to admission what portion of the
22 deposits, admissions fees, prepaid charges, or minimum stay fees will
23 be refunded to the resident or his or her representative if the
24 resident leaves the long-term care facility or nursing facility.
25 Receipt of the disclosures required under this subsection must be
26 acknowledged in writing. If the facility does not provide these
27 disclosures, the deposits, admissions fees, prepaid charges, or minimum
28 stay fees may not be kept by the facility. If a resident(~~(, during the~~
29 ~~first thirty days of residence,)~~) dies or is hospitalized or is
30 transferred to another facility for more appropriate care and does not
31 return to the original facility, the facility shall refund any deposit
32 or charges already paid less the facility's per diem rate for the days
33 the resident actually resided or reserved or retained a bed in the
34 facility notwithstanding any minimum stay policy or discharge notice
35 requirements, except that the facility may retain an additional amount
36 to cover its reasonable, actual expenses incurred as a result of a
37 resident's move, not to exceed five days' per diem charges. All long-
38 term care facilities or nursing facilities covered under this section

1 are required to refund any and all refunds due the resident or
2 (~~their~~) his or her representative within thirty days from the
3 resident's date of discharge from the facility. Nothing in this
4 section applies to provisions in contracts negotiated between a nursing
5 facility or long-term care facility and a certified health plan, health
6 or disability insurer, health maintenance organization, managed care
7 organization, or similar entities.

8 (2) Where a long-term care facility or nursing facility requires
9 the execution of an admission contract by or on behalf of an individual
10 seeking admission to the facility, the terms of the contract shall be
11 consistent with the requirements of this section, and the terms of an
12 admission contract by a long-term care facility shall be consistent
13 with the requirements of this chapter.

14 **Sec. 306.** RCW 74.39A.030 and 1995 1st sp.s. c 18 s 2 are each
15 amended to read as follows:

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

19 (2) In expanding home and community services, the department shall:
20 (a) Take full advantage of federal funding available under Title XVIII
21 and Title XIX of the federal social security act, including home
22 health, adult day care, waiver options, and state plan services; and
23 (b) be authorized to use funds available under its community options
24 program entry system waiver granted under section 1915(c) of the
25 federal social security act to expand the availability of in-home,
26 adult residential care, adult family homes, enhanced adult residential
27 care, and assisted living services. By June 30, 1997, the department
28 shall undertake to reduce the nursing home medicaid census by at least
29 one thousand six hundred by assisting individuals who would otherwise
30 require nursing facility services to obtain services of their choice,
31 including assisted living services, enhanced adult residential care,
32 and other home and community services. If a resident, or his or her
33 legal representative, objects to a discharge decision initiated by the
34 department, the resident shall not be discharged if the resident has
35 been assessed and determined to require nursing facility services. In
36 contracting with nursing homes and boarding homes for enhanced adult
37 residential care placements, neither the department nor the department

1 of health shall (~~not~~) require, by contract or through other means,
2 structural modifications to existing building construction.

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

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

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

23 **Sec. 307.** RCW 74.39A.040 and 1995 1st sp.s. c 18 s 6 are each
24 amended to read as follows:

25 The department shall work in partnership with hospitals, who choose
26 to participate, in assisting patients and their families to find long-
27 term care services of their choice according to subsections (1) through
28 (4) of this section. The department shall not delay hospital
29 discharges but shall assist and support the activities of hospital
30 discharge planners. The department also shall coordinate with home
31 health and hospice agencies whenever appropriate. The role of the
32 department is to assist the hospital and to assist patients and their
33 families in making informed choices by providing information regarding
34 home and community options to individuals who are hospitalized and
35 likely to need long-term care.

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

1 (a) Are medicaid clients, medicaid applicants, or eligible for both
2 medicare and medicaid; and

3 (b) Apply or are likely to apply for admission to a nursing
4 facility.

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

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

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

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

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

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

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

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

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

30 (c) Describe the role of the department in providing nursing
31 facility case management.

32 **Sec. 308.** RCW 74.39A.050 and 1995 1st sp.s. c 18 s 12 are each
33 amended to read as follows:

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

37 (1) The system shall be (~~consumer~~) client-centered and promote
38 privacy, independence, dignity, choice, and a home or home-like

1 environment for consumers consistent with chapter . . . , Laws of 1997
2 (this act).

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

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

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

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

17 (6) Providers ~~((generally))~~ at all levels of care should be
18 assisted in addressing identified problems initially through
19 consultation and technical assistance, unless the safety, health, or
20 well-being of a resident is seriously and immediately endangered.
21 Prompt and specific enforcement remedies shall also be ((available))
22 implemented for providers found to have delivered care or failed to
23 deliver care resulting in problems that are serious, recurring, or that
24 have been uncorrected. These enforcement remedies must include, when
25 appropriate, reasonable conditions on a contract or license.

26 (7) To the extent funding is available, providers at all levels and
27 their staff should be screened through background checks in a uniform
28 and timely manner to ensure that they do not have a criminal history
29 that would disqualify them from working with vulnerable adults.
30 Employees may be provisionally hired pending the results of the
31 background check if they have been given three positive references.

32 (8) The department shall promote the development of a training
33 system that is practical and relevant to the needs of residents,
34 providers, and staff. To improve access to training, especially for
35 rural communities, the training system may include, but is not limited
36 to, the use of satellite technology distance learning that is
37 coordinated through community colleges.

38 (9) No provider or staff, or prospective provider or staff, with a
39 stipulated finding of fact, conclusion of law, and agreed order, or

1 finding of fact, conclusion of law, or final order issued by a
2 disciplining authority, a court of law, or entered into the state
3 registry finding him or her guilty of abuse, neglect, exploitation, or
4 abandonment of a minor or a vulnerable adult as defined in chapter
5 74.34 RCW shall be employed in the care of and have unsupervised access
6 to vulnerable adults.

7 (10) Under existing funds the department shall establish a quality
8 improvement standards committee to review and implement the principles
9 set forth in chapter . . . , Laws of 1997 (this act).

10 **Sec. 309.** RCW 74.39A.060 and 1995 1st sp.s. c 18 s 13 are each
11 amended to read as follows:

12 (1) The (~~aging and adult services administration~~) long-term care
13 division of the department shall establish and maintain a toll-free
14 telephone number for receiving complaints regarding a facility that the
15 (~~administration~~) department licenses or with which it contracts for
16 long-term care services.

17 (2) All facilities that are licensed by, or that contract with the
18 (~~aging and adult services administration~~) long-term care division to
19 provide chronic long-term care services shall post in a place and
20 manner clearly visible to residents and visitors the department's toll-
21 free complaint telephone number and the toll-free number and program
22 description of the long-term care ombudsman as provided by RCW
23 43.190.050.

24 (3) The (~~aging and adult services administration~~) long-term care
25 division shall investigate complaints if the subject of the complaint
26 is within its authority unless the department determines that: (a) The
27 complaint is intended to willfully harass a licensee or employee of the
28 licensee; or (b) there is no reasonable basis for investigation; or (c)
29 corrective action has been taken as determined by the ombudsman or the
30 department.

31 (4) The (~~aging and adult services administration~~) long-term care
32 division shall refer complaints to appropriate state agencies, law
33 enforcement agencies, the attorney general, the long-term care
34 ombudsman, or other entities if the department lacks authority to
35 investigate or if its investigation reveals that a follow-up referral
36 to one or more of these entities is appropriate.

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

1 (a) Upon receipt of a complaint, the department shall make a
2 preliminary review of the complaint, assess the severity of the
3 complaint, and assign an appropriate response time. Complaints
4 involving imminent danger to the health, safety, or well-being of a
5 resident must be responded to within two days. When appropriate, the
6 department shall make an on-site investigation within a reasonable time
7 after receipt of the complaint or otherwise ensure that complaints are
8 responded to.

9 (b) The complainant must be: Promptly contacted by the department
10 and informed of the right to meet the inspector at the site of the
11 alleged violations, unless the inspector determines that the privacy of
12 residents would be violated or compromised thereby or the investigator
13 determines that imminent danger to the resident necessitates an initial
14 response before the complainant is available; informed of the
15 department's proposed course of action; and informed of the right to
16 receive a written copy of the investigation report.

17 (c) In conducting the investigation, the department shall interview
18 the complainant, unless anonymous, and shall use its best efforts to
19 interview the resident or residents allegedly harmed by the violations,
20 and, in addition to facility staff, any available independent sources
21 of relevant information, including if appropriate the family members of
22 the resident.

23 (d) Substantiated complaints involving harm to residents may be
24 sanctioned according to RCW 74.39A.080 or 18.20.190 or chapter 18.51
25 RCW. Whenever appropriate, the department shall also give consultation
26 and technical assistance to the provider.

27 (e) In the best practices of total quality management and
28 continuous quality improvement, after a department finding of a
29 violation that is serious, recurring, or uncorrected following a
30 previous citation, the department shall make an on-site revisit of the
31 facility to ensure correction of the violation.

32 (f) Substantiated complaints of neglect, abuse, exploitation, or
33 abandonment of residents, or suspected criminal violations, shall also
34 be referred by the department to the appropriate law enforcement
35 agencies, the attorney general, and appropriate professional
36 disciplinary boards.

37 (6) The department may ((not)) provide the substance of the
38 complaint to the licensee or contractor before the completion of the
39 investigation by the department unless such disclosure would reveal the

1 identity of a complainant, witness, or resident who chooses to remain
2 anonymous. Neither the substance of the complaint provided to the
3 licensee or contractor nor any copy of the complaint or related report
4 published, released, or made otherwise available shall disclose, or
5 reasonably lead to the disclosure of, the name, title, or identity of
6 any complainant, or other person mentioned in the complaint, except
7 that the name of the provider and the name or names of any officer,
8 employee, or agent of the department conducting the investigation shall
9 be disclosed after the investigation has been closed and the complaint
10 has been substantiated. The department may disclose the identity of
11 the complainant if such disclosure is requested in writing by the
12 complainant. Nothing in this subsection shall be construed to
13 interfere with the obligation of the long-term care ombudsman program
14 to monitor the department's licensing, contract, and complaint
15 investigation files for long-term care facilities.

16 ((+6)) (7) The resident has the right to be free of interference,
17 coercion, discrimination, and reprisal from a facility in exercising
18 his or her rights, including the right to voice grievances about
19 treatment furnished or not furnished. A facility that provides long-
20 term care services shall not discriminate or retaliate in any manner
21 against a resident, employee, or any other person on the basis or for
22 the reason that such resident or any other person made a complaint to
23 the department, the attorney general, law enforcement agencies, or the
24 long-term care ombudsman, provided information, or otherwise cooperated
25 with the investigation of such a complaint. Any attempt to discharge
26 a resident against the resident's wishes, or any type of retaliatory
27 treatment of a resident by whom or upon whose behalf a complaint
28 substantiated by the department has been made to the department, the
29 attorney general, law enforcement agencies, or the long-term care
30 ombudsman, within six months of the filing of the complaint, raises a
31 rebuttable presumption that such action was in retaliation for the
32 filing of the complaint. "Retaliatory treatment" means, but is not
33 limited to, monitoring a resident's phone, mail, or visits; involuntary
34 seclusion or isolation; transferring a resident to a different room
35 unless requested or based upon legitimate management reasons;
36 withholding or threatening to withhold food or treatment; or
37 persistently delaying responses to a resident's request for service or
38 assistance. A facility that provides long-term care services shall not
39 willfully interfere with the performance of official duties by a long-

1 term care ombudsman. The department shall sanction and may impose a
2 civil penalty of not more than three thousand dollars for a violation
3 of this subsection (~~((and require the facility to mitigate any damages~~
4 ~~incurred by the resident))~~).

5 **Sec. 310.** RCW 70.129.105 and 1994 c 214 s 17 are each amended to
6 read as follows:

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

12 **Sec. 311.** RCW 74.42.030 and 1979 ex.s. c 211 s 3 are each amended
13 to read as follows:

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

- 17 (1) The resident's rights and responsibilities in the facility;
18 (2) Rules governing resident conduct;
19 (3) Services, items, and activities available in the facility; and
20 (4) Charges for services, items, and activities, including those
21 not included in the facility's basic daily rate or not paid by
22 medicaid.

23 The facility shall provide this information before (~~(or at the time~~
24 ~~of))~~ admission and as changes occur during the resident's stay. The
25 resident and his or her representative must be informed in writing in
26 advance of changes in the availability or charges for services, items,
27 or activities, or of changes in the facility's rules. Except in
28 unusual circumstances, thirty days' advance notice must be given prior
29 to the change. The resident or legal guardian shall acknowledge in
30 writing receipt of this information (~~((and any changes in the~~
31 ~~information))~~).

32 The written information provided by the facility pursuant to this
33 section, and the terms of any admission contract executed between the
34 facility and an individual seeking admission to the facility, must be
35 consistent with the requirements of this chapter and chapter 18.51 RCW
36 and, for facilities certified under medicaid or medicare, with the
37 applicable federal requirements.

1 PART IV

2 ESTATE RECOVERY CONSUMER DISCLOSURE

3 NEW SECTION. **Sec. 401.** A new section is added to chapter 43.20B
4 RCW to read as follows:

5 (1) It is the intent of the legislature to ensure that needy
6 individuals have access to basic long-term care without requiring them
7 to sell their homes. In the face of rising medical costs and limited
8 funding for social welfare programs, however, the state's medicaid and
9 state-funded long-term care programs have placed an increasing
10 financial burden on the state. By balancing the interests of
11 individuals with immediate and future unmet medical care needs,
12 surviving spouses and dependent children, adult nondependent children,
13 more distant heirs, and the state, the estate recovery provisions of
14 RCW 43.20B.080 and 74.39A.170 provide an equitable and reasonable
15 method of easing the state's financial burden while ensuring the
16 continued viability of the medicaid and state-funded long-term care
17 programs.

18 (2) It is further the intent of the legislature to confirm that
19 chapter 21, Laws of 1994, effective July 1, 1994, repealed and
20 substantially reenacted the state's medicaid estate recovery laws and
21 did not eliminate the department's authority to recover the cost of
22 medical assistance paid prior to October 1, 1993, from the estates of
23 deceased recipients regardless of whether they died before, on, or
24 after July 1, 1994.

25 **Sec. 402.** RCW 43.20B.080 and 1995 1st sp.s. c 18 s 67 are each
26 amended to read as follows:

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

31 (2) Liens may be adjusted by foreclosure in accordance with chapter
32 61.12 RCW.

33 (3) In the case of an individual who was fifty-five years of age or
34 older when the individual received medical assistance, the department
35 shall seek adjustment or recovery from the individual's estate, and
36 from nonprobate assets of the individual as defined by RCW 11.02.005
37 (~~((except property passing through a community property agreement))~~), but

1 only for medical assistance consisting of nursing facility services,
2 home and community-based services, other services that the department
3 determines to be appropriate, and related hospital and prescription
4 drug services. Recovery from the individual's estate, including
5 foreclosure of liens imposed under this section, shall be undertaken as
6 soon as practicable, consistent with (~~the requirements of~~) 42 U.S.C.
7 Sec. 1396p.

8 (4) The provision that relates to the elimination of the community
9 property agreement exemption to recovery made by chapter . . . , Laws of
10 1997 (this act) applies as follows:

11 (a) If a recipient received assistance subject to estate recovery
12 on or after the effective date of this section, the department may
13 recover from the estate or nonprobate assets of a deceased recipient
14 the cost of all the assistance received, whenever received, in
15 accordance with the law in effect at the time the benefit was received;
16 and

17 (b) If a recipient does not receive assistance subject to estate
18 recovery on or after the effective date of this section, but did
19 receive the assistance before the effective date of this section, the
20 department may recover from the estate or nonprobate assets of a
21 deceased recipient the cost of all the assistance received, whenever
22 received, in accordance with the law in effect at the time of the last
23 assistance payment made by the department on the recipient's behalf.

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

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

32 (~~(5)~~) (6) A lien authorized under subsections (1) through (5) of
33 this section relates back to attach to any real property that the
34 decedent had an ownership interest in immediately before death and is
35 effective as of that date.

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

1 **Sec. 403.** RCW 74.34.010 and 1995 1st sp.s. c 18 s 82 are each
2 amended to read as follows:

3 The legislature finds that frail elders and vulnerable adults may
4 be subjected to abuse, neglect, exploitation, or abandonment. The
5 legislature finds that there are a number of adults sixty years of age
6 or older who lack the ability to perform or obtain those services
7 necessary to maintain or establish their well-being. The legislature
8 finds that many frail elders and vulnerable adults have health problems
9 that place them in a dependent position. The legislature further finds
10 that a significant number of frail elders and vulnerable adults have
11 mental and verbal limitations that leave them vulnerable and incapable
12 of asking for help and protection.

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

17 It is the intent of the legislature to assist frail elders and
18 vulnerable adults by providing these persons with the protection of the
19 courts and with the least-restrictive services, such as home care, and
20 by preventing or reducing inappropriate institutional care. The
21 legislature finds that it is in the interests of the public health,
22 safety, and welfare of the people of the state to provide a procedure
23 for identifying these vulnerable persons and providing the services and
24 remedies necessary for their well-being.

25 It is further the intent of the legislature that the cost of
26 protective services rendered to a frail elder or vulnerable adult under
27 this chapter that are paid with state funds only not be subject to
28 recovery from the recipient or the recipient's estate, whether by lien,
29 adjustment, or any other means of recovery, regardless of the income or
30 assets of the recipient of the services. In making this exemption the
31 legislature recognizes that receipt of such services is voluntary and
32 incentives to decline services or delay permission must be kept to a
33 minimum. There may be a need to act or intervene quickly to protect
34 the assets, health, or well-being of a frail elder or vulnerable adult;
35 to prevent or halt the exploitation, neglect, abandonment, or abuse of
36 the person or assets of a frail elder or vulnerable adult; or to
37 prevent or limit inappropriate placement or retention in an institution
38 providing long-term care. The delivery of such services is less likely
39 to be impeded, and consent to such services will be more readily

1 obtained, if the cost of these services is not subject to recovery.
2 The legislature recognizes that there will be a cost in not seeking
3 financial recovery for such services, but that this cost may be offset
4 by preventing costly and inappropriate institutional placement.

5 NEW SECTION. Sec. 404. A new section is added to chapter 74.34
6 RCW to read as follows:

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

12 **Sec. 405.** RCW 74.39A.170 and 1995 1st sp.s. c 18 s 56 are each
13 amended to read as follows:

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

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

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

31 (4) In disclosing estate recovery costs to potential clients and
32 their family members, the department shall provide a written
33 description of the community service options. The description must
34 include supervision, wages, and the full direct and indirect costs
35 associated with each care option offered.

36 (5) To the extent funds are available and in compliance with
37 federal law, the department is responsible for also notifying the

1 client, or his or her advocate, quarterly of the types of services
2 used, charges for services, credit amount of copayment, and the
3 difference (debt) that will be charged against the estate.

4 **PART V**

5 **BOARDING HOME UNIFORM DISCIPLINARY ACT**

6 NEW SECTION. **Sec. 501.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout this
8 chapter.

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

10 (2) "Boarding home" means a facility licensed under chapter 18.20
11 RCW.

12 (3) "Boarding home provider" means any individual, partnership,
13 corporation, association, or limited liability company that is licensed
14 under chapter 18.20 RCW to operate a boarding home.

15 (4) "Boarding home operator" means a person who is employed or
16 otherwise is contracted with by the provider to manage a boarding home,
17 or a provider who acts as a manager of the boarding home.

18 NEW SECTION. **Sec. 502.** (1) The secretary shall register boarding
19 home operators and providers.

20 (2) The secretary, by policy or rule, shall define terms and
21 establish forms and procedures for registration applications, including
22 the payment of registration fees pursuant to RCW 43.70.250. An
23 application for boarding home operator or provider registration must
24 include at least the following information:

25 (a) Name and address;

26 (b) If the provider is a corporation, copies of its articles of
27 incorporation and current bylaws, together with the names and addresses
28 of its officers and directors; and

29 (c) Social security number.

30 (3) The secretary shall adopt policies or rules to establish the
31 registration periods, fees, and procedures. If the boarding home is
32 sold or ownership or management is transferred, the registration is
33 voided and the provider and operator must apply for a new registration.

34 NEW SECTION. **Sec. 503.** The uniform disciplinary act, chapter
35 18.130 RCW, governs the issuance and denial of registration and the

1 discipline of persons registered under this chapter. The secretary is
2 the disciplinary authority under this chapter.

3 NEW SECTION. **Sec. 504.** A provider who operates more than one
4 boarding home must register for each separate location.

5 **Sec. 505.** RCW 18.20.040 and 1957 c 253 s 4 are each amended to
6 read as follows:

7 (1) An application for a license shall be made to the department or
8 authorized department upon forms provided by either of said departments
9 and shall contain such information as the department reasonably
10 requires, which shall include affirmative evidence of ability to comply
11 with such rules and regulations as are lawfully promulgated by the
12 board.

13 (2) Boarding home operators and boarding home providers, as defined
14 in section 501 of this act, must register with the department of health
15 under section 502 of this act.

16 **Sec. 506.** RCW 18.130.040 and 1996 c 200 s 32 and 1996 c 81 s 5 are
17 each reenacted and amended to read as follows:

18 (1) This chapter applies only to the secretary and the boards and
19 commissions having jurisdiction in relation to the professions licensed
20 under the chapters specified in this section. This chapter does not
21 apply to any business or profession not licensed under the chapters
22 specified in this section.

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

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

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

27 (iii) Midwives licensed under chapter 18.50 RCW;

28 (iv) Ocularists licensed under chapter 18.55 RCW;

29 (v) Massage operators and businesses licensed under chapter 18.108
30 RCW;

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

32 (vii) Acupuncturists licensed under chapter 18.06 RCW;

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

35 (ix) Respiratory care practitioners certified under chapter 18.89
36 RCW;

1 (x) Persons registered or certified under chapter 18.19 RCW;
2 (xi) Persons registered as nursing pool operators under chapter
3 18.52C RCW;
4 (xii) Nursing assistants registered or certified under chapter
5 (~~18.79~~) 18.88A RCW;
6 (xiii) Health care assistants certified under chapter 18.135 RCW;
7 (xiv) Dietitians and nutritionists certified under chapter 18.138
8 RCW;
9 (xv) Sex offender treatment providers certified under chapter
10 18.155 RCW;
11 (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW
12 18.71.205;
13 (xvii) Persons registered as adult family home providers and
14 resident managers under RCW 18.48.020; (~~and~~)
15 (xviii) Denturists licensed under chapter 18.30 RCW; and
16 (xix) Boarding home operators and providers registered under
17 chapter 18.-- RCW (sections 501 through 504 of this act).
18 (b) The boards and commissions having authority under this chapter
19 are as follows:
20 (i) The podiatric medical board as established in chapter 18.22
21 RCW;
22 (ii) The chiropractic quality assurance commission as established
23 in chapter 18.25 RCW;
24 (iii) The dental quality assurance commission as established in
25 chapter 18.32 RCW;
26 (iv) The board of hearing and speech as established in chapter
27 18.35 RCW;
28 (v) The board of examiners for nursing home administrators as
29 established in chapter 18.52 RCW;
30 (vi) The optometry board as established in chapter 18.54 RCW
31 governing licenses issued under chapter 18.53 RCW;
32 (vii) The board of osteopathic medicine and surgery as established
33 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
34 18.57A RCW;
35 (viii) The board of pharmacy as established in chapter 18.64 RCW
36 governing licenses issued under chapters 18.64 and 18.64A RCW;
37 (ix) The medical quality assurance commission as established in
38 chapter 18.71 RCW governing licenses and registrations issued under
39 chapters 18.71 and 18.71A RCW;

1 (x) The board of physical therapy as established in chapter 18.74
2 RCW;

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

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

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

9 (xiv) The veterinary board of governors as established in chapter
10 18.92 RCW.

11 (3) In addition to the authority to discipline license holders, the
12 disciplining authority has the authority to grant or deny licenses
13 based on the conditions and criteria established in this chapter and
14 the chapters specified in subsection (2) of this section. This chapter
15 also governs any investigation, hearing, or proceeding relating to
16 denial of licensure or issuance of a license conditioned on the
17 applicant's compliance with an order entered pursuant to RCW 18.130.160
18 by the disciplining authority.

19 (4) All disciplining authorities shall adopt procedures to ensure
20 substantially consistent application of this chapter, the Uniform
21 Disciplinary Act, among the disciplining authorities listed in
22 subsection (2) of this section.

23 NEW SECTION. **Sec. 507.** The department of social and health
24 services shall develop a plan for implementing a pilot program for
25 accrediting boarding homes licensed under RCW 18.20.020 with a
26 recognized national nongovernmental accreditation organization or an
27 organization with experience in developing and implementing
28 accreditation programs in at least two states. The pilot plan shall be
29 developed with the input of residents, provider representatives, and
30 other vested interest groups. The plan shall review the overall
31 feasibility of implementation, cost or savings to the department of
32 health, impact on client health and safety, and financial and other
33 impacts to the boarding industry. The pilot boarding home
34 accreditation plan shall be presented to the appropriate committees of
35 the house of representatives and the senate by January 5, 1998.

36
37

PART VI
ADULT FAMILY HOMES

1 **Sec. 601.** RCW 70.128.175 and 1995 1st sp.s. c 18 s 29 are each
2 amended to read as follows:

3 (1) Unless the context clearly requires otherwise, these
4 definitions shall apply throughout this section and RCW 35.63.140,
5 35A.63.149, 36.70.755, 35.22.680, and 36.32.560:

6 (a) "Adult family home" means a regular family abode (~~(of)~~) in
7 which a person or persons (~~(providing)~~) provides personal care, special
8 care, room, and board to more than one but not more than six adults who
9 are not related by blood or marriage to the person or persons providing
10 the services.

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

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

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

20 NEW SECTION. **Sec. 602.** The department of social and health
21 services shall implement a limited moratorium on the authorization of
22 adult family home licenses until December 12, 1997, or until the
23 advisory committee has determined that all adult family home and group
24 home safety and quality of care standards have been reviewed by the
25 department, determined by the secretary to reasonably protect the life,
26 safety, and health of residents, and has notified all adult family home
27 and group home operators of the standards of care or any modifications
28 to the existing standards. This limited moratorium shall in no way
29 prevent a person eligible to receive services from receiving the same
30 or equivalent chronic long-term care services. In the event of a need
31 for such services, the department shall develop a process for
32 determining the availability of chronic long-term care residential
33 services on a case-by-case basis to determine if an adult family home
34 license should be granted to accommodate the needs of a particular
35 geographical or ethnic community. The secretary shall make the final
36 determination on individual case licensure until December 12, 1997, or
37 until the moratorium has been removed.

1 **PART VII**

2 **MISCELLANEOUS PROVISIONS**

3 NEW SECTION. **Sec. 701.** The department of community, trade, and
4 economic development, in collaboration with the organizations
5 designated by state or federal law to provide protection and advocacy
6 and ombuds services for older Americans and people with disabilities
7 using publicly funded long-term care residential services, shall
8 conduct a study, make recommendations, and draft legislation necessary
9 to implement changes that will result in a single coordinating umbrella
10 for ombuds and advocacy services that maximizes efficiency, minimizes
11 duplication, and allows for specialization in target populations such
12 as developmental disabilities, older Americans, and mental illness, and
13 assures that the providers of ombuds services have sufficient expertise
14 and experience with target populations and the systems that serve them.
15 The study shall include review of all relevant federal and state laws
16 and regulations, including but not limited to the older Americans act,
17 42 U.S.C. 3001 as amended, the developmental disabilities assistance
18 and bill of rights act as amended, 42 U.S.C. 6000, the protection and
19 advocacy for persons with mental illness act as amended, 42 U.S.C.
20 10801, the rehabilitation act of 1973 as amended, 29 U.S.C. 701, the
21 long-term care ombudsman statute chapter 43.190 RCW, developmental
22 disabilities statute, Title 71A RCW, and the community mental health
23 services regulations, chapter 275-57 WAC. The study shall identify the
24 gaps in current ombuds and advocacy services, and develop a cost
25 assessment for implementation of a comprehensive umbrella of ombuds and
26 advocacy services. The department of community, trade, and economic
27 development shall report to the appropriate committees of the house of
28 representatives and the senate by January 10, 1998.

29 NEW SECTION. **Sec. 702.** The department of social and health
30 services shall review the cost and feasibility of implementing
31 developmental disabilities certification standards for community
32 residential alternatives to ensure that services are adequate for the
33 health, safety, care, treatment, and support of persons with
34 developmental disabilities. The community residential alternatives
35 shall include, but not be limited to, entities that contract or
36 directly provide services with the division of developmental
37 disabilities such as group homes, agency alternative living, intensive

1 and other tenant support services, adult family homes, or boarding
2 homes. Certification standards shall review at a minimum the following
3 areas. Administrative and financial capabilities of the provider,
4 health and safety practices, the opportunities for the individuals
5 served by the programs to have power and choice in their lives,
6 opportunities to develop friendships and relationships, and
7 opportunities to develop self-respect and to gain respect from others,
8 to participate in the community, and to gain independent living skills.
9 The department shall also recommend whether adult family homes that
10 choose to provide services only to persons with developmental
11 disabilities should receive special certification or licensure apart
12 from or in place of the existing adult family home license. The review
13 shall also recommend the type and amount of provider training necessary
14 to appropriately support persons with developmental disabilities in
15 community residential alternatives. The department shall include the
16 assistance of other departments, vested interest groups, and family
17 members in the development of recommendations. The department shall
18 report to the appropriate committees of the house of representatives
19 and the senate by January 30, 1998.

20 NEW SECTION. **Sec. 703.** The following acts or parts of acts are
21 each repealed:

- 22 (1) RCW 74.39.001 and 1989 c 427 s 1;
- 23 (2) RCW 74.39.005 and 1995 1st sp.s. c 18 s 10 & 1989 c 427 s 2;
- 24 (3) RCW 74.39.030 and 1989 c 427 s 11;
- 25 (4) RCW 74.39.040 and 1989 c 427 s 13;
- 26 (5) RCW 74.39A.005 and 1993 c 508 s 1;
- 27 (6) RCW 74.39A.007 and 1993 c 508 s 2; and
- 28 (7) RCW 74.39A.008 and 1995 1st sp.s. c 18 s 1.

29 NEW SECTION. **Sec. 704.** (1) Sections 102 through 108 of this act
30 constitute a new chapter in Title 43 RCW.

31 (2) Sections 501 through 504 of this act constitute a new chapter
32 in Title 18 RCW.

33 NEW SECTION. **Sec. 705.** Sections 107, 108, 401 through 405, 507,
34 602, 701, and 702 of this act are necessary for the immediate
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and take effect
2 immediately.

3 NEW SECTION. **Sec. 706.** Part headings and captions used in this
4 act are not part of the law.

--- END ---