# Title 70

# PUBLIC HEALTH AND SAFETY

Chapters

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## Chapter 70.01 RCW
## GENERAL PROVISIONS

Sections



**70.01.010 Cooperation with federal government—Construction.** In furtherance of the policy of this state to cooperate with the federal government in the public health programs, the department of health, the state board of health, and the health care authority shall adopt such rules as may become necessary to entitle this state to participate in federal funds unless expressly prohibited by law. Any section or provision of the public health laws of this state which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal funds for the various programs of public health. [2011 1st sp.s. c 15 § 81; 2011 c 27 § 3; 1985 c 213 § 14; 1969 ex.s. c 25 § 1; 1967 ex.s. c 102 § 12.]

**Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15:** See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

**70.01.020 Donation of blood by person sixteen or over—Parental consent.** (1) Any person of the age of 18 years or over shall be eligible to donate blood, including donation through apheresis, in any voluntary and noncompensatory blood program without the necessity of obtaining parental permission or authorization.

(2) Any person between the ages of 16 and 17 years old shall be eligible to donate blood, including donation through apheresis, in any voluntary and noncompensatory blood program after obtaining parental or legal guardian permission or authorization. [2021 c 16 § 1; 1969 c 51 § 1.]

**70.01.030 Health care fees and charges—Estimate.** (1) Health care providers licensed under Title 18 RCW and health care facilities licensed under Title 70 RCW shall provide the following to a patient upon request:

(a) An estimate of fees and charges related to a specific service, visit, or stay; and

(b) Information regarding other types of fees or charges a patient may receive in conjunction with their visit to the provider or facility. Hospitals licensed under chapter 70.41 RCW may fulfill this requirement by providing a statement and contact information as described in RCW 70.41.400.

(2) Providers and facilities listed in subsection (1) of this section may, after disclosing estimated charges and fees to a patient, refer the patient to the patient's insurer, if applicable, for specific information on the insurer's charges and fees, any cost-sharing responsibilities required of the patient, and the network status of ancillary providers who may or may not share the same network status as the provider or facility.

(3) Except for hospitals licensed under chapter 70.41 RCW, providers and facilities listed in subsection (1) of this section shall post a sign in patient registration areas containing at least the following language: "Information about the estimated charges of your health services is available upon request. Please do not hesitate to ask for information." [2009 c 529 § 1.]

**70.01.040 Provider-based clinics that charge a facility fee—Posting of required notice—Reporting requirements.** (1) Prior to the delivery of nonemergency services, a provider-based clinic that charges a facility fee shall provide a notice to any patient that the clinic is licensed as part of the hospital and the patient may receive a separate charge or billing for the facility component, which may result in a higher out-of-pocket expense.

(2) Each health care facility must post prominently in locations easily accessible to and visible by patients, including its website, a statement that the provider-based clinic is licensed as part of the hospital and the patient may receive a separate charge or billing for the facility, which may result in a higher out-of-pocket expense.

(3) Nothing in this section applies to laboratory services, imaging services, or other ancillary health services not provided by staff employed by the health care facility.

(4) As part of the year-end financial reports submitted to the department of health pursuant to RCW 43.70.052, all hospitals with provider-based clinics that bill a separate facility fee shall report:

(a) The number of provider-based clinics owned or operated by the hospital that charge or bill a separate facility fee;

(b) The number of patient visits at each provider-based clinic for which a facility fee was charged or billed for the year;

(c) The revenue received by the hospital for the year by means of facility fees at each provider-based clinic; and

(d) The range of allowable facility fees paid by public or private payers at each provider-based clinic.

(5) For the purposes of this section:

(a) "Facility fee" means any separate charge or billing by a provider-based clinic in addition to a professional fee for physicians' services that is intended to cover building, electronic medical records systems, billing, and other administrative and operational expenses.

(b) "Provider-based clinic" means the site of an off-campus clinic or provider office that is owned by a hospital licensed under chapter 70.41 RCW or a health system that operates one or more hospitals licensed under chapter 70.41 RCW, is licensed as part of the hospital, and is primarily engaged in providing diagnostic and therapeutic care including medical history, physical examinations, assessment of health status, and treatment monitoring. This does not include clinics exclusively designed for and providing laboratory, X-ray, testing, therapy, pharmacy, or educational services and does not include facilities designated as rural health clinics. [2021 c 162 § 4; 2012 c 184 § 1.]

**Effective date—2012 c 184:** "This act takes effect January 1, 2013." [2012 c 184 § 2.]

**70.01.050 Breast cancer—Breast reconstruction and prostheses—Education campaign.** (1) The health care authority, in coordination with the department of health, must create and implement a campaign to educate breast cancer patients about the availability of insurance coverage for breast reconstruction and breast prostheses.

(2) The health care authority and department of health may create new educational materials or make available materials published by for-profit or nonprofit organizations. The materials must provide, at a minimum, all of the following:

(a) Information about the availability of breast reconstruction surgery following a mastectomy including that the breast reconstruction surgery may be performed at the time of a mastectomy or the breast reconstruction surgery may be delayed until a time after the mastectomy.

(b) Information about prostheses or breast forms as alternatives to breast reconstruction surgery.

(c) Information about the requirements of the women's health and cancer rights act of 1998 (P.L. 105-277) including the right to breast reconstruction surgery even if the surgery is delayed.

(3) The educational materials developed or made available under subsection (2) of this section must be distributed by the office of the insurance commissioner and the health care authority to people receiving their services. Distribution may be accomplished through current methods used to inform consumers including posting information online and other methods developed or used by the office of the insurance commissioner and the health care authority.

(4) The department of health must also make the educational materials developed or made available under subsection (2) of this section available to health care professionals for distribution to patients who may qualify for breast reconstruction surgery following a mastectomy. This may be accomplished through current methods used by the department to provide health care professionals with informational materials, including making them available online.

(5) This section does not create a private right of action. [2017 c 91 § 1.]

**70.01.060 Eating disorder—Diabetes—Public information availability.** By December 1, 2020, the department of health shall make available on its website links to existing information related to the condition commonly known as "diabulimia," an eating disorder associated with individuals with type 1 diabetes. [2020 c 267 § 2.]

**Findings—2020 c 267:** "Research indicates a higher prevalence of eating disorders among people with diabetes, as compared to their peers without diabetes. Eating disorders and disordered eating behaviors, especially insulin omission, are associated with poorer glycemic control and serious risk for increased morbidity and mortality." [2020 c 267 § 1.]

**Short title—2020 c 267:** "This act shall be known and may be cited as Alyssa's law." [2020 c 267 § 3.]

**70.01.070 Report and guidelines on epidemic disease preparedness and response.** (1) The department of health and the department of social and health services shall develop a report and guidelines on epidemic disease preparedness and response for long-term care facilities. In developing the report and guidelines, the department of health and the department of social and health services shall consult with interested stakeholders, including but not limited to:

(a) Local health jurisdictions;

(b) Advocates for consumers of long-term care;

(c) Associations representing long-term care facility providers; and

(d) The office of the state long-term care ombuds.

(2) The report must identify best practices and lessons learned about containment and mitigation strategies for controlling the spread of the infectious agent. At a minimum, the report must consider:

(a) Visitation policies that balance the psychosocial and physical health of residents;

(b) Timely and adequate access to personal protective equipment and other infection control supplies so that employees in long-term care facilities are prioritized for distribution in the event of supply shortages;

(c) Admission and discharge policies and standards; and

(d) Rapid and accurate testing to identify infectious outbreaks for:

(i) Resident cohorting and treatment;

(ii) Contact tracing purposes; and

(iii) Protecting the health and well-being of residents and employees.

(3) In developing the report, the department of health and the department of social and health services shall work with the stakeholders identified in subsection (1) of this section to:

(a) Ensure that any corresponding federal rules and guidelines take precedence over the state guidelines;

(b) Avoid conflict between federal requirements and state guidelines;

(c) Develop a timeline for implementing the guidelines and a process for communicating the guidelines to long-term care facilities, local health jurisdictions, and other interested stakeholders in a clear and timely manner;

(d) Consider options for targeting available resources towards infection control when epidemic disease outbreaks occur in long-term care facilities;

(e) Establish methods for ensuring that epidemic preparedness and response guidelines are consistently applied across all local health jurisdictions and long-term care facilities in Washington state. This may include recommendations to the legislature for any needed statutory changes;

(f) Develop a process for maintaining and updating epidemic preparedness and response guidelines as necessary; and

(g) Ensure appropriate considerations for each unique provider type.

(4) By December 1, 2021, the department of health and the department of social and health services shall provide a draft report and guidelines on COVID-19 as outlined in subsection (2) of this section to the health care committees of the legislature.

(5) By July 1, 2022, the department of health and the department of social and health services shall finalize the report and guidelines on COVID-19 and provide the report to the health care committees of the legislature.

(6) Beginning December 1, 2022, and annually thereafter, the department of health and the department of social and health services shall:

(a) Review the report and any corresponding guidelines;

(b) Make any necessary changes regarding COVID-19 and add information about any emerging epidemic of public health concern; and

(c) Provide the updated report and guidelines to the health care committees of the legislature. When providing the updated guidelines to the legislature, the department of health and the department of social and health services may include recommendations to the legislature for any needed statutory changes.

(7) For purposes of this section, "long-term care facilities" includes:

(a) Licensed skilled nursing facilities, assisted living facilities, adult family homes, and enhanced services facilities;

(b) Certified community residential services and supports; and

(c) Registered continuing care retirement communities. [2021 c 159 § 30.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

# Chapter 70.02 RCW
# MEDICAL RECORDS—HEALTH CARE INFORMATION ACCESS AND DISCLOSURE

Sections



*Record retention by hospitals: RCW 70.41.190.*

**70.02.005 Findings.** The legislature finds that:

(1) Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care, or other interests.

(2) Patients need access to their own health care information as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

(3) In order to retain the full trust and confidence of patients, health care providers have an interest in assuring

that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information.

(4) Persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

(5) The movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information. [1991 c 335 § 101.]

**70.02.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" has the same meaning as in RCW 71.05.020.

(2) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:

(a) Statutory, regulatory, fiscal, medical, or scientific standards;

(b) A private or public program of payments to a health care provider; or

(c) Requirements for licensing, accreditation, or certification.

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

(4) "Commitment" has the same meaning as in RCW 71.05.020.

(5) "Custody" has the same meaning as in RCW 71.05.020.

(6) "Deidentified" means health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.

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

(8) "Designated crisis responder" has the same meaning as in RCW 71.05.020 or 71.34.020, as applicable.

(9) "Detention" or "detain" has the same meaning as in RCW 71.05.020.

(10) "Directory information" means information disclosing the presence, and for the purpose of identification, the name, location within a health care facility, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(11) "Discharge" has the same meaning as in RCW 71.05.020.

(12) "Evaluation and treatment facility" has the same meaning as in RCW 71.05.020 or 71.34.020, as applicable.

(13) "Federal, state, or local law enforcement authorities" means an officer of any agency or authority in the United States, a state, a tribe, a territory, or a political subdivision of a state, a tribe, or a territory who is empowered by law to: (a) Investigate or conduct an official inquiry into a potential criminal violation of law; or (b) prosecute or otherwise conduct a criminal proceeding arising from an alleged violation of law.

(14) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(15) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

(16) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(17) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information.

(18) "Health care operations" means any of the following activities of a health care provider, health care facility, or third-party payor to the extent that the activities are related to functions that make an entity a health care provider, a health care facility, or a third-party payor:

(a) Conducting: Quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, if the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(b) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance and third-party payor performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of nonhealth care professionals, accreditation, certification, licensing, or credentialing activities;

(c) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care, including stop-loss insurance and excess of loss insurance, if any applicable legal requirements are met;

(d) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

(e) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the health care facility or third-party payor, including formulary development and

administration, development, or improvement of methods of payment or coverage policies; and

(f) Business management and general administrative activities of the health care facility, health care provider, or third-party payor including, but not limited to:

(i) Management activities relating to implementation of and compliance with the requirements of this chapter;

(ii) Customer service, including the provision of data analyses for policyholders, plan sponsors, or other customers, provided that health care information is not disclosed to such policyholder, plan sponsor, or customer;

(iii) Resolution of internal grievances;

(iv) The sale, transfer, merger, or consolidation of all or part of a health care provider, health care facility, or third-party payor with another health care provider, health care facility, or third-party payor or an entity that following such activity will become a health care provider, health care facility, or third-party payor, and due diligence related to such activity; and

(v) Consistent with applicable legal requirements, creating deidentified health care information or a limited data set for the benefit of the health care provider, health care facility, or third-party payor.

(19) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(20) "Human immunodeficiency virus" or "HIV" has the same meaning as in RCW 70.24.017.

(21) "Imminent" has the same meaning as in RCW 71.05.020.

(22) "Indian health care provider" has the same meaning as in RCW 43.71B.010(11).

(23) "Information and records related to mental health services" means a type of health care information that relates to all information and records compiled, obtained, or maintained in the course of providing services by a mental health service agency or mental health professional to persons who are receiving or have received services for mental illness. The term includes mental health information contained in a medical bill, registration records, as defined in *RCW 70.97.010, and all other records regarding the person maintained by the department, by the authority, by behavioral health administrative services organizations and their staff, managed care organizations contracted with the authority under chapter 74.09 RCW and their staff, and by treatment facilities. The term further includes documents of legal proceedings under chapter 71.05, 71.34, or 10.77 RCW, or somatic health care information. For health care information maintained by a hospital as defined in RCW 70.41.020 or a health care facility or health care provider that participates with a hospital in an organized health care arrangement defined under federal law, "information and records related to mental health services" is limited to information and records of services provided by a mental health professional or information and records of services created by a hospital-operated community behavioral health program as defined in RCW 71.24.025. The term does not include psychotherapy notes.

(24) "Information and records related to sexually transmitted diseases" means a type of health care information that relates to the identity of any person upon whom an HIV antibody test or other sexually transmitted infection test is performed, the results of such tests, and any information relating to diagnosis of or treatment for any confirmed sexually transmitted infections.

(25) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(26) "Legal counsel" has the same meaning as in RCW 71.05.020.

(27) "Local public health officer" has the same meaning as in **RCW 70.24.017.

(28) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(29) "Managed care organization" has the same meaning as provided in RCW 71.24.025.

(30) "Mental health professional" means a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary of health under chapter 71.05 RCW, whether that person works in a private or public setting.

(31) "Mental health service agency" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.05.020 or 71.34.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.34.020, community mental health service delivery systems, or community behavioral health programs, as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(32) "Minor" has the same meaning as in RCW 71.34.020.

(33) "Parent" has the same meaning as in RCW 71.34.020.

(34) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(35) "Payment" means:

(a) The activities undertaken by:

(i) A third-party payor to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits by the third-party payor; or

(ii) A health care provider, health care facility, or third-party payor, to obtain or provide reimbursement for the provision of health care; and

(b) The activities in (a) of this subsection that relate to the patient to whom health care is provided and that include, but are not limited to:

(i) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, includ-

ing stop-loss insurance and excess of loss insurance, and related health care data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(v) Utilization review activities, including precertification and preauthorization of services, and concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of any of the following health care information relating to collection of premiums or reimbursement:

(A) Name and address;

(B) Date of birth;

(C) Social security number;

(D) Payment history;

(E) Account number; and

(F) Name and address of the health care provider, health care facility, and/or third-party payor.

(36) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(37) "Professional person" has the same meaning as in RCW 71.05.020.

(38) "Psychiatric advanced registered nurse practitioner" has the same meaning as in RCW 71.05.020.

(39) "Psychotherapy notes" means notes recorded, in any medium, by a mental health professional documenting or analyzing the contents of conversations during a private counseling session or group, joint, or family counseling session, and that are separated from the rest of the individual's medical record. The term excludes mediation prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

(40) "Reasonable fee" means the charges for duplicating or searching the record, but shall not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars. These amounts shall be adjusted biennially in accordance with changes in the consumer price index, all consumers, for Seattle-Tacoma metropolitan statistical area as determined by the secretary of health. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

(41) "Release" has the same meaning as in RCW 71.05.020.

(42) "Resource management services" has the same meaning as in RCW 71.05.020.

(43) "Serious violent offense" has the same meaning as in RCW 9.94A.030.

(44) "Sexually transmitted infection" or "sexually transmitted disease" has the same meaning as "sexually transmitted disease" in RCW 70.24.017.

(45) "Test for a sexually transmitted disease" has the same meaning as in RCW 70.24.017.

(46) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan, excluding fitness or wellness plans; or a state or federal health benefit program.

(47) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another. [2020 c 302 § 112; 2020 c 256 § 401; 2019 c 325 § 5019; 2018 c 201 § 8001; 2016 sp.s. c 29 § 416. Prior: 2014 c 225 § 70; 2014 c 220 § 4; 2013 c 200 § 1; 2006 c 235 § 2; 2005 c 468 § 1; 2002 c 318 § 1; 1993 c 448 § 1; 1991 c 335 § 102.]

**Reviser's note:** *(1) RCW 70.97.010 was amended by 2020 c 278 § 1, deleting the definition of "registration records."

**(2) RCW 70.24.017 was amended by 2020 c 76 § 2, changing the definition of "local public health officer" to "local health officer."

(3) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(4) This section was amended by 2020 c 256 § 401 and by 2020 c 302 § 112, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

(5) For charges or fees under subsection (38) of this section as adjusted by the secretary of health, see chapter 246-08 WAC.

**Effective date—2019 c 325:** See note following RCW 71.24.011.

**Findings—Intent—Effective date—2018 c 201:** See notes following RCW 41.05.018.

**Effective dates—2016 sp.s. c 29:** See note following RCW 71.05.760.

**Short title—Right of action—2016 sp.s. c 29:** See notes following RCW 71.05.010.

**Effective date—2014 c 225:** See note following RCW 71.24.016.

**Effective date—2014 c 220:** See note following RCW 70.02.290.

**Effective date—2013 c 200:** "Except for section 5 of this act, this act takes effect July 1, 2014." [2013 c 200 § 35.]

**Purpose—Effective date—2006 c 235:** See notes following RCW 70.02.050.

Additional notes found at www.leg.wa.gov

**70.02.020 Disclosure by health care provider.** (1) Except as authorized elsewhere in this chapter, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A patient has a right to receive an accounting of disclosures of health care information made by a health care provider or a health care facility in the six years before the date on which the accounting is requested, except for disclosures:

(a) To carry out treatment, payment, and health care operations;

(b) To the patient of health care information about him or her;

(c) Incident to a use or disclosure that is otherwise permitted or required;

(d) Pursuant to an authorization where the patient authorized the disclosure of health care information about himself or herself;

(e) Of directory information;

(f) To persons involved in the patient's care;

(g) For national security or intelligence purposes if an accounting of disclosures is not permitted by law;

(h) To correctional institutions or law enforcement officials if an accounting of disclosures is not permitted by law; and

(i) Of a limited data set that excludes direct identifiers of the patient or of relatives, employers, or household members of the patient. [2014 c 220 § 5; 2013 c 200 § 2; 2005 c 468 § 2; 1993 c 448 § 2; 1991 c 335 § 201.]

**Effective date—2014 c 220:** See note following RCW 70.02.290.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

Additional notes found at www.leg.wa.gov

**70.02.030 Patient authorization of disclosure—Health care information—Requirement to provide free copy to patient appealing denial of social security benefits.** (1) A patient may authorize a health care provider or health care facility to disclose the patient's health care information. A health care provider or health care facility shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider or health care facility denies the patient access to health care information under RCW 70.02.090.

(2)(a) Except as provided in (b) of this subsection, a health care provider or health care facility may charge a reasonable fee for providing the health care information and is not required to honor an authorization until the fee is paid.

(b) Upon request of a patient or a patient's personal representative, a health care facility or health care provider shall provide the patient or representative with one copy of the patient's health care information free of charge if the patient is appealing the denial of federal supplemental security income or social security disability benefits. The patient or representative may complete a disclosure authorization specifying the health care information requested and provide it to the health care facility or health care provider. The health care facility or health care provider may provide the health care information in either paper or electronic format. A health care facility or health care provider is not required to provide a patient or a patient's personal representative with a free copy of health care information that has previously been provided free of charge pursuant to a request within the preceding two years.

(3) To be valid, a disclosure authorization to a health care provider or health care facility shall:

(a) Be in writing, dated, and signed by the patient;

(b) Identify the nature of the information to be disclosed;

(c) Identify the name and institutional affiliation of the person or class of persons to whom the information is to be disclosed;

(d) Identify the provider or class of providers who are to make the disclosure;

(e) Identify the patient; and

(f) Contain an expiration date or an expiration event that relates to the patient or the purpose of the use or disclosure.

(4) Unless disclosure without authorization is otherwise permitted under RCW 70.02.050 or the federal health insurance portability and accountability act of 1996 and its implementing regulations, an authorization may permit the disclosure of health care information to a class of persons that includes:

(a) Researchers if the health care provider or health care facility obtains the informed consent for the use of the patient's health care information for research purposes; or

(b) Third-party payors if the information is only disclosed for payment purposes.

(5) Except as provided by this chapter, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence, or common law.

(6) When an authorization permits the disclosure of health care information to a financial institution or an employer of the patient for purposes other than payment, the authorization as it pertains to those disclosures shall expire one year after the signing of the authorization, unless the authorization is renewed by the patient.

(7) A health care provider or health care facility shall retain the original or a copy of each authorization or revocation in conjunction with any health care information from which disclosures are made.

(8) Where the patient is under the supervision of the department of corrections, an authorization signed pursuant to this section for health care information related to mental health or drug or alcohol treatment expires at the end of the term of supervision, unless the patient is part of a treatment program that requires the continued exchange of information until the end of the period of treatment. [2018 c 87 § 1; 2014 c 220 § 15; 2005 c 468 § 3; 2004 c 166 § 19; 1994 sp.s. c 9 § 741; 1993 c 448 § 3; 1991 c 335 § 202.]

**Effective date—2014 c 220:** See note following RCW 70.02.290.

Additional notes found at www.leg.wa.gov

**70.02.040 Patient's revocation of authorization for disclosure.** A patient may revoke in writing a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no actual notice of the revocation of the authorization. [1991 c 335 § 203.]

**70.02.045 Third-party payor release of information.** Third-party payors shall not release health care information disclosed under this chapter, except as required by chapter 43.371 RCW and RCW 48.43.071 and to the extent that health care providers are authorized to do so under RCW 70.02.050, 70.02.200, and 70.02.210. [2018 c 87 § 2; 2015 c 289 § 1; 2014 c 223 § 18; 2000 c 5 § 2.]

**Effective date—2015 c 289:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 18, 2015]." [2015 c 289 § 2.]

**Finding—2014 c 223:** See note following RCW 41.05.690.

**Intent—Purpose—2000 c 5:** See RCW 48.43.500.

**70.02.050 Disclosure without patient's authorization—Need-to-know basis.** (1) A health care provider or health care facility may disclose health care information, except for information and records related to sexually transmitted diseases which are addressed in RCW 70.02.220, about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider or facility reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, actuarial services to, or other health care operations for or on behalf of the health care provider or health care facility; or for assisting the health care provider or health care facility in the delivery of health care and the health care provider or health care facility reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any person if the health care provider or health care facility believes, in good faith, that use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and the information is disclosed only to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. There is no obligation under this chapter on the part of the provider or facility to so disclose; or

(d) For payment, including information necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(2) A health care provider shall disclose health care information, except for information and records related to sexually transmitted diseases, unless otherwise authorized in RCW 70.02.220, about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws, or to investigate unprofessional conduct or ability to practice with reasonable skill and safety under chapter 18.130 RCW. Any health care information obtained under this subsection is exempt from public inspection and copying pursuant to chapter 42.56 RCW; or

(b) When needed to protect the public health. [2017 c 298 § 2; 2014 c 220 § 6; 2013 c 200 § 3; 2007 c 156 § 12; 2006 c 235 § 3; 2005 c 468 § 4; 1998 c 158 § 1; 1993 c 448 § 4; 1991 c 335 § 204.]

**Effective date—2014 c 220:** See note following RCW 70.02.290.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**Purpose—2006 c 235:** "The purpose of this act is to aid law enforcement in combating crime through the rapid identification of all persons who require medical treatment as a result of a criminal act and to assist in the rapid identification of human remains." [2006 c 235 § 1.]

Additional notes found at www.leg.wa.gov

**70.02.060 Discovery request or compulsory process.** (1) Before service of a discovery request or compulsory process on a health care provider for health care information, an attorney shall provide advance notice to the health care provider and the patient or the patient's attorney involved through service of process or first-class mail, indicating the health care provider from whom the information is sought, what health care information is sought, and the date by which a protective order must be obtained to prevent the health care provider from complying. Such date shall give the patient and the health care provider adequate time to seek a protective order, but in no event be less than fourteen days since the date of service or delivery to the patient and the health care provider of the foregoing. Thereafter the request for discovery or compulsory process shall be served on the health care provider.

(2) Without the written consent of the patient, the health care provider may not disclose the health care information sought under subsection (1) of this section if the requestor has not complied with the requirements of subsection (1) of this section. In the absence of a protective order issued by a court of competent jurisdiction forbidding compliance, the health care provider shall disclose the information in accordance with this chapter. In the case of compliance, the request for discovery or compulsory process shall be made a part of the patient record.

(3) Production of health care information under this section, in and of itself, does not constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure. [1991 c 335 § 205.]

**70.02.070 Certification of record.** Upon the request of the person requesting the record, the health care provider or facility shall certify the record furnished and may charge for such certification in accordance with RCW 36.18.016(5). No record need be certified until the fee is paid. The certification shall be affixed to the record and disclose:

(1) The identity of the patient;

(2) The kind of health care information involved;

(3) The identity of the person to whom the information is being furnished;

(4) The identity of the health care provider or facility furnishing the information;

(5) The number of pages of the health care information;

(6) The date on which the health care information is furnished; and

(7) That the certification is to fulfill and meet the requirements of this section. [1995 c 292 § 20; 1991 c 335 § 206.]

**70.02.080 Patient's examination and copying—Requirements.** (1) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances, but no later than fifteen working days after receiving the request shall:

(a) Make the information available for examination during regular business hours and provide a copy, if requested, to the patient;

(b) Inform the patient if the information does not exist or cannot be found;

(c) If the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) If the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than twenty-one working days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) Deny the request, in whole or in part, under RCW 70.02.090 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the health care information available in the requested form. Except as provided in RCW 70.02.030, the health care provider may charge a reasonable fee for providing the health care information and is not required to permit examination or copying until the fee is paid. [2018 c 87 § 3; 1993 c 448 § 5; 1991 c 335 § 301.]

Additional notes found at www.leg.wa.gov

**70.02.090 Patient's request—Denial of examination and copying.** (1) Subject to any conflicting requirement in the public records act, chapter 42.56 RCW, a health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) Knowledge of the health care information would be injurious to the health of the patient;

(b) Knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) The health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(e) Access to the health care information is otherwise prohibited by law.

(2) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) of this section from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(3) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (c) of this section, the provider shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified, registered, or otherwise authorized under the laws of this state to treat the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection. The patient shall be responsible for arranging for compensation of the other health care provider so selected. [2005 c 274 § 331; 1991 c 335 § 302.]

**70.02.100 Correction or amendment of record.** (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which a patient has access under RCW 70.02.080.

(2) As promptly as required under the circumstances, but no later than ten days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) Make the requested correction or amendment and inform the patient of the action;

(b) Inform the patient if the record no longer exists or cannot be found;

(c) If the health care provider does not maintain the record, inform the patient and provide the patient with the name and address, if known, of the person who maintains the record;

(d) If the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing, the earliest date, not later than twenty-one days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) Inform the patient in writing of the provider's refusal to correct or amend the record as requested and the patient's right to add a statement of disagreement. [1991 c 335 § 401.]

**70.02.110 Correction or amendment or statement of disagreement—Procedure.** (1) In making a correction or amendment, the health care provider shall:

(a) Add the amending information as a part of the health record; and

(b) Mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) Permit the patient to file as a part of the record of the patient's health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) Mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

(3) A health care provider who receives a request from a patient to amend or correct the patient's health care information, as provided in RCW 70.02.100, shall forward any changes made in the patient's health care information or

health record, including any statement of disagreement, to any third-party payor or insurer to which the health care provider has disclosed the health care information that is the subject of the request. [2000 c 5 § 3; 1991 c 335 § 402.]

**Intent—Purpose—2000 c 5:** See RCW 48.43.500.

Additional notes found at www.leg.wa.gov

**70.02.120 Notice of information practices—Display conspicuously.** (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a "notice of information practices" that contains substantially the following:

NOTICE

"We keep a record of the health care services we provide you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at . . . . . ."

(2) The health care provider shall place a copy of the notice of information practices in a conspicuous place in the health care facility, on a consent form or with a billing or other notice provided to the patient. [1991 c 335 § 501.]

**70.02.130 Consent by others—Health care representatives.** (1) A person authorized to consent to health care for another may exercise the rights of that person under this chapter to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized to consent to health care without parental consent under federal and state law, only the minor may exercise the rights of a patient under this chapter as to information pertaining to health care to which the minor lawfully consented. In cases where parental consent is required, a health care provider may rely, without incurring any civil or criminal liability for such reliance, on the representation of a parent that he or she is authorized to consent to health care for the minor patient regardless of whether:

(a) The parents are married, unmarried, or separated at the time of the representation;

(b) The consenting parent is, or is not, a custodial parent of the minor;

(c) The giving of consent by a parent is, or is not, full performance of any agreement between the parents, or of any order or decree in any action entered pursuant to chapter 26.09 RCW.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient. [1991 c 335 § 601.]

**70.02.140 Representative of deceased patient.** A personal representative of a deceased patient may exercise all of the deceased patient's rights under this chapter. If there is no personal representative, or upon discharge of the personal representative, a deceased patient's rights under this chapter may be exercised by persons who would have been authorized to make health care decisions for the deceased patient when the patient was living under RCW 7.70.065. [1991 c 335 § 602.]

**70.02.150 Security safeguards.** A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

Reasonable safeguards shall include affirmative action to delete outdated and incorrect facsimile transmission or other telephone transmittal numbers from computer, facsimile, or other databases. When health care information is transmitted electronically to a recipient who is not regularly transmitted health care information from the health care provider, the health care provider shall verify that the number is accurate prior to transmission. [2001 c 16 § 2; 1991 c 335 § 701.]

**70.02.160 Retention of record.** A health care provider shall maintain a record of existing health care information for at least one year following receipt of an authorization to disclose that health care information under RCW 70.02.040, and during the pendency of a request for examination and copying under RCW 70.02.080 or a request for correction or amendment under RCW 70.02.100. [1991 c 335 § 702.]

**70.02.170 Civil remedies.** (1) A person who has complied with this chapter may maintain an action for the relief provided in this section against a health care provider or facility who has not complied with this chapter.

(2) The court may order the health care provider or other person to comply with this chapter. Such relief may include actual damages, but shall not include consequential or incidental damages. The court shall award reasonable attorneys' fees and all other expenses reasonably incurred to the prevailing party.

(3) Any action under this chapter is barred unless the action is commenced within two years after the cause of action is discovered.

(4) A violation of this chapter shall not be deemed a violation of the consumer protection act, chapter 19.86 RCW. [1991 c 335 § 801.]

**70.02.180 Licensees under chapter 18.225 RCW—Subject to chapter.** Mental health counselors, marriage and family therapists, and social workers licensed under chapter 18.225 RCW are subject to this chapter. [2001 c 251 § 34.]

Additional notes found at www.leg.wa.gov

**70.02.200 Disclosure without patient's authorization—Permitted and mandatory disclosures.** (1) In addition to the disclosures authorized by RCW 70.02.050 and 70.02.210, a health care provider or health care facility may disclose health care information, except for information and records related to sexually transmitted diseases and information related to mental health services which are addressed by RCW 70.02.220 through 70.02.260, about a patient without the patient's authorization, to:

(a) Any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(b) Persons under RCW 70.02.205 if the conditions in RCW 70.02.205 are met;

(c) A health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(d) A person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(e) Provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(f) Fire, police, sheriff, or other public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(g) Federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor;

(h) Another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in *RCW 70.02.010(17) (a) and (b);

(i) An official of a penal or other custodial institution in which the patient is detained; and

(j) Any law enforcement officer, corrections officer, or guard supplied by a law enforcement or corrections agency who is accompanying a patient pursuant to RCW 10.110.020, only to the extent the disclosure is incidental to the fulfillment of the role of the law enforcement officer, corrections officer, or guard under RCW 10.110.020.

(2) In addition to the disclosures required by RCW 70.02.050 and 70.02.210, a health care provider shall disclose health care information, except for information related to sexually transmitted diseases and information related to mental health services which are addressed by RCW 70.02.220 through 70.02.260, about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(b) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

(i) The name of the patient;

(ii) The patient's residence;

(iii) The patient's sex;

(iv) The patient's age;

(v) The patient's condition;

(vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;

(vii) Whether the patient was conscious when admitted;

(viii) The name of the health care provider making the determination in (b)(v), (vi), and (vii) of this subsection;

(ix) Whether the patient has been transferred to another facility; and

(x) The patient's discharge time and date;

(c) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) To the extent they retain health care information subject to this chapter, the department of social and health services and the health care authority shall disclose to the department of children, youth, and families health care information, except for information and records related to sexually transmitted diseases and information related to mental health services that are addressed by RCW 70.02.220 through 70.02.260, about a patient without the patient's authorization, for the purpose of investigating and preventing child abuse and neglect and providing for the health care coordination and the well-being of children in foster care. Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act. [2017 3rd sp.s. c 6 § 815; 2017 c 298 § 3; 2015 c 267 § 7; 2014 c 220 § 7; 2013 c 200 § 4.]

***Reviser's note:** RCW 70.02.010 was amended by 2018 c 201 § 8001, changing subsection (17) to subsection (18).

**Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822:** See note following RCW 43.216.025.

**Conflict with federal requirements—2017 3rd sp.s. c 6:** See RCW 43.216.908.

**Effective date—2014 c 220:** See note following RCW 70.02.290.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.205 Disclosure without patient's authorization—Persons with close relationship.** (1)(a) A health care provider or health care facility may use or disclose the health care information of a patient without obtaining an authorization from the patient or the patient's personal representative if the conditions in (b) of this subsection are met and:

(i) The disclosure is to a family member, including a patient's state registered domestic partner, other relative, a close personal friend, or other person identified by the patient, and the health care information is directly relevant to the person's involvement with the patient's health care or payment related to the patient's health care; or

(ii) The use or disclosure is for the purpose of notifying, or assisting in the notification of, including identifying or locating, a family member, a personal representative of the patient, or another person responsible for the care of the patient of the patient's location, general condition, or death.

(b) A health care provider or health care facility may make the uses and disclosures described in (a) of this subsection if:

(i) The patient is not present or obtaining the patient's authorization or providing the opportunity to agree or object to the use or disclosure is not practicable due to the patient's incapacity or an emergency circumstance, the health care provider or health care facility may in the exercise of professional judgment, determine whether the use or disclosure is in the best interests of the patient and, if so, disclose only the health care information that is directly relevant to the person's involvement with the patient's health care or payment related to the patient's health care; or

(ii) The patient is present for, or otherwise available prior to, the use or disclosure and has the capacity to make health care decisions, the health care provider or health care facility may use or disclose the information if it:

(A) Obtains the patient's agreement;

(B) Provides the patient with the opportunity to object to the use or disclosure, and the patient does not express an objection; or

(C) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the patient does not object to the use or disclosure.

(2) With respect to information and records related to mental health services provided to a patient by a health care provider, the health care information disclosed under this section may include, to the extent consistent with the health care provider's professional judgment and standards of ethical conduct:

(a) The patient's diagnoses and the treatment recommendations;

(b) Issues concerning the safety of the patient, including risk factors for suicide, steps that can be taken to make the patient's home safer, and a safety plan to monitor and support the patient;

(c) Information about resources that are available in the community to help the patient, such as case management and support groups; and

(d) The process to ensure that the patient safely transitions to a higher or lower level of care, including an interim safety plan.

(3) Any use or disclosure of health care information, including information and records related to mental health services, under this section must be limited to the minimum necessary to accomplish the purpose of the use or disclosure.

(4) A health care provider or health care facility is not subject to any civil liability for making or not making a use or disclosure in accordance with this section. [2020 c 81 § 2; 2017 c 298 § 1.]

**70.02.210 Disclosure without patient's authorization—Research.** (1)(a) A health care provider or health care facility may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is for use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project.

(b) Disclosure under (a) of this subsection may include health care information and records of treatment programs related to chemical dependency addressed in *chapter 70.96A RCW and as authorized by federal law.

(2) In addition to the disclosures required by RCW 70.02.050 and 70.02.200, a health care provider or health care facility shall disclose health care information about a patient without the patient's authorization if:

(a) The disclosure is to county coroners and medical examiners for the investigations of deaths;

(b) The disclosure is to a procurement organization or person to whom a body part passes for the purpose of examination necessary to assure the medical suitability of the body part; or

(c) The disclosure is to a person subject to the jurisdiction of the federal food and drug administration in regards to a food and drug administration-regulated product or activity for which that person has responsibility for quality, safety, or effectiveness of activities. [2014 c 220 § 8; 2013 c 200 § 5.]

***Reviser's note:** Chapter 70.96A RCW was repealed and/or recodified in its entirety pursuant to 2016 sp.s. c 29 §§ 301, 601, and 701.

**Effective date—2014 c 220 § 8:** "Section 8 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 4, 2014]." [2014 c 220 § 18.]

**Effective date—2013 c 200 § 5:** "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2013]." [2013 c 200 § 36.]

**70.02.220 Sexually transmitted diseases—Permitted and mandatory disclosures.** (1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this section, RCW 70.02.210, or chapter 70.24 RCW.

(2) No person may disclose or be compelled to disclose information and records related to sexually transmitted diseases, except as authorized by this section, RCW 70.02.210, 70.02.205, or chapter 70.24 RCW. A person may disclose information related to sexually transmitted diseases about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is to:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor fourteen years of age or over and otherwise capable of making health care decisions;

(b) The state health officer as defined in RCW 70.24.017, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(c) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that was provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(d) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, so long as the record was obtained by means of court-ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(e) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure must: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services;

(f) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(g) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as defined by the board of health in rule pursuant to RCW 70.24.340, who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340, if a state or local public health officer performs the test;

(h) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection must be confidential and may not be released or available to persons who are not involved in handling or determining medical claims payment; and

(i) A department of children, youth, and families worker, a child-placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of children, youth, and families or a licensed child-placing agency. This information may also be received by a person responsible for providing residential care for such a child when the department of social and health services, the department of children, youth, and families, or a licensed child-placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2)(d) of this section, is governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW *70.24.340(1), 70.24.360, or 70.24.370 must be made available by department of corrections health care providers and local public health officers to the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) may be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a mandatory test conducted pursuant to RCW *70.24.340(1), 70.24.360, or 70.24.370 must be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) may be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may be submitted to transporting officers and receiving facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care administrator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties

prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW *70.24.340(1), 70.24.360, or 70.24.370, must be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules governing employees' occupational exposure to blood-borne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure must also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member must also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition, as defined in **RCW 70.24.017, may not be disclosed to a staff person except as provided in this section and RCW 70.02.050(1)(d) and 70.24.340. A health care administrator or infection control coordinator may provide the staff member with information about how to obtain the offender's or detainee's test results under this section and RCW 70.02.050(1)(d) and 70.24.340.

(5) The requirements of this section do not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor do they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(6) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW must be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. The disclosure must be accompanied by appropriate counseling, including information regarding follow-up testing.

(7) A person, including a health care facility or health care provider, shall disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease and information and records related to sexually transmitted diseases to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal certification or registration rules or laws; or when needed to protect the public health. Any health care information obtained under this subsection is exempt from public inspection and copying pursuant to chapter 42.56 RCW. [2021 c 270 § 5; 2017 3rd sp.s. c 6 § 332; 2017 c 298 § 4; 2013 c 200 § 6.]

**Reviser's note:** *(1) RCW 70.24.340 was amended by 2020 c 76 § 13, deleting subsection (1) and removing subsection numbering.

**(2) RCW 70.24.017 was amended by 2020 c 76 § 2, deleting the definition of "HIV-related condition."

**Effective date—2021 c 270:** See note following RCW 7.70.065.

**Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822:** See note following RCW 43.216.025.

**Conflict with federal requirements—2017 3rd sp.s. c 6:** See RCW 43.216.908.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.230 Mental health services, confidentiality of records—Permitted disclosures.** (1) The fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies may not be disclosed except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265, or pursuant to a valid authorization under RCW 70.02.030.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter 71.34 RCW, may be disclosed:

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW, including Indian health care providers, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

(i) Employed by the facility;

(ii) Who has medical responsibility for the patient's care;

(iii) Who is a designated crisis responder;

(iv) Who is providing services under chapter 71.24 RCW;

(v) Who is employed by a state or local correctional facility where the person is confined or supervised; or

(vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

(b) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside;

(c)(i) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such a designation;

(ii) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(A) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(B) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator;

(d)(i) To the courts, including tribal courts, as necessary to the administration of chapter 71.05 RCW or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

(ii) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(iii) Disclosure under this subsection is mandatory for the purpose of the federal health insurance portability and accountability act;

(e)(i) When a mental health professional or designated crisis responder is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional or designated crisis responder shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed only after giving notice to the committed person and the person's counsel;

(h)(i) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act;

(j) To the persons designated in RCW 71.05.425 for the purposes described in those sections;

(k) By a care coordinator under RCW 71.05.585 or 10.77.175 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.05 or 10.77 RCW;

(l) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW 70.02.140;

(m) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient;

(n) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(v). The extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(v);

(iii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(o) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

(p) Pursuant to lawful order of a court, including a tribal court;

(q) To qualified staff members of the department, to the authority, to behavioral health administrative services organizations, to managed care organizations, to resource manage-

ment services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

(r) Within the mental health service agency or Indian health care provider facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

(s) Within the department and the authority as necessary to coordinate treatment for mental illness, developmental disabilities, or substance use disorder of persons who are under the supervision of the department;

(t) Between the department of social and health services, the department of children, youth, and families, and the health care authority as necessary to coordinate treatment for mental illness, developmental disabilities, or substance use disorder of persons who are under the supervision of the department of social and health services or the department of children, youth, and families;

(u) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information and records related to mental health services could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

(v)(i) Consistent with the requirements of the federal health insurance portability and accountability act, to:

(A) A health care provider, including an Indian health care provider, who is providing care to a patient, or to whom a patient has been referred for evaluation or treatment; or

(B) Any other person who is working in a care coordinator role for a health care facility, health care provider, or Indian health care provider, or is under an agreement pursuant to the federal health insurance portability and accountability act with a health care facility or a health care provider and requires the information and records to assure coordinated care and treatment of that patient.

(ii) A person authorized to use or disclose information and records related to mental health services under this subsection (2)(v) must take appropriate steps to protect the information and records relating to mental health services.

(iii) Psychotherapy notes may not be released without authorization of the patient who is the subject of the request for release of information;

(w) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (v) of this subsection;

(x) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one evaluation and treatment facility to another. The release of records under this subsection is limited to the information and records related to mental health services required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record;

(y) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW;

(z) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information must notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

(aa) To all current treating providers, including Indian health care providers, of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department or the authority may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(d). The department, or the authority, if applicable, shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. Neither the department nor the authority may release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

(bb)(i) To the secretary of social and health services and the director of the health care authority for either program evaluation or research, or both so long as the secretary or director, where applicable, adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, . . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ . . . . . ."

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary, or director, where applicable;

(cc) To any person if the conditions in RCW 70.02.205 are met;

(dd) To the secretary of health for the purposes of the maternal mortality review panel established in RCW 70.54.450; or

(ee) To a tribe or Indian health care provider to carry out the requirements of RCW 71.05.150(6).

(3) Whenever federal law or federal regulations restrict the release of information contained in the information and records related to mental health services of any patient who receives treatment for a substance use disorder, the department or the authority may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services or the authority under RCW *71.05.280(3) and **71.05.320(4)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW 70.02.260, in a subsequent criminal prosecution of a person committed pursuant to RCW *71.05.280(3) or **71.05.320(4)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter 71.05 RCW must be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

(6)(a) Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this section, for the greater of the following amounts:

(i) One thousand dollars; or

(ii) Three times the amount of actual damages sustained, if any.

(b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.

(c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.

(d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reasonable attorney fees in addition to those otherwise provided by law.

(e) If an action is brought under this subsection, no action may be brought under RCW 70.02.170. [2022 c 268 § 43. Prior: 2021 c 264 § 17; 2021 c 263 § 6; 2020 c 256 § 402; prior: 2019 c 381 § 19; 2019 c 325 § 5020; 2019 c 317 § 2; 2018 c 201 § 8002; 2017 3rd sp.s. c 6 § 816; prior: 2017 c 325 § 2; (2017 c 325 § 1 expired April 1, 2018); 2017 c 298 § 6; (2017 c 298 § 5 expired April 1, 2018); 2016 sp.s. c 29 § 417; prior: 2014 c 225 § 71; 2014 c 220 § 9; 2013 c 200 § 7.]

**Reviser's note:** *(1) RCW 71.05.280 was amended by 2013 c 289 § 4, substantially modifying the provisions of subsection (3).

**(2) RCW 71.05.320 was amended by 2013 c 289 § 5, substantially modifying the provisions of subsection (4)(c).

**Effective dates—2022 c 268:** See note following RCW 7.105.010.

**Application—2021 c 263:** See note following RCW 10.77.150.

**Short title—2019 c 381:** See note following RCW 71.34.500.

**Effective date—2019 c 325:** See note following RCW 71.24.011.

**Findings—Intent—Effective date—2018 c 201:** See notes following RCW 41.05.018.

**Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822:** See note following RCW 43.216.025.

**Conflict with federal requirements—2017 3rd sp.s. c 6:** See RCW 43.216.908.

**Expiration date—2017 c 325 § 1:** "Section 1 of this act expires April 1, 2018." [2017 c 325 § 3.]

**Effective date—2017 c 325 § 2:** "Section 2 of this act takes effect April 1, 2018." [2017 c 325 § 4.]

**Expiration date—2017 c 298 § 5:** "Section 5 of this act expires April 1, 2018." [2017 c 298 § 8.]

**Effective date—2017 c 298 § 6:** "Section 6 of this act takes effect April 1, 2018." [2017 c 298 § 7.]

**Effective dates—2016 sp.s. c 29:** See note following RCW 71.05.760.

**Short title—Right of action—2016 sp.s. c 29:** See notes following RCW 71.05.010.

**Effective date—2014 c 225:** See note following RCW 71.24.016.

**Effective date—2014 c 220:** See note following RCW 70.02.290.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.240 Mental health services—Minors—Permitted disclosures.** The fact of admission and all information and records related to mental health services obtained through inpatient or outpatient treatment of a minor under chapter 71.34 RCW must be kept confidential, except as authorized by this section or under RCW 70.02.050, 70.02.210, 70.02.230, 70.02.250, 70.02.260, and 70.02.265. Confidential information under this section may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of chapter 71.34 RCW, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To the minor, the minor's parent, including those acting as a parent as defined in RCW 71.34.020 for purposes of family-initiated treatment, and the minor's attorney, subject to RCW 13.50.100;

(4) To the courts as necessary to administer chapter 71.34 RCW;

(5) By a care coordinator under RCW 71.34.755 or 10.77.175 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.34 or 10.77 RCW;

(6) By a care coordinator under RCW 71.34.755 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.34 RCW;

(7) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address must be disclosed upon request;

(8) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(9) To the secretary of social and health services and the director of the health care authority for assistance in data collection and program evaluation or research so long as the secretary or director, where applicable, adopts rules for the conduct of such evaluation and research. The rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, . . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/ . . . . . ";

(10) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

(11) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

(12) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(13) Upon the death of a minor, to the minor's next of kin;

(14) To a facility in which the minor resides or will reside;

(15) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(v). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(v);

(c) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(16) This section may not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the director of the health care authority or the secretary of the department of social and health services, where applicable. The fact of admission and all information obtained pursuant to chapter 71.34 RCW are not admissible as evidence in any legal proceeding outside chapter 71.34 RCW, except guardianship or dependency, without the written consent of the minor or the minor's parent;

(17) For the purpose of a correctional facility participating in the postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555 and 74.09.295;

(18) Pursuant to a lawful order of a court. [2022 c 268 § 44. Prior: 2021 c 264 § 18; 2021 c 263 § 7; 2019 c 381 § 20; 2018 c 201 § 8003; 2013 c 200 § 8.]

**Effective dates—2022 c 268:** See note following RCW 7.105.010.

**Application—2021 c 263:** See note following RCW 10.77.150.

**Short title—2019 c 381:** See note following RCW 71.34.500.

**Findings—Intent—Effective date—2018 c 201:** See notes following RCW 41.05.018.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.250 Mental health services—Department of corrections.** (1) Information and records related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW must be released, upon request, by a mental health service agency to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request must be in writing and may not require the consent of the subject of the records.

(2) The information to be released to the department of corrections must include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (1) of this section.

(3) The authority shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific behavioral health administrative services organizations, managed care organizations contracted with the authority under chapter 74.09 RCW, and mental health service agencies that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the authority and the department of corrections.

(4) The authority, in consultation with the department, the department of corrections, behavioral health administrative services organizations, managed care organizations contracted with the authority under chapter 74.09 RCW, mental health service agencies as defined in RCW 70.02.010, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules must:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(5) The information received by the department of corrections under this section must remain confidential and subject to the limitations on disclosure outlined in chapter 71.34 RCW, except as provided in RCW 72.09.585.

(6) No mental health service agency or individual employed by a mental health service agency may be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under this chapter. [2019 c 325 § 5021; 2018 c 201 § 8004; 2014 c 225 § 72; 2013 c 200 § 9.]

**Effective date—2019 c 325:** See note following RCW 71.24.011.

**Findings—Intent—Effective date—2018 c 201:** See notes following RCW 41.05.018.

**Effective date—2014 c 225:** See note following RCW 71.24.016.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.260 Mental health services—Requests for information and records.** (1)(a) A mental health service agency shall release to the persons authorized under subsection (2) of this section, upon request:

(i) The fact, place, and date of an involuntary commitment, the fact and date of discharge or release, and the last known address of a person who has been committed under chapter 71.05 RCW.

(ii) Information and records related to mental health services, in the format determined under subsection (9) of this section, concerning a person who:

(A) Is currently committed to the custody or supervision of the department of corrections or the indeterminate sentence review board under chapter 9.94A or 9.95 RCW;

(B) Has been convicted or found not guilty by reason of insanity of a serious violent offense; or

(C) Was charged with a serious violent offense and the charges were dismissed under RCW 10.77.086.

(b) Legal counsel may release such information to the persons authorized under subsection (2) of this section on behalf of the mental health service agency, so long as nothing in this subsection requires the disclosure of attorney work product or attorney-client privileged information.

(2) The information subject to release under subsection (1) of this section must be released to law enforcement officers, personnel of a county or city jail, designated mental health professionals or designated crisis responders, as appropriate, public health officers, therapeutic court personnel as defined in RCW 71.05.020, or personnel of the department of corrections, including the indeterminate sentence review board and personnel assigned to perform board-related duties, when such information is requested during the course of business and for the purpose of carrying out the responsibilities of the requesting person's office. No mental health service agency or person employed by a mental health service agency, or its legal counsel, may be liable for information released to or used under the provisions of this section or rules adopted under this section except under RCW 71.05.680.

(3) A person who requests information under subsection (1)(a)(ii) of this section must comply with the following restrictions:

(a) Information must be requested only for the purposes permitted by this subsection and for the purpose of carrying out the responsibilities of the requesting person's office. Appropriate purposes for requesting information under this section include:

(i) Completing presentence investigations or risk assessment reports;

(ii) Assessing a person's risk to the community;

(iii) Assessing a person's risk of harm to self or others when confined in a city or county jail;

(iv) Planning for and provision of supervision of an offender, including decisions related to sanctions for violations of conditions of community supervision; and

(v) Responding to an offender's failure to report for department of corrections supervision;

(b) Information may not be requested under this section unless the requesting person has reasonable suspicion that the individual who is the subject of the information:

(i) Has engaged in activity indicating that a crime or a violation of community custody or parole has been committed or, based upon his or her current or recent past behavior, is likely to be committed in the near future; or

(ii) Is exhibiting signs of a deterioration in mental functioning which may make the individual appropriate for civil commitment under chapter 71.05 RCW; and

(c) Any information received under this section must be held confidential and subject to the limitations on disclosure outlined in this chapter, except:

(i) The information may be shared with other persons who have the right to request similar information under subsection (2) of this section, solely for the purpose of coordinating activities related to the individual who is the subject of the information in a manner consistent with the official responsibilities of the persons involved;

(ii) The information may be shared with a prosecuting attorney acting in an advisory capacity for a person who receives information under this section. A prosecuting attorney under this subsection is subject to the same restrictions and confidentiality limitations as the person who requested the information; and

(iii) As provided in RCW 72.09.585.

(4) A request for information and records related to mental health services under this section does not require the consent of the subject of the records. The request must be provided in writing, except to the extent authorized in subsection (5) of this section. A written request may include requests made by email or facsimile so long as the requesting person is clearly identified. The request must specify the information being requested.

(5) In the event of an emergency situation that poses a significant risk to the public or the offender, a mental health service agency, or its legal counsel, shall release information related to mental health services delivered to the offender and, if known, information regarding where the offender is likely to be found to the department of corrections or law enforcement upon request. The initial request may be written or oral. All oral requests must be subsequently confirmed in writing. Information released in response to an oral request is limited to a statement as to whether the offender is or is not being treated by the mental health service agency and the address or information about the location or whereabouts of the offender.

(6) Disclosure under this section to state or local law enforcement authorities is mandatory for the purposes of the federal health insurance portability and accountability act.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under this chapter.

(9) In collaboration with interested organizations, the authority shall develop a standard form for requests for information related to mental health services made under this section and a standard format for information provided in response to the requests. Consistent with the goals of the health information privacy provisions of the federal health insurance portability and accountability act, in developing the standard form for responsive information, the authority shall design the form in such a way that the information disclosed is limited to the minimum necessary to serve the purpose for which the information is requested. [2018 c 201 § 8005; 2013 c 200 § 10.]

**Findings—Intent—Effective date—2018 c 201:** See notes following RCW 41.05.018.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.265 Adolescent behavioral health services—Disclosure of treatment information and records—Restrictions and requirements—Immunity from liability.** (1)(a) When an adolescent voluntarily consents to his or her own mental health treatment under RCW 71.34.500 or 71.34.530, a mental health professional shall not proactively exercise his or her discretion under RCW 70.02.240 to release information or records related to solely mental health services received by the adolescent to a parent of the adolescent, beyond any notification required under RCW 71.34.510, unless the adolescent states a clear desire to do so which is documented by the mental health professional, except in situations concerning an imminent threat to the health and safety of the adolescent or others, or as otherwise may be required by law.

(b) In the event a mental health professional discloses information or releases records, or both, that relate solely to mental health services of an adolescent, to a parent pursuant to RCW 70.02.240(3), the mental health professional must provide notice of this disclosure to the adolescent and the adolescent must have a reasonable opportunity to express any concerns about this disclosure to the mental health professional prior to the disclosure of the information or records related solely to mental health services. The mental health professional shall document any objections to disclosure in the adolescent's medical record if the mental health professional subsequently discloses information or records related solely to mental health services over the objection of the adolescent.

(2) When an adolescent receives a mental health evaluation or treatment at the direction of a parent under RCW 71.34.600 through 71.34.670, the mental health professional is encouraged to exercise his or her discretion under RCW 70.02.240 to proactively release to the parent such information and records related to solely mental health services received by the adolescent, excluding psychotherapy notes, that are necessary to assist the parent in understanding the nature of the evaluation or treatment and in supporting their child. Such information includes:

(a) Diagnosis;

(b) Treatment plan and progress in treatment;

(c) Recommended medications, including risks, benefits, side effects, typical efficacy, dose, and schedule;

(d) Psychoeducation about the child's mental health;

(e) Referrals to community resources;

(f) Coaching on parenting or behavioral management strategies; and

(g) Crisis prevention planning and safety planning.

(3) If, after receiving a request from a parent for release of mental health treatment information relating to an adolescent, the mental health professional determines that disclosure of information or records related solely to mental health services pursuant to RCW 70.02.240(3) would be detrimental to the adolescent and declines to disclose such information or records, the mental health professional shall document the reasons for the lack of disclosure in the adolescent's medical record.

(4) Information or records about an adolescent's substance use disorder evaluation or treatment may be provided to a parent without the written consent of the adolescent only if permitted by federal law. A mental health professional or chemical dependency professional providing substance use disorder evaluation or treatment to an adolescent may seek the written consent of the adolescent to provide substance use disorder treatment information or records to a parent when the mental health professional or chemical dependency professional determines that both seeking the written consent and sharing the substance use disorder treatment information or records of the adolescent would not be detrimental to the adolescent.

(5) A mental health professional providing inpatient or outpatient mental health evaluation or treatment is not civilly liable for the decision to disclose information or records related to solely mental health services or not disclose such information or records so long as the decision was reached in good faith and without gross negligence.

(6) A chemical dependency professional or mental health professional providing inpatient or outpatient substance use disorder evaluation or treatment is not civilly liable for the decision to disclose information or records related to substance use disorder treatment information with the written consent of the adolescent or to not disclose such information or records to a parent without an adolescent's consent pursuant to this section so long as the decision was reached in good faith and without gross negligence.

(7) For purposes of this section, "adolescent" means a minor thirteen years of age or older. [2019 c 381 § 18.]

**Short title—2019 c 381:** See note following RCW 71.34.500.

**70.02.270 Health care information—Use or disclosure prohibited.** (1) No person who receives health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services, or other health care operations for or on behalf of a health care provider or health care facility, may use or disclose any health care information received from the health care provider or health care facility in any manner that would violate the requirements of this chapter if performed by the health care provider or health care facility.

(2) A health care provider or health care facility that has a contractual relationship with a person to provide services described under subsection (1) of this section may terminate the contractual relationship with the person if the health care provider or health care facility learns that the person has engaged in a pattern of activity that violates the person's duties under subsection (1) of this section, unless the person took reasonable steps to correct the breach of confidentiality or has discontinued the violating activity. [2014 c 220 § 10; 2013 c 200 § 11.]

**Effective date—2014 c 220:** See note following RCW 70.02.290.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.280 Health care providers and facilities—Prohibited actions.** A health care provider, health care facility, and their assistants, employees, agents, and contractors may not:

(1) Use or disclose health care information for marketing or fund-raising purposes, unless permitted by federal law; or

(2) Sell health care information to a third party, except:

(a) For purposes of treatment or payment;

(b) For purposes of sale, transfer, merger, or consolidation of a business;

(c) For purposes of remuneration to a third party for services;

(d) As disclosures are required by law;

(e) For purposes of providing access to or accounting of disclosures to an individual;

(f) For public health purposes;

(g) For research;

(h) With an individual's authorization;

(i) Where a reasonable cost-based fee is paid to prepare and transmit health information, where authority to disclose the information is provided in this chapter; or

(j) In a format that is deidentified and aggregated. [2014 c 220 § 11; 2013 c 200 § 12.]

**Effective date—2014 c 220:** See note following RCW 70.02.290.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.290 Agency rule-making requirements—Use/destruction of health care information by certain state and local agencies—Unauthorized disclosure—Notice—Rules/policies available on agency's website.** (1) All state or local agencies obtaining patient health care information pursuant to RCW 70.02.050 and 70.02.200 through 70.02.240 that are not health care facilities or providers shall adopt rules establishing their record acquisition, retention, destruction, and security policies that are consistent with this chapter.

(2) State and local agencies that are not health care facilities or providers that have not requested health care information and are not authorized to receive this information under this chapter:

(a) Must not use or disclose this information unless permitted under this chapter; and

(b) Must destroy the information in accordance with the policy developed under subsection (1) of this section or return the information to the entity that provided the information to the state or local agency if the entity is a health care facility or provider and subject to this chapter.

(3) A person who has health care information disclosed in violation of subsection (2)(a) of this section, must be informed of the disclosure by the state or local agency

improperly making the disclosure. State and local agencies that are not health care facilities or providers must develop a policy to establish a reasonable notification period and what information must be included in the notice, including whether the name of the entity that originally provided the information to the agency must be included.

(4) Rules or policies adopted under this section must be available through each agency's website. [2014 c 220 § 1; 2013 c 200 § 13.]

**Effective date—2014 c 220:** "Sections 1 through 7 and 9 through *16 of this act take effect July 1, 2014." [2014 c 220 § 17.]

***Reviser's note:** 2014 c 220 § 16 was vetoed.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.300 Sexually transmitted diseases—Required statement upon disclosure.** Whenever disclosure is made of information and records related to sexually transmitted diseases pursuant to this chapter, except for RCW 70.02.050(1)(a) and 70.02.220 (2) (a) and (b) and (7), it must be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written authorization of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure must be accompanied or followed by such a notice within ten days. [2013 c 200 § 14.]

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.310 Mental health services—Information and records.** (1) Resource management services shall establish procedures to provide reasonable and timely access to information and records related to mental health services for an individual. However, access may not be denied at any time to records of all medications and somatic treatments received by the person.

(2) Following discharge, a person who has received mental health services has a right to a complete record of all medications and somatic treatments prescribed during evaluation, admission, or commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(3) Information and records related to mental health services may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information on the condition that his or her identity remain confidential. Entire documents may not be withheld to protect such confidentiality.

(4) At the time of discharge resource management services shall inform all persons who have received mental health services of their rights as provided in this chapter and RCW 71.05.620. [2014 c 220 § 12; 2013 c 200 § 15.]

**Effective date—2014 c 220:** See note following RCW 70.02.290.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.320 Mental health services—Minors—Prompt entry in record upon disclosure.** When disclosure of information and records related to mental services pertaining to a minor, as defined in RCW 71.34.020, is made, the date and circumstances under which the disclosure was made, the name or names of the persons or agencies to whom such disclosure was made and their relationship if any, to the minor, and the information disclosed must be entered promptly in the minor's clinical record. [2013 c 200 § 16.]

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.330 Obtaining confidential records under false pretenses—Penalty.** Any person who requests or obtains confidential information and records related to mental health services pursuant to this chapter under false pretenses is guilty of a gross misdemeanor. [2013 c 200 § 17.]

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.340 Disclosure of information and records related to mental health services—Agency rule-making authority.** The authority shall adopt rules related to the disclosure of information and records related to mental health services. [2018 c 201 § 8006; 2014 c 220 § 13; 2013 c 200 § 18.]

**Findings—Intent—Effective date—2018 c 201:** See notes following RCW 41.05.018.

**Effective date—2014 c 220:** See note following RCW 70.02.290.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.350 Release of information to protect the public.** In addition to any other information required to be released under this chapter, the department of social and health services and the authority are authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific person committed under RCW *71.05.280(3) or **71.05.320(3)(c) following dismissal of a sex offense as defined in RCW 9.94A.030. [2018 c 201 § 8007; 2013 c 200 § 19.]

**Reviser's note:** *(1) RCW 71.05.280 was amended by 2013 c 289 § 4, substantially modifying the provisions of subsection (3).

**(2) RCW 71.05.320 was amended by 2013 c 289 § 5, substantially modifying the provisions of subsection (3)(c). RCW 71.05.320 was subsequently amended by 2015 c 250 § 11, changing subsection (3) to subsection (4).

**Findings—Intent—Effective date—2018 c 201:** See notes following RCW 41.05.018.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**70.02.900 Conflicting laws.** (1) This chapter does not restrict a health care provider, a third-party payor, or an insurer regulated under Title 48 RCW from complying with obligations imposed by federal or state health care payment programs or federal or state law.

(2) This chapter does not modify the terms and conditions of disclosure under Title 51 RCW and chapters 13.50, 26.09, 70.24, *70.96A, and 74.09 RCW and rules adopted under these provisions. [2013 c 200 § 20; 2011 c 305 § 10; 2000 c 5 § 4; 1991 c 335 § 901.]

***Reviser's note:** Chapter 70.96A RCW was repealed and/or recodified in its entirety pursuant to 2016 sp.s. c 29 §§ 301, 601, and 701.

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**Findings—2011 c 305:** See note following RCW 74.09.295.

**Intent—Purpose—2000 c 5:** See RCW 48.43.500.

Additional notes found at www.leg.wa.gov

**70.02.901 Application and construction—1991 c 335.** This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. [1991 c 335 § 903.]

**70.02.902 Short title.** This act may be cited as the uniform health care information act. [1991 c 335 § 904.]

**70.02.905 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 149.]

## Chapter 70.03 RCW
## MEDICAL RECORDS—PROVIDING INFORMATION TO PATIENTS

Sections



**70.03.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Health care entity" means an entity that supervises, controls, grants privileges to, directs the practice of, or directly or indirectly restricts the practice of, a health care provider.

(3) "Health care provider" has the same meaning as in RCW 70.02.010.

(4) "Medically accurate" means information that is verified or supported by research in compliance with scientific methods, is published in peer-reviewed journals, where appropriate, and is recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field. [2020 c 102 § 1.]

**70.03.020 Providing medical information to patients.** (1) If a health care provider is acting in good faith, within the provider's scope of practice, education, training, and experience, including specialty areas of practice and board certification, and within the accepted standard of care, a health care entity may not:

(a) Limit the health care provider's provision of:

(i) Medically accurate and comprehensive information and counseling to a patient regarding the patient's health status including, but not limited to, diagnosis, prognosis, recommended treatment, treatment alternatives, and any potential risks to the patient's health or life; and

(ii) Information about available services and about what relevant resources are available in the community and how to access those resources for obtaining the care of the patient's choice;

(b) Limit the health care provider's provision of information about and regarding Washington's death with dignity act, chapter 70.245 RCW, information about what relevant resources are available in the community, and how to access those resources for obtaining the care of the patient's choice.

(2) A health care entity may not discharge, demote, suspend, discipline, or otherwise discriminate against a health care provider for providing information in compliance with this section.

(3) If any part of this section is found to be in conflict with federal requirements which are a prescribed condition to the receipts of federal funds to the state, the conflicting part of this section is inoperative solely to the extent of the conflict with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of the section. [2020 c 102 § 2.]

**70.03.030 Information for health care providers and staff.** A health care entity must provide the information prepared by the department under RCW 43.70.810(1) at the time of hiring, contracting with, or privileging health care providers and staff, and on a yearly basis thereafter. Hospitals must also provide information to clearly inform health care providers and staff of the provisions of the federal emergency medical treatment and labor act (42 U.S.C. Sec. 1395dd), including obligations to screen, stabilize, and transfer patients, at the time of hiring, contracting with, or privileging health care providers and staff, and on a yearly basis thereafter. [2020 c 102 § 3.]

## Chapter 70.05 RCW
## LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS—REGULATIONS

Sections

*Health districts: Chapter 70.46 RCW.*

*State board of health: Chapter 43.20 RCW.*

**70.05.010 Definitions.** For the purposes of chapters 70.05 and 70.46 RCW and unless the context thereof clearly indicates to the contrary:

(1) "Local health departments" means the county or district which provides public health services to persons within the area.

(2) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the county or district public health department.

(3) "Local board of health" means the county or district board of health.

(4) "Health district" means all the territory consisting of one or more counties organized pursuant to the provisions of chapters 70.05 and 70.46 RCW.

(5) "Department" means the department of health. [1993 c 492 § 234; 1967 ex.s. c 51 § 1.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.05.030 Counties—Local board of health—Jurisdiction.** (1) Except as provided in subsection (2) of this section, for counties without a home rule charter, the board of county commissioners and the members selected under (a) and (e) of this subsection, shall constitute the local board of health, unless the county is part of a health district pursuant to chapter 70.46 RCW. The jurisdiction of the local board of health shall be coextensive with the boundaries of the county.

(a) The remaining board members must be persons who are not elected officials and must be selected from the following categories consistent with the requirements of this section and the rules adopted by the state board of health under RCW 43.20.300:

(i) Public health, health care facilities, and providers. This category consists of persons practicing or employed in the county who are:

(A) Medical ethicists;

(B) Epidemiologists;

(C) Experienced in environmental public health, such as a registered sanitarian;

(D) Community health workers;

(E) Holders of master's degrees or higher in public health or the equivalent;

(F) Employees of a hospital located in the county; or

(G) Any of the following providers holding an active or retired license in good standing under Title 18 RCW:

(I) Physicians or osteopathic physicians;

(II) Advanced registered nurse practitioners;

(III) Physician assistants or osteopathic physician assistants;

(IV) Registered nurses;

(V) Dentists;

(VI) Naturopaths; or

(VII) Pharmacists;

(ii) Consumers of public health. This category consists of county residents who have self-identified as having faced significant health inequities or as having lived experiences with public health-related programs such as: The special supplemental nutrition program for women, infants, and children; the supplemental nutrition program; home visiting; or treatment services. It is strongly encouraged that individuals from historically marginalized and underrepresented communities are given preference. These individuals may not be elected officials and may not have any fiduciary obligation to a health facility or other health agency, and may not have a material financial interest in the rendering of health services; and

(iii) Other community stakeholders. This category consists of persons representing the following types of organizations located in the county:

(A) Community-based organizations or nonprofits that work with populations experiencing health inequities in the county;

(B) Active, reserve, or retired armed services members;

(C) The business community; or

(D) The environmental public health regulated community.

(b) The board members selected under (a) of this subsection must be approved by a majority vote of the board of county commissioners.

(c) If the number of board members selected under (a) of this subsection is evenly divisible by three, there must be an equal number of members selected from each of the three categories. If there are one or two members over the nearest multiple of three, those members may be selected from any of the three categories. However, if the board of health demonstrates that it attempted to recruit members from all three categories and was unable to do so, the board may select members only from the other two categories.

(d) There may be no more than one member selected under (a) of this subsection from one type of background or position.

(e) If a federally recognized Indian tribe holds reservation, trust lands, or has usual and accustomed areas within the county, or if a 501(c)(3) organization registered in Washington that serves American Indian and Alaska Native people and provides services within the county, the board of health must include a tribal representative selected by the American Indian health commission.

(f) The board of county commissioners may, at its discretion, adopt an ordinance expanding the size and composition of the board of health to include elected officials from cities and towns and persons other than elected officials as members so long as the city and county elected officials do not constitute a majority of the total membership of the board.

(g) Except as provided in (a) and (e) of this subsection, an ordinance adopted under this section shall include provisions for the appointment, term, and compensation, or reimbursement of expenses.

(h) The jurisdiction of the local board of health shall be coextensive with the boundaries of the county.

(i) The local health officer, as described in RCW 70.05.050, shall be appointed by the official designated under the provisions of the county charter. The same official designated under the provisions of the county charter may appoint an administrative officer, as described in RCW 70.05.045.

(j) The number of members selected under (a) and (e) of this subsection must equal the number of city and county elected officials on the board of health.

(k) At the first meeting of a district board of health the members shall elect a chair to serve for a period of one year.

(l) Any decision by the board of health related to the setting or modification of permit, licensing, and application fees may only be determined by the city and county elected officials on the board.

(2) A local board of health comprised solely of elected officials may retain this composition if the local health jurisdiction had a public health advisory committee or board with its own bylaws established on January 1, 2021. By January 1, 2022, the public health advisory committee or board must meet the requirements established in RCW 70.46.140 for community health advisory boards. Any future changes to local board of health composition must meet the requirements of subsection (1) of this section. [2021 c 205 § 3; 1995 c 43 § 6; 1993 c 492 § 235; 1967 ex.s. c 51 § 3.]

**Effective date—2021 c 205 §§ 3-6:** "Sections 3 through 6 of this act take effect July 1, 2022." [2021 c 205 § 9.]

**Finding—2021 c 205:** See note following RCW 43.70.675.

***Reviser's note:** The 1995 omnibus appropriations act, chapter 18, Laws of 1995 2nd sp. sess. provided two million two hundred fifty thousand dollars.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.05.035 Home rule charter counties—Local board of health.** (1) Except as provided in subsection (2) of this section, for home rule charter counties, the county legislative authority shall establish a local board of health and may prescribe the membership and selection process for the board. The membership of the local board of health must also include the members selected under (a) and (e) of this subsection.

(a) The remaining board members must be persons who are not elected officials and must be selected from the following categories consistent with the requirements of this section and the rules adopted by the state board of health under RCW 43.20.300:

(i) Public health, health care facilities, and providers. This category consists of persons practicing or employed in the county who are:

(A) Medical ethicists;

(B) Epidemiologists;

(C) Experienced in environmental public health, such as a registered sanitarian;

(D) Community health workers;

(E) Holders of master's degrees or higher in public health or the equivalent;

(F) Employees of a hospital located in the county; or

(G) Any of the following providers holding an active or retired license in good standing under Title 18 RCW:

(I) Physicians or osteopathic physicians;

(II) Advanced registered nurse practitioners;

(III) Physician assistants or osteopathic physician assistants;

(IV) Registered nurses;

(V) Dentists;

(VI) Naturopaths; or

(VII) Pharmacists;

(ii) Consumers of public health. This category consists of county residents who have self-identified as having faced significant health inequities or as having lived experiences with public health-related programs such as: The special supplemental nutrition program for women, infants, and children; the supplemental nutrition program; home visiting; or treatment services. It is strongly encouraged that individuals from historically marginalized and underrepresented communities are given preference. These individuals may not be elected officials and may not have any fiduciary obligation to a health facility or other health agency, and may not have a material financial interest in the rendering of health services; and

(iii) Other community stakeholders. This category consists of persons representing the following types of organizations located in the county:

(A) Community-based organizations or nonprofits that work with populations experiencing health inequities in the county;

(B) Active, reserve, or retired armed services members;

(C) The business community; or

(D) The environmental public health regulated community.

(b) The board members selected under (a) of this subsection must be approved by a majority vote of the board of county commissioners.

(c) If the number of board members selected under (a) of this subsection is evenly divisible by three, there must be an equal number of members selected from each of the three categories. If there are one or two members over the nearest multiple of three, those members may be selected from any of the three categories. However, if the board of health demonstrates that it attempted to recruit members from all three categories and was unable to do so, the board may select members only from the other two categories.

(d) There may be no more than one member selected under (a) of this subsection from one type of background or position.

(e) If a federally recognized Indian tribe holds reservation, trust lands, or has usual and accustomed areas within the county, or if a 501(c)(3) organization registered in Washington that serves American Indian and Alaska Native people and provides services within the county, the board of health must include a tribal representative selected by the American Indian health commission.

(f) The county legislative authority may appoint to the board of health elected officials from cities and towns and persons other than elected officials as members so long as the city and county elected officials do not constitute a majority of the total membership of the board.

(g) Except as provided in (a) and (e) of this subsection, the county legislative authority shall specify the appointment, term, and compensation or reimbursement of expenses.

(h) The jurisdiction of the local board of health shall be coextensive with the boundaries of the county.

(i) The local health officer, as described in RCW 70.05.050, shall be appointed by the official designated under the provisions of the county charter. The same official designated under the provisions of the county charter may appoint an administrative officer, as described in RCW 70.05.045.

(j) The number of members selected under (a) and (e) of this subsection must equal the number of city and county elected officials on the board of health.

(k) At the first meeting of a district board of health the members shall elect a chair to serve for a period of one year.

(l) Any decision by the board of health related to the setting or modification of permit, licensing, and application fees may only be determined by the city and county elected officials on the board.

(2) A local board of health comprised solely of elected officials may retain this composition if the local health jurisdiction had a public health advisory committee or board with its own bylaws established on January 1, 2021. By January 1, 2022, the public health advisory committee or board must meet the requirements established in RCW 70.46.140 for community health advisory boards. Any future changes to local board of health composition must meet the requirements of subsection (1) of this section. [2021 c 205 § 4; 1995 c 43 § 7; 1993 c 492 § 237.]

**Effective date—2021 c 205 §§ 3-6:** See note following RCW 70.05.030.

**Finding—2021 c 205:** See note following RCW 43.70.675.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.05.040 Local board of health—Chair—Administrative officer—Vacancies.** The local board of health shall elect a chair and may appoint an administrative officer. A local health officer shall be appointed pursuant to RCW 70.05.050. Vacancies on the local board of health shall be filled by appointment within thirty days and made in the same manner as was the original appointment. At the first meeting of the local board of health, the members shall elect a chair to serve for a period of one year. [1993 c 492 § 236; 1984 c 25 § 1; 1983 1st ex.s. c 39 § 1; 1967 ex.s. c 51 § 4.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.05.045 Administrative officer—Responsibilities.** The administrative officer shall act as executive secretary and administrative officer for the local board of health, and shall be responsible for administering the operations of the board including such other administrative duties required by the local health board, except for duties assigned to the health officer as enumerated in RCW 70.05.070 and other applicable state law. [1984 c 25 § 2.]

**70.05.050 Local health officer—Qualifications—Employment of personnel—Salary and expenses.** The local health officer shall be an experienced physician licensed to practice medicine and surgery or osteopathic medicine and surgery in this state and who is qualified or provisionally qualified in accordance with the standards prescribed in RCW 70.05.051 through 70.05.055 to hold the office of local health officer. No term of office shall be established for the local health officer but the local health officer shall not be removed until after notice is given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal. The local health officer shall act as executive secretary to, and administrative officer for the local board of health and shall also be empowered to employ such technical and other personnel as approved by the local board of health except where the local board of health has appointed an administrative officer under RCW 70.05.040. The local health officer shall be paid such salary and allowed such expenses as shall be determined by the local board of health. In home rule counties that are part of a health district under this chapter and chapter 70.46 RCW the local health officer and administrative officer shall be appointed by the local board of health. [1996 c 178 § 19; 1995 c 43 § 8; 1993 c 492 § 238; 1984 c 25 § 5; 1983 1st ex.s. c 39 § 2; 1969 ex.s. c 114 § 1; 1967 ex.s. c 51 § 9.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.05.051 Local health officer—Qualifications.** The following persons holding licenses as required by RCW 70.05.050 shall be deemed qualified to hold the position of local health officer:

(1) Persons holding the degree of master of public health or its equivalent;

(2) Persons not meeting the requirements of subsection (1) of this section, who upon August 11, 1969 are currently employed in this state as a local health officer and whom the secretary of social and health services recommends in writing to the local board of health as qualified; and

(3) Persons qualified by virtue of completing three years of service as a provisionally qualified officer pursuant to RCW 70.05.053 through 70.05.055. [1979 c 141 § 75; 1969 ex.s. c 114 § 2.]

**70.05.053 Provisionally qualified local health officers—Appointment—Term—Requirements.** A person holding a license required by RCW 70.05.050 but not meeting any of the requirements for qualification prescribed by RCW 70.05.051 may be appointed by the board or official responsible for appointing the local health officer under RCW 70.05.050 as a provisionally qualified local health officer for a maximum period of three years upon the following conditions and in accordance with the following procedures:

(1) He or she shall participate in an in-service orientation to the field of public health as provided in RCW 70.05.054, and

(2) He or she shall satisfy the secretary of health pursuant to the periodic interviews prescribed by RCW 70.05.055 that he or she has successfully completed such in-service orientation and is conducting such program of good health practices as may be required by the jurisdictional area concerned. [1991 c 3 § 305; 1983 1st ex.s. c 39 § 3; 1979 c 141 § 76; 1969 ex.s. c 114 § 3.]

**70.05.054 Provisionally qualified local health officers—In-service public health orientation program.** The secretary of health shall provide an in-service public health

orientation program for the benefit of provisionally qualified local health officers.

Such program shall consist of—

(1) A three months course in public health training conducted by the secretary either in the state department of health, in a county and/or city health department, in a local health district, or in an institution of higher education; or

(2) An on-the-job, self-training program pursuant to a standardized syllabus setting forth the major duties of a local health officer including the techniques and practices of public health principles expected of qualified local health officers: PROVIDED, That each provisionally qualified local health officer may choose which type of training he or she shall pursue. [1991 c 3 § 306; 1979 c 141 § 77; 1969 ex.s. c 114 § 4.]

**70.05.055 Provisionally qualified local health officers—Interview—Evaluation as to qualification as local public health officer.** Each year, on a date which shall be as near as possible to the anniversary date of appointment as provisional local health officer, the secretary of health or his or her designee shall personally visit such provisional officer's office for a personal review and discussion of the activity, plans, and study being carried on relative to the provisional officer's jurisdictional area: PROVIDED, That the third such interview shall occur three months prior to the end of the three year provisional term. A standardized checklist shall be used for all such interviews, but such checklist shall not constitute a grading sheet or evaluation form for use in the ultimate decision of qualification of the provisional appointee as a public health officer.

Copies of the results of each interview shall be supplied to the provisional officer within two weeks following each such interview.

Following the third such interview, the secretary shall evaluate the provisional local health officer's in-service performance and shall notify such officer by certified mail of his or her decision whether or not to qualify such officer as a local public health officer. Such notice shall be mailed at least sixty days prior to the third anniversary date of provisional appointment. Failure to so mail such notice shall constitute a decision that such provisional officer is qualified. [1991 c 3 § 307; 1979 c 141 § 78; 1969 ex.s. c 114 § 5.]

**70.05.060 Powers and duties of local board of health.** Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction and shall:

(1) Enforce through the local health officer or the administrative officer appointed under RCW 70.05.040, if any, the public health statutes of the state and rules promulgated by the state board of health and the secretary of health;

(2) Supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction;

(3) Enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;

(4) Provide for the control and prevention of any dangerous, contagious or infectious disease within the jurisdiction of the local health department;

(5) Provide for the prevention, control and abatement of nuisances detrimental to the public health;

(6) Make such reports to the state board of health through the local health officer or the administrative officer as the state board of health may require; and

(7) Establish fee schedules for issuing or renewing licenses or permits or for such other services as are authorized by the law and the rules of the state board of health: PROVIDED, That such fees for services shall not exceed the actual cost of providing any such services. [1991 c 3 § 308; 1984 c 25 § 6; 1979 c 141 § 79; 1967 ex.s. c 51 § 10.]

**70.05.070 Local health officer—Powers and duties.** The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

(1) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70A.125.030 and 70A.105.120, the confidentiality provisions in RCW 70.02.220 and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of health or his or her authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules of the state board of health;

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department. [2020 c 20 § 1066; 2013 c 200 § 26; 2007 c 343 § 10; 1999 c 391 § 5; 1993 c 492 § 239; 1991 c 3 § 309; 1990 c 133 § 10; 1984 c 25 § 7; 1979 c 141 § 80; 1967 ex.s. c 51 § 12.]

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**Findings—Purpose—1999 c 391:** See note following RCW 70.05.180.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Findings—Severability—1990 c 133:** See notes following RCW 36.94.140.

Additional notes found at www.leg.wa.gov

**70.05.072 Local health officer—Authority to grant waiver from on-site sewage system requirements.** The local health officer may grant a waiver from specific requirements adopted by the state board of health for on-site sewage systems if:

(1) The on-site sewage system for which a waiver is requested is for sewage flows under three thousand five hundred gallons per day;

(2) The waiver request is evaluated by the local health officer on an individual, site-by-site basis;

(3) The local health officer determines that the waiver is consistent with the standards in, and the intent of, the state board of health rules; and

(4) The local health officer submits quarterly reports to the department regarding any waivers approved or denied.

Based on review of the quarterly reports, if the department finds that the waivers previously granted have not been consistent with the standards in, and intent of, the state board of health rules, the department shall provide technical assistance to the local health officer to correct the inconsistency, and may notify the local and state boards of health of the department's concerns.

If upon further review of the quarterly reports, the department finds that the inconsistency between the waivers granted and the state board of health standards has not been corrected, the department may suspend the authority of the local health officer to grant waivers under this section until such inconsistencies have been corrected. [1995 c 263 § 1.]

**70.05.074 On-site sewage system permits—Application—Limitation of alternative sewage systems.** (1) The local health officer must respond to the applicant for an on-site sewage system permit within thirty days after receiving a fully completed application. The local health officer must respond that the application is either approved, denied, or pending.

(2) If the local health officer denies an application to install an on-site sewage system, the denial must be for cause and based upon public health and environmental protection concerns, including concerns regarding the ability to operate and maintain the system, or conflicts with other existing laws, regulations, or ordinances. The local health officer must provide the applicant with a written justification for the denial, along with an explanation of the procedure for appeal.

(3) If the local health officer identifies the application as pending and subject to review beyond thirty days, the local health officer must provide the applicant with a written justification that the site-specific conditions or circumstances necessitate a longer time period for a decision on the application. The local health officer must include any specific information necessary to make a decision and the estimated time required for a decision to be made.

(4) A local health officer may not limit the number of alternative sewage systems within his or her jurisdiction without cause. Any such limitation must be based upon public health and environmental protection concerns, including concerns regarding the ability to operate and maintain the system, or conflicts with other existing laws, regulations, or ordinances. If such a limitation is established, the local health officer must justify the limitation in writing, with specific reasons, and must provide an explanation of the procedure for appealing the limitation. [1997 c 447 § 2.]

**Finding—Purpose—1997 c 447:** "The legislature finds that improperly designed, installed, or maintained on-site sewage disposal systems are a major contributor to water pollution in this state. The legislature also recognizes that evolving technology has produced many viable alternatives to traditional on-site septic systems. It is the purpose of this act to help facilitate the siting of new alternative on-site septic systems and to assist local governments in promoting efficient operation of on-site septic *these systems." [1997 c 447 § 1.]

***Reviser's note:** Due to a drafting error, the word "these" was not removed when this sentence was rewritten.

Additional notes found at www.leg.wa.gov

**70.05.077 Department of health—Training—On-site sewage systems—Application of the waiver authority—Topics—Availability.** (1) The department of health, in consultation and cooperation with local environmental health officers, shall develop a one-day course to train local environmental health officers, health officers, and environmental health specialists and technicians to address the application of the waiver authority granted under RCW 70.05.072 as well as other existing statutory or regulatory flexibility for siting on-site sewage systems.

(2) The training course shall include the following topics:

(a) The statutory authority to grant waivers from the state on-site sewage system rules;

(b) The regulatory framework for the application of on-site sewage treatment and disposal technologies, with an emphasis on the differences between rules, standards, and guidance. The course shall include instruction on interpreting the intent of a rule rather than the strict reading of the language of a rule, and also discuss the liability assumed by a unit of local government when local rules, policies, or practices deviate from the state administrative code;

(c) The application of site evaluation and assessment methods to match the particular site and development plans with the on-site sewage treatment and disposal technology suitable to protect public health to at least the level provided by state rule; and

(d) Instruction in the concept and application of mitigation waivers.

(3) The training course shall be made available to all local health departments and districts in various locations in the state without fee. Updated guidance documents and materials shall be provided to all participants, including examples of the types of waivers and processes that other jurisdictions in the region have granted and used. The first training conducted under this section shall take place by June 30, 1999. [1998 c 34 § 3.]

**Intent—1998 c 34:** "(1) The 1997 legislature directed the department of health to convene a work group for the purpose of making recommendations to the legislature for the development of a certification program for occupations related to on-site septic systems, including those who pump, install, design, perform maintenance, inspect, or regulate on-site septic systems. The work group was convened and studied issues relating to certification of people employed in these occupations, bonding levels, and other standards related to these occupations. In addition, the work group examined the application of a risk analysis pertaining to the installation and maintenance of different types of septic systems in different parts of the state. A written report containing the work group's findings and recommendations was submitted to the legislature as directed.

(2) The legislature recognizes that the recommendations of the work group must be phased-in over a time period in order to develop the necessary scope of work requirements, knowledge requirements, public protection requirements, and other criteria for the upgrading of these occupations. It is the intent of the legislature to start implementing the work group's recommendations by focusing first on the occupations that are considered to be the highest priority, and to address the other occupational recommendations in subsequent sessions." [1998 c 34 § 1.]

**70.05.080 Local health officer—Failure to appoint—Procedure.** If the local board of health or other official responsible for appointing a local health officer under RCW 70.05.050 refuses or neglects to appoint a local health officer after a vacancy exists, the secretary of health may appoint a local health officer and fix the compensation. The local health officer so appointed shall have the same duties, powers and authority as though appointed under RCW 70.05.050. Such local health officer shall serve until a qualified individual is appointed according to the procedures set forth in RCW 70.05.050. The board or official responsible for appointing the local health officer under RCW 70.05.050 shall also be authorized to appoint an acting health officer to serve whenever the health officer is absent or incapacitated and unable to fulfill his or her responsibilities under the provisions of chapters 70.05 and 70.46 RCW. [1993 c 492 § 240; 1991 c 3 § 310; 1983 1st ex.s. c 39 § 4; 1979 c 141 § 81; 1967 ex.s. c 51 § 13.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.05.090 Physicians to report diseases.** Whenever any physician shall attend any person sick with any dangerous contagious or infectious disease, or with any diseases required by the state board of health to be reported, he or she shall, within twenty-four hours, give notice thereof to the local health officer within whose jurisdiction such sick person may then be or to the state department of health in Olympia. [1991 c 3 § 311; 1979 c 141 § 82; 1967 ex.s. c 51 § 14.]

**70.05.100 Determination of character of disease.** In case of the question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state department of health can be notified, and then the opinion of the executive officer of the state department of health, or any physician he or she may appoint to examine such case, shall be final. [1991 c 3 § 312; 1979 c 141 § 83; 1967 ex.s. c 51 § 15.]

**70.05.110 Local health officials and physicians to report contagious diseases.** It shall be the duty of the local board of health, health authorities or officials, and of physicians in localities where there are no local health authorities or officials, to report to the state board of health, promptly upon discovery thereof, the existence of any one of the following diseases which may come under their observation, to wit: Asiatic cholera, yellow fever, smallpox, scarlet fever, diphtheria, typhus, typhoid fever, bubonic plague or leprosy, and of such other contagious or infectious diseases as the state board may from time to time specify. [1967 ex.s. c 51 § 16.]

**70.05.120 Violations—Remedies—Penalties.** (1) Any local health officer or administrative officer appointed under RCW 70.05.040, if any, who shall refuse or neglect to obey or enforce the provisions of chapters 70.05, 70.24, and 70.46 RCW or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer or administrative officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. Any person may complain to the state board of health concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer or administrative officer is guilty of the alleged acts. Such hearings shall be held pursuant to the provisions of chapter 34.05 RCW, and the rules and regulations of the state board of health adopted thereunder.

(2) Any member of a local board of health who shall violate any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state board of health made for the prevention, suppression or control of any dangerous contagious or infectious disease or for the protection of the health of the people of this state, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars.

(3) Any physician who shall refuse or neglect to report to the proper health officer or administrative officer within twelve hours after first attending any case of contagious or infectious disease or any diseases required by the state board of health to be reported or any case suspicious of being one of such diseases, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars for each case that is not reported.

(4) Any person violating any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or administrative officer or state board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment. [2003 c 53 § 350; 1999 c 391 § 6; 1993 c 492 § 241; 1984 c 25 § 8; 1967 ex.s. c 51 § 17.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**Findings—Purpose—1999 c 391:** See note following RCW 70.05.180.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.05.130 Expenses of state, health district, or county in enforcing health laws and rules—Payment by county.** All expenses incurred by the state, health district, or county in carrying out the provisions of chapters 70.05 and 70.46 RCW or any other public health law, or the rules of the department of health enacted under such laws, shall be paid by the county and such expenses shall constitute a claim against the general fund as provided in this section. [1993 c 492 § 242; 1991 c 3 § 313; 1979 c 141 § 84; 1967 ex.s. c 51 § 18.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.05.150 Contracts for sale or purchase of health services authorized.** In addition to powers already granted them, any county, district, or local health department may contract for either the sale or purchase of any or all health services from any local health department. [2011 c 27 § 4; 1993 c 492 § 243; 1967 ex.s. c 51 § 22.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.05.160 Moratorium on water, sewer hookups, or septic systems—Public hearing—Limitation on length.** A local board of health that adopts a moratorium affecting water hookups, sewer hookups, or septic systems without holding a public hearing on the proposed moratorium, shall hold a public hearing on the adopted moratorium within at least sixty days of its adoption. If the board does not adopt findings of fact justifying its action before this hearing, then the board shall do so immediately after this public hearing. A moratorium adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. [1992 c 207 § 7.]

**70.05.170 Child mortality review.** (1)(a) The legislature finds that the mortality rate in Washington state among infants and children less than eighteen years of age is unacceptably high, and that such mortality may be preventable. The legislature further finds that, through the performance of child mortality reviews, preventable causes of child mortality can be identified and addressed, thereby reducing the infant and child mortality in Washington state.

(b) It is the intent of the legislature to encourage the performance of child death reviews by local health departments by providing necessary legal protections to the families of children whose deaths are studied, local health department officials and employees, and health care professionals participating in child mortality review committee activities.

(2) As used in this section, "child mortality review" means a process authorized by a local health department as such department is defined in RCW 70.05.010 for examining factors that contribute to deaths of children less than eighteen years of age. The process may include a systematic review of medical, clinical, and hospital records; home interviews of parents and caretakers of children who have died; analysis of individual case information; and review of this information by a team of professionals in order to identify modifiable medical, socioeconomic, public health, behavioral, administrative, educational, and environmental factors associated with each death.

(3) Local health departments are authorized to conduct child mortality reviews. In conducting such reviews, the following provisions shall apply:

(a) All health care information collected as part of a child mortality review is confidential, subject to the restrictions on disclosure provided for in chapter 70.02 RCW. When documents are collected as part of a child mortality review, the records may be used solely by local health departments for the purposes of the review.

(b) No identifying information related to the deceased child, the child's guardians, or anyone interviewed as part of the child mortality review may be disclosed. Any such information shall be redacted from any records produced as part of the review.

(c) Any witness statements or documents collected from witnesses, or summaries or analyses of those statements or records prepared exclusively for purposes of a child mortality review, are not subject to public disclosure, discovery, subpoena, or introduction into evidence in any administrative, civil, or criminal proceeding related to the death of a child reviewed. This provision does not restrict or limit the discovery or subpoena from a health care provider of records or documents maintained by such health care provider in the ordinary course of business, whether or not such records or documents may have been supplied to a local health department pursuant to this section. This provision shall not restrict or limit the discovery or subpoena of documents from such witnesses simply because a copy of a document was collected as part of a child mortality review.

(d) No local health department official or employee, and no members of technical committees established to perform case reviews of selected child deaths may be examined in any administrative, civil, or criminal proceeding as to the existence or contents of documents assembled, prepared, or maintained for purposes of a child mortality review.

(e) This section shall not be construed to prohibit or restrict any person from reporting suspected child abuse or neglect under chapter 26.44 RCW nor to limit access to or use of any records, documents, information, or testimony in any civil or criminal action arising out of any report made pursuant to chapter 26.44 RCW.

(4) The department shall assist local health departments to collect the reports of any child mortality reviews conducted by local health departments and assist with entering the reports into a database to the extent that the data is not protected under subsection (3) of this section. Notwithstanding subsection (3) of this section, the department shall respond to any requests for data from the database to the extent permitted for health care information under chapter 70.02 RCW. In addition, the department shall provide technical assistance to local health departments and child death review coordinators conducting child mortality reviews and encourage communication among child death review teams. The department shall conduct these activities using only federal and private funding.

(5) This section does not prevent a local health department from publishing statistical compilations and reports related to the child mortality review. Any portions of such

compilations and reports that identify individual cases and sources of information must be redacted. [2010 c 128 § 1; 2009 c 134 § 1; 1993 c 41 § 1; 1992 c 179 § 1.]

**70.05.180 Infectious disease testing—Good samaritans—Rules.** A person rendering emergency care or transportation, commonly known as a "Good Samaritan," as described in RCW 4.24.300 and 4.24.310, may request and receive appropriate infectious disease testing free of charge from the local health department of the county of her or his residence, if: (1) While rendering emergency care she or he came into contact with bodily fluids; and (2) she or he does not have health insurance that covers the testing. Nothing in this section requires a local health department to provide health care services beyond testing. The department shall adopt rules implementing this section.

The information obtained from infectious disease testing is subject to statutory confidentiality provisions, including those of chapters 70.24 and 70.05 RCW. [1999 c 391 § 2.]

**Findings—Purpose—1999 c 391:** "The legislature finds that citizens who assist individuals in emergency situations perform a needed and valuable role that deserves recognition and support. The legislature further finds that emergency assistance in the form of mouth to mouth resuscitation or other emergency medical procedures resulting in the exchange of bodily fluids significantly increases the odds of being exposed to a deadly infectious disease. Some of the more life-threatening diseases that can be transferred during an emergency procedure where bodily fluids are exchanged include hepatitis A, B, and C, and human immunodeficiency virus (HIV). Individuals infected by these diseases value confidentiality regarding this information. A number of good samaritans who perform lifesaving emergency procedures such as cardiopulmonary resuscitation are unable to pay for the tests necessary for detecting infectious diseases that could have been transmitted during the emergency procedure. It is the purpose of this act to provide infectious disease testing at no cost to good samaritans who request testing for infectious diseases after rendering emergency assistance that has brought them into contact with a bodily fluid and to further protect the testing information once obtained through confidentiality provisions." [1999 c 391 § 1.]

Additional notes found at www.leg.wa.gov

**70.05.190 On-site sewage program management plans—Authority of certain boards of health.** (1) A local board of health in the twelve counties bordering Puget Sound implementing an on-site sewage program management plan may:

(a) Impose and collect reasonable rates or charges in an amount sufficient to pay for the actual costs of administration and operation of the on-site sewage program management plan; and

(b) Contract with the county treasurer to collect the rates or charges imposed under this section in accordance with RCW 84.56.035.

(2) In executing the provisions in subsection (1) of this section, a local board of health does not have the authority to impose a lien on real property for failure to pay rates and charges imposed by this section.

(3) Nothing in this section provides a local board of health with the ability to impose and collect rates and charges related to the implementation of an on-site sewage program management plan beyond those powers currently designated under RCW 70.05.060(7). [2012 c 175 § 1.]

**70.05.200 On-site sewage system self-inspection.** Nothing in this chapter prohibits a county from relying on self-inspection of on-site sewage systems consistent with RCW 36.70A.690 or eliminates the requirement that counties protect water quality consistent with RCW 36.70A.070 (1) and (5). [2017 c 105 § 3.]

**70.05.210 Fatality review teams.** (1) The legislature finds that the mortality rate in Washington state due to overdose, withdrawal related to substance abuse such as opiates, benzodiazepines, and alcohol, and suicide is unacceptably high and that such mortality may be preventable. The legislature further finds that, through the performance of overdose, withdrawal, and suicide fatality reviews, preventable causes of mortality can be identified and addressed, thereby reducing the number of overdose, withdrawal, and suicide fatalities in Washington state.

(2)(a) A local health department may establish multidisciplinary overdose, withdrawal, and suicide fatality review teams to review overdose, withdrawal, and suicide deaths and to develop strategies for the prevention of overdose, withdrawal, and suicide fatalities.

(b) The department shall assist local health departments to collect the reports of any overdose, withdrawal, and suicide fatality reviews conducted by local health departments and assist with entering the reports into a database to the extent that the data is not protected under subsection (3) of this section. Notwithstanding subsection (3) of this section, the department shall respond to any requests for data from the database to the extent permitted for health care information under chapters 70.02 and 70.225 RCW. In addition, the department shall provide technical assistance to local health departments and overdose, withdrawal, and suicide fatality review teams conducting overdose, withdrawal, and suicide fatality reviews and encourage communication among overdose, withdrawal, and suicide fatality review teams.

(c) All overdose, withdrawal, or suicide fatality reviews undertaken under this section shall be shared with the department, subject to the same confidentiality restrictions described in this section.

(3)(a) All health care information collected as part of an overdose, withdrawal, and suicide fatality review is confidential, subject to the restrictions on disclosure provided for in chapter 70.02 RCW. When documents are collected as part of an overdose, withdrawal, and suicide fatality review, the records may be used solely by local health departments for the purposes of the review.

(b) Information, documents, proceedings, records, and opinions created, collected, or maintained by the overdose, withdrawal, and suicide fatality review team or the local health department in support of the review team are confidential and are not subject to public inspection or copying under chapter 42.56 RCW and are not subject to discovery or introduction into evidence in any civil or criminal action.

(c) Any person who was in attendance at a meeting of the review team or who participated in the creation, collection, or maintenance of the review team's information, documents, proceedings, records, or opinions may not be permitted or required to testify in any civil or criminal action as to the content of such proceedings, or the review team's information, documents, records, or opinions. This subsection does not prevent a member of the review team from testifying in a civil or criminal action concerning facts which form the basis for the overdose, withdrawal, and suicide fatality review

team's proceedings of which the review team member had personal knowledge acquired independently of the overdose, withdrawal, and suicide fatality review team or which is public information.

(d) Any person who, in substantial good faith, participates as a member of the review team or provides information to further the purposes of the review team may not be subject to an action for civil damages or other relief as a result of the activity or its consequences.

(e) All meetings, proceedings, and deliberations of the overdose, withdrawal, and suicide fatality review team must be confidential and may be conducted in executive session.

(4) This section does not prevent a local health department from publishing statistical compilations and reports related to the overdose, withdrawal, and suicide fatality review. Any portions of such compilations and reports that identify individual cases and sources of information must be redacted.

(5) To aid in an overdose, withdrawal, and suicide fatality review, the local health department has the authority to:

(a) Request and receive data for specific overdose, withdrawal, and suicide fatalities including, but not limited to, all medical records related to the overdose, withdrawal, and suicide, autopsy reports, medical examiner reports, coroner reports, schools, criminal justice, law enforcement, and social services records; and

(b) Request and receive data as described in (a) of this subsection from health care providers, health care facilities, clinics, schools, criminal justice, law enforcement, laboratories, medical examiners, coroners, professions and facilities licensed by the department of health, local health jurisdictions, the health care authority and its licensees and providers, the department of health and its licensees, the department of social and health services and its licensees and providers, and the department of children, youth, and families and its licensees and providers.

(6) Upon request by the local health department, health care providers, health care facilities, clinics, schools, criminal justice, law enforcement, laboratories, medical examiners, coroners, professions and facilities licensed by the department of health, local health jurisdictions, the health care authority and its licensees and providers, the department of health and its licensees, the department of social and health services and its licensees and providers, and the department of children, youth, and families and its licensees and providers must provide all medical records related to the overdose, withdrawal, and suicide, autopsy reports, medical examiner reports, coroner reports, social services records, and other data requested for specific overdose, withdrawal, and suicide fatalities to perform an overdose, withdrawal, and suicide fatality review to the local health department.

(7) For the purposes of this section, "overdose, withdrawal, and suicide fatality review" means a confidential process to review minor or adult overdose, withdrawal, and suicide deaths as identified through a death certificate; by a medical examiner or coroner; or by a process defined by the local department of health. The process may include a systematic review of medical, clinical, and hospital records related to the overdose, withdrawal, and suicide; confidential interviews conducted with the protections established in subsection (3) of this section; analysis of individual case information; and review of this information by a team of professionals in order to identify modifiable medical, socioeconomic, public health, behavioral, administrative, educational, and environmental factors associated with each death. [2022 c 190 § 1.]

## Chapter 70.08 RCW
## COMBINED CITY-COUNTY HEALTH DEPARTMENTS

Sections



*Control of cities and towns over water pollution: Chapter 35.88 RCW.*

**70.08.005 Transfer of duties to the department of health.** The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 244.]

Additional notes found at www.leg.wa.gov

**70.08.010 Combined city-county health departments—Establishment.** Any city with one hundred thousand or more population and the county in which it is located, are authorized, as shall be agreed upon between the respective governing bodies of such city and said county, to establish and operate a combined city and county health department, and to appoint the director of public health. [1985 c 124 § 1; (1993 c 492 § 244 repealed by 1995 c 43 § 16); 1949 c 46 § 1; Rem. Supp. 1949 § 6099-30. Formerly RCW 70.05.037.]

**70.08.020 Director of public health—Powers and duties.** The director of public health is authorized to and shall exercise all powers and perform all duties by law vested in the local health officer. [1985 c 124 § 2; 1949 c 46 § 2; Rem. Supp. 1949 § 6099-31.]

**70.08.030 Qualifications.** Notwithstanding any provisions to the contrary contained in any city or county charter, the director of public health, under this chapter shall meet as a minimum one of the following standards of educational achievement and vocational experience to be qualified for appointment to the office:

(1) Bachelor's degree in business administration, public administration, hospital administration, management, nursing, environmental health, epidemiology, public health, or its equivalent and five years of experience in administration in a community-related field; or

(2) A graduate degree in any of the fields listed in subsection (1) of this section, or in medicine or osteopathic med-

icine and surgery, plus three years of administrative experience in a community-related field.

The director shall not engage in the private practice of the director's profession during such tenure of office and shall not be included in the classified civil service of the said city or the said county.

If the director of public health does not meet the qualifications of a health officer or a physician under RCW 70.05.050, the director shall employ a person so qualified to advise the director on medical or public health matters. [1996 c 178 § 20; 1985 c 124 § 3; 1984 c 25 § 3; 1949 c 46 § 3; Rem. Supp. 1949 § 6099-32.]

Additional notes found at www.leg.wa.gov

**70.08.040 Director of public health—Appointment.** Notwithstanding any provisions to the contrary contained in any city or county charter, where a combined department is established under this chapter, the director of public health under this chapter shall be appointed by the county executive of the county and the mayor of the city. The appointment shall be effective only upon a majority vote confirmation of the legislative authority of the county and the legislative authority of the city. The director may be removed by the county executive of the county, after consultation with the mayor of the city, upon filing a statement of reasons therefor with the legislative authorities of the county and the city. [1995 c 188 § 1; 1995 c 43 § 9; 1985 c 124 § 4; 1980 c 57 § 1; 1949 c 46 § 4; Rem. Supp. 1949 § 6099-33.]

**Reviser's note:** This section was amended by 1995 c 43 § 9 and by 1995 c 188 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

**70.08.050 May act as health officer for other cities or towns.** Nothing in this chapter shall prohibit the director of public health as provided herein from acting as health officer for any other city or town within the county, nor from acting as health officer in any adjoining county or any city or town within such county having a contract or agreement as provided in RCW 70.08.090: PROVIDED, HOWEVER, That before being appointed health officer for such adjoining county, the secretary of health shall first give his or her approval thereto. [1991 c 3 § 314; 1979 c 141 § 85; 1949 c 46 § 8; Rem. Supp. 1949 § 6099-37.]

**70.08.060 Director of public health shall be registrar of vital statistics.** The director of public health under this chapter shall be registrar of vital statistics for all cities and counties under his or her jurisdiction and shall conduct such vital statistics work in accordance with the same laws and/or rules and regulations pertaining to vital statistics for a city of the first class. [2012 c 117 § 372; 1961 ex.s. c 5 § 4; 1949 c 46 § 9; Rem. Supp. 1949 § 6099-38.]

*Vital statistics: Chapter 70.58A RCW.*

**70.08.070 Employees may be included in civil service or retirement plans of city, county, or combined department.** Notwithstanding any provisions to the contrary contained in any city or county charter, and to the extent provided by the city and the county pursuant to appropriate legislative enactment, employees of the combined city and county health department may be included in the personnel system or civil service and retirement plans of the city or the county or a personnel system for the combined city and county health department that is separate from the personnel system or civil service of either county or city: PROVIDED, That residential requirements for such positions shall be coextensive with the county boundaries: PROVIDED FURTHER, That the city or county is authorized to pay such parts of the expense of operating and maintaining such personnel system or civil service and retirement system and to contribute to the retirement fund in behalf of employees such sums as may be agreed upon between the legislative authorities of such city and county. [1982 c 203 § 1; 1980 c 57 § 2; 1949 c 46 § 5; Rem. Supp. 1949 § 6099-34.]

**70.08.080 Pooling of funds.** The city by ordinance, and the county by appropriate legislative enactment, under this chapter may pool all or any part of their respective funds available for public health purposes, in the office of the city treasurer or the office of the county treasurer in a special pooling fund to be established in accordance with agreements between the legislative authorities of said city and county and which shall be expended for the combined health department. [1980 c 57 § 3; 1949 c 46 § 6; Rem. Supp. 1949 § 6099-35.]

**70.08.090 Other cities or agencies may contract for services.** Any other city in said county, other governmental agency or any charitable or health agency may by contract or by agreement with the governing bodies of the combined health department receive public health services. [1949 c 46 § 7; Rem. Supp. 1949 § 6099-36.]

**70.08.100 Termination of agreement to operate combined city-county health department.** Agreement to operate a combined city and county health department made under this chapter may after two years from the date of such agreement, be terminated by either party at the end of any calendar year upon notice in writing given at least six months prior thereto. The termination of such agreement shall not relieve either party of any obligations to which it has been previously committed. [1949 c 46 § 10; Rem. Supp. 1949 § 6099-39.]

**70.08.110 Prior expenditures in operating combined health department ratified.** Any expenditures heretofore made by a city of one hundred thousand population or more, and by the county in which it is located, not made fraudulently and which were within the legal limits of indebtedness, towards the expense of maintenance and operation of a combined health department, are hereby legalized and ratified. [1949 c 46 § 11; Rem. Supp. 1949 § 6099-40.]

## Chapter 70.10 RCW
## COMPREHENSIVE COMMUNITY HEALTH CENTERS

Sections

*Community behavioral health services act: Chapter 71.24 RCW.*

*Mental health services, interstate contracts: RCW 71.28.010.*

**70.10.010 Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing.** It is declared to be the policy of the legislature of the state of Washington that, wherever feasible, community health services and services for persons with mental illness or intellectual disabilities shall be combined within single facilities in order to provide maximum utilization of available funds and personnel, and to assure the greatest possible coordination of such services for the benefit of those requiring them. It is further declared to be the policy of the legislature to authorize the state to cooperate with counties, cities, and other municipal corporations in order to encourage them to take such steps as may be necessary to construct comprehensive community health centers in communities throughout the state. [2010 c 94 § 15; 1967 ex.s. c 4 § 1.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**70.10.020 "Comprehensive community health center" defined.** The term "comprehensive community health center" as used in this chapter shall mean a health facility housing community health, mental health, and developmental disabilities services. [1977 ex.s. c 80 § 37; 1967 ex.s. c 4 § 2.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**70.10.030 Authorization to apply for and administer federal or state funds.** The several agencies of the state authorized to administer within the state the various federal acts providing federal moneys to assist in the cost of establishing facilities for community health and mental health and facilities for persons with intellectual disabilities, are authorized to apply for and disburse federal grants, matching funds, or other funds, including gifts or donations from any source, available for use by counties, cities, other municipal corporations or nonprofit corporations. Upon application, these agencies shall also be authorized to distribute such state funds as may be appropriated by the legislature for such local construction projects: PROVIDED, That where state funds have been appropriated to assist in covering the cost of constructing a comprehensive community health center, or a facility for community health and mental health or a facility for persons with intellectual disabilities, and where any county, city, other municipal corporation or nonprofit corporation has submitted an approved application for such state funds, then, after any applicable federal grant has been deducted from the total cost of construction, the state agency or agencies in charge of each program may allocate to such applicant an amount not to exceed fifty percent of that particular program's contribution toward the balance of remaining construction costs. [2010 c 94 § 16; 1967 ex.s. c 4 § 3.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**70.10.040 Application for federal or state funds for construction of facility as part of or separate from health center—Processing and approval by administering agencies—Decision on use as part of comprehensive health center.** Any application for federal or state funds to be used for construction of the community health, mental health, or developmental disabilities facility, which will be part of the comprehensive community health center as defined in RCW 70.10.020, shall be separately processed and approved by the state agency which has been designated to administer the particular federal or state program involved. Any application for federal or state funds for a construction project to establish a community health, mental health, or developmental disabilities facility not part of a comprehensive health center shall be processed by the state agency which is designated to administer the particular federal or state program involved. This agency shall also forward a copy of the application to the other agency or agencies designated to administer the program or programs providing funds for construction of the facilities which make up a comprehensive health center. The agency or agencies receiving this copy of the application shall have a period of time not to exceed sixty days in which to file a statement with the agency to which the application has been submitted and to any statutory advisory council or committee which has been designated to advise the administering agency with regard to the program, stating that the proposed facility should or should not be part of a comprehensive health center. [1977 ex.s. c 80 § 38; 1967 ex.s. c 4 § 4.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**70.10.050 Application for federal or state funds for construction of facility as part of or separate from health center—Cooperation between agencies in standardizing application procedures and forms.** The several state agencies processing applications for the construction of comprehensive health centers for community health, mental health, or developmental disability facilities shall cooperate to develop general procedures to be used in implementing the statute and to attempt to develop application forms and procedures which are as nearly standard as possible, after taking cognizance of the different information required in the various programs, to assist applicants in applying to various state agencies. [1977 ex.s. c 80 § 39; 1967 ex.s. c 4 § 5.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**70.10.060 Adoption of rules and regulations—Liberal construction of chapter.** In furtherance of the legislative policy to authorize the state to cooperate with the federal government in facilitating the construction of comprehensive community health centers, the state agencies involved shall adopt such rules and regulations as may become necessary to entitle the state and local units of government to share in federal grants, matching funds, or other funds, unless the same be expressly prohibited by this chapter. Any section or provi-

sion of this chapter susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling the state and local units of government to receive federal grants, matching funds or other funds for the construction of comprehensive community health centers. [1967 ex.s. c 4 § 6.]

## Chapter 70.12 RCW
## PUBLIC HEALTH FUNDS

Sections



### COUNTY FUNDS

**70.12.015 Secretary may expend funds in counties.** The secretary of health is hereby authorized to apportion and expend such sums as he or she shall deem necessary for public health work in the counties of the state, from the appropriations made to the state department of health for county public health work. [1991 c 3 § 315; 1979 c 141 § 86; 1939 c 191 § 2; RRS § 6001-1. Formerly RCW 70.12.080.]

**70.12.025 County funds for public health.** Each county legislative authority shall annually budget and appropriate a sum for public health work. [1975 1st ex.s. c 291 § 2.]

Additional notes found at www.leg.wa.gov

### PUBLIC HEALTH POOLING FUND

**70.12.030 Public health pooling fund.** Any county, combined city-county health department, or health district is hereby authorized and empowered to create a "public health pooling fund", hereafter called the "fund", for the efficient management and control of all moneys coming to such county, combined department, or district for public health purposes. [1993 c 492 § 245; 1945 c 46 § 1; 1943 c 190 § 1; Rem. Supp. 1945 § 6099-1.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.12.040 Fund, how maintained and disbursed.** Any such fund may be established in the county treasurer's office or the city treasurer's office of a first-class city according to the type of local health department organization existing.

In a district composed of more than one county, the county treasurer of the county having the largest population shall be the custodian of the fund, and the county auditor of said county shall keep the record of receipts and disbursements; and shall draw and the county treasurer shall honor and pay all such warrants.

Into any such fund so established may be paid:

(1) All grants from any state fund for county public health work;

(2) Any county current expense funds appropriated for the health department;

(3) Any other money appropriated by the county for health work;

(4) City funds appropriated for the health department;

(5) All moneys received from any governmental agency, local, state or federal which may contribute to the local health department; and

(6) Any contributions from any charitable or voluntary agency or contributions from any individual or estate.

Any school district may contract in writing for health services with the health department of the county, first-class city or health district, and place such funds in the public health pooling fund in accordance with the contract. [1983 c 3 § 170; 1945 c 46 § 2; 1943 c 190 § 2; Rem. Supp. 1945 § 6099-2.]

**70.12.050 Expenditures from fund.** All expenditures in connection with salaries, wages and operations incurred in carrying on the health department of the county, combined city-county health department, or health district shall be paid out of such fund. [1993 c 492 § 246; 1945 c 46 § 3; 1943 c 190 § 3; Rem. Supp. 1945 § 6099-3.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.12.060 Expenditures geared to budget.** Any fund established as herein provided shall be expended so as to make the expenditures thereof agree with any respective appropriation period. Any accumulation in any such fund so established shall be taken into consideration when preparing any budget for the operations for the ensuing year. [1943 c 190 § 4; Rem. Supp. 1943 § 6099-4.]

**70.12.070 Fund subject to audit and check by state.** The public health pool fund shall be subject to audit by the state auditor and shall be subject to check by the state department of health. [1995 c 301 § 77; 1991 c 3 § 316; 1979 c 141 § 87; 1943 c 190 § 5; Rem. Supp. 1943 § 6099-5.]

## Chapter 70.14 RCW
## HEALTH CARE SERVICES PURCHASED BY STATE AGENCIES

Sections

*State health care cost containment policies: RCW 43.41.160.*

**70.14.020 State agencies to identify alternative health care providers.** Each of the agencies listed in *RCW 70.14.010, with the exception of the department of labor and industries, which expends more than five hundred thousand dollars annually of state funds for purchase of health care shall identify the availability and costs of nonfee for service providers of health care, including preferred provider organizations, health maintenance organizations, managed health care or case management systems, or other nonfee for service alternatives. In each case where feasible in which an alternative health care provider arrangement, of similar scope and quality, is available at lower cost than fee-for-service providers, such state agencies shall make the services of the alternative provider available to clients, consumers, or employees for whom state dollars are spent to purchase health care. As consistent with other state and federal law, requirements for copayments, deductibles, the scope of available services, or other incentives shall be used to encourage clients, consumers, or employees to use the lowest cost providers, except that copayments or deductibles shall not be required where they might have the impact of denying access to necessary health care in a timely manner. [1986 c 303 § 7.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

*Medical assistance—Agreements with managed health care systems: RCW 74.09.522.*

**70.14.030 Health care utilization review procedures.** Plans for establishing or improving utilization review procedures for purchased health care services shall be developed by each agency listed in *RCW 70.14.010. The plans shall specifically address such utilization review procedures as prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and the obtaining of second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers. [1986 c 303 § 8.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

**70.14.040 Review of prospective rate setting methods.** The state agencies listed in *RCW 70.14.010 shall review the feasibility of establishing prospective payment approaches within their health care programs. Work plans or timetables shall be prepared for the development of prospective rates. The agencies shall identify legislative actions that may be necessary to facilitate the adoption of prospective rate setting methods. [1986 c 303 § 9.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

**70.14.050 Drug purchasing cost controls—Establishment of evidence-based prescription drug program.** (1) Each agency administering a state purchased health care program as defined in *RCW 41.05.011(2) shall, in cooperation with other agencies, take any necessary actions to control costs without reducing the quality of care when reimbursing for or purchasing drugs. To accomplish this purpose, participating agencies may establish an evidence-based prescription drug program.

(2) In developing the evidence-based prescription drug program authorized by this section, agencies:

(a) Shall prohibit reimbursement for drugs that are determined to be ineffective by the United States food and drug administration;

(b) Shall adopt rules in order to ensure that less expensive generic drugs will be substituted for brand name drugs in those instances where the quality of care is not diminished;

(c) Where possible, may authorize reimbursement for drugs only in economical quantities;

(d) May limit the prices paid for drugs by such means as negotiated discounts from pharmaceutical manufacturers, central purchasing, volume contracting, or setting maximum prices to be paid;

(e) Shall consider the approval of drugs with lower abuse potential in substitution for drugs with significant abuse potential;

(f) May take other necessary measures to control costs of drugs without reducing the quality of care; and

(g) Shall adopt rules governing practitioner endorsement and use of any list developed as part of the program authorized by this section.

(3) Agencies shall provide for reasonable exceptions, consistent with RCW 69.41.190, to any list developed as part of the program authorized by this section.

(4) Agencies shall establish an independent pharmacy and therapeutics committee to evaluate the effectiveness of prescription drugs in the development of the program authorized by this section. [2003 1st sp.s. c 29 § 9; 1986 c 303 § 10.]

***Reviser's note:** RCW 41.05.011 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (2) to subsection (21). RCW 41.05.011 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (21) to subsection (22). RCW 41.05.011 was subsequently amended by 2017 3rd sp.s. c 13 § 802, changing subsection (22) to subsection (25). RCW 41.05.011 was subsequently amended by 2018 c 260 § 4, changing subsection (25) to subsection (26).

**Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29:** See notes following RCW 74.09.650.

**70.14.060 Prescription drug purchasing consortium—Participation—Exceptions—Rules.** (1)(a) The director of the state health care authority shall, directly or by contract, adopt policies necessary for establishment of a prescription drug purchasing consortium. The consortium's purchasing activities shall be based upon the evidence-based prescription drug program established under RCW 70.14.050. Except as provided in RCW 70.14.065 or exempted under (b) of this subsection, state purchased health care programs as defined in RCW 41.05.011 shall purchase prescription drugs through the consortium for those prescription drugs that are purchased directly by the state and those that are purchased through reimbursement of pharmacies.

The director shall not require any supplemental rebate offered to the health care authority by a pharmaceutical manufacturer for prescription drugs purchased for medical assistance program clients under chapter 74.09 RCW be extended to any other state purchased health care program, or to any other individuals or entities participating in the consortium. The director shall explore joint purchasing opportunities with other states.

(b) State purchased health care programs are exempt from the requirements of this section if they can demonstrate to the director of the state health care authority that, as a result of the availability of federal programs or other purchasing arrangements, their other purchasing mechanisms will result in greater discounts and aggregate cost savings than would be realized through participation in the consortium.

(2) Participation in the purchasing consortium shall be offered as an option beginning January 1, 2006. Participation in the consortium is purely voluntary for units of local government, private entities, labor organizations, health carriers as provided in RCW 48.43.005, state purchased health care services from or through health carriers as provided in RCW 48.43.005, and for individuals who lack or are underinsured for prescription drug coverage. The director may set reasonable fees, including enrollment fees, to cover administrative costs attributable to participation in the prescription drug consortium.

(3) The state health care authority is authorized to adopt rules implementing chapter 129, Laws of 2005. [2021 c 274 § 2; 2020 c 346 § 4; 2009 c 560 § 13; 2005 c 129 § 1.]

**Intent—2020 c 346:** See note following RCW 70.14.165.

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

Additional notes found at www.leg.wa.gov

**70.14.065 Generic prescription drug partnership agreements.** (1)(a) The authority may enter into partnership agreements with another state, a group of states, a state agency, a nonprofit organization, or any other entity to produce, distribute, or purchase generic prescription drugs and distribute and purchase insulin. Partnership agreements with governmental entities are exempt from competitive solicitation requirements in accordance with RCW 39.26.125(10). However, the authority must comply with state procurement laws related to competitive procurement when purchasing or entering into purchasing agreements with nongovernmental entities.

(b) The generic prescription drugs and insulin must be produced or distributed by a drug company or generic drug manufacturer that is registered with the United States food and drug administration.

(2) The authority shall only enter into partnerships, in consultation with other state agencies as necessary, to produce, distribute, or purchase a generic prescription drug or insulin at a price that results in savings to public and private purchasers and consumers.

(3) For generic prescription drugs and insulin that the authority has entered into a partnership under this section:

(a) State purchased health care programs must purchase the generic prescription drugs and insulin through the partnership, unless the state purchased health care program can obtain the generic prescription drug or insulin at a cost savings through another purchasing mechanism; and

(b) Local governments, private entities, health carriers, and others may choose to voluntarily purchase the generic prescription drugs and insulin from the authority as available quantities allow.

(4) All information and documents obtained or created under this section is exempt from disclosure under chapter 42.56 RCW.

(5) For purposes of this section, the following definitions apply:

(a) "Authority" means the health care authority.

(b) "Eligible prescription drug" means a prescription drug or biological product, as defined in 42 U.S.C. Sec. 262(i), that is not under patent.

(c) "Generic drug" means a drug that is approved pursuant to an application referencing an eligible prescription drug that is submitted under section 505(j) of the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.), or section 351(k) of the federal public health service act (42 U.S.C. Sec. 262).

(d) "Purchase" means the acquisition of generic drugs and insulin. "Purchase" includes, but is not limited to, entering into contracts with manufacturers on behalf of those dispensing drugs and other innovative purchasing strategies to help increase access for Washington citizens to the best price available for insulin and generic prescription drugs. This subsection should be interpreted broadly to provide the authority flexibility in how it procures generic drugs and insulin in order to obtain the best price.

(e) "State purchased health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, department of health, state health care authority, department of labor and industries, department of corrections, and department of veterans affairs. State purchased health care does not include prescription drugs purchased for medical assistance program clients under chapter 74.09 RCW. [2021 c 274 § 1.]

**70.14.070 Prescription drug consortium account.** The prescription drug consortium account is created in the custody of the state treasurer. All receipts from activities related to administration of the state drug purchasing consortium on behalf of participating individuals and organizations, other than state purchased health care programs, shall be deposited into the account. The receipts include but are not limited to rebates from manufacturers, and the fees established under RCW 70.14.060(2). Expenditures from the account may be used only for the purposes of RCW 70.14.060. Only the administrator of the state health care authority or the administrator's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 129 § 2.]

Additional notes found at www.leg.wa.gov

**70.14.080 Definitions.** The definitions in this section apply throughout RCW 70.14.090 through 70.14.130 unless the context clearly requires otherwise.

(1) "Administrator" means the administrator of the Washington state health care authority under chapter 41.05 RCW.

(2) "Advisory group" means a group established under RCW 70.14.110(2)(c).

(3) "Committee" means the health technology clinical committee established under RCW 70.14.090.

(4) "Coverage determination" means a determination of the circumstances, if any, under which a health technology will be included as a covered benefit in a state purchased health care program.

(5) "Health technology" means medical and surgical devices and procedures, medical equipment, and diagnostic tests. Health technologies does not include prescription drugs governed by RCW 70.14.050.

(6) "Participating agency" means the department of social and health services, the state health care authority, and the department of labor and industries.

(7) "Reimbursement determination" means a determination to provide or deny reimbursement for a health technology included as a covered benefit in a specific circumstance for an individual patient who is eligible to receive health care services from the state purchased health care program making the determination. [2006 c 307 § 1.]

Additional notes found at www.leg.wa.gov

**70.14.090 Health technology clinical committee.** (1) A health technology clinical committee is established, to include the following eleven members appointed by the administrator in consultation with participating state agencies:

(a) Six practicing physicians licensed under chapter 18.57 or 18.71 RCW; and

(b) Five other practicing licensed health professionals who use health technology in their scope of practice.

(i) At least two members of the committee must have professional experience treating women, children, elderly persons, and people with diverse ethnic and racial backgrounds.

(ii) At least one member of the committee must be appointed from nominations submitted by the Washington state medical association or the Washington state osteopathic medical association.

(2) In addition, any rotating clinical expert selected to advise the committee on health technology must be a nonvoting member of the committee.

(3) Members of the committee:

(a) Shall not contract with or be employed by a health technology manufacturer or a participating agency during their term or for eighteen months before their appointment. As a condition of appointment, each person shall agree to the terms and conditions imposed by the administrator regarding conflicts of interest;

(b) Are immune from civil liability for any official acts performed in good faith as members of the committee; and

(c) Shall be compensated for participation in the work of the committee in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the committee.

(4) Meetings of the committee and any advisory group are subject to chapter 42.30 RCW, the open public meetings act, including RCW 42.30.110(1)(l), which authorizes an executive session during a regular or special meeting to consider proprietary or confidential nonpublished information.

(5) Neither the committee nor any advisory group is an agency for purposes of chapter 34.05 RCW.

(6) The health care authority shall provide administrative support to the committee and any advisory group, and may adopt rules governing their operation. [2016 sp.s. c 1 § 1; 2006 c 307 § 2.]

Additional notes found at www.leg.wa.gov

**70.14.100 Health technology selection and assessment.** (1) The administrator, in consultation with participating agencies and the committee, shall select the health technologies to be reviewed by the committee under RCW 70.14.110. Up to six may be selected for review in the first year after June 7, 2006, and up to eight may be selected in the second year after June 7, 2006. In making the selection, priority shall be given to any technology for which:

(a) There are concerns about its safety, efficacy, or cost-effectiveness, especially relative to existing alternatives, or significant variations in its use;

(b) Actual or expected state expenditures are high, due to demand for the technology, its cost, or both; and

(c) There is adequate evidence available to conduct the complete review.

(2) A health technology for which the committee has made a determination under RCW 70.14.110 shall be considered for rereview at least once every eighteen months, beginning the date the determination is made. The administrator, in consultation with participating agencies and the committee, shall select the technology for rereview if he or she decides that evidence has since become available that could change a previous determination. Upon rereview, consideration shall be given only to evidence made available since the previous determination.

(3) Pursuant to a petition submitted by an interested party, the health technology clinical committee may select health technologies for review that have not otherwise been selected by the administrator under subsection (1) or (2) of this section.

(4) Upon the selection of a health technology for review, the administrator shall contract for a systematic evidence-based assessment of the technology's safety, efficacy, and cost-effectiveness. The contract shall:

(a) Be with an evidence-based practice center designated as such by the federal agency for health care research and quality, or other appropriate entity;

(b) Require the assessment be initiated no sooner than thirty days after notice of the selection of the health technology for review is posted on the internet under RCW 70.14.130;

(c) Require, in addition to other information considered as part of the assessment, consideration of: (i) Safety, health outcome, and cost data submitted by a participating agency; and (ii) evidence submitted by any interested party; and

(d) Require the assessment to: (i) Give the greatest weight to the evidence determined, based on objective indicators, to be the most valid and reliable, considering the nature and source of the evidence, the empirical characteristic of the studies or trials upon which the evidence is based, and the

consistency of the outcome with comparable studies; and (ii) take into account any unique impacts of the technology on specific populations based upon factors such as sex, age, ethnicity, race, or disability. [2006 c 307 § 3.]

Additional notes found at www.leg.wa.gov

**70.14.110 Health technology clinical committee determinations.** (1) The committee shall determine, for each health technology selected for review under RCW 70.14.100: (a) The conditions, if any, under which the health technology will be included as a covered benefit in health care programs of participating agencies; and (b) if covered, the criteria which the participating agency administering the program must use to decide whether the technology is medically necessary, or proper and necessary treatment.

(2) In making a determination under subsection (1) of this section, the committee:

(a) Shall consider, in an open and transparent process, evidence regarding the safety, efficacy, and cost-effectiveness of the technology as set forth in the systematic assessment conducted under RCW 70.14.100(4);

(b) Shall provide an opportunity for public comment; and

(c) May establish ad hoc temporary advisory groups if specialized expertise is needed to review a particular health technology or group of health technologies, or to seek input from enrollees or clients of state purchased health care programs. Advisory group members are immune from civil liability for any official act performed in good faith as a member of the group. As a condition of appointment, each person shall agree to the terms and conditions imposed by the administrator regarding conflicts of interest.

(3) Determinations of the committee under subsection (1) of this section shall be consistent with decisions made under the federal medicare program and in expert treatment guidelines, including those from specialty physician organizations and patient advocacy organizations, unless the committee concludes, based on its review of the systematic assessment, that substantial evidence regarding the safety, efficacy, and cost-effectiveness of the technology supports a contrary determination. [2006 c 307 § 4.]

Additional notes found at www.leg.wa.gov

**70.14.120 Agency compliance with committee determination—Coverage and reimbursement determinations for nonreviewed health technologies—Appeals.** (1) A participating agency shall comply with a determination of the committee under RCW 70.14.110 unless:

(a) The determination conflicts with an applicable federal statute or regulation, or applicable state statute; or

(b) Reimbursement is provided under an agency policy regarding experimental or investigational treatment, services under a clinical investigation approved by an institutional review board, or health technologies that have a humanitarian device exemption from the federal food and drug administration.

(2) For a health technology not selected for review under RCW 70.14.100, a participating agency may use its existing statutory and administrative authority to make coverage and reimbursement determinations. Such determinations shall be shared among agencies, with a goal of maximizing each agency's understanding of the basis for the other's decisions and providing opportunities for agency collaboration.

(3) A health technology not included as a covered benefit under a state purchased health care program pursuant to a determination of the health technology clinical committee under RCW 70.14.110, or for which a condition of coverage established by the committee is not met, shall not be subject to a determination in the case of an individual patient as to whether it is medically necessary, or proper and necessary treatment.

(4) Nothing in chapter 307, Laws of 2006 diminishes an individual's right under existing law to appeal an action or decision of a participating agency regarding a state purchased health care program. Appeals shall be governed by state and federal law applicable to participating agency decisions. [2006 c 307 § 5.]

Additional notes found at www.leg.wa.gov

**70.14.130 Health technology clinical committee—Public notice.** (1) The administrator shall develop a centralized, internet-based communication tool that provides, at a minimum:

(a) Notification when a health technology is selected for review under RCW 70.14.100, indicating when the review will be initiated and how an interested party may submit evidence, or provide public comment, for consideration during the review;

(b) Notification of any determination made by the committee under RCW 70.14.110(1), its effective date, and an explanation of the basis for the determination; and

(c) Access to the systematic assessment completed under RCW 70.14.100(4), and reports completed under subsection (2) of this section.

(2) Participating agencies shall develop methods to report on the implementation of this section and RCW 70.14.080 through 70.14.120 with respect to health care outcomes, frequency of exceptions, cost outcomes, and other matters deemed appropriate by the administrator. [2006 c 307 § 7.]

Additional notes found at www.leg.wa.gov

**70.14.140 Applicability to health care services purchased from health carriers.** RCW 70.14.080 through 70.14.130 and 41.05.013 do not apply to state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005. [2006 c 307 § 9.]

Additional notes found at www.leg.wa.gov

**70.14.150 Data-sharing agreements—Report.** (1) The department of social and health services and the health care authority shall enter into data-sharing agreements with the appropriate agencies in the states of Oregon and Idaho to assure the valid Washington state residence of applicants for health care services in Washington. Such agreements shall include appropriate safeguards related to the confidentiality of the shared information.

(2) The department of social and health services and the health care authority must jointly report on the status of the data-sharing agreements to the appropriate committees of the legislature no later than November 30, 2007. [2007 c 60 § 1.]

**70.14.155 Streamlined health care administration—Agency participation.** The following state agencies are directed to cooperate with the insurance commissioner and, within funds appropriated specifically for this purpose, adopt the processes, guidelines, and standards to streamline health care administration pursuant to chapter 48.165 RCW: The department of social and health services, the health care authority, and, to the extent permissible under Title 51 RCW, the department of labor and industries. [2009 c 298 § 3.]

**70.14.160 Total cost of insulin work group—Appointment—Duties—Reporting.** ***(Expires December 1, 2024.)*** (1) The total cost of insulin work group is established. The work group membership must consist of the insurance commissioner or designee and the following members appointed by the governor:

(a) A representative from the prescription drug purchasing consortium described in RCW 70.14.060;

(b) A representative from the pharmacy quality assurance commission;

(c) A representative from an association representing independent pharmacies;

(d) A representative from an association representing health carriers;

(e) A representative from the public employees' benefits board or the school employees' benefits board;

(f) A representative from the health care authority;

(g) A representative from an association representing pharmacy benefit managers;

(h) A representative from a drug distributor or wholesaler that distributes or sells insulin in the state;

(i) A representative from a state agency that purchases health care services and drugs for a selected population;

(j) A representative from the attorney general's office with expertise in prescription drug purchasing;

(k) A representative from an organization representing diabetes patients who is living with diabetes; and

(l) Four members of the public living with diabetes.

(2) The work group must review and design strategies to:

(a) Reduce the cost of and total expenditures on insulin in this state. Strategies the work group must consider include, but are not limited to, a state agency becoming a licensed drug wholesaler, a state agency becoming a registered pharmacy benefit manager, and a state agency purchasing prescription drugs on behalf of the state directly from other states or in coordination with other states; and

(b) Provide a once yearly 30-day supply of insulin to individuals on an emergency basis. The strategies identified by the work group shall include recommendations on eligibility criteria, patient access, program monitoring, and pharmacy reimbursement, if applicable.

(3) Staff support for the work group shall be provided by the health care authority.

(4) By December 1, 2022, the work group must submit a preliminary report detailing strategies to reduce the cost of and total expenditures on insulin for patients, health carriers, payers, and the state. The work group must submit a final report by July 1, 2023, to the governor and the legislature. The final report must include any statutory changes necessary to implement the strategies.

(5) This section expires December 1, 2024. [2022 c 205 § 1; 2020 c 346 § 2.]

**Intent—2020 c 346:** See note following RCW 70.14.165.

**70.14.165 Total cost of insulin work group—Authority implementation.** (1) In order to implement strategies recommended by the total cost of insulin work group established in RCW 70.14.160, the health care authority may:

(a) Become or designate a state agency that shall become a drug wholesaler licensed under RCW 18.64.046;

(b) Become or designate a state agency that shall become a pharmacy benefit manager registered under *RCW 19.340.030; or

(c) Purchase prescription drugs on behalf of the state directly from other states or in coordination with other states.

(2) In addition to the authorities granted in subsection (1) of this section, if the total cost of insulin work group established in RCW 70.14.160 determines that all or a portion of the strategies may be implemented without statutory changes, the health care authority and the prescription drug purchasing consortium described in RCW 70.14.060 shall begin implementation without further legislative direction. [2020 c 346 § 3.]

***Reviser's note:** RCW 19.340.030 was repealed by 2020 c 240 § 19, effective January 1, 2022.

**Intent—2020 c 346:** "(1) The legislature recognizes that:

(a) Insulin is a lifesaving drug and is critical to the management of diabetes as it helps patients control their blood sugar levels;

(b) According to Yale researchers, one-quarter of patients with Type 1 or 2 diabetes have reported using less insulin than prescribed due to the high cost of insulin;

(c) The first insulin patent in the United States was awarded in 1923 and the first synthetic insulin arrived on the market in 1978; and

(d) The price and utilization of insulin has steadily increased, making it one of the costliest prescription drugs in the state. According to the Washington all-payer claims database, the allowable costs before rebates for health carriers in the state have increased eighty-seven percent since 2014, and per member out-of-pocket costs have increased an average of eighteen percent over the same time period.

(2) Therefore, the legislature intends to review, consider, and pursue several strategies with the goal of reducing the cost of insulin in Washington." [2020 c 346 § 1.]

**70.14.170 Opioid overdose reversal medications—Bulk purchasing and distribution—Rules—Report—Recommendation to legislature.** (1) As soon as reasonably practicable, the health care authority shall establish a bulk purchasing and distribution program for opioid overdose reversal medication. The health care authority is authorized to:

(a) Purchase or enter into contracts as necessary to purchase and distribute opioid overdose reversal medication, collect an assessment, and administer the program;

(b) Bill, charge, and receive payment from health carriers, managed health care systems, and[,] to the extent that any self-insured health plans choose to participate, self-insured health plans; and

(c) Perform any other functions as may be necessary or proper to establish and administer the program.

(2) To establish and administer the opioid overdose reversal medication bulk purchasing and distribution program, the health care authority may adopt rules providing the following:

(a) A dosage-based assessment and formula to determine the assessment for each opioid overdose reversal medication provided to an individual through the program that includes administrative costs of the program;

(b) The mechanism, requirements, and timeline for health carriers, managed health care systems, and[,] self-insured plans to pay the dosage-based assessments;

(c) The types of health care facilities, health care providers, or other entities that are required to or are permitted to participate in the program;

(d) The billing procedures for any participating health care facility, health care provider, or other entity participating in the program; and

(e) Any other rules necessary to establish, implement, or administer the program.

(3) The following agencies, health plans, and insurers must participate in the bulk purchasing and distribution program:

(a) Health carriers;

(b) Managed health care systems administering a medicaid managed care plan; and

(c) The health care authority for purposes of:

(i) Health plans offered to public employees and their dependents;

(ii) Individuals enrolled in medical assistance under chapter 74.09 RCW that are not enrolled in a managed care plan; and

(iii) Uninsured individuals.

(4) The health care authority may establish an interest charge for late payment of any assessment under this section. The health care authority shall assess a civil penalty against any health carrier, managed health care system, or self-insured health plan that fails to pay an assessment within three months of billing. The civil penalty under this subsection is 150 percent of such assessment. The health care authority is authorized to file liens and seek judgment to recover amounts in arrears and civil penalties, and recover reasonable collection costs, including reasonable attorneys' fees and costs. Civil penalties so levied must be deposited in the opioid overdose reversal medication account created in RCW 70.14.175.

(5) The health care authority in coordination with the office of the insurance commissioner may recommend to the appropriate committees of the legislature the termination of the bulk purchasing and distribution mechanism for opioid overdose reversal medication if it finds that the original intent of its formation and operation has not been achieved.

(6) By January 1, 2022, the health care authority shall submit a report to the legislature on the progress towards establishing the bulk purchasing and distribution program. The health care authority shall submit an updated report on the progress towards establishing the bulk purchasing and distribution program by January 1, 2023.

(7) By July 1, 2025, the health care authority shall submit recommendations to the appropriate committees of the legislature on whether and how the opioid overdose reversal medication bulk purchasing and distribution program may be expanded to include other prescription drugs.

(8) "Opioid overdose reversal medication" has the same meaning as provided in RCW 69.41.095. [2021 c 273 § 7.]

**Rules—2021 c 273 §§ 7-12:** "(1) The health care authority may adopt rules necessary to implement sections 7 through 12 of this act.

(2) The insurance commissioner may adopt rules necessary to implement sections 7 and 11 of this act." [2021 c 273 § 13.]

**Findings—Intent—2021 c 273:** See note following RCW 70.41.480.

**70.14.175 Opioid overdose reversal medication account.** The opioid overdose reversal medication account is created in the custody of the state treasurer. All receipts from collections under RCW 70.14.170 must be deposited into the account. Expenditures from the account may be used only for the operation and administration of the opioid overdose reversal medication bulk purchasing and distribution program identified in RCW 70.14.170. Only the director of the health care authority or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2021 c 273 § 8.]

**Rules—2021 c 273 §§ 7-12:** See note following RCW 70.14.170.

**Findings—Intent—2021 c 273:** See note following RCW 70.41.480.

## Chapter 70.15 RCW
## UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT

Sections



**70.15.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and that:

(a) Is designated or recognized as a provider of those services pursuant to a disaster response and recovery plan adopted by an agency of the federal government or the department; or

(b) Regularly plans and conducts its activities in coordination with an agency of the federal government or the department.

(3) "Emergency" means an event or condition that is an emergency, disaster, or public health emergency under chapter 38.52 RCW.

(4) "Emergency declaration" means a proclamation of a state of emergency issued by the governor under RCW 43.06.010.

(5) "Emergency management assistance compact" means the interstate compact approved by congress by P.L. 104-321, 110 Stat. 3877, RCW 38.10.010.

(6) "Entity" means a person other than an individual.

(7) "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.

(8) "Health practitioner" means an individual licensed under the laws of this or another state to provide health or veterinary services.

(9) "Health services" means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

(a) The following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:

(i) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and

(ii) Counseling, assessment, procedures, or other services;

(b) Sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and

(c) Funeral, cremation, alkaline hydrolysis, natural organic reduction as defined in RCW 68.04.310, cemetery, or other mortuary services.

(10) "Host entity" means an entity operating in this state which uses volunteer health practitioners to respond to an emergency.

(11) "License" means authorization by a state to engage in health or veterinary services that are unlawful without the authorization. The term includes authorization under the laws of this state to an individual to provide health or veterinary services based upon a national certification issued by a public or private entity.

(12) "Person" means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Scope of practice" means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(15) "Veterinary services" means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

(a) Diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of vaccine, medicine, surgery, or therapy;

(b) Use of a procedure for reproductive management; and

(c) Monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

(16) "Volunteer health practitioner" means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services. The term does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate which requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect. [2019 c 432 § 29; 2018 c 184 § 2.]

**Effective date—2019 c 432:** See note following RCW 68.05.175.

**70.15.020 Applicability to volunteer health practitioners.** This chapter applies to volunteer health practitioners registered with a registration system that complies with RCW 70.15.040 and who provide health or veterinary services in this state for a host entity while an emergency declaration is in effect. [2018 c 184 § 3.]

**70.15.030 Regulation of services during emergency by department—Orders—Host entity duties.** (1) While an emergency declaration is in effect, the department may limit, restrict, or otherwise regulate:

(a) The duration of practice by volunteer health practitioners;

(b) The geographical areas in which volunteer health practitioners may practice;

(c) The types of volunteer health practitioners who may practice; and

(d) Any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.

(2) An order issued pursuant to subsection (1) of this section may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the administrative procedure act, chapter 34.05 RCW.

(3) A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:

(a) Consult and coordinate its activities with the department to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

(b) Comply with any laws other than this chapter relating to the management of emergency health or veterinary services. [2018 c 184 § 4.]

**70.15.040 Volunteer health practitioner registration systems—Requirements.** (1) To qualify as a volunteer health practitioner registration system, a system must:

(a) Accept applications for the registration of volunteer health practitioners before or during an emergency;

(b) Include information about the licensure and good standing of health practitioners which is accessible by authorized persons;

(c) Be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this chapter; and

(d) Meet one of the following conditions:

(i) Be an emergency system for advance registration of volunteer health care practitioners established by a state and funded through the United States department of health and human services under section 319I of the public health services act, 42 U.S.C. Sec. 247d-7b, as it existed on June 7, 2018, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(ii) Be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed pursuant to section 2801 of the public health services act, 42 U.S.C. Sec. 300hh, as it existed on June 7, 2018, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(iii) Be operated by a:

(A) Disaster relief organization;

(B) Licensing board;

(C) National or regional association of licensing boards or health practitioners;

(D) Health facility that provides comprehensive inpatient and outpatient health care services, including a tertiary care, teaching hospital, or acute care facility; or

(E) Governmental entity; or

(iv) Be designated by the department as a registration system for purposes of this chapter.

(2) While an emergency declaration is in effect, the department, a person authorized to act on behalf of the department, or a host entity may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subsection (1) of this section. Confirmation is limited to obtaining identities of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.

(3) Upon request of a person in this state authorized under subsection (2) of this section, or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.

(4) A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing. [2018 c 184 § 5.]

**70.15.050 Recognition of volunteer health practitioners licensed in other states.** (1) While an emergency declaration is in effect, a volunteer health practitioner, registered with a registration system that complies with RCW 70.15.040 and licensed and in good standing in the state upon which the practitioner's registration is based, may practice in this state to the extent authorized by this chapter as if the practitioner were licensed in this state.

(2) A volunteer health practitioner qualified under subsection (1) of this section is not entitled to the protections of this chapter if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges, or has been voluntarily terminated under threat of sanction. [2018 c 184 § 6.]

**70.15.060 No effect on health facility credentialing and privileging standards.** (1) As used in this section:

(a) "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.

(b) "Privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status, and specialized skill.

(2) This chapter does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect. [2018 c 184 § 7.]

**70.15.070 Provision of volunteer health or veterinary services—Scope of practice—Modifications or restrictions—Unauthorized practice—Administrative sanctions.** (1) Subject to subsections (2) and (3) of this section, a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of this state.

(2) Except as otherwise provided in subsection (3) of this section, this chapter does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services.

(3) The department may modify or restrict the health or veterinary services that volunteer health practitioners may provide pursuant to this chapter. An order under this subsection may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the administrative procedure act, chapter 34.05 RCW.

(4) A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to this chapter.

(5) A volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification, or restriction under this section or that a similarly licensed practitioner in this state would not be permitted to provide the services. A volunteer health practitioner has reason to know of a limitation, modification, or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:

(a) The practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or

(b) From all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction

exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

(6) In addition to the authority granted by law of this state other than this chapter to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

(a) May impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;

(b) May impose administrative sanctions upon a practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and

(c) Shall report any administrative sanctions imposed upon a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

(7) In determining whether to impose administrative sanctions under subsection (6) of this section, a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience, and specialized skill. [2018 c 184 § 8.]

**70.15.080 Relation to other laws—Emergency management assistance compact—Pacific Northwest emergency management arrangement.** (1) This chapter does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this chapter. Except as otherwise provided in subsection (2) of this section, this chapter does not affect requirements for the use of health practitioners pursuant to the emergency management assistance compact or the Pacific Northwest emergency management arrangement approved by congress by P.L. 105-381, 112 Stat. 3402.

(2) The department, pursuant to the emergency management assistance compact or the Pacific Northwest emergency management arrangement approved by congress by P.L. 105-381, 112 Stat. 3402, may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or employees of this state, a political subdivision of this state, or a municipality or other local government within this state. [2018 c 184 § 9.]

**70.15.090 Rules—Consultation with state military department and other agencies.** The department may promulgate rules to implement this chapter. In doing so, the department shall consult with and consider the recommendations of the state military department as the agency established to carry out the state's program for emergency management, and coordinate the implementation of the emergency management assistance compact with the state military department to ensure conformity with the state's program for emergency management and the coordination of all response activities through the state's emergency operations center during a state of emergency. The department shall also consult with and consider rules promulgated by similarly empowered agencies in other states to promote uniformity of application of this chapter and make the emergency response systems in the various states reasonably compatible. [2018 c 184 § 10.]

**70.15.100 Volunteer health practitioners—Workers' compensation coverage—Rules.** (1) A volunteer health practitioner who dies or is injured as the result of providing health or veterinary services pursuant to this chapter is deemed to be an employee of this state for the purpose of receiving benefits for the death or injury under the workers' compensation law of this state, Title 51 RCW, if:

(a) The practitioner is not otherwise eligible for such benefits for the injury or death under the law of this or another state; and

(b) The practitioner, or in the case of death the practitioner's personal representative, elects coverage under the workers' compensation law of this state, Title 51 RCW, by making a claim under that law.

(2) The department in consultation with the department of labor and industries shall adopt rules, enter into agreements with other states, or take other measures to facilitate the receipt of benefits for injury or death under the workers' compensation law of this state, Title 51 RCW, by volunteer health practitioners who reside in other states, and may waive or modify requirements for filing, processing, and paying claims that unreasonably burden the practitioners. To promote uniformity of application of this chapter with other states that enact similar legislation, the department shall consult with and consider the practices for filing, processing, and paying claims by agencies with similar authority in other states.

(3) For the purposes of this section, "injury" means a physical or mental injury or disease for which an employee of this state who is injured or contracts the disease in the course of the employee's employment would be entitled to benefits under the workers' compensation law of this state, Title 51 RCW. [2018 c 184 § 11.]

**70.15.110 Liability—Volunteer health practitioners—Operation, use, reliance upon volunteer health practitioner registration system.** (1) No act or omission, except those acts or omissions constituting gross negligence or willful or wanton misconduct, by a volunteer health practitioner registered and providing services within the provisions of this chapter shall impose any liability for civil damages resulting from such an act or omission upon:

(a) The volunteer health practitioner;

(b) The supervisor or supervisors of the volunteer health practitioner;

(c) Any facility or their officers or employees;

(d) The employer of the volunteer health practitioner;

(e) The owner of the property or vehicle where the act or omission may have occurred;

(f) Any organization that registered the volunteer health practitioner under the provisions of this chapter;

(g) The state or any state or local governmental entity; or

(h) Any professional or trade association of the volunteer health practitioner.

(2) A person that, pursuant to this chapter, operates, uses, or relies upon information provided by a volunteer health practitioner registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission constitutes gross negligence, an intentional tort, or willful or wanton misconduct. [2019 c 64 § 23; 2018 c 184 § 12.]

**Explanatory statement—2019 c 64:** See note following RCW 1.20.110.

**70.15.900 Short title.** This chapter may be known and cited as the uniform emergency volunteer health practitioners act. [2018 c 184 § 1.]

**70.15.901 Uniformity of application and construction.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2018 c 184 § 13.]

## Chapter 70.22 RCW
## MOSQUITO CONTROL

Sections



**70.22.010 Declaration of purpose.** The purpose of this chapter is to establish a statewide program for the control or elimination of mosquitoes as a health hazard. [1961 c 283 § 1.]

*Mosquito control districts: Chapter 17.28 RCW.*

**70.22.020 Secretary may make inspections, investigations, and determinations and provide for control.** The secretary of health is hereby authorized and empowered to make or cause to be made such inspections, investigations, studies and determinations as he or she may from time to time deem advisable in order to ascertain the effect of mosquitoes as a health hazard, and, to the extent to which funds are available, to provide for the control or elimination thereof in any or all parts of the state. [1991 c 3 § 317; 1979 c 141 § 88; 1961 c 283 § 2.]

**70.22.030 Secretary to coordinate plans.** The secretary of health shall coordinate plans for mosquito control work which may be projected by any county, city or town, municipal corporation, taxing district, state department or agency, federal government agency, or any person, group or organization, and arrange for cooperation between any such districts, departments, agencies, persons, groups or organizations. [1991 c 3 § 318; 1979 c 141 § 89; 1961 c 283 § 3.]

**70.22.040 Secretary may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes.** The secretary of health is authorized and empowered to receive funds from any county, city or town, municipal corporation, taxing district, the federal government, or any person, group or organization to carry out the purpose of this chapter. In connection therewith the secretary is authorized and empowered to contract with any such county, city, or town, municipal corporation, taxing district, the federal government, person, group or organization with respect to the construction and maintenance of facilities and other work for the purpose of effecting mosquito control or elimination, and any such county, city or town, municipal corporation, or taxing district obligated to carry out the provisions of any such contract entered into with the secretary is authorized, empowered and directed to appropriate, and if necessary, to levy taxes for and pay over such funds as its contract with the secretary may from time to time require. [1991 c 3 § 319; 1979 c 141 § 90; 1961 c 283 § 4.]

**70.22.050 Powers and duties of secretary.** To carry out the purpose of this chapter, the secretary of health may:

(1) Abate as nuisances breeding places for mosquitoes as defined in RCW 17.28.170;

(2) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for carrying out the purpose of this chapter;

(3) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants;

(4) Publish information or literature; and

(5) Do any and all other things necessary to carry out the purpose of this chapter: PROVIDED, That no program shall be permitted nor any action taken in pursuance thereof which may be injurious to the life or health of game or fish. [1991 c 3 § 320; 1989 c 11 § 25; 1979 c 141 § 91; 1961 c 283 § 5.]

Additional notes found at www.leg.wa.gov

**70.22.060 Governmental entities to cooperate with secretary.** Each state department, agency, and political subdivision shall cooperate with the secretary of health in carrying out the purposes of this chapter. [1991 c 3 § 321; 1979 c 141 § 92; 1961 c 283 § 6.]

## Chapter 70.24 RCW
## CONTROL AND TREATMENT OF SEXUALLY TRANSMITTED DISEASES

Sections

*Center for volunteerism and citizen service: RCW 43.150.050.*

**70.24.005 Transfer of duties to the department of health.** The powers and duties of the department of social and health services, the department of licensing, and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 247.]

Additional notes found at www.leg.wa.gov

**70.24.015 Legislative finding.** The legislature declares that sexually transmitted diseases and blood-borne pathogens constitute a serious and sometimes fatal threat to the public and individual health and welfare of the people of the state. The legislature finds that the incidence of sexually transmitted diseases and blood-borne pathogens is rising at an alarming rate and that these diseases result in significant social, health, and economic costs, including infant and maternal mortality, temporary and lifelong disability, and premature death. The legislature further finds that sexually transmitted diseases and blood-borne pathogens, by their nature, involve sensitive issues of privacy, and it is the intent of the legislature that all programs designed to deal with these diseases afford patients privacy, confidentiality, and dignity. The legislature also finds that medical knowledge and information about sexually transmitted diseases and blood-borne pathogens are rapidly changing. It is therefore the intent of the legislature to provide a program that is sufficiently flexible to meet emerging needs, deals efficiently and effectively with reducing the incidence of sexually transmitted diseases and blood-borne pathogens, and provides patients with a secure knowledge that information they provide will remain private and confidential. [2020 c 76 § 1; 1988 c 206 § 901.]

**70.24.017 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Blood-borne pathogen" means a pathogenic microorganism that is present in human blood and can cause disease in humans, including hepatitis B virus, hepatitis C virus, and human immunodeficiency virus, as well as any other pathogen specified by the board in rule.

(2) "Board" means the state board of health.

(3) "Department" means the department of health, or any successor department with jurisdiction over public health matters.

(4) "Health care facility" means a hospital, nursing home, neuropsychiatric or mental health facility, home health agency, hospice, child care agency, group care facility, family foster home, clinic, blood bank, blood center, sperm bank, laboratory, or other social service or health care institution regulated or operated by the department of health.

(5) "Health care provider" means any person who is a member of a profession under RCW 18.130.040 or other person providing medical, nursing, psychological, or other health care services regulated by the department of health.

(6) "Health order" means a written directive issued by the state or local health officer that requires the recipient to take specific action to remove, reduce, control or prevent a risk to public health.

(7) "Human immunodeficiency virus" or "HIV" means all HIV and HIV-related viruses which damage the cellular branch of the human immune system and leave the person immunodeficient.

(8) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incompetent or, in the case of a minor, a person who has legal custody of the child.

(9) "Local health officer" has the same meaning as in RCW 70.05.010.

(10) "Medical treatment" includes treatment for curable diseases and treatment that causes a person to be unable to transmit a disease to others, based upon generally accepted standards of medical and public health science, as specified by the board in rule.

(11) "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation, or health facility.

(12) "Sexually transmitted disease" means a bacterial, viral, fungal, or parasitic infection, determined by the board by rule to be sexually transmitted, to be a threat to the public health and welfare, and to be an infection for which a legitimate public interest will be served by providing for regulation and treatment. The board shall designate chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, trachomitis, genital human papilloma virus infection, syphilis, and human immunodeficiency virus (HIV) infection as sexually transmitted diseases, and shall consider the recommendations and classifications of the centers for disease control and other nationally recognized medical authorities in designating other diseases as sexually transmitted.

(13) "State health officer" means the secretary of health or an officer appointed by the secretary.

(14) "Test for a sexually transmitted disease" means a test approved by the board by rule. [2020 c 76 § 2; 2001 c 319 § 4; 1991 c 3 § 322; 1988 c 206 § 101.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**70.24.022 Interviews, examination, counseling, or treatment of infected persons or persons believed to be infected—Dissemination of false information—Penalty.** (1) The board shall adopt rules authorizing interviews and the state and local public health officers and their authorized representatives may interview, or cause to be interviewed, all persons infected with a sexually transmitted disease and all persons who, in accordance with standards adopted by the board by rule, are reasonably believed to be infected with such diseases for the purpose of investigating the source and spread of the diseases and for the purpose of ordering a person to submit to examination, counseling, or treatment as

necessary for the protection of the public health and safety, subject to RCW 70.24.024.

(2) State and local public health officers or their authorized representatives shall investigate identified partners of persons infected with sexually transmitted diseases in accordance with procedures prescribed by the board.

(3) All information gathered in the course of contact investigation pursuant to this section shall be considered confidential.

(4) No person contacted under this section or reasonably believed to be infected with a sexually transmitted disease who reveals the name or names of sexual contacts during the course of an investigation shall be held liable in a civil action for such revelation, unless the revelation is made with a knowing or reckless disregard for the truth.

(5) Any person who knowingly or maliciously disseminates any false information or report concerning the existence of any sexually transmitted disease under this section is guilty of a gross misdemeanor punishable as provided under RCW 9A.20.021. [1988 c 206 § 906.]

**70.24.024 Orders for examinations and counseling—Investigation—Issuance of health order—Notice and hearing—Exception.** (1) Subject to the provisions of this chapter, the state and local health officers or their authorized representatives may examine and counsel persons reasonably believed to be infected with or to have been exposed to a sexually transmitted disease.

(2)(a) The state or a local health officer may conduct an investigation when:

(i) He or she knows or has reason to believe that a person in his or her jurisdiction has a sexually transmitted disease and is engaging in specified behavior that endangers the public health; and

(ii) The basis for the health officer's investigation is the officer's direct medical knowledge or reliable testimony of another who is in a position to have direct knowledge of the person's behavior.

(b) In conducting the investigation, the health officer shall evaluate the allegations, as well as the reliability and credibility of any person or persons who provided information related to the specified behavior that endangers the public health.

(3) If the state or local health officer determines upon conclusion of the investigation that the allegations are true and that the person continues to engage in behavior that endangers the public health, the health officer shall document measures taken to protect the public health, including reasonable efforts to obtain the person's voluntary cooperation.

(4)(a) If the measures taken under subsection (3) of this section fail to protect the public health, the state or local health officer may issue a health order requiring the person to:

(i) Submit to a medical examination or testing, receive counseling, or receive medical treatment, or any combination of these. If ordering a person to receive medical treatment, the health officer must provide the person with at least one additional appropriate option to choose from in the health order; or

(ii) Immediately cease and desist from specified behavior that endangers the public health by imposing such restrictions upon the person as are necessary to prevent the specified behavior that endangers the public health.

(b) Any restriction shall be in writing, setting forth the name of the person to be restricted, the initial period of time during which the health order shall remain effective, the terms of the restrictions, and such other conditions as may be necessary to protect the public health. Restrictions shall be imposed in the least-restrictive manner necessary to protect the public health. The period of time during which the health order is effective must be reasonably related to the purpose of the restriction or restrictions contained in the order, up to a maximum period of twelve months.

(5)(a) Upon the issuance of a health order pursuant to subsection (4) of this section, the state or local health officer shall give written notice promptly, personally, and confidentially to the person who is the subject of the order stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order. The written notice must inform the person who is the subject of the order that, if he or she contests the order, he or she may file an appeal and appear at a judicial hearing on the enforceability of the order, to be held in superior court. The hearing shall be held within seventy-two hours of receipt of the notice, unless the person subject to the order agrees to comply. If the person contests the order, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to this subsection.

(b) The health officer may apply to the superior court for a court order requiring the person to comply with the health order if the person fails to comply with the health order within the time period specified.

(c) At a hearing held pursuant to (a) or (b) of this subsection (5), the person subject to the health order may have an attorney appear on his or her behalf at public expense, if necessary. The burden of proof shall be on the health officer to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed therein are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the health order.

(d) If the superior court dismisses the health order, the fact that the order was issued shall be expunged from the records of the department or local department of health. [2020 c 76 § 3; 1988 c 206 § 909.]

**70.24.025 Violations of health order—Penalties.** A person who violates or fails to comply with a health order issued under RCW 70.24.024 is guilty of a gross misdemeanor punishable by confinement until the order has been complied with or terminated, up to a maximum period of three hundred sixty-four days. In lieu of confinement, the court may place the defendant on probation upon condition that the defendant comply with the health order, up to the length of the health order. If the defendant is placed on probation and subsequently violates or fails to comply with the health order, the court shall revoke the probation and reinstate the original sentence of confinement. [2020 c 76 § 4.]

**70.24.027 Intentional transmission of HIV—Penalties.** (1) It is unlawful for a person who knows that he or she has HIV to have sexual intercourse if:

(a) The person has been counseled by a health care provider or public health professional regarding the risk of transmitting HIV to others;

(b) The partner or partners exposed to HIV through sexual intercourse did not know that the person had HIV; and

(c) The person intended to transmit HIV to the partner.

(2) It is a defense to a prosecution under this section if:

(a) HIV was not transmitted to the partner; or

(b) The person took or attempted to take practical means to prevent transmission of HIV.

(3)(a) Except as provided in (b) of this subsection, violation of this section is a misdemeanor punishable as provided in RCW 9A.20.021.

(b) Violation of this section is a gross misdemeanor punishable as provided in RCW 9A.20.021 if the person knowingly misrepresented his or her infection status to the partner.

(c) Violation of this section does not require registration under RCW 9A.44.130, unless the partner is a child or vulnerable adultvictim.

(4) For purposes of this section, the following terms have the following meanings:

(a) "Practical means to prevent transmission" means good faith employment of an activity, behavior, method, or device that is scientifically demonstrated to measurably reduce the risk of transmitting a sexually transmitted disease, including but not limited to: The use of a condom, barrier protection, or other prophylactic device; or good faith participation in a treatment regimen prescribed by a health care provider or public health professional.

(b) "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight, of the vagina or anus of one person by the sexual organs of another whether such persons are of the same or another sex. [2020 c 76 § 5.]

**70.24.034 Detention—Grounds—Order—Hearing.** (1) When the procedures of RCW 70.24.024 have been exhausted and the state or local public health officer, within his or her respective jurisdiction, knows or has reason to believe, because of medical information, that a person has a sexually transmitted disease and that the person continues to engage in behaviors that present an imminent danger to the public health as defined by the board by rule based upon generally accepted standards of medical and public health science, the public health officer may bring an action in superior court to detain the person in a facility designated by the board for a period of time necessary to accomplish a program of counseling and education, excluding any coercive techniques or procedures, designed to get the person to adopt nondangerous behavior. In no case may the period exceed ninety days under each order. The board shall establish, by rule, standards for counseling and education under this subsection. The public health officer shall request the prosecuting attorney to file such action in superior court. During that period, reasonable efforts will be made in a noncoercive manner to get the person to adopt nondangerous behavior.

(2) If an action is filed as outlined in subsection (1) of this section, the superior court, upon the petition of the prosecuting attorney, shall issue other appropriate court orders including, but not limited to, an order to take the person into custody immediately, for a period not to exceed seventy-two hours, and place him or her in a facility designated or approved by the board. The person who is the subject of the order shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order, and notifying the person that if he or she refuses to comply with the order he or she may appear at a hearing to review the order and that he or she may have an attorney appear on his or her behalf in the hearing at public expense, if necessary. If the person contests testing or treatment, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to subsection (3) of this section.

(3) The hearing shall be conducted no later than forty-eight hours after the receipt of the order. The person who is subject to the order has a right to be present at the hearing and may have an attorney appear on his or her behalf in the hearing, at public expense if necessary. If the order being contested includes detention for a period of fourteen days or longer, the person shall also have the right to a trial by jury upon request. Upon conclusion of the hearing or trial by jury, the court shall issue appropriate orders.

The court may continue the hearing upon the request of the person who is subject to the order for good cause shown for no more than five additional judicial days. If a trial by jury is requested, the court, upon motion, may continue the hearing for no more than ten additional judicial days. During the pendency of the continuance, the court may order that the person contesting the order remain in detention or may place terms and conditions upon the person which the court deems appropriate to protect public health.

(4) The burden of proof shall be on the state or local public health officer to show by clear and convincing evidence that grounds exist for the issuance of any court order pursuant to subsection (2) or (3) of this section. If the superior court dismisses the order, the fact that the order was issued shall be expunged from the records of the state or local department of health.

(5) Any hearing conducted by the superior court pursuant to subsection (2) or (3) of this section shall be closed and confidential unless a public hearing is requested by the person who is the subject of the order, in which case the hearing will be conducted in open court. Unless in open hearing, any transcripts or records relating thereto shall also be confidential and may be sealed by order of the court.

(6) Any order entered by the superior court pursuant to subsection (1) or (2) of this section shall impose terms and conditions no more restrictive than necessary to protect the public health. [1988 c 206 § 910.]

**70.24.050 Diagnosis of sexually transmitted diseases—Confirmation—Anonymous prevalence reports.** Diagnosis of a sexually transmitted disease in every instance must be confirmed by laboratory tests or examinations in a laboratory approved or conducted in accordance with procedures and such other requirements as may be established by the board. Laboratories testing for HIV shall report anony-

mous HIV prevalence results to the department, for health statistics purposes, in a manner established by the board. [1988 c 206 § 907; 1919 c 114 § 6; RRS § 6105.]

**70.24.070 Detention and treatment facilities.** For the purpose of carrying out this chapter, the board shall have the power and authority to designate facilities for the detention and treatment of persons found to be infected with a sexually transmitted disease and to designate any such facility in any hospital or other public or private institution, other than a jail or correctional facility, having, or which may be provided with, such necessary detention, segregation, isolation, clinic and hospital facilities as may be required and prescribed by the board, and to enter into arrangements for the conduct of such facilities with the public officials or persons, associations, or corporations in charge of or maintaining and operating such institutions. [1988 c 206 § 908; 1919 c 114 § 8; RRS § 6107.]

**70.24.080 Penalty.** Except as provided in RCW 70.24.025 and 70.24.027, any person who violates any of the provisions of this chapter or any rule adopted by the board under this chapter, or who fails or refuses to obey any lawful order issued by any state, county or municipal health officer under this chapter shall be deemed guilty of a gross misdemeanor punishable as provided under RCW 9A.20.021. [2020 c 76 § 6; 1988 c 206 § 911; 1919 c 114 § 5; RRS § 6104.]

**70.24.084 Violations of chapter—Aggrieved persons—Right of action.** (1) Any person aggrieved by a violation of this chapter shall have a right of action in superior court and may recover for each violation:

(a) Against any person who negligently violates a provision of this chapter, one thousand dollars, or actual damages, whichever is greater, for each violation.

(b) Against any person who intentionally or recklessly violates a provision of this chapter, ten thousand dollars, or actual damages, whichever is greater, for each violation.

(c) Reasonable attorneys' fees and costs.

(d) Such other relief, including an injunction, as the court may deem appropriate.

(2) Any action under this chapter is barred unless the action is commenced within three years after the cause of action accrues.

(3) Nothing in this chapter limits the rights of the subject of a test for a sexually transmitted disease to recover damages or other relief under any other applicable law.

(4) Nothing in this chapter may be construed to impose civil liability or criminal sanction for disclosure of a test result for a sexually transmitted disease in accordance with any reporting requirement for a diagnosed case of sexually transmitted disease by the department or the centers for disease control of the United States public health service.

(5) It is a negligent violation of this chapter to cause an unauthorized communication of confidential sexually transmitted disease information by facsimile transmission or otherwise communicating the information to an unauthorized recipient when the sender knew or had reason to know the facsimile transmission telephone number or other transmittal information was incorrect or outdated. [2001 c 16 § 1; 1999 c 391 § 4; 1988 c 206 § 914.]

**Findings—Purpose—1999 c 391:** See note following RCW 70.05.180.

**70.24.090 Pregnant women—Test for syphilis.** Every physician attending a pregnant woman in the state of Washington during gestation shall, in the case of each woman so attended, take or cause to be taken a sample of blood of such woman at the time of first examination, and submit such sample to an approved laboratory for a standard serological test for syphilis. If the pregnant woman first presents herself for examination after the fifth month of gestation the physician or other attendant shall in addition to the above, advise and urge the patient to secure a medical examination and blood test before the fifth month of any subsequent pregnancies. [1939 c 165 § 1; RRS § 6002-1.]

**70.24.110 Minors—Treatment, consent, liability for payment for care.** A minor fourteen years of age or older who may have come in contact with any sexually transmitted disease or suspected sexually transmitted disease may give consent to the furnishing of hospital, medical, and surgical care related to the diagnosis or treatment of such disease; and treatment to avoid HIV infection. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical, and surgical care related to such disease, and such parent, parents, or legal guardian shall not be liable for payment for any care rendered pursuant to this section. [2020 c 76 § 7; 1988 c 206 § 912; 1969 ex.s. c 164 § 1.]

**70.24.120 Sexually transmitted disease case investigators—Authority to obtain specimens.** (1) Disease case investigators, upon specific authorization from a physician or by a physician's standing order, are hereby authorized to gather specimens, including through performance of venipuncture or fingerstick puncture, from a person for the sole purpose of obtaining specimens for use in testing for sexually transmitted diseases, blood-borne pathogens, and other infections as defined by board rule.

(2) For the purposes of this section:

(a) "Disease case investigator" means only those persons who:

(i) Are employed by public health authorities; and

(ii) Have been trained by a physician in proper procedures to be employed when collecting specimens, including blood, in accordance with training requirements established by the department of health; and

(iii) Possess a statement signed by the instructing physician that the training required by (a)(ii) of this subsection has been successfully completed.

(b) "Physician" means any person licensed under the provisions of chapters 18.57 or 18.71 RCW. [2020 c 76 § 8; 1991 c 3 § 324; 1988 c 206 § 913; 1977 c 59 § 1.]

**70.24.130 Adoption of rules.** (1) The board shall adopt such rules as are necessary to implement and enforce this chapter, including, but not limited to, rules:

(a) Establishing procedures for taking appropriate action, in addition to any other penalty under this chapter,

with regard to health care facilities or health care providers that violate this chapter or the rules adopted under this chapter;

(b) Prescribing stringent safeguards to protect the confidentiality of the persons and records subject to this chapter, consistent with chapter 70.02 RCW;

(c) Establishing reporting requirements for sexually transmitted diseases;

(d) Establishing procedures for investigations under RCW 70.24.024;

(e) Specifying, for purposes of RCW 70.24.024, behavior that endangers the public health, based upon generally accepted standards of medical and public health science;

(f) Defining, for the purposes of RCW 70.24.120, specimens that can be obtained and tests that can be administered for sexually transmitted diseases, blood-borne pathogens, and other infections;

(g) Determining, for purposes of RCW 70.24.340, categories of employment that are at risk of substantial exposure to a blood-borne pathogen; and

(h) Defining, for purposes of RCW 70.24.340, 70.24.360, and 70.24.370, what constitutes an exposure that presents a possible risk of transmission of a blood-borne pathogen.

(2) In addition to any rules adopted by the board, the department may adopt any rules necessary to implement and enforce this chapter.

(3) The procedures set forth in chapter 34.05 RCW apply to the administration of this chapter, except that in case of conflict between chapter 34.05 RCW and this chapter, the provisions of this chapter shall control. [2020 c 76 § 9; 1991 c 3 § 325; 1988 c 206 § 915.]

**70.24.150 Immunity of certain public employees.** Members of the state board of health and local boards of health, public health officers, and employees of the department of health and local health departments are immune from civil action for damages arising out of the good faith performance of their duties as prescribed by this chapter, unless such performance constitutes gross negligence. [1991 c 3 § 326; 1988 c 206 § 918.]

**70.24.220 Sexually transmitted disease education in public schools—Finding.** The legislature finds that the public schools provide a unique and appropriate setting for educating young people about the pathology and prevention of sexually transmitted diseases. The legislature recognizes that schools and communities vary throughout the state and that locally elected school directors should have a significant role in establishing a program of sexually transmitted disease education in their districts, consistent with RCW 28A.230.020 and 28A.300.475. [2020 c 76 § 10; 1988 c 206 § 401.]

**70.24.290 Public school employees—Rules for blood-borne pathogens education and training.** The superintendent of public instruction shall adopt rules that require appropriate education and training, to be included as part of their present continuing education requirements, for public school employees on the prevention, transmission, and treatment of blood-borne pathogens. The superintendent of public instruction, in consultation with the department of health, shall develop the educational and training material necessary for school employees. [2020 c 76 § 11; 1988 c 206 § 606.]

**70.24.325 Testing—Insurance requirements.** (1) This section shall apply to consent for blood-borne pathogen testing administered as part of an application for coverage authorized under Title 48 RCW.

(2) Persons subject to regulation under Title 48 RCW who are requesting an insured, a subscriber, or a potential insured or subscriber to furnish the results of a blood-borne pathogen test for underwriting purposes as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Provide written information to the individual prior to being tested which explains which blood-borne pathogen test is being administered; and that the purpose of blood-borne pathogen testing in this setting is to determine eligibility for coverage.

(b) Obtain informed specific written consent for the blood-borne pathogen test or tests. The written informed consent shall include an explanation of the confidential treatment of the test results which limits access to the results to persons involved in handling or determining applications for coverage or claims of the applicant or claimant.

(c) Establish procedures to inform an applicant of the following:

(i) That the applicant may designate a health care provider or health care agency to whom the insurer, the health care service contractor, or health maintenance organization will provide test results indicative of infection with a blood-borne pathogen for interpretation; and

(ii) That test results indicative of infection with a blood-borne pathogen will be sent directly to the applicant. [2020 c 76 § 12; 1989 c 387 § 1.]

**70.24.340 Employees' substantial exposure to bodily fluids—Procedure and court orders.** A law enforcement officer, firefighter, health care provider, health care facility staff person, department of corrections' staff person, jail staff person, or person employed in other categories of employment to be at risk of exposure that presents a possible risk of transmission of a blood-borne pathogen, who has experienced an exposure to another person's bodily fluids in the course of his or her employment, may request a state or local health officer to order blood-borne pathogen testing for the person whose bodily fluids he or she has been exposed to. If the state or local health officer refuses to order testing under this section, the person who made the request may petition the superior court for a hearing to determine whether an order shall be issued. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review to determine whether the state or local health officer shall be required to issue the order is whether an exposure occurred and whether that exposure presents a possible risk of transmission of a blood-borne pathogen. Upon conclusion of the hearing, the court shall issue the appropriate order.

The person who is subject to the state or local health officer's order to receive testing shall be given written notice of the order promptly, personally, and confidentially, stating the

grounds and provisions of the order, including the factual basis therefor. If the person who is subject to the order refuses to comply, the state or local health officer may petition the superior court for a hearing. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review for the order is whether an exposure occurred and whether that exposure presents a possible risk of transmission of a blood-borne pathogen. Upon conclusion of the hearing, the court shall issue the appropriate order.

The state or local health officer shall perform testing under this section if he or she finds that the exposure presents a possible risk of transmission of a blood-borne pathogen or if he or she is ordered to do so by a court.

The testing required under this section shall be completed as soon as possible after the substantial exposure or, if ordered by the court, within seventy-two hours of the order's issuance. [2020 c 76 § 13; 2011 c 232 § 2; 1997 c 345 § 3; 1988 c 206 § 703.]

**Findings—Intent—1997 c 345:** "(1) The legislature finds that department of corrections staff and jail staff perform essential public functions that are vital to our communities. The health and safety of these workers is often placed in jeopardy while they perform the responsibilities of their jobs. Therefore, the legislature intends that the results of any HIV tests conducted on an offender or detainee pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be disclosed to the health care administrator or infection control coordinator of the department of corrections facility or the local jail that houses the offender or detainee. The legislature intends that these test results also be disclosed to any corrections or jail staff who have been substantially exposed to the bodily fluids of the offender or detainee when the disclosure is provided by a licensed health care provider in accordance with Washington Administrative Code rules governing employees' occupational exposure to blood-borne pathogens.

(2) The legislature further finds that, through the efforts of health care professionals and corrections staff, offenders in department of corrections facilities and people detained in local jails are being encouraged to take responsibility for their health by requesting voluntary and anonymous pretest counseling, HIV testing, posttest counseling, and AIDS counseling. The legislature does not intend, through chapter 345, Laws of 1997, to mandate disclosure of the results of voluntary and anonymous tests. The legislature intends to continue to protect the confidential exchange of medical information related to voluntary and anonymous pretest counseling, HIV testing, posttest counseling, and AIDS counseling as provided by chapter 70.24 RCW." [1997 c 345 § 1.]

**70.24.360 Jail detainees—Testing of persons who present a possible risk.** Jail administrators, with the approval of the local health officer, may order blood-borne pathogen testing for a person detained in the jail if the local health officer determines that the detainee's behavior exposed the staff, general public, or other persons, and that exposure presents a possible risk of transmitting a blood-borne pathogen. Documentation of the behavior shall be reviewed with the person to ensure that the person understands the basis for testing. [2020 c 76 § 14; 1988 c 206 § 706.]

**70.24.370 Correction facility inmates—Testing—Procedure.** (1) The chief medical officer of the department of corrections may order blood-borne pathogen testing for an inmate if the chief medical officer or his or her designee determines that the inmate's behavior exposed the staff, general public, or other inmates, and that exposure presents a possible risk of transmitting a blood-borne pathogen. The department of corrections shall establish a procedure to document the exposure that presents a possible risk of transmitting a blood-borne pathogen which is the basis for the testing. The chief medical officer, or his or her designee, shall review the exposure that presents a possible risk of transmitting a blood-borne pathogen in the documentation of the behavior with the inmate to ensure that he or she understands the basis for the testing.

(2) Administrative hearing requirements set forth in chapter 34.05 RCW do not apply to the procedure developed by the department of corrections pursuant to this section. This section shall not be construed as requiring any hearing process except as may be required under existing federal constitutional law. [2020 c 76 § 15; 1988 c 206 § 707.]

**70.24.400 Funding for office on AIDS—Center for AIDS education—Department's duties for awarding grants.** (1) The secretary of health shall direct that all state or federal funds, excluding those from federal Title XIX for services or other activities authorized in this chapter, shall be allocated to the office on AIDS established in *RCW 70.24.250. The secretary shall further direct that all funds for services and activities specified in subsection (4) of this section shall be provided by the department directly to public and private providers in the communities.

(2) Efforts shall be made by both the counties and the department to use existing service delivery systems, where possible.

(3) The University of Washington health science program, in cooperation with the office on AIDS, may, within available resources, establish a center for AIDS education. The center for AIDS education is not intended to engage in state-funded research related to HIV infection, AIDS, or HIV-related conditions. Its duties shall include providing the office on AIDS with the appropriate educational materials necessary to carry out that office's duties.

(4) The department shall develop standards and criteria for awarding grants to support testing, counseling, education, case management, notification of sexual partners of infected persons, planning, coordination, and other services required by law. In addition, funds shall be allocated for intervention strategies specifically addressing groups that are at a high risk of being infected with the human immunodeficiency virus.

(5) The department shall reflect in its departmental biennial budget request the funds necessary to implement this section.

(6) The use of appropriate materials may be authorized by the department in the prevention or control of HIV infection. [2010 1st sp.s. c 3 § 1; 1998 c 245 § 126; 1991 c 3 § 327; 1988 c 206 § 801.]

***Reviser's note:** RCW 70.24.250 was repealed by 2020 c 76 § 22.

Additional notes found at www.leg.wa.gov

**70.24.420 Additional local funding of treatment programs not required.** Nothing in this chapter may be construed to require additional local funding of programs to treat communicable disease established as of March 23, 1988. [1988 c 206 § 919.]

**70.24.430 Application of chapter to persons subject to jurisdiction of department of corrections.** Nothing in this chapter is intended to create a state-mandated liberty interest of any nature for offenders or inmates confined in

department of corrections facilities or subject to the jurisdiction of the department of corrections. [1988 c 206 § 920.]

**70.24.450 Confidentiality—Reports—Unauthorized disclosures.** (1) In order to assure compliance with the protections under this chapter and the rules of the board, and to assure public confidence in the confidentiality of reported information, the department shall:

(a) Report annually to the board any incidents of unauthorized disclosure by the department, local health departments, or their employees of information protected under RCW 70.02.220. The report shall include recommendations for preventing future unauthorized disclosures and improving the system of confidentiality for reported information; and

(b) Assist health care providers, facilities that conduct tests, local health departments, and other persons involved in disease reporting to understand, implement, and comply with this chapter and the rules of the board related to disease reporting.

(2) This section is exempt from RCW 70.24.084, 70.05.070, and 70.05.120. [2013 c 200 § 27; 1999 c 391 § 3.]

**Effective date—2013 c 200:** See note following RCW 70.02.010.

**Findings—Purpose—1999 c 391:** See note following RCW 70.05.180.

**70.24.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 150.]

## Chapter 70.26 RCW
## PANDEMIC INFLUENZA PREPAREDNESS

Sections



**70.26.010 Findings—Intent.** The legislature finds that:

(1) Pandemic influenza is a global outbreak of disease that occurs when a new virus appears in the human population, causes serious illness, and then spreads easily from person to person.

(2) Historically, pandemic influenza has occurred on average every thirty years. Most recently, the Asian flu in 1957-58 and the Hong Kong flu in 1968-69 killed seventy thousand and thirty-four thousand, respectively, in the United States.

(3) Another influenza pandemic could emerge with little warning, affecting a large number of people. Estimates are that another pandemic influenza would cause more than two hundred thousand deaths in our country, with as many as five thousand in Washington. Our state could also expect ten thousand to twenty-four thousand people needing hospital stays, and as many as a million people requiring outpatient visits. During a severe pandemic these numbers could be much higher. The economic losses could also be substantial.

(4) The current Avian or bird flu that is spreading around the world has the potential to start a pandemic. There is yet no proven vaccine, and antiviral medication supplies are limited and of unknown effectiveness against a human version of the virus, leaving traditional public health measures as the only means to slow the spread of the disease. Given the global nature of a pandemic, as much as possible, the state must be able to respond assuming only limited outside resources and assistance will be available.

(5) An effective response to pandemic influenza in Washington must focus at the local level and will depend on preestablished partnerships and collaborative planning on a range of best case and worst case scenarios. It will require flexibility and real-time decision making, guided by accurate information. It will also depend on a well-informed public that understands the dangers of pandemic influenza and the steps necessary to prevent the spread of the disease.

(6) Avian flu is but one example of an infectious disease that, were an outbreak to occur, could pose a significant statewide health hazard. As such, preparation for pandemic flu will also enhance the capacity of local public health jurisdictions to respond to other emergencies.

It is therefore the intent of the legislature that adequate pandemic flu preparedness and response plans be developed and implemented by local public health jurisdictions statewide in order to limit the number of illnesses and deaths, preserve the continuity of essential government and other community services, and minimize social disruption and economic loss in the event of an influenza pandemic. [2006 c 63 § 1.]

**70.26.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Local health jurisdiction" means a local health department as established under chapter 70.05 RCW, a combined city-county health department as established under chapter 70.08 RCW, or a health district established under chapter 70.05 or 70.46 RCW.

(3) "Secretary" means the secretary of the department of health. [2006 c 63 § 2.]

**70.26.030 Local preparedness and response plans—Requirements.** (1) The secretary shall establish requirements and performance standards, consistent with any requirements or standards established by the United States

department of health and human services, regarding the development and implementation of local pandemic flu preparedness and response plans.

(2) To the extent state or federal funds are provided for this purpose, by November 1, 2006, each local health jurisdiction shall develop a pandemic flu preparedness and response plan, consistent with requirements and performance standards established in subsection (1) of this section, for the purpose of:

(a) Defining preparedness activities that should be undertaken before a pandemic occurs that will enhance the effectiveness of response measures;

(b) Describing the response, coordination, and decision-making structure that will incorporate the local health jurisdiction, the local health care system, other local response agencies, and state and federal agencies during the pandemic;

(c) Defining the roles and responsibilities for the local health jurisdiction, local health care partners, and local response agencies during all phases of a pandemic;

(d) Describing public health interventions in a pandemic response and the timing of such interventions;

(e) Serving as a guide for local health care system partners, response agencies, and businesses in the development of pandemic influenza response plans; and

(f) Providing technical support and information on which preparedness and response actions are based.

Each plan shall be developed based on an assessment by the local health jurisdiction of its current capacity to respond to pandemic flu and otherwise meet department outcome measures related to infectious disease outbreaks of statewide significance. [2006 c 63 § 3.]

**70.26.040 Local preparedness and response plans—Consultation with public, private sector—Department to provide technical assistance and disburse funds.** (1) Each local health jurisdiction shall develop its pandemic flu preparedness and response plan based on the requirements and performance standards established under RCW 70.26.030(1) and an assessment of the jurisdiction's current capacity to respond to pandemic flu. The plan shall be developed in consultation with appropriate public and private sector partners, including departments of emergency management, law enforcement, school districts, hospitals and medical professionals, tribal governments, and business organizations. At a minimum, each plan shall address:

(a) Strategies to educate the public about the consequences of influenza pandemic and what each person can do to prepare, including the adoption of universal infectious disease prevention practices and maintaining appropriate emergency supplies;

(b) Jurisdiction-wide disease surveillance programs, coordinated with state and federal efforts, to detect pandemic influenza strains in humans and animals, including health care provider compliance with reportable conditions requirements, and investigation and analysis of reported illness or outbreaks;

(c) Communication systems, including the availability of and access to specialized communications equipment by health officials and community leaders, and the use of mass media outlets;

(d) Mass vaccination plans and protocols to rapidly administer vaccine and monitor vaccine effectiveness and safety;

(e) Guidelines for the utilization of antiviral medications for the treatment and prevention of influenza;

(f) Implementation of nonmedical measures to decrease the spread of the disease as guided by the epidemiology of the pandemic, including increasing adherence to public health advisories, voluntary social isolation during outbreaks, and health officer orders related to quarantines;

(g) Medical system mobilization, including improving the linkages and coordination of emergency responses across health care organizations, and assuring the availability of adequate facilities and trained personnel;

(h) Strategies for maintaining social order and essential community services while limiting the spread of disease throughout the duration of the pandemic; and

(i) The jurisdiction's relative priorities related to implementation of the above activities, based on available funding.

(2) To the extent state or federal funds are provided for this purpose, the department, in consultation with the state director of emergency management, shall provide technical assistance and disburse funds as needed, based on the formula developed under RCW 70.26.060, to support local health jurisdictions in developing their pandemic flu preparedness and response plans. [2006 c 63 § 4.]

**70.26.050 Plans to be submitted to secretary for approval, rejection—Funding—Preparedness and response activities.** Local health jurisdictions shall submit their pandemic flu preparedness and response plans to the secretary by November 1, 2006. Upon receipt of a plan, the secretary shall approve or reject the plan. When the plan is determined by the department to comply with the requirements and integrate the performance standards established under RCW 70.26.030(1), any additional state or federal funding appropriated in the budget shall be provided to the local health jurisdiction to support the preparedness response activities identified in the plan, based upon a formula developed by the secretary under RCW 70.26.060. Preparedness and response activities include but are not limited to:

(1) Education, information, and outreach, in multiple languages, to increase community preparedness and reduce the spread of the disease should it occur;

(2) Development of materials and systems to be used in the event of a pandemic to keep the public informed about the influenza, the course of the pandemic, and response activities;

(3) Development of the legal documents necessary to facilitate and support the necessary government response;

(4) Training and response drills for local health jurisdiction staff, law enforcement, health care providers, and others with responsibilities identified in the plan;

(5) Enhancement of the communicable disease surveillance system; and

(6) Development of coordination and communication systems among responding agencies.

Where appropriate, these activities shall be coordinated and funded on a regional or statewide basis. The secretary, in consultation with the state director of emergency management, shall provide implementation support and assistance to

a local health jurisdiction when the secretary or the local health jurisdiction has concerns regarding a jurisdiction's progress toward implementing its plan. [2006 c 63 § 5.]

**70.26.060 Secretary to develop a formula for fund distribution—Requirements.** The secretary shall develop a formula for distribution of any federal and state funds appropriated in the omnibus appropriations act on or before July 1, 2006, to local health jurisdictions for development and implementation of their pandemic flu preparedness and response plans. The formula developed by the secretary shall ensure that each local health jurisdiction receives a minimum amount of funds for plan development and that any additional funds for plan development be distributed equitably, including consideration of population and factors that increase susceptibility to an outbreak, upon soliciting the advice of the local health jurisdictions. [2006 c 63 § 6.]

**70.26.070 Secretary duties—Report.** The secretary shall:

(1) Develop a process for assessing the compliance of each local health jurisdiction with the requirements and performance standards developed under RCW 70.26.030(1) at least biannually;

(2) By November 15, 2008, report to the legislature on the level of compliance with the performance standards established under RCW 70.26.030(1). The report shall consider the extent to which local health jurisdictions comply with each performance standard and any impediments to meeting the expected level of performance. [2006 c 63 § 7.]

## Chapter 70.28 RCW
## CONTROL OF TUBERCULOSIS

Sections



**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

**70.28.005 Health officials, broad powers to protect public health.** (1) Tuberculosis has been and continues to be a threat to the public's health in the state of Washington.

(2) While it is important to respect the rights of individuals, the legitimate public interest in protecting the public health and welfare from the spread of a deadly infectious disease outweighs incidental curtailment of individual rights that may occur in implementing effective testing, treatment, and infection control strategies.

(3) To protect the public's health, it is the intent of the legislature that local health officials provide culturally sensitive and medically appropriate early diagnosis, treatment, education, and follow-up to prevent tuberculosis. Further, it is imperative that public health officials and their staff have the necessary authority and discretion to take actions as are necessary to protect the health and welfare of the public, subject to the constitutional protection required under the federal and state constitutions. Nothing in this chapter shall be construed as in any way limiting the broad powers of health officials to act as necessary to protect the public health. [1994 c 145 § 1.]

**70.28.008 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Department" means the department of health;

(2) "Secretary" means the secretary of the department of health or his or her designee;

(3) "Tuberculosis control" refers to the procedures administered in the counties for the control, prevention, and treatment of tuberculosis. [1999 c 172 § 7; 1991 c 3 § 330; 1983 c 3 § 171; 1971 ex.s. c 277 § 15. Formerly RCW 70.33.010.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

**70.28.010 Health care providers required to report cases.** All practicing health care providers in the state are hereby required to report to the local health department cases of every person having tuberculosis who has been attended by, or who has come under the observation of, the health care provider within one day thereof. [1999 c 172 § 2; 1996 c 209 § 1; 1967 c 54 § 1; 1899 c 71 § 1; RRS § 6109.]

**Finding—1999 c 172:** "The legislature finds that current statutes relating to the reporting, treatment, and payment for tuberculosis are outdated, and not in concert with current clinical practice and tuberculosis care management. Updating reporting requirements for local health departments will benefit providers, local health, and individuals requiring treatment for tuberculosis." [1999 c 172 § 1.]

Additional notes found at www.leg.wa.gov

**70.28.020 Record of reports.** All local health departments in this state are hereby required to receive and keep a record, for a period of ten years from the date of the report, of the reports required by RCW 70.28.010 to be made to them; such records shall not be open to public inspection, but shall be submitted to the proper inspection of other local health departments and of the department of health alone, and such records shall not be published nor made public. [1999 c 172 § 3; 1967 c 54 § 2; 1899 c 71 § 2; RRS § 6110.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

**70.28.025 Secretary's administrative responsibility—Scope.** The secretary shall have responsibility for establishing standards for the control, prevention, and treatment of tuberculosis and hospitals approved to treat tuberculosis in the state operated under this chapter and chapter 70.30 RCW and for providing, either directly or through agreement, contract, or purchase, appropriate facilities and services for persons who are, or may be suffering from tuberculosis except as otherwise provided by RCW 70.30.061 or this section.

Under that responsibility, the secretary shall have the following powers and duties:

(1) To develop and enter into such agreements, contracts, or purchase arrangements with counties and public and private agencies or institutions to provide for hospitalization, nursing home, or other appropriate facilities and services, including laboratory services, for persons who are or may be suffering from tuberculosis;

(2) Adopt such rules as are necessary to assure effective patient care and treatment of tuberculosis. [1999 c 172 § 8; 1983 c 3 § 172; 1973 1st ex.s. c 213 § 2; 1971 ex.s. c 277 § 16. Formerly RCW 70.33.020.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

**70.28.031 Powers and duties of health officers.** Each health officer is hereby directed to use every available means to ascertain the existence of, and immediately to investigate, all reported or suspected cases of tuberculosis in the infectious stages within his or her jurisdiction and to ascertain the sources of such infections. In carrying out such investigations, each health officer is hereby invested with full powers of inspection, examination, treatment, and quarantine or isolation of all persons known to be infected with tuberculosis in an infectious stage or persons who have been previously diagnosed as having tuberculosis and who are under medical orders for treatment or periodic follow-up examinations and is hereby directed:

(a) To make such examinations as are deemed necessary of persons reasonably suspected of having tuberculosis in an infectious stage and to isolate and treat or isolate, treat, and quarantine such persons, whenever deemed necessary for the protection of the public health.

(b) To make such examinations as deemed necessary of persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations.

(c) Follow local rules and regulations regarding examinations, treatment, quarantine, or isolation, and all rules, regulations, and orders of the state board and of the department in carrying out such examination, treatment, quarantine, or isolation.

(d) Whenever the health officer shall determine on reasonable grounds that an examination or treatment of any person is necessary for the preservation and protection of the public health, he or she shall make an examination order in writing, setting forth the name of the person to be examined, the time and place of the examination, the treatment, and such other terms and conditions as may be necessary to protect the public health. Nothing contained in this subdivision shall be construed to prevent any person whom the health officer determines should have an examination or treatment for infectious tuberculosis from having such an examination or treatment made by a physician of his or her own choice who is licensed to practice osteopathic medicine and surgery under chapter 18.57 RCW or medicine and surgery under chapter 18.71 RCW under such terms and conditions as the health officer shall determine on reasonable grounds to be necessary to protect the public health.

(e) Whenever the health officer shall determine that quarantine, treatment, or isolation in a particular case is necessary for the preservation and protection of the public health, he or she shall make an order to that effect in writing, setting forth the name of the person, the period of time during which the order shall remain effective, the place of treatment, isolation, or quarantine, and such other terms and conditions as may be necessary to protect the public health.

(f) Upon the making of an examination, treatment, isolation, or quarantine order as provided in this section, a copy of such order shall be served upon the person named in such order.

(g) Upon the receipt of information that any examination, treatment, quarantine, or isolation order, made and served as herein provided, has been violated, the health officer shall advise the prosecuting attorney of the county in which such violation has occurred, in writing, and shall submit to such prosecuting attorney the information in his or her possession relating to the subject matter of such examination, treatment, isolation, or quarantine order, and of such violation or violations thereof.

(h) Any and all orders authorized under this section shall be made by the health officer or his or her tuberculosis control officer.

(i) Nothing in this chapter shall be construed to abridge the right of any person to rely exclusively on spiritual means alone through prayer to treat tuberculosis in accordance with the tenets and practice of any well-recognized church or religious denomination, nor shall anything in this chapter be deemed to prohibit a person who is inflicted with tuberculosis from being isolated or quarantined in a private place of his own choice, provided, it is approved by the local health officer, and all laws, rules and regulations governing control, sanitation, isolation, and quarantine are complied with. [1996 c 209 § 2; 1996 c 178 § 21; 1967 c 54 § 4.]

**Reviser's note:** This section was amended by 1996 c 178 § 21 and by 1996 c 209 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

**70.28.032 Due process standards for testing, treating, detaining—Reporting requirements—Training and scope for skin test administration.** (1) The state board of health shall adopt rules establishing the requirements for:

(a) Reporting confirmed or suspected cases of tuberculosis by health care providers and reporting of laboratory results consistent with tuberculosis by medical test sites;

(b) Due process standards for health officers exercising their authority to involuntarily detain, test, treat, or isolate persons with suspected or confirmed tuberculosis under RCW 70.28.031 and 70.05.070 that provide for release from any involuntary detention, testing, treatment, or isolation as soon as the health officer determines the patient no longer represents a risk to the public's health;

(c) Training of persons to perform tuberculosis skin testing and to administer tuberculosis medications.

(2) Notwithstanding any other provision of law, persons trained under subsection (1)(c) of this section may perform skin testing and administer medications if doing so as part of a program established by a state or local health officer to control tuberculosis. [1996 c 209 § 3; 1994 c 145 § 2.]

**70.28.033 Treatment, isolation, or examination order of health officer—Violation—Penalty.** Inasmuch as the order provided for by RCW 70.28.031 is for the protection of the public health, any person who, after service upon him or her of an order of a health officer directing his or her treatment, isolation, or examination as provided for in RCW 70.28.031, violates or fails to comply with the same or any provision thereof, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any and all other penalties which may be imposed by law upon such conviction, may be ordered by the court confined until such order of such health officer shall have been fully complied with or terminated by such health officer, but not exceeding six months from the date of passing judgment upon such conviction: PROVIDED, That the court, upon suitable assurances that such order of such health officer will be complied with, may place any person convicted of a violation of such order of such health officer upon probation for a period not to exceed two years, upon condition that the said order of said health officer be fully complied with: AND PROVIDED FURTHER, That upon any subsequent violation of such order of such health officer, such probation shall be terminated and confinement as herein provided ordered by the court. [1996 c 209 § 4; 1967 c 54 § 5.]

**70.28.035 Order of health officer—Refusal to obey—Application for superior court order.** In addition to the proceedings set forth in RCW 70.28.031, where a local health officer has reasonable cause to believe that an individual has tuberculosis as defined in the rules and regulations of the state board of health, and the individual refuses to obey the order of the local health officer to appear for an initial examination or a follow-up examination or an order for treatment, isolation, or quarantine, the health officer may apply to the superior court for an order requiring the individual to comply with the order of the local health officer. [1996 c 209 § 5; 1967 c 54 § 6.]

**70.28.037 Superior court order for confinement of individuals having active tuberculosis.** Where it has been determined after an examination as prescribed in this chapter that an individual has active tuberculosis, upon application to the superior court by the local health officer, the superior court shall order the sheriff to transport the individual to a designated facility for isolation, treatment, and care until such time as the local health officer or designee determines that the patient's condition is such that it is safe for the patient to be discharged from the facility. [1999 c 172 § 4; 1967 c 54 § 7.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

## Chapter 70.30 RCW
## TUBERCULOSIS HOSPITALS, FACILITIES, AND FUNDING

Sections



**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

*County hospitals: Chapter 36.62 RCW.*

*Hospital's lien: Chapter 60.44 RCW.*

*Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.*

**70.30.015 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Secretary" means the secretary of the department of health or his or her designee.

(3) "Tuberculosis control" refers to the procedures administered in the counties for the control, prevention, and treatment of tuberculosis. [1999 c 172 § 10.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

**70.30.045 Expenditures for tuberculosis control directed—Standards—Payment for treatment.** Tuberculosis is a communicable disease and tuberculosis prevention, treatment, control, and follow-up of known cases of tuberculosis are the basic steps in the control of this major health problem. In order to carry on such work effectively in accordance with the standards set by the secretary under RCW 70.28.025, the legislative authority of each county shall budget a sum to be used for the control of tuberculosis, including case finding, prevention, treatment, and follow-up of known cases of tuberculosis. Under no circumstances should this section be construed to mean that the legislative authority of each county shall budget sums to provide tuberculosis treatment when the patient has the ability to pay for the treatment. Each patient's ability to pay for the treatment shall be assessed by the local health department. [1999 c 172 § 6; 1975 1st ex.s. c 291 § 3; 1973 1st ex.s. c 195 § 79; 1971 ex.s. c 277 § 21; 1970 ex.s. c 47 § 7; 1967 ex.s. c 110 § 11; 1959 c 117 § 1; 1945 c 66 § 1; 1943 c 162 § 1; Rem. Supp. 1945 § 6113-1. Formerly RCW 70.32.010.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

*County budget for tuberculosis facilities: RCW 70.30.055.*

*County treasurer: Chapter 36.29 RCW.*

Additional notes found at www.leg.wa.gov

**70.30.055 County budget for tuberculosis facilities.** In order to maintain adequate facilities and services for the residents of the state of Washington who are or may be suffering from tuberculosis and to assure their proper care, the legislative authority of each county shall budget annually a sum to provide such services in the county.

The funds may be retained by the county for operating its own services for the prevention and treatment of tuberculosis. None of the counties shall be required to make any payments to the state or any other agency from these funds except as authorized by the local health department. However, if the counties do not comply with the adopted standards of the department, the secretary shall take action to provide the required services and to charge the affected county directly for the provision of these services by the state. [1999 c 172 §

9; 1975 1st ex.s. c 291 § 4. Prior: 1973 1st ex.s. c 213 § 4; 1973 1st ex.s. c 195 § 81; 1971 ex.s. c 277 § 18. Formerly RCW 70.33.040.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

*Expenditures for tuberculosis control directed—Standards—Payment for treatment: RCW 70.30.045.*

Additional notes found at www.leg.wa.gov

**70.30.061 Admissions to facility.** Any person residing in the state and needing treatment for tuberculosis may apply in person to the local health officer or to any licensed physician, advanced registered nurse practitioner, or licensed physician assistant for examination and if that health care provider has reasonable cause to believe that the person is suffering from tuberculosis in any form he or she may apply to the local health officer or designee for admission of the person to an appropriate facility for the care and treatment of tuberculosis. [1999 c 172 § 5; 1973 1st ex.s. c 213 § 1; 1972 ex.s. c 143 § 2.]

**Finding—Severability—1999 c 172:** See notes following RCW 70.28.010.

**70.30.081 Annual inspections.** All hospitals established or maintained for the treatment of persons suffering from tuberculosis shall be subject to annual inspection, or more frequently if required by federal law, by agents of the department of health, and the medical director shall admit such agents into every part of the facility and its buildings, and give them access on demand to all records, reports, books, papers, and accounts pertaining to the facility. [1991 c 3 § 329; 1972 ex.s. c 143 § 4.]

## Chapter 70.37 RCW
## HEALTH CARE FACILITIES

Sections



**70.37.010 Declaration of public policies—Purpose.** The good health of the people of our state is a most important public concern. The state has a direct interest in seeing to it that health care facilities adequate for good public health are established and maintained in sufficient numbers and in proper locations. The rising costs of care of the infirm constitute a grave challenge not only to health care providers but to our state and the people of our state who will seek such care. It is hereby declared to be the public policy of the state of Washington to assist and encourage the building, providing and utilization of modern, well equipped and reasonably priced health care facilities, and the improvement, expansion and modernization of health care facilities in a manner that will minimize the capital costs of construction, financing and use thereof and thereby the costs to the public of the use of such facilities, and to contribute to improving the quality of health care available to our citizens. In order to accomplish these and related purposes this chapter is adopted and shall be liberally construed to carry out its purposes and objects. [1974 ex.s. c 147 § 1.]

**70.37.020 Definitions.** As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent and the singular of any term shall encompass the plural and the plural the singular unless the context indicates otherwise:

(1) "Authority" means the Washington health care facilities authority created by RCW 70.37.030 or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority shall be given by law.

(2) "Bonds" mean bonds, notes or other evidences of indebtedness of the authority issued pursuant hereto.

(3) "Health care facility" means any land, structure, system, machinery, equipment or other real or personal property or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services, and shall include research and support facilities of a comprehensive cancer center, but excluding, however, any facility which is maintained by a participant primarily for rental or lease to self-employed health care professionals or as an independent nursing home or other facility primarily offering domiciliary care.

(4) "Participant" means any city, county or other municipal corporation or agency or political subdivision of the state or any corporation, hospital, comprehensive cancer center, or health maintenance organization authorized by law to operate nonprofit health care facilities, or any affiliate, as defined by regulations promulgated by the director of the department of financial institutions pursuant to RCW 21.20.450, which is a nonprofit corporation acting for the benefit of any entity described in this subsection.

(5) "Project" means a specific health care facility or any combination of health care facilities, constructed, purchased, acquired, leased, used, owned or operated by a participant, and alterations, additions to, renovations, enlargements, betterments and reconstructions thereof. [1994 c 92 § 505; 1989 c 65 § 1; 1983 c 210 § 3; 1974 ex.s. c 147 § 2.]

**70.37.030 Washington health care facilities authority established—Members—Chair—Terms—Quorum—Vacancies—Compensation and travel expenses.** There is hereby established a public body corporate and politic, with perpetual corporate succession, to be known as the Washington health care facilities authority. The authority shall consti-

tute a political subdivision of the state established as an instrumentality exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010. The authority shall consist of the governor who shall serve as chair, the lieutenant governor, the insurance commissioner, the secretary of health, and one member of the public who shall be appointed by the governor, subject to confirmation by the senate, on the basis of the member's interest or expertise in health care delivery, for a term expiring on the fourth anniversary of the date of appointment. In the event that any of the offices referred to shall be abolished, the resulting vacancy on the authority shall be filled by the officer who shall succeed substantially to the powers and duties thereof. The members of the authority shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses incurred in the discharge of their duties under this chapter, subject to the provisions of RCW 43.03.050 and 43.03.060. A majority shall constitute a quorum.

The governor and the insurance commissioner each may designate an employee of his or her office to act on his or her behalf during the absence of the governor or the insurance commissioner at one or more of the meetings of the authority. The vote of the designee shall have the same effect as if cast by the governor or the insurance commissioner if the designation is in writing and is presented to the person presiding at the meetings included within the designation.

The governor may designate a member to preside during the governor's absence. [2012 c 117 § 373; 2002 c 91 § 1; 1989 1st ex.s. c 9 § 261; 1984 c 287 § 103; 1983 c 210 § 1; 1975-'76 2nd ex.s. c 34 § 157; 1974 ex.s. c 147 § 3.]

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

**70.37.040 Washington health care facilities authority—Powers—Special fund bonds—Revenue bonds.** (1) The authority is hereby empowered to issue bonds for the construction, purchase, acquisition, rental, leasing or use by participants of projects for which bonds to provide funds therefor have been approved by the authority. Such bonds shall be issued in the name of the authority. They shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. They shall contain a recital on their face that their payment and the payment of interest thereon shall be a valid claim only as against the special fund relating thereto derived by the authority in whole or in part from the revenues received by the authority from the operation by the participant of the health care facilities for which the bonds are issued but that they shall constitute a prior charge over all other charges or claims whatever against such special fund. The lien of any such pledge on such revenues shall attach thereto immediately on their receipt by the authority and shall be valid and binding as against parties having claims of any kind in tort, contract or otherwise against the participant, without recordation thereof and whether or not they have notice thereof. For inclusion in such special funds and for other uses in or for such projects of participants the authority is empowered to accept and receive funds, grants, gifts, pledges, guarantees, mortgages, trust deeds and other security instruments, and property from the federal government or the state of Washington or other public body, entity or agency and from any public or private institution, association, corporation or organization, including participants, except that it shall not accept or receive from the state or any taxing agency any money derived from taxes save money to be devoted to the purposes of a project of the state or taxing agency.

(2) For the purposes outlined in subsection (1) of this section the authority is empowered to provide for the issuance of its special fund bonds and other limited obligation security instruments subordinate to the first and prior lien bonds, if any, relating to a project or projects of a participant and to create special funds relating thereto against which such subordinate securities shall be liens, but the authority shall not have power to incur general obligations with respect thereto.

(3) The authority may also issue special fund bonds to redeem or to fund or refund outstanding bonds or any part thereof at maturity, or before maturity if subject to prior redemption, with the right in the authority to include various series and issues of such outstanding special fund bonds in a single issue of funding or refunding special fund bonds and to pay any redemption premiums out of the proceeds thereto. Such funding or refunding bonds shall be limited special fund bonds issued in accordance with the provisions of this chapter, including this section and shall not be general obligations of the authority.

(4) Such special fund bonds of either first lien or subordinate lien nature may also be issued by the authority, the proceeds of which may be used to refund already existing mortgages or other obligations on health care facilities already constructed and operating incurred by a participant in the construction, purchase or acquisition thereof.

(5) The authority may also lease to participants, lease to them with option to purchase, or sell to them, facilities which it has acquired by construction, purchase, devise, gift, or leasing: PROVIDED, That the terms thereof shall at least fully reimburse the authority for its costs with respect to such facilities, including costs of financing, and provide fully for the debt service on any bonds issued by the authority to finance acquisition by it of the facilities. To pay the cost of acquiring or improving such facilities or to refund any bonds issued for such purpose, the authority may issue its revenue bonds secured solely by revenues derived from the sale or lease of the facility, but which may additionally be secured by mortgage, lease, pledge or assignment, trust agreement or other security device. Such bonds and such security devices shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. Such health care facilities may be acquired, constructed, reconstructed, and improved and may be leased, sold or otherwise disposed of in the manner determined by the authority in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of the state, or any agency thereof, is not applicable to any action so taken by the authority. [1974 ex.s. c 147 § 4.]

**70.37.050 Requests for financing—Financing plan—Bond issue, special fund authorized.** The authority shall establish rules concerning its exercise of the powers authorized by this chapter. The authority shall receive from applicants requests for the providing of bonds for financing of health care facilities and shall investigate and determine the need and the feasibility of providing such bonds. Whenever the authority deems it necessary or advisable for the benefit of the public health to provide financing for a health care facility, it shall adopt a financing plan therefor and shall declare the estimated cost thereof, as near as may be, including as part of such cost funds necessary for the expenses incurred in the financing as well as in the construction or purchase or other acquisition or in connection with the rental or other payment for the use thereof, interest during construction, reserve funds and any funds necessary for initial start-up costs, and shall issue and sell its bonds for the purposes of carrying out the proposed financing plan: PROVIDED, That if a certificate of need is required for the proposed project, no such financing plan shall be adopted until such certificate has been issued pursuant to chapter 70.38 RCW by the secretary of the department of social and health services. The authority shall have power as a part of such plan to create a special fund or funds for the purpose of defraying the cost of such project and for other projects of the same participant subsequently or at the same time approved by it and for their maintenance, improvement, reconstruction, remodeling, and rehabilitation, into which special fund or funds it shall obligate and bind the participant to set aside and pay from the gross revenues of the project or from other sources an amount sufficient to pay the principal and interest of the bonds being issued, reserves and other requirements of the special fund and to issue and sell bonds payable as to both principal and interest out of such fund or funds relating to the project or projects of such participant.

Such bonds shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered, or both, as provided in RCW 39.46.030, carry such registration privileges, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, bear such fixed or variable rate or rates of interest, and be sold in such manner, at such price, as the authority shall determine. Such bonds shall be executed by the chair, by either its duly elected secretary or its executive director, and by the trustee if the authority determines to utilize a trustee for the bonds. Execution of the bonds may be by manual or facsimile signature: PROVIDED, That at least one signature placed thereon shall be manually subscribed. Any interest coupons appurtenant to the bonds shall be executed by facsimile or manual signature or signatures, as the authority shall determine. [2012 c 117 § 374. Prior: 1983 c 210 § 2; 1983 c 167 § 171; 1981 c 121 § 1; 1974 ex.s. c 147 § 5.]

Additional notes found at www.leg.wa.gov

**70.37.060 Bond issues—Terms—Payment—Legal investment, etc.** The bonds of the authority shall be subject to such terms, conditions and covenants and protective provisions as shall be found necessary or desirable by the authority, which may include but shall not be limited to provisions for the establishment and maintenance by the participant of rates for health services of the project, fees and other charges of every kind and nature sufficient in amount and adequate, over and above costs of operation and maintenance and all other costs other than costs and expenses of capital, associated with the project, to pay the principal of and interest on the bonds payable out of the special fund or funds of the project, to set aside and maintain reserves as determined by the authority to secure the payment of such principal and interest, to set aside and maintain reserves for repairs and replacement, to maintain coverage which may be agreed upon over and above the requirements of payment of principal and interest, and for other needs found by the authority to be required for the security of the bonds. When issuing bonds the authority may provide for the future issuance of additional bonds on a parity with outstanding bonds, and the terms and conditions of their issuance.

All bonds issued under the authority of this chapter shall constitute legal investments for trustees and other fiduciaries and for savings and loan associations, banks, and insurance companies doing business in this state. All such bonds and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the negotiable instruments law of this state. [1974 ex.s. c 147 § 6.]

**70.37.070 Bond issues—Special trust fund—Payments—Status—Administration of fund.** All revenues received by the authority from a participant derived from a particular project of such participant to be applied on principal and interest of bonds or for other bond requirements such as reserves and all other funds for the bond requirements of a particular project received from contributions or grants or in any other form shall be deposited by the authority in qualified public depositaries to the credit of a special trust fund to be designated as the authority special bond fund for the particular project or projects producing such revenue or to which the contribution or grant relates. Such fund shall not be or constitute funds of the state of Washington but at all times shall be kept segregated and set apart from other funds. From such funds, the authority shall make payment of principal and interest of the bonds of the particular project or projects; and the authority may set up subaccounts in the bond fund for reserve accounts for payment of principal and interest, for repairs and replacement and for other special requirements of the bonds of the project or projects as determined by the authority. In lieu of itself receiving and handling these moneys as here outlined the authority may appoint trustees, depositaries and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the bondholders. [1974 ex.s. c 147 § 7.]

**70.37.080 Bond issues—Disposition of proceeds—Special fund.** Proceeds from the sale of all bonds of a project issued under the provisions of this chapter received by the authority shall be deposited forthwith by the authority in qualified public depositaries in a special fund for the particular project for which the bonds were issued and sold, which money shall not be funds of the state of Washington. Such fund shall at all times be segregated and set apart from all other funds and in trust for the purposes of purchase, con-

struction, acquisition, leasing, or use of a project or projects, and for other special needs of the project declared by the authority, including the manner of disposition of any money not finally needed in the construction, purchase, or other acquisition. Money other than bond sale proceeds received by the authority for these same purposes, such as contributions from a participant or a grant from the federal government may be deposited in the same project fund. Proceeds received from the sale of the bonds may also be used to defray the expenses of the authority in connection with and incidental to the issuance and sale of bonds for the project, as well as expenses for studies, surveys, estimates, inspections and examinations of or relating to the particular project, and other costs advanced therefor by the participant or by the authority. In lieu of itself receiving and handling these moneys in the manner here outlined the authority may appoint trustees, depositaries and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the participants and of bondholders. [1974 ex.s. c 147 § 8.]

**70.37.090 Payment of authority for expenses incurred in investigating and financing projects.** The authority shall have power to require persons applying for its assistance in connection with the investigation and financing of projects to pay fees and charges to provide the authority with funds for investigation, financial feasibility studies, expenses of issuance and sale of bonds and other charges for services provided by the authority in connection with such projects. All other expenses of the authority including compensation of its employees and consultants, expenses of administration and conduct of its work and business and other expenses shall be paid out of such fees and charges, out of contributions and grants to it, out of the proceeds of bonds issued for projects of participants or out of revenues of such projects; none by the state of Washington. The authority shall have power to establish special funds into which such money shall be received and out of which it may be disbursed by the persons and with the procedure and in the manner established by the authority. [1974 ex.s. c 147 § 9.]

**70.37.100 Powers of authority.** The authority may make contracts, employ or engage engineers, architects, attorneys, an executive director, and other technical or professional assistants, and such other personnel as are necessary. It may delegate to the executive director or other appropriate persons the power to execute legal instruments on its behalf. It may enter into contracts with the United States, accept gifts for its purposes, and exercise any other power reasonably required to implement the principal powers granted in this chapter. No provision of this chapter shall be construed so as to limit the power of the authority to provide bond financing to more than one participant and/or project by means of a single issue of revenue bonds utilizing a single bond fund and/or a single special fund into which proceeds of such bonds are deposited. The authority shall have no power to levy any taxes of any kind or nature and no power to incur obligations on behalf of the state of Washington. [1982 c 10 § 14. Prior: 1981 c 121 § 2; 1981 c 31 § 1; 1974 ex.s. c 147 § 10.]

Additional notes found at www.leg.wa.gov

**70.37.110 Advancements and contributions by political subdivisions.** Any city, county or other political subdivision of this state and any public health care facility is hereby authorized to advance or contribute to the authority real property, money, and other personal property of any kind towards the expense of preliminary surveys and studies and other preliminary expenses of projects which they are by other statutes of this state authorized to own or operate which are a part of a plan or system which has been submitted by them and is under consideration by the authority for assistance under the provisions of this chapter. [1974 ex.s. c 147 § 11.]

## Chapter 70.38 RCW
## HEALTH PLANNING AND DEVELOPMENT

Sections



**70.38.015 Declaration of public policy.** It is declared to be the public policy of this state:

(1) That strategic health planning efforts must be supported by appropriately tailored regulatory activities that can effectuate the goals and principles of the statewide health resources strategy developed pursuant to chapter 43.370 RCW. The implementation of the strategy can promote, maintain, and assure the health of all citizens in the state, provide accessible health services, health manpower, health facilities, and other resources while controlling increases in costs, and recognize prevention as a high priority in health programs. Involvement in health planning from both consumers and providers throughout the state should be encouraged;

(2) That the certificate of need program is a component of a health planning regulatory process that is consistent with the statewide health resources strategy and public policy goals that are clearly articulated and regularly updated;

(3) That the development and maintenance of adequate health care information, statistics and projections of need for health facilities and services is essential to effective health planning and resources development;

(4) That the development of nonregulatory approaches to health care cost containment should be considered, including the strengthening of price competition; and

(5) That health planning should be concerned with public health and health care financing, access, and quality, recognizing their close interrelationship and emphasizing cost control of health services, including cost-effectiveness and cost-benefit analysis. [2007 c 259 § 55; 1989 1st ex.s. c 9 § 601; 1983 c 235 § 1; 1980 c 139 § 1; 1979 ex.s. c 161 § 1.]

Additional notes found at www.leg.wa.gov

**70.38.018 Statewide health resources strategy—Consistency—Waivers.** (1) For the purposes of this section and RCW 70.38.015 and 70.38.135, "statewide health resource strategy" or "strategy" means the statewide health resource strategy developed by the office of financial management pursuant to chapter 43.370 RCW.

(2) Effective January 1, 2010, for those facilities and services covered by the certificate of need programs, certificate of need determinations must be consistent with the statewide health resources strategy developed pursuant to RCW 43.370.030, including any health planning policies and goals identified in the statewide health resources strategy in effect at the time of application. The department may waive specific terms of the strategy if the applicant demonstrates that consistency with those terms will create an undue burden on the population that a particular project would serve, or in emergency circumstances which pose a threat to public health. [2007 c 259 § 56.]

Additional notes found at www.leg.wa.gov

**70.38.025 Definitions.** When used in this chapter, the terms defined in this section shall have the meanings indicated.

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

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

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

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

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

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

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

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

(b)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, X-ray, emergency, and preventive services, and out-of-area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in (b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health ser-

vice actually provided; and (iii) provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

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

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

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

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

(12) "Public health" means the level of well-being of the general population; those actions in a community necessary to preserve, protect, and promote the health of the people for which government is responsible; and the governmental system developed to guarantee the preservation of the health of the people.

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

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

(15) "Hospital" means any health care institution which is required to qualify for a license under *RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW. [2000 c 175 § 22; 1997 c 210 § 2; 1991 c 158 § 1; 1989 1st ex.s. c 9 § 602; 1988 c 20 § 1; 1983 1st ex.s. c 41 § 43; 1983 c 235 § 2; 1982 c 119 § 1; 1980 c 139 § 2; 1979 ex.s. c 161 § 2.]

***Reviser's note:** RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4). RCW 70.41.020 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (5). RCW 70.41.020 was subsequently amended by 2016 c 226 § 1, changing subsection (5) to subsection (7). RCW 70.41.020 was subsequently amended by 2021 c 157 § 3, changing subsection (7) to subsection (8).

Additional notes found at www.leg.wa.gov

**70.38.095 Public disclosure.** Public accessibility to records shall be accorded by health systems agencies pursuant to Public Law 93-641 and chapter 42.56 RCW. A health systems agency shall be considered a "public agency" for the sole purpose of complying with the public records act, chapter 42.56 RCW. [2005 c 274 § 332; 1979 ex.s. c 161 § 9.]

**70.38.105 Health services and facilities requiring certificate of need—Fees.** (1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is administered consistent with the requirements of federal law as necessary to the receipt of federal funds by the state.

(3) No person shall engage in any undertaking which is subject to certificate of need review under subsection (4) of this section without first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility including, but not limited to, a hospital constructed, developed, or established by a health maintenance organization or by a combination of health maintenance organizations except as provided in subsection (7)(a) of this section;

(b) The sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025 including, but not limited to, a hospital sold, purchased, or leased by a health maintenance organization or by a combination of health maintenance organizations except as provided in subsection (7)(b) of this section;

(c) Any capital expenditure for the construction, renovation, or alteration of a nursing home which substantially changes the services of the facility after January 1, 1981, provided that the substantial changes in services are specified by the department in rule;

(d) Any capital expenditure for the construction, renovation, or alteration of a nursing home which exceeds the expenditure minimum as defined by RCW 70.38.025. However, a capital expenditure which is not subject to certificate of need review under (a), (b), (c), or (e) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure, however, other additional repairs, remodeling, or replacement projects that are not related to one or more deficiency citations and are not necessary to maintain state licensure are not exempt from certificate of need review except as otherwise permitted by (d)(vi) of this subsection or RCW 70.38.115(13);

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;

(vi) Construction or renovation at an existing nursing home which involves physical plant facilities, including administrative, dining areas, kitchen, laundry, therapy areas, and support facilities, by an existing licensee who has operated the beds for at least one year;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

(e) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and assisted living facility care if the bed redistribution is to be

effective for a period in excess of six months, or a change in bed capacity of a rural health care facility licensed under RCW 70.175.100 that increases the total number of nursing home beds or redistributes beds from acute care or assisted living facility care to nursing home care if the bed redistribution is to be effective for a period in excess of six months. A health care facility certified as a critical access hospital under 42 U.S.C. 1395i-4 may increase its total number of licensed beds to the total number of beds permitted under 42 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under 42 U.S.C. 1395i-4 among acute care and nursing home care without being subject to certificate of need review. If there is a nursing home licensed under chapter 18.51 RCW within twenty-seven miles of the critical access hospital, the critical access hospital is subject to certificate of need review except for:

(i) Critical access hospitals which had designated beds to provide nursing home care, in excess of five swing beds, prior to December 31, 2003;

(ii) Up to five swing beds; or

(iii) Up to twenty-five swing beds for critical access hospitals which do not have a nursing home licensed under chapter 18.51 RCW within the same city or town limits. Up to one-half of the additional beds designated for swing bed services under this subsection (4)(e)(iii) may be so designated before July 1, 2010, with the balance designated on or after July 1, 2010.

Critical access hospital beds not subject to certificate of need review under this subsection (4)(e) will not be counted as either acute care or nursing home care for certificate of need review purposes. If a health care facility ceases to be certified as a critical access hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the type and number of licensed hospital beds as it had when it requested critical access hospital designation;

(f) Any new tertiary health services which are offered in or through a health care facility or rural health care facility licensed under RCW 70.175.100, and which were not offered on a regular basis by, in, or through such health care facility or rural health care facility within the twelve-month period prior to the time such services would be offered;

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking under this subsection (4) of this section and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made; and

(h) Any increase in the number of dialysis stations in a kidney disease center.

(5) The department is authorized to charge fees for the review of certificate of need applications and requests for exemptions from certificate of need review. The fees shall be sufficient to cover the full cost of review and exemption, which may include the development of standards, criteria, and policies.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section.

(7)(a) The requirement that a health maintenance organization obtain a certificate of need under subsection (4)(a) of this section for the construction, development, or other establishment of a hospital does not apply to a health maintenance organization operating a group practice that has been continuously licensed as a health maintenance organization since January 1, 2009;

(b) The requirement that a health maintenance organization obtain a certificate of need under subsection (4)(b) of this section to sell, purchase, or lease a hospital does not apply to a health maintenance organization operating a group practice that has been continuously licensed as a health maintenance organization since January 1, 2009. [2012 c 10 § 47. Prior: 2009 c 315 § 1; 2009 c 242 § 3; 2009 c 54 § 1; 2004 c 261 § 6; 1996 c 50 § 1; 1992 c 27 § 1; 1991 sp.s. c 8 § 4; 1989 1st ex.s. c 9 § 603; 1984 c 288 § 21; 1983 c 235 § 7; 1982 c 119 § 2; 1980 c 139 § 7; 1979 ex.s. c 161 § 10.]

**Application—2012 c 10:** See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

**70.38.111 Certificates of need—Exemptions.** (1) The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

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

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

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals,

and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization;
if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

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

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

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

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this subsection with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

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

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

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

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

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

(i) Offers services only to contractual members;

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

(iii) Contractually assumes responsibility for the cost of services exceeding the member's financial responsibility under the contract, so that no third party, with the exception of insurance purchased by the retirement community or its members, but including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources;

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

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

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

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

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

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

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

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

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

(7) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under chapter 70.41 RCW may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be subject to the requirements of

RCW 70.38.105(4)(a) as the construction, development, or other establishment of a new hospital, provided there is no increase in the number of beds previously licensed under chapter 70.41 RCW and there is no redistribution in the number of beds used for acute care or long-term care, the rural health care facility has been in continuous operation, and the rural health care facility has not been purchased or leased.

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

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

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

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

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

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

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

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

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

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

(i) The hospice agency is designed to serve the unique religious or cultural needs of a religious group or an ethnic minority and commits to furnishing hospice services in a manner specifically aimed at meeting the unique religious or cultural needs of the religious group or ethnic minority;

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

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

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

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

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

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

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

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

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

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

(a) The department shall suspend the certificate of need requirement for a hospital licensed under chapter 70.41 RCW

that changes the use of licensed beds to increase the number of beds to provide psychiatric services, including involuntary treatment services. A certificate of need exemption under this subsection (11)(a) shall be valid for two years.

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

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

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

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

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

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

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

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

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

(b) The exemption under this subsection:

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

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

(13) A rural health clinic providing health services in a home health shortage area as declared by the department pursuant to 42 C.F.R. Sec. 405.2416 is not subject to certificate of need review under this chapter. [2021 c 277 § 1; 2020 c 258 § 1. Prior: 2019 c 324 § 8; 2019 c 31 § 1; 2017 c 199 § 1; 2016 sp.s. c 31 § 4; 2014 c 225 § 106; 2012 c 10 § 48; prior: 2009 c 315 § 2; 2009 c 89 § 1; 1997 c 210 § 1; 1995 1st sp.s. c 18 § 71; 1993 c 508 § 5; 1992 c 27 § 2; 1991 c 158 § 2; 1989 1st ex.s. c 9 § 604; 1982 c 119 § 3; 1980 c 139 § 9.]

**Effective date—2021 c 277:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2021." [2021 c 277 § 3.]

**Report—2019 c 324:** "By November 15, 2019, the health care authority shall confer with the department of health, hospitals licensed under chapters 70.41 and 71.12 RCW, and evaluation and treatment facilities licensed or certified under chapter 71.05 RCW to review laws and regulations and identify changes that may be necessary to address care delivery and cost-effective treatment for adults on ninety-day or one hundred eighty-day commitment orders. The health care authority must report its findings to the governor's office and the appropriate committees of the legislature by December 15, 2019." [2019 c 324 § 7.]

**Findings—Intent—2019 c 324:** See note following RCW 71.24.648.

**Mental health drop-in center services pilot program—2019 c 324:** See note following RCW 71.24.649.

**Recommendations—Residential intensive behavioral health and developmental disability services—2019 c 324:** See note following RCW 74.39A.030.

**Effective date—2017 c 199:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2017]." [2017 c 199 § 3.]

**Finding—Intent—2016 sp.s. c 31:** See note following RCW 74.09.5225.

**Application—2012 c 10:** See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

### 70.38.115 Certificates of need—Procedures—Rules—Criteria for review—Conditional certificates of need—Concurrent review—Review periods—Hearing—Adjudicative proceeding—Amended certificates of need.

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

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

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

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

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

(d) In the case of health services to be provided, (i) the availability of alternative uses of project resources for the provision of other health services, (ii) the extent to which such proposed services will be accessible to all residents of the area to be served, and (iii) the need for and the availability in the community of services and facilities for osteopathic physicians and surgeons and allopathic physicians and their patients. The department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathic medicine and surgery and medicine at the student, internship, and residency training levels;

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

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

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

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

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

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

(k) In the case of nursing home applications:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) An increase in bed capacity;

(d) A significant reduction in the scope of a nursing home project without a commensurate reduction in the cost of the nursing home project, or a cost increase (as represented in bids on a nursing home construction project or final cost estimates acceptable to the person to whom the certificate of need was issued) if the total of such increases exceeds twelve

percent or fifty thousand dollars, whichever is greater, over the maximum capital expenditure approved. The review of reductions or cost increases shall be restricted to the continued conformance of the nursing home project with the review criteria pertaining to financial feasibility and cost containment.

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

(13)(a) Replacement of existing nursing home beds in the same planning area by an existing licensee who has operated the beds for at least one year shall not require a certificate of need under this chapter. The licensee shall give written notice of its intent to replace the existing nursing home beds to the department and shall provide the department with information as may be required pursuant to rule. Replacement of the beds by a party other than the licensee is subject to certificate of need review under this chapter, except as otherwise permitted by subsection (14) of this section.

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

(14) In the event that a licensee, who has provided the department with notice of his or her intent to replace nursing home beds under subsection (13)(a) of this section, engages in unprofessional conduct or becomes unable to practice with reasonable skill and safety by reason of mental or physical condition, pursuant to chapter 18.130 RCW, or dies, the building owner shall be permitted to complete the nursing home bed replacement project, provided the building owner has secured an interest in the beds. [1996 c 178 § 22; 1995 1st sp.s. c 18 § 72; 1993 c 508 § 6. Prior: 1989 1st ex.s. c 9 § 605; 1989 c 175 § 126; 1984 c 288 § 22; 1983 c 235 § 8; 1980 c 139 § 8; 1979 ex.s. c 161 § 11.]

***Reviser's note:** RCW 70.38.919 was repealed by 2007 c 259 § 67.

Additional notes found at www.leg.wa.gov

**70.38.118 Certificates of need—Applications submitted by hospice agencies.** All certificate of need applications submitted by hospice agencies for the construction, development, or other establishment of a facility to be licensed as either a hospital under chapter 70.41 RCW or as a nursing home under chapter 18.51 RCW, for the purpose of operating the functional equivalent of a hospice care center shall not require a separate certificate of need for a hospice care center provided the certificate of need application was declared complete prior to July 1, 2001, the applicant has been issued a certificate of need, and has applied for and received an in-home services agency license by July 1, 2002. [2000 c 175 § 23.]

Additional notes found at www.leg.wa.gov

**70.38.125 Certificates of need—Issuance—Duration—Penalties for violations.** (1) A certificate of need shall be valid for two years. One six-month extension may be made if it can be substantiated that substantial and continuing progress toward commencement of the project has been made as defined by regulations to be adopted pursuant to this chapter.

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

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

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

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

(6) The department may bring any action to enjoin a violation or the threatened violation of the provisions of this chapter or any rules and regulations adopted pursuant to this chapter, or may bring any legal proceeding authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW, in the superior court in the county in which such violation occurs or is about to occur, or in the superior court of Thurston county. [1989 1st ex.s. c 9 § 606; 1983 c 235 § 9; 1980 c 139 § 10; 1979 ex.s. c 161 § 12.]

Additional notes found at www.leg.wa.gov

**70.38.128 Certificates of need—Elective percutaneous coronary interventions—Rules.** To promote the stability of Washington's cardiac care delivery system, by July 1, 2008, the department of health shall adopt rules establishing criteria for the issuance of a certificate of need under this chapter for the performance of elective percutaneous coronary interventions at hospitals that do not otherwise provide on-site cardiac surgery.

Prior to initiating rule making, the department shall contract for an independent evidence-based review of the circumstances under which elective percutaneous coronary

interventions should be allowed in Washington at hospitals that do not otherwise provide on-site cardiac surgery. The review shall address, at a minimum, factors related to access to care, patient safety, quality outcomes, costs, and the stability of Washington's cardiac care delivery system and of existing cardiac care providers, and ensure that elective coronary intervention volumes at the University of Washington academic medical center are maintained at levels required for training of cardiologists consistent with applicable accreditation requirements. The department shall consider the results of this review, and any associated recommendations, in adopting these rules. [2007 c 440 § 1.]

**70.38.135 Services and surveys—Rules.** The secretary shall have authority to:

(1) Provide when needed temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee-for-service basis;

(2) Make or cause to be made such on-site surveys of health care or medical facilities as may be necessary for the administration of the certificate of need program;

(3) Upon review of recommendations, if any, from the board of health or the office of financial management as contained in the Washington health resources strategy:

(a) Promulgate rules under which health care facilities providers doing business within the state shall submit to the department such data related to health and health care as the department finds necessary to the performance of its functions under this chapter;

(b) Promulgate rules pertaining to the maintenance and operation of medical facilities which receive federal assistance under the provisions of Title XVI;

(c) Promulgate rules in implementation of the provisions of this chapter, including the establishment of procedures for public hearings for predecisions and post-decisions on applications for certificate of need;

(d) Promulgate rules providing circumstances and procedures of expedited certificate of need review if there has not been a significant change in existing health facilities of the same type or in the need for such health facilities and services;

(4) Grant allocated state funds to qualified entities, as defined by the department, to fund not more than seventy-five percent of the costs of regional planning activities, excluding costs related to review of applications for certificates of need, provided for in this chapter or approved by the department; and

(5) Contract with and provide reasonable reimbursement for qualified entities to assist in determinations of certificates of need. [2007 c 259 § 57; 1989 1st ex.s. c 9 § 607; 1983 c 235 § 10; 1979 ex.s. c 161 § 13.]

Additional notes found at www.leg.wa.gov

**70.38.155 Certificates of need—Savings—1979 ex.s. c 161.** The enactment of this chapter shall not have the effect of terminating, or in any way modifying the validity of any certificate of need which shall already have been issued prior to *the effective date of this act. [1979 ex.s. c 161 § 15.]

***Reviser's note:** For "the effective date of this act," see RCW 70.38.915.

**70.38.156 Certificates of need—Savings—1980 c 139.** The enactment of this chapter as amended shall not have the effect of terminating, or in any way modifying the validity of any certificate of need which shall already have been issued prior to *the effective date of this 1980 act. [1980 c 139 § 11.]

***Reviser's note:** For "the effective date of this 1980 act," see RCW 70.38.916.

**70.38.157 Certificates of need—Savings—1983 c 235.** The enactment of amendments to chapter 70.38 RCW by chapter 235, Laws of 1983 shall not have the effect of terminating or in any way modifying the validity of a certificate of need which was issued prior to *the effective date of this 1983 act. [1983 c 235 § 11.]

***Reviser's note:** "the effective date of this 1983 act" [1983 c 235] for sections 16 and 17 of that act was May 17, 1983. For all other sections of that act the effective date was July 24, 1983.

**70.38.158 Certificates of need—Savings—1989 1st ex.s. c 9 §§ 601 through 607.** The enactment of *sections 601 through 607 of this act shall not have the effect of terminating, or in any way modifying, the validity of any certificate of need which shall already have been issued prior to July 1, 1989. [1989 1st ex.s. c 9 § 608.]

***Reviser's note:** "Sections 601 through 607 of this act" consist of the 1989 1st ex.s. c 9 amendments to RCW 70.38.015, 70.38.025, 70.38.105, 70.38.111, 70.38.115, 70.38.125, and 70.38.135.

**70.38.220 Ethnic minorities—Nursing home beds that reflect cultural differences.** (1) The legislature recognizes that in this state ethnic minorities currently use nursing home care at a lower rate than the general population. The legislature also recognizes and supports the federal mandate that nursing homes receiving federal funds provide residents with a homelike environment. The legislature finds that certain ethnic minorities have special cultural, language, dietary, and other needs not generally met by existing nursing homes which are intended to serve the general population. Accordingly, the legislature further finds that there is a need to foster the development of nursing homes designed to serve the special cultural, language, dietary, and other needs of ethnic minorities.

(2) The department shall establish a separate pool of no more than two hundred fifty beds for nursing homes designed to serve the special needs of ethnic minorities. The pool shall be made up of nursing home beds that become available on or after March 15, 1991, due to:

(a) Loss of license or reduction in licensed bed capacity if the beds are not otherwise obligated for replacement; or

(b) Expiration of a certificate of need.

(3) The department shall develop procedures for the fair and efficient award of beds from the special pool. In making its decisions regarding the award of beds from the pool, the department shall consider at least the following:

(a) The relative degree to which the long-term care needs of an ethnic minority are not otherwise being met;

(b) The percentage of low-income persons who would be served by the proposed nursing home;

(c) The financial feasibility of the proposed nursing home; and

(d) The impact of the proposal on the area's total need for nursing home beds.

(4) To be eligible to apply for or receive an award of beds from the special pool, an application must be to build a new nursing home, or add beds to a nursing home, that:

(a) Will be owned and operated by a nonprofit corporation, and at least fifty percent of the board of directors of the corporation are members of the ethnic minority the nursing home is intended to serve;

(b) Will be designed, managed, and administered to serve the special cultural, language, dietary, and other needs of an ethnic minority; and

(c) Will not discriminate in admissions against persons who are not members of the ethnic minority whose special needs the nursing home is designed to serve.

(5) If a nursing home or portion of a nursing home that is built as a result of an award from the special pool is sold or leased within ten years to a party not eligible under subsection (4) of this section:

(a) The purchaser or lessee may not operate those beds as nursing home beds without first obtaining a certificate of need for new beds under this chapter; and

(b) The beds that had been awarded from the special pool shall be returned to the special pool.

(6) The department shall initially award up to one hundred beds before that number of beds are actually in the special pool, provided that the number of beds so awarded are subtracted from the total of two hundred fifty beds that can be awarded from the special pool. [1991 c 271 § 1.]

**70.38.230 Residential hospice care centers—Defined—Change in bed capacity—Applicability of chapter.** (1) A change in bed capacity at a residential hospice care center shall not be subject to certificate of need review under this chapter if the department determined prior to June 1994 that the construction, development, or other establishment of the residential hospice care center was not subject to certificate of need review under this chapter.

(2) For purposes of this section, a "residential hospice care center" means any building, facility, place, or equivalent that opened in December 1996 and is organized, maintained, and operated specifically to provide beds, accommodations, facilities, and services over a continuous period of twenty-four hours or more for palliative care of two or more individuals, not related to the operator, who are diagnosed as being in the latter stages of an advanced disease that is expected to lead to death. [1998 c 322 § 50.]

**70.38.250 Redistribution and addition of beds—Determination.** (1) The need for projects identified in *RCW 70.38.240 shall be determined using the individual planning area's estimated nursing home bed need ratio and includes but is not limited to the following criteria:

(a) The current capacity of nursing homes and other long-term care services;

(b) The occupancy rates of nursing homes and other long-term care services over the previous two-year period; and

(c) The ability of the other long-term care services to serve all people regardless of payor source.

(2) For the purposes of this section, nursing home beds include long-term care units or distinct part long-term care units located in a hospital that is licensed under chapter 70.41 RCW. [1999 c 376 § 2.]

***Reviser's note:** RCW 70.38.240 expired June 30, 2004.

Additional notes found at www.leg.wa.gov

**70.38.260 Certain hospitals not subject to certificate of need requirements for the addition of the number of new psychiatric beds.** ***(Expires June 30, 2025.)*** (1) For a grant awarded during fiscal years 2018 and 2019 by the department of commerce under this section, hospitals licensed under chapter 70.41 RCW and psychiatric hospitals licensed as establishments under chapter 71.12 RCW are not subject to certificate of need requirements for the addition of the number of new psychiatric beds indicated in the grant. The department of commerce may not make a prior approval of a certificate of need application a condition for a grant application under this section. The period during which an approved hospital or psychiatric hospital project qualifies for a certificate of need exemption under this section is two years from the date of the grant award.

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

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

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

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

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

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

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

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

(b) A psychiatric hospital that adds new psychiatric beds under this subsection (3) must:

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

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

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

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

(b) An entity that seeks to construct, develop, or establish a psychiatric hospital under this subsection (4) must:

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

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

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

(5) This section expires June 30, 2025. [2021 c 277 § 2; 2019 c 324 § 9; 2017 c 199 § 2; 2015 3rd sp.s. c 22 § 2.]

***Reviser's note:** The reference to RCW 70.170.100 appears to be erroneous. RCW 70.170.100 was repealed by 1995 c 265 § 27 and by 1995 c 267 § 12.

**Effective date—2021 c 277:** See note following RCW 70.38.111.

**Findings—Intent—2019 c 324:** See note following RCW 71.24.648.

**Mental health drop-in center services pilot program—2019 c 324:** See note following RCW 71.24.649.

**Report—2019 c 324:** See note following RCW 70.38.111.

**Recommendations—Residential intensive behavioral health and developmental disability services—2019 c 324:** See note following RCW 74.39A.030.

**Effective date—2017 c 199:** See note following RCW 70.38.111.

**Intent—2015 3rd sp.s. c 22:** "To accommodate the urgent need for inpatient psychiatric services and to facilitate state compliance with the Washington state supreme court decision, In re the Detention of D.W., No. 90110-4, August 7, 2014, which prohibits the practice of psychiatric boarding, the legislature intends to exempt certain hospital mental health projects provided grant funding by the department of commerce from certificate of need requirements." [2015 3rd sp.s. c 22 § 1.]

**Effective date—2015 3rd sp.s. c 22:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 6, 2015]." [2015 3rd sp.s. c 22 § 4.]

**70.38.270 Psychiatric beds added under RCW 70.38.260.** New psychiatric beds added under RCW 70.38.260 must remain psychiatric beds unless a certificate of need is granted to change their use or the hospital or psychiatric hospital voluntarily reduces its licensed capacity. [2015 3rd sp.s. c 22 § 3.]

**Intent—Effective date—2015 3rd sp.s. c 22:** See notes following RCW 70.38.260.

**70.38.905 Conflict with federal law—Construction.** In any case where the provisions of this chapter may directly conflict with federal law, or regulations promulgated thereunder, the federal law shall supersede and be paramount as necessary to the receipt of federal funds by the state. [1983 c 235 § 12; 1979 ex.s. c 161 § 16.]

**70.38.914 Pending certificates of need—1983 c 235.** A certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to *the effective date of this act, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to *the effective date of this act, and the rules adopted thereunder. [1983 c 235 § 14.]

***Reviser's note:** For "the effective date of this act," see note following RCW 70.38.157.

**70.38.915 Effective dates—Pending certificates of need—1979 ex.s. c 161.** (1) *Sections 10, 11, 12, and 21 shall take effect on January 1, 1980.

(2) Any certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to January 1, 1980, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to **the effective date of this 1979 act, and the regulations adopted thereunder. [1979 ex.s. c 161 § 19.]

**Reviser's note:** *(1) Sections 10, 11, and 12 are codified as RCW 70.38.105, 70.38.115, and 70.38.125. Section 21 was a repealer which repealed RCW 70.38.020, 70.38.110 through 70.38.190, and 70.38.210.

**(2) The effective date of those remaining sections of 1979 ex.s. c 161 which do not have a specific effective date indicated in this section is September 1, 1979.

**70.38.916 Effective date—1980 c 139.** *Sections 7, 8, and 10 of this 1980 act shall take effect January 1, 1981. [1980 c 139 § 14.]

**Reviser's note:** *(1) "Sections 7, 8, and 10 of this 1980 act" consist of amendments to RCW 70.38.105, 70.38.115, and 70.38.125.

(2) The effective date of those remaining sections of 1980 c 139 is June 12, 1980.

**70.38.918 Effective dates—Pending certificates of need—1989 1st ex.s. c 9.** Any certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to July 1, 1989, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to July 1, 1989, and the rules adopted thereunder. [1989 1st ex.s. c 9 § 609.]

**70.38.920 Short title.** This act may be cited as the "State Health Planning and Resources Development Act". [1979 ex.s. c 161 § 22.]

## Chapter 70.40 RCW
## HOSPITAL AND MEDICAL FACILITIES SURVEY AND CONSTRUCTION ACT

Sections

**70.40.005 Transfer of duties to the department of health.** The powers and duties of the department of social and health services and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 248.]

Additional notes found at www.leg.wa.gov

**70.40.010 Short title.** This chapter may be cited as the "Washington Hospital and Medical Facilities Survey and Construction Act." [1959 c 252 § 1; 1949 c 197 § 1; Rem. Supp. 1949 § 6090-60.]

**70.40.020 Definitions.** As used in this chapter:

(1) "Secretary" means the secretary of the state department of health;

(2) "The federal act" means Title VI of the public health service act, as amended, or as hereafter amended by congress;

(3) "The surgeon general" means the surgeon general of the public health service of the United States;

(4) "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals;

(5) "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers;

(6) "Nonprofit hospital" and "nonprofit medical facility" means any hospital or medical facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(7) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act. [1991 c 3 § 331; 1979 c 141 § 96; 1959 c 252 § 2; 1949 c 197 § 2; Rem. Supp. 1949 § 6090-61.]

**70.40.030 Section of hospital and medical facility survey and construction established—Duties.** There is hereby established in the state department of health a "section of hospital and medical facility survey and construction" which shall be administered by a full time salaried head under the supervision and direction of the secretary. The state department of health, through such section, shall constitute the sole agency of the state for the purpose of:

(1) Making an inventory of existing hospitals and medical facilities, surveying the need for construction of hospitals and medical facilities, and developing a program of hospital and medical facility construction; and

(2) Developing and administering a state plan for the construction of public and other nonprofit hospitals and medical facilities as provided in this chapter. [1991 c 3 § 332; 1979 c 141 § 97; 1959 c 252 § 3; 1949 c 197 § 3; Rem. Supp. 1949 § 6090-62.]

**70.40.040 General duties of the secretary.** In carrying out the purposes of the chapter the secretary is authorized and directed:

(1) To require such reports, make such inspections and investigations, and prescribe such regulations as he or she deems necessary;

(2) To provide such methods of administration, appoint a head and other personnel of the section, and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(3) To procure in his or her discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee-for-service basis and do not involve the performance of administrative duties;

(4) To the extent that he or she considers desirable to effectuate the purposes of this chapter, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions public or private;

(5) To accept on behalf of the state and to deposit with the state treasurer, any grant, gift, or contribution made to assist in meeting the cost of carrying out the purposes of this chapter, and to expend the same for such purpose; and

(6) To make an annual report to the governor on activities pursuant to this chapter, including recommendations for such additional legislation as the secretary considers appropriate to furnish adequate hospital and medical facilities to the people of this state. [2012 c 117 § 375; 1979 c 141 § 98; 1977 c 75 § 83; 1959 c 252 § 4; 1949 c 197 § 4; Rem. Supp. 1949 § 6090-63.]

**70.40.060 Development of program for construction of facilities needed.** The secretary is authorized and directed to make an inventory of existing hospitals and medical facilities, including public nonprofit and proprietary hospitals and medical facilities, to survey the need for construction of hospitals and medical facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital and medical facility services to all the people of the state. [1979 c 141 § 99; 1959 c 252 § 6; 1949 c 197 § 6; Rem. Supp. 1949 § 6090-65.]

**70.40.070 Distribution of facilities.** The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital and medical facilities for the people residing in this state and insofar

as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facility service reasonably accessible to all persons in the state. [1959 c 252 § 7; 1949 c 197 § 7; Rem. Supp. 1949 § 6090-66.]

**70.40.080 Federal funds—Application for—Deposit, use.** The secretary is authorized to make application to the surgeon general for federal funds to assist in carrying out the survey and planning activities herein provided. Such funds shall be deposited with the state treasurer and shall be available to the secretary for expenditure in carrying out the purposes of this part. Any such funds received and not expended for such purposes shall be repaid to the treasurer of the United States. [1979 c 141 § 100; 1949 c 197 § 8; Rem. Supp. 1949 § 6090-67.]

**70.40.090 State plan—Publication—Hearing—Approval by surgeon general—Modifications.** The secretary shall prepare and submit to the surgeon general a state plan which shall include the hospital and medical facility construction program developed under this chapter and which shall provide for the establishment, administration, and operation of hospital and medical facility construction activities in accordance with the requirements of the federal act and the regulations thereunder. The secretary shall, prior to the submission of such plan to the surgeon general, give adequate publicity to a general description of all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the secretary shall publish a general description of the provisions thereof in at least one newspaper having general circulation in the state, and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations. The secretary shall from time to time review the hospital and medical facility construction program and submit to the surgeon general any modifications thereof which he or she may find necessary and may submit to the surgeon general such modifications of the state plan, not inconsistent with the requirements of the federal act, as he or she may deem advisable. [2012 c 117 § 376; 1979 c 141 § 101; 1959 c 252 § 8; 1949 c 197 § 9; Rem. Supp. 1949 § 6090-68.]

**70.40.100 Plan shall provide for construction in order of relative needs.** The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal act, and provide for the construction, insofar as financial resources available therefor and for maintenance and operations make possible, in the order of such relative need. [1949 c 197 § 11; Rem. Supp. 1949 § 6090-70.]

**70.40.110 Minimum standards for maintenance and operation.** The secretary shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and medical facilities which receive federal aid for construction under the state plan. [1979 c 141 § 102; 1959 c 252 § 9; 1949 c 197 § 10; Rem. Supp. 1949 § 6090-69.]

**70.40.120 Applications for construction projects—Diagnostic, treatment centers.** Applications for hospital and medical facility construction projects for which federal funds are requested shall be submitted to the secretary and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or medical facility: PROVIDED, That except as may be permitted by federal law no application for a diagnostic or treatment center shall be approved unless the applicant is (1) a state, political subdivision, or public agency, or (2) a corporation or association which owns and operates a nonprofit hospital. Each application for a construction project shall conform to federal and state requirements. [1979 c 141 § 103; 1959 c 252 § 10; 1949 c 197 § 12; Rem. Supp. 1949 § 6090-71.]

**70.40.130 Hearing—Approval.** The secretary shall afford to every applicant for a construction project an opportunity for a fair hearing. If the secretary, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of RCW 70.40.120 and is otherwise in conformity with the state plan, he or she shall approve such application and shall recommend and forward it to the surgeon general. [2012 c 117 § 377; 1979 c 141 § 104; 1949 c 197 § 13; Rem. Supp. 1949 § 6090-72.]

**70.40.140 Inspection of project under construction—Certification as to federal funds due.** From time to time the secretary shall inspect each construction project approved by the surgeon general, and, if the inspection so warrants, the secretary shall certify to the surgeon general that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant. [1979 c 141 § 105; 1949 c 197 § 14; Rem. Supp. 1949 § 6090-73.]

**70.40.150 Hospital and medical facility construction fund—Deposits, use.** The secretary is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants or to approve applicants for federal funds and authorize the payment of such funds directly to such applicants as may be allowed by federal law. To achieve that end there is hereby established, separate and apart from all public moneys and funds of this state, a trust fund to be known as the "hospital and medical facility construction fund", of which the state treasurer shall ex officio be custodian. Moneys received from the federal government for construction projects approved by the surgeon general shall be deposited to the credit of this fund, shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Vouchers covering all payments from the hospital and medical facility construction fund shall be prepared by the department of health and shall bear the signature of the secretary or his or her duly authorized agent for such purpose, and warrants therefor shall be signed by the

state treasurer. [1991 c 3 § 333; 1973 c 106 § 31; 1959 c 252 § 11; 1949 c 197 § 15; Rem. Supp. 1949 § 6090-74.]

## Chapter 70.41 RCW
## HOSPITAL LICENSING AND REGULATION

Sections



*Actions for negligence against hospitals, evidence and proof required to prevail: RCW 4.24.290.*

*Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.*

*Hospitals, hospital personnel, actions against, limitation of: RCW 4.16.350.*

*Identification of potential anatomical parts donors—Procurement organizations: RCW 68.64.120.*

*Immunity from civil liability for certain types of medical care: RCW 4.24.300, 18.71.220.*

*Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.*

*Records of hospital committee or board, immunity from process: RCW 4.24.250.*

*Standards and procedures for hospital staff membership or privileges: Chapter 70.43 RCW.*

**70.41.005 Transfer of duties to the department of health.** The powers and duties of the department of social and health services under this chapter shall be performed by the department of health. [1989 1st ex.s. c 9 § 249.]

Additional notes found at www.leg.wa.gov

**70.41.010 Declaration of purpose.** The primary purpose of this chapter is to promote safe and adequate care of individuals in hospitals through the development, establishment and enforcement of minimum hospital standards for maintenance and operation. To accomplish these purposes, this chapter provides for:

(1) The licensing and inspection of hospitals;

(2) The establishment of a Washington state hospital advisory council;

(3) The establishment by the department of standards, rules and regulations for the construction, maintenance and operation of hospitals;

(4) The enforcement by the department of the standards, rules, and regulations established under this chapter. [1985 c 213 § 15; 1979 c 141 § 106; 1955 c 267 § 1.]

Additional notes found at www.leg.wa.gov

**70.41.020 Definitions.** Unless the context clearly indicates otherwise, the following terms, whenever used in this chapter, shall be deemed to have the following meanings:

(1) "Aftercare" means the assistance provided by a lay caregiver to a patient under this chapter after the patient's discharge from a hospital. The assistance may include, but is not limited to, assistance with activities of daily living, wound care, medication assistance, and the operation of medical equipment. "Aftercare" includes assistance only for conditions that were present at the time of the patient's discharge from the hospital. "Aftercare" does not include:

(a) Assistance related to conditions for which the patient did not receive medical care, treatment, or observation in the hospital; or

(b) Tasks the performance of which requires licensure as a health care provider.

(2)(a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment.

(b) "Audio-only telemedicine" does not include:

(i) The use of facsimile or email; or

(ii) The delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results.

(3) "Department" means the Washington state department of health.

(4) "Discharge" means a patient's release from a hospital following the patient's admission to the hospital.

(5) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine.

(6) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

(7) "Emergency contraception" means any health care treatment approved by the food and drug administration that prevents pregnancy, including but not limited to administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

(8) "Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include psychiatric hospitals, which come within the scope of chapter 71.12 RCW; nor any other hospital, or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, intellectual disability, convulsive disorders, or other abnormal mental condition. Furthermore, nothing in this chapter or the rules adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denominations.

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

(10) "Lay caregiver" means any individual designated as such by a patient under this chapter who provides aftercare assistance to a patient in the patient's residence. "Lay caregiver" does not include a long-term care worker as defined in RCW 74.39A.009.

(11) "Originating site" means the physical location of a patient receiving health care services through telemedicine.

(12) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

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

(14) "Sexual assault" has the same meaning as in RCW 70.125.030.

(15) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. "Telemedicine" includes audio-only telemedicine, but does not include facsimile or email.

(16) "Victim of sexual assault" means a person who alleges or is alleged to have been sexually assaulted and who presents as a patient. [2021 c 157 § 3; 2021 c 61 § 1; 2016 c 226 § 1. Prior: 2015 c 23 § 5; 2010 c 94 § 17; 2002 c 116 § 2; 1991 c 3 § 334; 1985 c 213 § 16; 1971 ex.s. c 189 § 8; 1955 c 267 § 2.]

**Reviser's note:** This section was amended by 2021 c 61 § 1 and by 2021 c 157 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Conflict with federal requirements—2021 c 157:** See note following RCW 74.09.327.

**Intent—2015 c 23:** See note following RCW 41.05.700.

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**Findings—2002 c 116:** See note following RCW 70.41.350.

Additional notes found at www.leg.wa.gov

**70.41.030 Standards and rules.** The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of hospitals, and rescind, amend, or modify such rules from time to time, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of hospitalization required for the safe and adequate care and treatment of patients. To the extent possible, the department

shall endeavor to make such minimum standards and rules consistent in format and general content with the applicable hospital survey standards of the joint commission on the accreditation of health care organizations. The department shall adopt standards that are at least equal to recognized applicable national standards pertaining to medical gas piping systems. [1995 c 282 § 1; 1989 c 175 § 127; 1985 c 213 § 17; 1971 ex.s. c 189 § 9; 1955 c 267 § 3.]

Additional notes found at www.leg.wa.gov

**70.41.040 Enforcement of chapter—Personnel—Merit system.** The enforcement of the provisions of this chapter and the standards, rules and regulations established under this chapter, shall be the responsibility of the department which shall cooperate with the joint commission on the accreditation of health care organizations. The department shall advise on the employment of personnel and the personnel shall be under the merit system or its successor. [1995 c 282 § 3; 1985 c 213 § 18; 1955 c 267 § 4.]

Additional notes found at www.leg.wa.gov

**70.41.045 Hospital surveys or audits—Frequent problems to be posted on agency websites—Hospital evaluation of survey or audit, form—Notice.** (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Agency" means a department of state government created under RCW 43.17.010 and the office of the state auditor.

(b) "Audit" means an examination of records or financial accounts to evaluate accuracy and monitor compliance with statutory or regulatory requirements.

(c) "Hospital" means a hospital licensed under chapter 70.41 RCW.

(d) "Survey" means an inspection, examination, or site visit conducted by an agency to evaluate and monitor the compliance of a hospital or hospital services or facilities with statutory or regulatory requirements.

(2) By July 1, 2004, each state agency which conducts hospital surveys or audits shall post to its agency website a list of the most frequent problems identified in its hospital surveys or audits along with information on how to avoid or address the identified problems, and a person within the agency that a hospital may contact with questions or for further assistance.

(3) By July 1, 2004, the department of health, in cooperation with other state agencies which conduct hospital surveys or audits, shall develop an instrument, to be provided to every hospital upon completion of a state survey or audit, which allows the hospital to anonymously evaluate the survey or audit process in terms of quality, efficacy, and the extent to which it supported improved patient care and compliance with state law without placing an unnecessary administrative burden on the hospital. The evaluation may be returned to the department of health for distribution to the appropriate agency.

(4) Except when responding to complaints or immediate public health and safety concerns or when such prior notice would conflict with other state or federal law, any state agency that provides notice of a hospital survey or audit must provide such notice to the hospital no less than four weeks prior to the date of the survey or audit. [2016 c 197 § 7; 2004 c 261 § 2.]

**70.41.080 Fire protection.** Standards for fire protection and the enforcement thereof, with respect to all hospitals to be licensed hereunder shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt, after approval by the department, the recognized standards applicable to hospitals for the protection of life against the cause and spread of fire and fire hazards adopted by the federal centers for medicare and medicaid services for hospitals that care for medicare or medicaid beneficiaries. The standards used for an inspection of an existing hospital, or existing portion thereof, shall be standards for existing buildings and not standards for new construction. The department upon receipt of an application for a license, shall submit to the director of fire protection in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make an inspection of the hospital to be licensed during the department's inspection. If it is found that the premises do not comply with the required safety standards and fire regulations as adopted pursuant to this chapter, the director of fire protection, or his or her deputy, shall promptly make a written report to the department listing the corrective actions required. The department shall incorporate the written report into the department's final inspection report. The applicant or licensee shall submit corrections to comply with the fire protection standards along with any other licensing inspection corrections to the department. The department shall submit the section of the statement of corrections from the applicant or licensee regarding fire protection standards to the director of fire protection. If extensive and serious corrections are required, the director of fire protection, or his or her deputy, may reinspect the premises. The director of fire protection, or his or her deputy, shall utilize the scope and severity matrix developed by the centers for medicare and medicaid services when determining what corrections will require a reinspection. Whenever the hospital to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department, in a timely manner so the license will not be delayed, a written report approving the hospital with respect to fire protection, and such report is required before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made inspections of such hospitals on average at least once every eighteen months. Inspections conducted by the joint commission on hospitals accredited by it shall be deemed equivalent to an inspection by the chief of the Washington state patrol, through the director of fire protection, for purposes of meeting the requirements for the inspections specified in this section.

The director of fire protection shall designate one lead deputy state fire marshal on a regional basis to provide consistency with each of the department's survey teams for the purpose of conducting the fire protection inspection during the department's licensing inspection. The director of fire protection shall ensure deputy state fire marshals are pro-

vided orientation with the department on the unique environment of hospitals before they conduct fire protection inspections in hospitals. The orientation shall include, but not be limited to: Clinical environment of hospitals; operating room environment; fire protection practices in hospitals; full participation in a complete licensing inspection of at least one urban hospital; and full participation in a complete licensing inspection of at least one rural hospital.

In cities which have in force a comprehensive building code, the provisions of which are determined by the chief of the Washington state patrol, through the director of fire protection, to be equal to the minimum standards of the code for hospitals adopted by the chief of the Washington state patrol, through the director of fire protection, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the chief of the Washington state patrol, through the director of fire protection, or his or her deputy and they shall jointly approve the premises before a full license can be issued. [2008 c 155 § 1; 2004 c 261 § 3; 1995 c 369 § 40; 1986 c 266 § 94; 1985 c 213 § 19; 1955 c 267 § 8.]

*State fire protection: Chapter 43.44 RCW.*

Additional notes found at www.leg.wa.gov

**70.41.090 Hospital license required—Certificate of need required—Participation in Washington rural health access preservation pilot.** (1) No person or governmental unit of the state of Washington, acting separately or jointly with any other person or governmental unit, shall establish, maintain, or conduct a hospital in this state, or use the word "hospital" to describe or identify an institution, without a license under this chapter: PROVIDED, That the provisions of this section shall not apply to state mental institutions and psychiatric hospitals which come within the scope of chapter 71.12 RCW.

(2) After June 30, 1989, no hospital shall initiate a tertiary health service as defined in RCW 70.38.025(14) unless it has received a certificate of need as provided in RCW 70.38.105 and 70.38.115.

(3) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under this chapter may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be required to meet certificate of need requirements under chapter 70.38 RCW as a new health care facility and not be required to meet new construction requirements as a new hospital under this chapter. These exceptions are subject to the following: The facility at the time of initial conversion was considered by the department to be in compliance with the hospital licensing rules and the condition of the physical plant and equipment is equal to or exceeds the level of compliance that existed at the time of conversion to a rural health care facility. The department shall inspect and determine compliance with the hospital rules prior to reissuing a hospital license.

(4) A rural hospital, as defined by the department, reducing the number of licensed beds to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction of licensed beds, increase the number of beds licensed under this chapter to no more than the previously licensed number of beds without being subject to the provisions of chapter 70.38 RCW and without being required to meet new construction requirements under this chapter. These exceptions are subject to the following: The facility at the time of the reduction in licensed beds was considered by the department to be in compliance with the hospital licensing rules and the condition of the physical plant and equipment is equal to or exceeds the level of compliance that existed at the time of the reduction in licensed beds. The department may inspect and determine compliance with the hospital rules prior to increasing the hospital license.

(5) If a rural hospital is determined to no longer meet critical access hospital status for state law purposes as a result of participation in the Washington rural health access preservation pilot identified by the state office of rural health, the rural hospital may renew its license by applying to the department for a hospital license and the previously licensed number of beds without being subject to the provisions of chapter 70.38 RCW and without being required to meet new construction review requirements under this chapter. These exceptions are subject to the following: The hospital, at the time it began participation in the pilot, was considered by the department to be in compliance with the hospital licensing rules, and the condition of the physical plant and equipment is equal to or exceeds the level of compliance that existed at the time of the reduction in licensed beds. The department may inspect and determine compliance with the hospital licensing rules. If all or part of a formerly licensed rural hospital is sold, purchased, or leased during the period the rural hospital does not meet critical access hospital status as a result of participation in the Washington rural health access preservation pilot and the new owner or lessor applies to renew the rural hospital's license, then the sale, purchase, or lease of part or all of the rural hospital is subject to the provisions of chapter 70.38 RCW. [2016 sp.s. c 31 § 3; 1992 c 27 § 3; 1989 1st ex.s. c 9 § 611; 1955 c 267 § 9.]

**Finding—Intent—2016 sp.s. c 31:** See note following RCW 74.09.5225.

Additional notes found at www.leg.wa.gov

**70.41.100 Applications for licenses and renewals—Fees.** An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires which may include affirmative evidence of ability to comply with the standards, rules, and regulations as are lawfully prescribed hereunder. An application for renewal of license shall be made to the department upon forms provided by it and submitted thirty days prior to the date of expiration of the license. Each application for a license or renewal thereof by a hospital as defined by this chapter shall be accompanied by a fee as established by the department under RCW 43.20B.110. [1987 c 75 § 8; 1982 c 201 § 9; 1955 c 267 § 10.]

Additional notes found at www.leg.wa.gov

**70.41.110 Licenses, provisional licenses—Issuance, duration, assignment, posting.** Upon receipt of an application for license and the license fee, the department shall issue a license or a provisional license if the applicant and the hospital facilities meet the requirements of this chapter and the

standards, rules and regulations established by the department. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department: PROVIDED, That no license issued pursuant to this chapter shall exceed thirty-six months in duration. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

If there be a failure to comply with the provisions of this chapter or the standards, rules and regulations promulgated pursuant thereto, the department may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the hospital for a period to be determined by the department. [1985 c 213 § 20; 1982 c 201 § 12; 1971 ex.s. c 247 § 3; 1955 c 267 § 11.]

Additional notes found at www.leg.wa.gov

**70.41.115 Specialty hospitals—Licenses—Exemptions.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(b) "General hospital" means a hospital that provides general acute care services, including emergency services.

(c) "Specialty hospital" means a subclass of hospital that is primarily or exclusively engaged in the care and treatment of one of the following categories: (i) Patients with a cardiac condition; (ii) patients with an orthopedic condition; (iii) patients receiving a surgical procedure; and (iv) any other specialized category of services that the secretary of health and human services designates as a specialty hospital.

(d) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a general hospital providing emergency services and for continuity of care for that patient.

(e) "Health service area" has the same meaning as in RCW 70.38.025.

(2) To be licensed under this chapter, a specialty hospital shall:

(a) Be significantly engaged in providing inpatient care;

(b) Comply with all standards and rules adopted by the department for hospitals;

(c) Provide appropriate discharge planning;

(d) Provide staff proficient in resuscitation and respiration maintenance twenty-four hours per day, seven days per week;

(e) Participate in the medicare and medicaid programs and provide at least the same percentage of services to medicare and medicaid beneficiaries, as a percent of gross revenues, as the lowest percentage of services provided to medicare and medicaid beneficiaries by a general hospital in the same health service area. The lowest percentage of services provided to medicare and medicaid beneficiaries shall be determined by the department in consultation with the general hospitals in the health service area but shall not be the percentage of medicare and medicaid services of a hospital that serves primarily members of a particular health plan or government sponsor;

(f) Provide at least the same percentage of charity care, as a percent of gross revenues, as the lowest percentage of charity care provided by a general hospital in the same health service area. The lowest percentage of charity care shall be determined by the department in consultation with the general hospitals in the health service area but shall not be the percentage of charity care of a hospital that serves primarily members of a particular health plan or government sponsor;

(g) Require any physician owner to: (i) In accordance with chapter 19.68 RCW, disclose a financial interest in the specialty hospital and provide a list of alternative hospitals before referring a patient to the specialty hospital; and (ii) if the specialty hospital does not have an intensive care unit, notify the patient that if intensive care services are required, the patient will be transferred to another hospital;

(h) Provide emergency services twenty-four hours per day, seven days per week in a designated area of the hospital, and comply with requirements for emergency facilities that are established by the department;

(i) Establish procedures to stabilize a patient with an emergency medical condition until the patient is transported or transferred to another hospital if emergency services cannot be provided at the specialty hospital to meet the needs of the patient in an emergency, and maintain a transfer agreement with a general hospital in the same health service area that establishes a process for patient transfers in a situation in which the specialty hospital cannot provide continuing care for a patient because of the specialty hospital's scope of services and for the transfer of patients; and

(j) Accept the transfer of patients from general hospitals when the patients require the category of care or treatment provided by the specialty hospital.

(3) This section does not apply to:

(a) A specialty hospital that provides only psychiatric, pediatric, long-term acute care, cancer, or rehabilitative services; or

(b) A hospital that was licensed under this chapter before January 1, 2007. [2007 c 102 § 2.]

**Finding—2007 c 102:** "The legislature finds that specialty hospitals jeopardize the financial balance of community hospitals by selectively providing care to less ill patients, treating fewer medicare, medicaid, and uninsured patients, providing primarily care that is profitable to investors, and reducing community hospital staffing. To assure that private and public hospitals in Washington remain financially viable institutions able to provide general acute care in their communities and maintain the capacity to respond to local, state, and national emergencies, the legislature has concluded that specialty hospitals must meet certain conditions in order to be licensed. These conditions will ensure that specialty hospitals and community hospitals compete on a level playing field and, therefore, will minimize the adverse impacts of specialty hospitals on community general hospitals while assuring quality patient care." [2007 c 102 § 1.]

**70.41.120 Inspection of hospitals—Final report—Alterations or additions, new facilities—Coordination with state and local agencies—Notice of inspection.** (1) The department shall make or cause to be made an unannounced inspection of all hospitals on average at least every eighteen months. Every inspection of a hospital may include an inspection of every part of the premises. The department may make an examination of all phases of the hospital operation necessary to determine compliance with the law and the standards, rules and regulations adopted thereunder.

(2) The department shall not issue its final report regarding an unannounced inspection by the department until: (a) The hospital is given at least two weeks following the inspection to provide any information or documentation requested by the department during the unannounced inspection that was not available at the time of the request; and (b) at least one person from the department conducting the inspection meets personally with the chief administrator or executive officer of the hospital following the inspection or the chief administrator or executive officer declines such a meeting.

(3) Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, comply with the regulations prescribed by the department.

(4) No hospital licensed pursuant to the provisions of this chapter shall be required to be inspected or licensed under other state laws or rules and regulations promulgated thereunder, or local ordinances, relative to hotels, restaurants, lodging houses, boarding houses, places of refreshment, nursing homes, maternity homes, or psychiatric hospitals.

(5) To avoid unnecessary duplication in inspections, the department shall coordinate with the department of social and health services, the office of the state fire marshal, and local agencies when inspecting facilities over which each agency has jurisdiction, the facilities including but not necessarily being limited to hospitals with both acute care and skilled nursing or psychiatric nursing functions. The department shall notify the office of the state fire marshal and the relevant local agency at least four weeks prior to any inspection conducted under this section and invite their attendance at the inspection, and shall provide a copy of its inspection report to each agency upon completion. [2009 c 242 § 1; 2005 c 447 § 1; 2004 c 261 § 4; 1995 c 282 § 4; 1985 c 213 § 21; 1955 c 267 § 12.]

Additional notes found at www.leg.wa.gov

**70.41.122 Exemption from RCW 70.41.120 for hospitals accredited by other entities.** Surveys conducted on hospitals by the joint commission on the accreditation of health care organizations, the American osteopathic association, or Det Norske Veritas shall be deemed equivalent to a department survey for purposes of meeting the requirements for the survey specified in RCW 70.41.120 if the department determines that the applicable survey standards are substantially equivalent to its own.

(1) Hospitals so surveyed shall provide to the department within thirty days of learning the result of a survey documentary evidence that the hospital has been certified as a result of a survey and the date of the survey.

(2) Hospitals shall make available to department surveyors the written reports of such surveys during department surveys, upon request. [2009 c 242 § 2; 2005 c 447 § 2; 1999 c 41 § 1; 1995 c 282 § 6.]

**70.41.125 Hospital construction review process—Coordination with state and local agencies.** (1) The department shall coordinate its hospital construction review process with other state and local agencies having similar review responsibilities, including the department of labor and industries, the office of the state fire marshal, and local building and fire officials. Inconsistencies or conflicts among the agencies shall be identified and eliminated. The department shall provide local agencies with relevant information derived from its construction review process.

(2) By September 1, 2004, the department shall report to the legislature regarding its implementation of subsection (1) of this section. [2004 c 261 § 5.]

**70.41.130 Administrative actions against license—Rules—Procedure.** (1) The department is authorized to take any of the actions identified in this section against a hospital's license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter or the requirements of RCW 71.34.375.

(a) When the department determines the hospital has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule, or has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule, or when the hospital failed to correct noncompliance with a statute or rule by a date established or agreed to by the department, the department may impose reasonable conditions on a license. Conditions may include correction within a specified amount of time, training, or hiring a department-approved consultant if the hospital cannot demonstrate to the department that it has access to sufficient internal expertise. If the department determines that the violations constitute immediate jeopardy, the conditions may be imposed immediately in accordance with subsection (3) of this section.

(b)(i) In accordance with the authority the department has under RCW 43.70.095, the department may assess a civil fine of up to $10,000 per violation, not to exceed a total fine of $1,000,000, on a hospital licensed under this chapter when the department determines the hospital has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule, or has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule, or when the hospital failed to correct noncompliance with a statute or rule by a date established or agreed to by the department.

(ii) Proceeds from these fines may only be used by the department to offset costs associated with licensing hospitals.

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

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

(B) The number of licensed beds and the operation size of the hospital. The licensed hospital beds will be categorized as:

(I) Up to 25 beds;

(II) 26 to 99 beds;

(III) 100 to 299 beds; and

(IV) 300 beds or greater.

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

(c) The department may suspend a specific category or categories of services or care or recovery units within the hospital as related to the violation by imposing a limited stop service. This may only be done if the department finds that noncompliance results in immediate jeopardy.

(i) Prior to imposing a limited stop service, the department shall provide a hospital written notification upon identifying deficient practices or conditions that constitute an immediate jeopardy, and upon the review and approval of the notification by the secretary or the secretary's designee. The hospital shall have 24 hours from notification to develop and implement a department-approved plan to correct the deficient practices or conditions that constitute an immediate jeopardy. If the deficient practice or conditions that constitute immediate jeopardy are not verified by the department as having been corrected within the same 24 hour period, the department may issue the limited stop service.

(ii) When the department imposes a limited stop service, the hospital may not admit any new patients to the units in the category or categories subject to the limited stop service until the limited stop service order is terminated.

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

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

(A) The department verifies the violation necessitating the limited stop service has been corrected or the department determines that the hospital has taken intermediate action to address the immediate jeopardy; and

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

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

(i) Prior to imposing a stop placement, the department shall provide a hospital written notification upon identifying deficient practices or conditions that constitute an immediate jeopardy, and upon the review and approval of the notification by the secretary or the secretary's designee. The hospital shall have 24 hours from notification to develop and implement a department-approved plan to correct the deficient practices or conditions that constitute an immediate jeopardy. If the deficient practice or conditions that constitute immediate jeopardy are not verified by the department as having been corrected within the same 24 hour period, the department may issue the stop placement.

(ii) When the department imposes a stop placement, the hospital may not admit any new patients until the stop placement order is terminated.

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

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

(A) The department verifies the violation necessitating the stop placement has been corrected or the department determines that the hospital has taken intermediate action to address the immediate jeopardy; and

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

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

(2) The department shall adopt in rules under this chapter a fee methodology that includes funding expenditures to implement subsection (1) of this section. The fee methodology must consider:

(a) The operational size of the hospital; and

(b) The number of licensed beds of the hospital.

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

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

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

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

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

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

(v) If the presiding officer sustains the immediate suspension or immediate imposition of conditions, the licensee may request an expedited full hearing on the merits of the department's action. A full hearing must be provided within 90 days of the licensee's request. [2021 c 61 § 2; 2011 c 302 § 3; 1991 c 3 § 335; 1989 c 175 § 128; 1985 c 213 § 22; 1955 c 267 § 13.]

Additional notes found at www.leg.wa.gov

**70.41.150 Denial, suspension, revocation of license—Disclosure of information.** Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter, may be disclosed publicly, as permitted under chapter 42.56 RCW, subject to the following provisions:

(1) Licensing inspections, or complaint investigations regardless of findings, shall, as requested, be disclosed no sooner than three business days after the hospital has received the resulting assessment report;

(2) Information regarding administrative action against the license shall, as requested, be disclosed after the hospital has received the documents initiating the administrative action;

(3) Information about complaints that did not warrant an investigation shall not be disclosed except to notify the hospital and the complainant that the complaint did not warrant an investigation. If requested, the individual complainant shall receive information on other like complaints that have been reported against the hospital; and

(4) Information disclosed pursuant to this section shall not disclose individual names. [2005 c 274 § 333; 2000 c 6 § 1; 1985 c 213 § 24; 1955 c 267 § 15.]

Additional notes found at www.leg.wa.gov

**70.41.155 Duty to investigate patient well-being.** Any complaint against a hospital and event notification required by the department that concerns patient well-being shall be investigated. [2000 c 6 § 2.]

**70.41.160 Remedies available to department—Duty of attorney general.** Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a hospital without a license under this law. [1985 c 213 § 25; 1955 c 267 § 16.]

Additional notes found at www.leg.wa.gov

**70.41.170 Operating or maintaining unlicensed hospital or unapproved tertiary health service—Penalty.** Any person operating or maintaining a hospital without a license under this chapter, or, after June 30, 1989, initiating a tertiary health service as defined in RCW 70.38.025(14) that is not approved under RCW 70.38.105 and 70.38.115, shall be guilty of a misdemeanor, and each day of operation of an unlicensed hospital or unapproved tertiary health service, shall constitute a separate offense. [1989 1st ex.s. c 9 § 612; 1955 c 267 § 17.]

Additional notes found at www.leg.wa.gov

**70.41.180 Physicians' services.** Nothing contained in this chapter shall in any way authorize the department to establish standards, rules and regulations governing the professional services rendered by any physician. [1985 c 213 § 26; 1955 c 267 § 18.]

Additional notes found at www.leg.wa.gov

**70.41.190 Medical records of patients—Retention and preservation.** Unless specified otherwise by the department, a hospital shall retain and preserve all medical records which relate directly to the care and treatment of a patient for a period of no less than ten years following the most recent discharge of the patient; except the records of minors, which shall be retained and preserved for a period of no less than three years following attainment of the age of eighteen years, or ten years following such discharge, whichever is longer.

If a hospital ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The department shall by regulation define the type of records and the information required to be included in the medical records to be retained and preserved under this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW. [1985 c 213 § 27; 1975 1st ex.s. c 175 § 1.]

*Medical records, disclosure: Chapter 70.02 RCW.*

Additional notes found at www.leg.wa.gov

**70.41.200 Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing.** (1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of one or more quality improvement committees with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. Different quality improvement committees may be established as a part of a quality improvement program to review different health care services. Such committees shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A process, including a medical staff privileges sanction procedure which must be conducted substantially in accordance with medical staff bylaws and applicable rules,

regulations, or policies of the medical staff through which credentials, physical and mental capacity, professional conduct, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) A process for the periodic review of the credentials, physical and mental capacity, professional conduct, and competence in delivering health care services of all other health care providers who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients including health care-associated infections as defined in RCW 43.70.056, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, infection control, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The Washington medical commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510, a coordinated quality improvement committee maintained by an ambulatory surgical facility under RCW 70.230.070, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and

prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

(10) Violation of this section shall not be considered negligence per se. [2019 c 55 § 14; 2013 c 301 § 2. Prior: 2007 c 273 § 22; 2007 c 261 § 3; prior: 2005 c 291 § 3; 2005 c 33 § 7; 2004 c 145 § 3; 2000 c 6 § 3; 1994 sp.s. c 9 § 742; 1993 c 492 § 415; 1991 c 3 § 336; 1987 c 269 § 5; 1986 c 300 § 4.]

**Finding—2007 c 261:** See note following RCW 43.70.056.

**Findings—2005 c 33:** See note following RCW 18.20.390.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Legislative findings—Severability—1986 c 300:** See notes following RCW 18.57.245.

*Board of osteopathic medicine and surgery: Chapter 18.57 RCW.*

*Washington medical commission: Chapter 18.71 RCW.*

Additional notes found at www.leg.wa.gov

**70.41.205 Public hospitals—Review of hospital privileges and quality improvement committee reports—Confidentiality.** (1) All meetings, proceedings, and deliberations of the governing body, its staff or agents, concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider as defined in RCW 7.70.020, if such other providers at the discretion of the governing body are considered for such privileges, must be confidential and may be conducted in executive session; however, the final action of the governing body as to the denial, revocation, or restriction of clinical or staff privileges of a physician or other health care provider as defined in RCW 7.70.020 must be done in public session.

(2) All meetings, proceedings, and deliberations of a quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200 and all meetings, proceedings, and deliberations of the governing body, its staff or agents, to review the report or the activities of a quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200 may, at the discretion of the quality improvement committee or the governing body, be confidential and may be conducted in executive session. Any review conducted by the governing body or quality improvement committee, or their staff or agents, must be subject to the same protections, limitations, and exemptions that apply to quality improvement committee activities under RCW 4.24.240, 4.24.250, 43.70.510, and 70.41.200. However, any final action of the governing body on the report of the quality improvement committee must be done in public session.

(3) For the purposes of this section:

(a) "Governing body" means the board or committee of a public hospital with authority to make final decisions concerning the granting, denial, revocation, restriction, or other consideration of the clinical or staff privileges of a physician or other health care provider, as defined in RCW 7.70.020; and

(b) "Public hospital" means any hospital owned or operated by the state or any of its subdivisions, including the University of Washington. [2019 c 162 § 1.]

**70.41.210 Duty to report restrictions on health care practitioners' privileges based on unprofessional conduct—Penalty.** (1) The chief administrator or executive officer of a hospital shall report to the department when the practice of a health care practitioner as defined in subsection (2) of this section is restricted, suspended, limited, or terminated based upon a conviction, determination, or finding by the hospital that the health care practitioner has committed an action defined as unprofessional conduct under RCW 18.130.180. The chief administrator or executive officer shall also report any voluntary restriction or termination of the practice of a health care practitioner as defined in subsection (2) of this section while the practitioner is under investigation or the subject of a proceeding by the hospital regarding unprofessional conduct, or in return for the hospital not conducting such an investigation or proceeding or not taking action. The department will forward the report to the appropriate disciplining authority.

(2) The reporting requirements apply to the following health care practitioners: Pharmacists as defined in chapter 18.64 RCW; advanced registered nurse practitioners as defined in chapter 18.79 RCW; dentists as defined in chapter 18.32 RCW; naturopaths as defined in chapter 18.36A RCW; optometrists as defined in chapter 18.53 RCW; osteopathic physicians and surgeons as defined in chapter 18.57 RCW; physicians as defined in chapter 18.71 RCW; physician assistants as defined in chapter 18.71A RCW; podiatric physicians and surgeons as defined in chapter 18.22 RCW; and psychologists as defined in chapter 18.83 RCW.

(3) Reports made under subsection (1) of this section shall be made within fifteen days of the date: (a) A conviction, determination, or finding is made by the hospital that the health care practitioner has committed an action defined as unprofessional conduct under RCW 18.130.180; or (b) the voluntary restriction or termination of the practice of a health care practitioner, including his or her voluntary resignation, while under investigation or the subject of proceedings regarding unprofessional conduct under RCW 18.130.180 is accepted by the hospital.

(4) Failure of a hospital to comply with this section is punishable by a civil penalty not to exceed five hundred dollars.

(5) A hospital, its chief administrator, or its executive officer who files a report under this section is immune from suit, whether direct or derivative, in any civil action related to the filing or contents of the report, unless the conviction, determination, or finding on which the report and its content are based is proven to not have been made in good faith. The prevailing party in any action brought alleging the conviction, determination, finding, or report was not made in good faith, shall be entitled to recover the costs of litigation, including reasonable attorneys' fees.

(6) The department shall forward reports made under subsection (1) of this section to the appropriate disciplining authority designated under Title 18 RCW within fifteen days of the date the report is received by the department. The department shall notify a hospital that has made a report under subsection (1) of this section of the results of the disciplining authority's case disposition decision within fifteen days after the case disposition. Case disposition is the decision whether to issue a statement of charges, take informal action, or close the complaint without action against a practitioner. In its biennial report to the legislature under RCW 18.130.310, the department shall specifically identify the case dispositions of reports made by hospitals under subsection (1) of this section.

(7) The department shall not increase hospital license fees to carry out this section before July 1, 2008. [2020 c 80 § 45; 2008 c 134 § 14; 2005 c 470 § 1; 1994 sp.s. c 9 § 743; 1986 c 300 § 7.]

**Effective date—2020 c 80 §§ 12-59:** See note following RCW 7.68.030.

**Intent—2020 c 80:** See note following RCW 18.71A.010.

**Finding—Intent—Severability—2008 c 134:** See notes following RCW 18.130.020.

**Legislative findings—Severability—1986 c 300:** See notes following RCW 18.57.245.

*Medical commission: Chapter 18.71 RCW.*

Additional notes found at www.leg.wa.gov

**70.41.220 Duty to keep records of restrictions on practitioners' privileges—Penalty.** Each hospital shall keep written records of decisions to restrict or terminate privileges of practitioners. Copies of such records shall be made available to the board within thirty days of a request and all information so gained shall remain confidential in accordance with RCW 70.41.200 and 70.41.230 and shall be protected from the discovery process. Failure of a hospital to comply with this section is punishable by [a] civil penalty not to exceed two hundred fifty dollars. [1986 c 300 § 8.]

**Legislative findings—Severability—1986 c 300:** See notes following RCW 18.57.245.

**70.41.230 Duty of hospital to request information on physicians, physician assistants, or advanced registered nurse practitioners granted privileges.** (1) Except as provided in subsection (3) of this section, prior to granting or renewing clinical privileges or association of any physician, physician assistant, or advanced registered nurse practitioner or hiring a physician, physician assistant, or advanced registered nurse practitioner who will provide clinical care under his or her license, a hospital or facility approved pursuant to this chapter shall request from the physician, physician assistant, or advanced registered nurse practitioner and the physician, physician assistant, or advanced registered nurse practitioner shall provide the following information:

(a) The name of any hospital or facility with or at which the physician, physician assistant, or advanced registered nurse practitioner had or has any association, employment, privileges, or practice during the prior five years: PROVIDED, That the hospital may request additional information going back further than five years, and the physician, physician assistant, or advanced registered nurse practitioner shall use his or her best efforts to comply with such a request for additional information;

(b) Whether the physician, physician assistant, or advanced registered nurse practitioner has ever been or is in the process of being denied, revoked, terminated, suspended, restricted, reduced, limited, sanctioned, placed on probation, monitored, or not renewed for any professional activity listed in (b)(i) through (x) of this subsection, or has ever voluntarily or involuntarily relinquished, withdrawn, or failed to proceed with an application for any professional activity listed in (b)(i) through (x) of this subsection in order to avoid an adverse action or to preclude an investigation or while under investigation relating to professional competence or conduct:

(i) License to practice any profession in any jurisdiction;

(ii) Other professional registration or certification in any jurisdiction;

(iii) Specialty or subspecialty board certification;

(iv) Membership on any hospital medical staff;

(v) Clinical privileges at any facility, including hospitals, ambulatory surgical centers, or skilled nursing facilities;

(vi) Medicare, medicaid, the food and drug administration, the national institute of health (office of human research protection), governmental, national, or international regulatory agency, or any public program;

(vii) Professional society membership or fellowship;

(viii) Participation or membership in a health maintenance organization, preferred provider organization, independent practice association, physician-hospital organization, or other entity;

(ix) Academic appointment;

(x) Authority to prescribe controlled substances (drug enforcement agency or other authority);

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the physician, physician assistant, or advanced registered nurse practitioner deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the physician, physician assistant, or advanced registered nurse practitioner deems appropriate;

(e) A waiver by the physician, physician assistant, or advanced registered nurse practitioner of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subsection; and

(f) A verification by the physician, physician assistant, or advanced registered nurse practitioner that the information provided by the physician, physician assistant, or advanced registered nurse practitioner is accurate and complete.

(2) Except as provided in subsection (3) of this section, prior to granting privileges or association to any physician, physician assistant, or advanced registered nurse practitioner or hiring a physician, physician assistant, or advanced registered nurse practitioner who will provide clinical care under his or her license, a hospital or facility approved pursuant to this chapter shall request from any hospital with or at which the physician, physician assistant, or advanced registered nurse practitioner had or has privileges, was associated, or was employed, during the preceding five years, the following information concerning the physician, physician assistant, or advanced registered nurse practitioner:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals pursuant to RCW 18.71.0195.

(3) In lieu of the requirements of subsections (1) and (2) of this section, when granting or renewing credentials and privileges or association of any physician, physician assistant, or advanced registered nurse practitioner providing telemedicine or store and forward services, an originating site hospital may rely on a distant site hospital's decision to grant or renew credentials and clinical privileges or association of the physician, physician assistant, or advanced registered nurse practitioner if the originating site hospital obtains reasonable assurances, through a written agreement with the distant site hospital, that all of the following provisions are met:

(a) The distant site hospital providing the telemedicine or store and forward services is a medicare participating hospital;

(b) Any physician, physician assistant, or advanced registered nurse practitioner providing telemedicine or store and forward services at the distant site hospital will be fully credentialed and privileged to provide such services by the distant site hospital;

(c) Any physician, physician assistant, or advanced registered nurse practitioner providing telemedicine or store and forward services will hold and maintain a valid license to perform such services issued or recognized by the state of Washington; and

(d) With respect to any distant site physician, physician assistant, or advanced registered nurse practitioner who holds current credentials and privileges at the originating site hospital whose patients are receiving the telemedicine or store and forward services, the originating site hospital has evidence of an internal review of the distant site physician's, physician assistant's, or advanced registered nurse practitioner's performance of these credentials and privileges and sends the distant site hospital such performance information for use in the periodic appraisal of the distant site physician, physician assistant, or advanced registered nurse practitioner. At a minimum, this information must include all adverse events, as defined in RCW 70.56.010, that result from the telemedicine or store and forward services provided by the distant site physician, physician assistant, or advanced registered nurse practitioner to the originating site hospital's patients and all complaints the originating site hospital has received about the distant site physician, physician assistant, or advanced registered nurse practitioner.

(4)(a) The Washington medical commission or the board of osteopathic medicine and surgery shall be advised within thirty days of the name of any physician or physician assistant denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(b) The nursing care quality assurance commission shall be advised within thirty days of the name of any advanced registered nurse practitioner denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(5) A hospital or facility that receives a request for information from another hospital or facility pursuant to subsections (1) through (3) of this section shall provide such information concerning the physician, physician assistant, or advanced registered nurse practitioner in question to the extent such information is known to the hospital or facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital or facility. A hospital, facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(6) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(7) Hospitals shall be granted access to information held by the Washington medical commission, the board of osteopathic medicine and surgery, and the nursing care quality assurance commission pertinent to decisions of the hospital regarding credentialing and recredentialing of practitioners.

(8) Violation of this section shall not be considered negligence per se. [2019 c 104 § 1; 2019 c 55 § 15; 2019 c 49 § 1; 2016 c 68 § 6; 2015 c 23 § 6; 2013 c 301 § 3; 1994 sp.s. c

9 § 744; 1993 c 492 § 416; 1991 c 3 § 337; 1987 c 269 § 6; 1986 c 300 § 11.]

**Reviser's note:** This section was amended by 2019 c 49 § 1, 2019 c 55 § 15, and by 2019 c 104 § 1, without reference to one another. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—2016 c 68:** See note following RCW 48.43.735.

**Intent—2015 c 23:** See note following RCW 41.05.700.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Legislative findings—Severability—1986 c 300:** See notes following RCW 18.57.245.

*Washington medical commission: Chapter 18.71 RCW.*

Additional notes found at www.leg.wa.gov

**70.41.235 Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited.** A hospital that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery licensed under chapter 18.57 RCW, who has applied to practice with the hospital, solely because that practitioner was board certified or eligible under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board. [1995 c 64 § 3.]

**70.41.240 Information regarding conversion of hospitals to nonhospital health care facilities.** The department of health shall compile and make available to the public information regarding medicare health care facility certification options available to hospitals licensed under this title that desire to convert to nonhospital health care facilities. The information provided shall include standards and requirements for certification and procedures for acquiring certification. [1991 c 3 § 338; 1988 c 207 § 3.]

Additional notes found at www.leg.wa.gov

**70.41.250 Cost disclosure to health care providers.** (1) The legislature finds that the spiraling costs of health care continue to surmount efforts to contain them, increasing at approximately twice the inflationary rate. The causes of this phenomenon are complex. By making physicians and other health care providers with hospital admitting privileges more aware of the cost consequences of health care services for consumers, these providers may be inclined to exercise more restraint in providing only the most relevant and cost-beneficial hospital services, with a potential for reducing the utilization of those services. The requirement of the hospital to inform physicians and other health care providers of the charges of the health care services that they order may have a positive effect on containing health costs. Further, the option of the physician or other health care provider to inform the patient of these charges may strengthen the necessary dialogue in the provider-patient relationship that tends to be diminished by intervening third-party payers.

(2) The chief executive officer of a hospital licensed under this chapter and the superintendent of a state hospital shall establish and maintain a procedure for disclosing to physicians and other health care providers with admitting privileges the charges of all health care services ordered for their patients. Copies of hospital charges shall be made available to any physician and/or other health care provider ordering care in hospital inpatient/outpatient services. The physician and/or other health care provider may inform the patient of these charges and may specifically review them. Hospitals are also directed to study methods for making daily charges available to prescribing physicians through the use of interactive software and/or computerized information thereby allowing physicians and other health care providers to review not only the costs of present and past services but also future contemplated costs for additional diagnostic studies and therapeutic medications. [1993 c 492 § 265.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.41.300 Long-term care—Definitions.** "Cost-effective care" and "long-term care services," where used in RCW 70.41.310 and 70.41.320, shall have the same meaning as that given in *RCW 74.39A.008. [1995 1st sp.s. c 18 § 4.]

***Reviser's note:** RCW 74.39A.008 was repealed by 1997 c 392 § 530.

Additional notes found at www.leg.wa.gov

**70.41.310 Long-term care—Program information to be provided to hospitals—Information on options to be provided to patients.** (1)(a) The department of social and health services, in consultation with hospitals and acute care facilities, shall promote the most appropriate and cost-effective use of long-term care services by developing and distributing to hospitals and other appropriate health care settings information on the various chronic long-term care programs that it administers directly or through contract. The information developed by the department of social and health services shall, at a minimum, include the following:

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

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

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

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

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

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

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

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

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

(e) Linking the patient and family to the local, state-designated aging and long-term care network to ensure effective transitions to appropriate levels of care and ongoing support. [1995 1st sp.s. c 18 § 3.]

Additional notes found at www.leg.wa.gov

**70.41.320 Long-term care—Patient discharge requirements for hospitals and acute care facilities—Pilot projects.** (1) Hospitals and acute care facilities shall:

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

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

(c) Establish written policies and procedures to:

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

(ii) Subject to RCW 70.41.322, develop a documented discharge plan for each identified patient, including relevant patient history, specific care requirements, and date such follow-up care is to be initiated;

(iii) Coordinate with patient, family, caregiver, lay caregiver as provided in RCW 70.41.322, and appropriate members of the health care team which may include a long-term care worker or a home and community-based service provider. For the purposes of this subsection (1)(c)(iii), long-term care worker has the meaning provided in RCW 74.39A.009 and home and community-based service provider includes an adult family home as defined in RCW 70.128.010, an assisted living facility as defined in RCW 18.20.020, or a home care agency as defined in RCW 70.127.010;

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

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

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

(vii) Inform the patient or his or her surrogate decision maker designated under RCW 7.70.065 if it is necessary to complete a valid disclosure authorization as required by state and federal laws governing health information privacy and security, including chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and related regulations, in order to allow disclosure of health care information, including the discharge plan, to an individual or entity that will be involved in the patient's care upon discharge, including a lay caregiver as defined in RCW 70.41.020, a long-term care worker as defined in RCW 74.39A.009, a home and community-based service provider such as an adult family home as defined in RCW 70.128.010, an assisted living facility as defined in RCW 18.20.020, or a home care agency as defined in RCW 70.127.010. If a valid disclosure authorization is obtained, the hospital may release information as designated by the patient for care coordination or other specified purposes.

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

(2) In partnership with selected hospitals, the department of social and health services shall develop and implement pilot projects in up to three areas of the state with the goal of providing information about appropriate in-home and community services to individuals and their families early during the individual's hospital stay.

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

In conducting the pilot projects, the department shall:

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

(b) Offer assessment and information regarding appropriate in-home and community services to individuals who are reasonably expected to become medicaid recipients within one hundred eighty days of admission to a nursing facility. [2016 c 226 § 5; 1998 c 245 § 127; 1995 1st sp.s. c 18 § 5.]

Additional notes found at www.leg.wa.gov

**70.41.322 Discharge planning—Requirements—Lay caregivers.** (1) In addition to the requirements in RCW 70.41.320, hospital discharge policies must ensure that the discharge plan is appropriate for the patient's physical condition, emotional and social needs, and, if a lay caregiver is designated takes into consideration, to the extent possible, the lay caregiver's abilities as disclosed to the hospital.

(2) As part of a patient's individualized treatment plan, discharge criteria must include, but not be limited to, the following components:

(a) The details of the discharge plan;

(b) Hospital staff assessment of the patient's ability for self-care after discharge;

(c) An opportunity for the patient to designate a lay caregiver;

(d) Documentation of any designated lay caregiver's contact information;

(e) A description of aftercare tasks necessary to promote the patient's ability to stay at home;

(f) An opportunity for the patient and, if designated, the patient's lay caregiver to participate in the discharge planning;

(g) Instruction or training provided to the patient and, if designated, the patient's lay caregiver, prior to discharge, to perform aftercare tasks. Instruction or training may include education and counseling about the patient's medications, including dosing and proper use of medication delivery devices when applicable; and

(h) Notification to a lay caregiver, if designated, of the patient's discharge or transfer.

(3) In the event that a hospital is unable to contact a designated lay caregiver, the lack of contact may not interfere with, delay, or otherwise affect the medical care provided to the patient, or an appropriate discharge of the patient. [2016 c 226 § 2.]

**70.41.324 Discharge planning—Certain policies and criteria not required.** RCW 70.41.322 does not require a hospital to adopt discharge policies or criteria that:

(1) Delay a patient's discharge or transfer to another facility or to home; or

(2) Require the disclosure of protected health information to a lay caregiver without obtaining a patient's consent as required by state and federal laws governing health information privacy and security, including chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and related regulations. [2016 c 226 § 3.]

**70.41.326 Discharge planning—Construction—Liability.** Nothing in RCW 70.41.322 may be construed to:

(1) Interfere with the rights or duties of an agent operating under a valid health care directive under RCW 70.122.030;

(2) Interfere with designations made by a patient pursuant to a physician order for life-sustaining treatment under RCW 43.70.480;

(3) Interfere with the rights or duties of an authorized surrogate decision maker under RCW 7.70.065;

(4) Establish a new requirement to reimburse or otherwise pay for services performed by the lay caregiver for aftercare;

(5) Create a private right of action against a hospital or any of its directors, trustees, officers, employees, or agents, or any contractors with whom the hospital has a contractual relationship;

(6) Hold liable, in any way, a hospital, hospital employee, or any consultants or contractors with whom the hospital has a contractual relationship for the services rendered or not rendered by the lay caregiver to the patient at the patient's residence;

(7) Obligate a designated lay caregiver to perform any aftercare tasks for any patient;

(8) Require a patient to designate any individual as a lay caregiver as defined in RCW 70.41.020;

(9) Obviate the obligation of a health carrier as defined in RCW 48.43.005 or any other entity issuing health benefit plans to provide coverage required under a health benefit plan; and

(10) Impact, impede, or otherwise disrupt or reduce the reimbursement obligations of a health carrier or any other entity issuing health benefit plans. [2016 c 226 § 4.]

**70.41.330 Hospital complaint toll-free telephone number.** Every hospital shall post in conspicuous locations a notice of the department's hospital complaint toll-free telephone number. The form of the notice shall be approved by the department. [2000 c 6 § 4.]

**70.41.340 Investigation of hospital complaints—Rules.** The department is authorized to adopt rules necessary to implement RCW 70.41.150, 70.41.155, and 70.41.330. [2000 c 6 § 6.]

**70.41.350 Emergency care provided to victims of sexual assault—Development of informational materials on emergency contraception—Rules.** (1) Every hospital providing emergency care to a victim of sexual assault shall:

(a) Provide the victim with medically and factually accurate and unbiased written and oral information about emergency contraception;

(b) Orally inform each victim of sexual assault of her option to be provided emergency contraception at the hospital; and

(c) If not medically contraindicated, provide emergency contraception immediately at the hospital to each victim of sexual assault who requests it.

(2) The secretary, in collaboration with community sexual assault programs and other relevant stakeholders, shall develop, prepare, and produce informational materials relating to emergency contraception for the prevention of pregnancy in rape victims for distribution to and use in all emergency rooms in the state, in quantities sufficient to comply with the requirements of this section. The secretary, in collaboration with community sexual assault programs and other relevant stakeholders, may also approve informational materials from other sources for the purposes of this section. The informational materials must be clearly written and readily comprehensible in a culturally competent manner, as the secretary, in collaboration with community sexual assault programs and other relevant stakeholders, deems necessary to inform victims of sexual assault. The materials must explain the nature of emergency contraception, including that it is effective in preventing pregnancy, treatment options, and where they can be obtained.

(3) The secretary shall adopt rules necessary to implement this section. [2002 c 116 § 3.]

**Findings—2002 c 116:** "(1) The legislature finds that:

(a) Each year, over three hundred thousand women are sexually assaulted in the United States;

(b) Nationally, over thirty-two thousand women become pregnant each year as a result of sexual assault. Approximately fifty percent of these pregnancies end in abortion;

(c) Approximately thirty-eight percent of women in Washington are sexually assaulted over the course of their lifetime. This is twenty percent more than the national average;

(d) Only fifteen percent of sexual assaults in Washington are reported; however, even the numbers of reported attacks are staggering. For example, last year, two thousand six hundred fifty-nine rapes were reported in Washington, this is more than seven rapes per day.

(2) The legislature deems it essential that all hospital emergency rooms provide emergency contraception as a treatment option to any woman who seeks treatment as a result of a sexual assault." [2002 c 116 § 1.]

**70.41.360 Emergency care provided to victims of sexual assault—Department to respond to violations—Task force.** The department must respond to complaints of violations of RCW 70.41.350. The department shall convene a task force, composed of representatives from community sexual assault programs and other relevant stakeholders including advocacy agencies, medical agencies, and hospital associations, to provide input into the development and evaluation of the education materials and rule development. The task force shall expire on January 1, 2004. [2002 c 116 § 4.]

**Findings—2002 c 116:** See note following RCW 70.41.350.

**70.41.365 Statewide sexual assault kit tracking system—Participation by hospitals.** Hospitals licensed under this chapter shall participate in the statewide sexual assault kit tracking system established in RCW 43.43.545 for the purpose of tracking the status of all sexual assault kits collected by or in the custody of hospitals and other entities contracting with hospitals. Hospitals shall begin full participation in the system according to the implementation schedule established by the Washington state patrol. [2016 c 173 § 6.]

**Finding—Intent—2016 c 173:** See note following RCW 43.43.545.

**70.41.367 Sexual assault evidence kit collection—Availability, plan, and notice requirements.** (1) By July 1, 2020, any hospital that does not provide sexual assault evidence kit collection, or does not have appropriate providers available to provide sexual assault evidence kit collection at all times, shall develop a plan, in consultation with the local community sexual assault agency, to assist individuals with obtaining sexual assault evidence kit collection at a facility that provides such collection.

(2) Beginning July 1, 2020:

(a) If a hospital does not perform sexual assault evidence kit collection or does not have appropriate providers available, the hospital shall, within two hours of a request, provide notice to every individual who presents in the emergency department of the hospital and requests a sexual assault evidence kit collection that the hospital does not perform such collection or does not have appropriate providers available; and

(b) Pursuant to the plan required in subsection (1) of this section, if the hospital does not perform sexual assault evidence kit collection or does not have appropriate providers available, hospital staff must coordinate care with the local community sexual assault agency and assist the patient in finding a facility with an appropriate provider available.

(3) A hospital must notify individuals upon arrival who present in the emergency department of the hospital and request a sexual assault evidence kit collection that they may file a complaint with the department if the hospital fails to comply with subsection (2)(a) of this section. [2019 c 250 § 1.]

**70.41.370 Investigation of complaints of violations concerning nursing technicians.** The department shall investigate complaints of violations of RCW 18.79.350 and 18.79.360 by an employer. The department shall maintain records of all employers that have violated RCW 18.79.350 and 18.79.360. [2003 c 258 § 8.]

Additional notes found at www.leg.wa.gov

**70.41.380 Notice of unanticipated outcomes.** Hospitals shall have in place policies to assure that, when appropriate, information about unanticipated outcomes is provided to patients or their families or any surrogate decision makers identified pursuant to RCW 7.70.065. Notifications of unanticipated outcomes under this section do not constitute an acknowledgment or admission of liability, nor can the fact of notification, the content disclosed, or any and all statements, affirmations, gestures, or conduct expressing apology be introduced as evidence in a civil action. [2005 c 118 § 1.]

Additional notes found at www.leg.wa.gov

**70.41.390 Safe patient handling.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(b) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistive devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring, and repositioning health care patients and residents.

(c) "Musculoskeletal disorders" means conditions that involve the nerves, tendons, muscles, and supporting structures of the body.

(2) By February 1, 2007, each hospital must establish a safe patient handling committee either by creating a new committee or assigning the functions of a safe patient handling committee to an existing committee. The purpose of the committee is to design and recommend the process for implementing a safe patient handling program. At least half of the members of the safe patient handling committee shall be frontline nonmanagerial employees who provide direct care to patients unless doing so will adversely affect patient care.

(3) By December 1, 2007, each hospital must establish a safe patient handling program. As part of this program, a hospital must:

(a) Implement a safe patient handling policy for all shifts and units of the hospital. Implementation of the safe patient handling policy may be phased-in with the acquisition of equipment under subsection (4) of this section;

(b) Conduct a patient handling hazard assessment. This assessment should consider such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas;

(c) Develop a process to identify the appropriate use of the safe patient handling policy based on the patient's physical and medical condition and the availability of lifting equipment or lift teams. The policy shall include a means to address circumstances under which it would be medically contraindicated to use lifting or transfer aids or assistive devices for particular patients;

(d) Conduct an annual performance evaluation of the program to determine its effectiveness, with the results of the evaluation reported to the safe patient handling committee. The evaluation shall determine the extent to which implementation of the program has resulted in a reduction in musculoskeletal disorder claims and days of lost work attributable to musculoskeletal disorder caused by patient handling,

and include recommendations to increase the program's effectiveness; and

(e) When developing architectural plans for constructing or remodeling a hospital or a unit of a hospital in which patient handling and movement occurs, consider the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

(4) By January 30, 2010, each hospital must complete, at a minimum, acquisition of their choice of: (a) One readily available lift per acute care unit on the same floor unless the safe patient handling committee determines a lift is unnecessary in the unit; (b) one lift for every ten acute care available inpatient beds; or (c) equipment for use by lift teams. Hospitals must train staff on policies, equipment, and devices at least annually.

(5) Nothing in this section precludes lift team members from performing other duties as assigned during their shift.

(6) A hospital shall develop procedures for hospital employees to refuse to perform or be involved in patient handling or movement that the hospital employee believes in good faith will expose a patient or a hospital employee to an unacceptable risk of injury. A hospital employee who in good faith follows the procedure developed by the hospital in accordance with this subsection shall not be the subject of disciplinary action by the hospital for the refusal to perform or be involved in the patient handling or movement. [2006 c 165 § 2.]

**Findings—2006 c 165:** "The legislature finds that:

(1) Patients are not at optimum levels of safety while being lifted, transferred, or repositioned manually. Mechanical lift programs can reduce skin tears suffered by patients by threefold. Nurses, thirty-eight percent of whom have previous back injuries, can drop patients if their pain thresholds are triggered.

(2) According to the bureau of labor statistics, hospitals in Washington have a nonfatal employee injury incidence rate that exceeds the rate of construction, agriculture, manufacturing, and transportation.

(3) The physical demands of the nursing profession lead many nurses to leave the profession. Research shows that the annual prevalence rate for nursing back injury is over forty percent and many nurses who suffer a back injury do not return to nursing. Considering the present nursing shortage in Washington, measures must be taken to protect nurses from disabling injury.

(4) Washington hospitals have made progress toward implementation of safe patient handling programs that are effective in decreasing employee injuries. It is not the intent of this act to place an undue financial burden on hospitals." [2006 c 165 § 1.]

**70.41.400 Patient billing—Written statement describing who may be billing the patient required—Contact phone numbers—Exceptions.** (1) Prior to or upon discharge, a hospital must furnish each patient receiving inpatient services a written statement providing a list of physician groups and other professional partners that commonly provide care for patients at the hospital and from whom the patient may receive a bill, along with contact phone numbers for those groups. The statement must prominently display a phone number that a patient can call for assistance if the patient has any questions about any of the bills they receive after discharge that relate to their hospital stay.

(2) This section does not apply to any hospital owned or operated by a health maintenance organization under chapter 48.46 RCW when providing prepaid health care services to enrollees of the health maintenance organization or any of its wholly owned subsidiary carriers. [2006 c 60 § 2.]

**Findings—Intent—2006 c 60:** "The legislature finds that the implementation of health information technologies in hospitals, including electronic medical records, has the potential to significantly reduce cost, improve patient outcomes, and simplify the administration of health care. Further, the legislature finds that the number of and complexity of the bills that result from a hospital stay can be confusing to patients. Therefore, it is the intent of the legislature to encourage hospitals to design the implementation of health information technologies so as to allow the hospital to provide the patient, prior to or upon discharge, clearly understandable information about the services provided during the hospital stay, and the bills the patient is likely to receive related to each of those services. Recognizing that complete implementation of the technologies required to achieve this goal will take a number of years, the legislature intends to require that hospitals immediately begin working toward the goal by compiling and communicating information to assist patients in understanding their bills." [2006 c 60 § 1.]

**70.41.410 Nurse staffing committee—Definitions.** The definitions in this section apply throughout this section and RCW 70.41.420 unless the context clearly requires otherwise.

(1) "Hospital" has the same meaning as defined in RCW 70.41.020, and also includes state hospitals as defined in RCW 72.23.010.

(2) "Intensity" means the level of patient need for nursing care, as determined by the nursing assessment.

(3) "Nursing personnel" means registered nurses, licensed practical nurses, and unlicensed assistive nursing personnel providing direct patient care.

(4) "Nurse staffing committee" means the committee established by a hospital under RCW 70.41.420.

(5) "Patient care unit" means any unit or area of the hospital that provides patient care by registered nurses.

(6) "Skill mix" means the number and relative percentages of registered nurses, licensed practical nurses, and unlicensed assistive personnel among the total number of nursing personnel. [2008 c 47 § 2.]

**Findings—Intent—2008 c 47:** "(1) The legislature finds that:

(a) Research evidence demonstrates that registered nurses play a critical role in patient safety and quality of care. The ever-worsening shortage of nurses available to provide care in acute care hospitals has necessitated multiple strategies to generate more nurses and improve the recruitment and retention of nurses in hospitals; and

(b) Evidence-based nurse staffing that can help ensure quality and safe patient care while increasing nurse satisfaction in the work environment is key to solving an urgent public health issue in Washington state. Hospitals and nursing organizations recognize a mutual interest in patient safety initiatives that create a healthy environment for nurses and safe care for patients.

(2) In order to protect patients and to support greater retention of registered nurses, and to promote evidence-based nurse staffing, the legislature intends to establish a mechanism whereby direct care nurses and hospital management shall participate in a joint process regarding decisions about nurse staffing." [2008 c 47 § 1.]

**70.41.420 Nurse staffing committee.** ***(Effective until June 1, 2023.)*** (1) By September 1, 2008, each hospital shall establish a nurse staffing committee, either by creating a new committee or assigning the functions of a nurse staffing committee to an existing committee. At least one-half of the members of the nurse staffing committee shall be registered nurses currently providing direct patient care and up to one-half of the members shall be determined by the hospital administration. The selection of the registered nurses providing direct patient care shall be according to the collective bargaining agreement if there is one in effect at the hospital. If there is no applicable collective bargaining agreement, the members of the nurse staffing committee who are registered

nurses providing direct patient care shall be selected by their peers.

(2) Participation in the nurse staffing committee by a hospital employee shall be on scheduled work time and compensated at the appropriate rate of pay. Nurse staffing committee members shall be relieved of all other work duties during meetings of the committee.

(3) Primary responsibilities of the nurse staffing committee shall include:

(a) Development and oversight of an annual patient care unit and shift-based nurse staffing plan, based on the needs of patients, to be used as the primary component of the staffing budget. Factors to be considered in the development of the plan should include, but are not limited to:

(i) Census, including total numbers of patients on the unit on each shift and activity such as patient discharges, admissions, and transfers;

(ii) Level of intensity of all patients and nature of the care to be delivered on each shift;

(iii) Skill mix;

(iv) Level of experience and specialty certification or training of nursing personnel providing care;

(v) The need for specialized or intensive equipment;

(vi) The architecture and geography of the patient care unit, including but not limited to placement of patient rooms, treatment areas, nursing stations, medication preparation areas, and equipment;

(vii) Staffing guidelines adopted or published by national nursing professional associations, specialty nursing organizations, and other health professional organizations;

(viii) Availability of other personnel supporting nursing services on the unit; and

(ix) Strategies to enable registered nurses to take meal and rest breaks as required by law or the terms of an applicable collective bargaining agreement, if any, between the hospital and a representative of the nursing staff;

(b) Semiannual review of the staffing plan against patient need and known evidence-based staffing information, including the nursing sensitive quality indicators collected by the hospital;

(c) Review, assessment, and response to staffing variations or concerns presented to the committee.

(4) In addition to the factors listed in subsection (3)(a) of this section, hospital finances and resources must be taken into account in the development of the nurse staffing plan.

(5) The staffing plan must not diminish other standards contained in state or federal law and rules, or the terms of an applicable collective bargaining agreement, if any, between the hospital and a representative of the nursing staff.

(6) The committee will produce the hospital's annual nurse staffing plan. If this staffing plan is not adopted by the hospital, the chief executive officer shall provide a written explanation of the reasons why the plan was not adopted to the committee. The chief executive officer must then either: (a) Identify those elements of the proposed plan being changed prior to adoption of the plan by the hospital or (b) prepare an alternate annual staffing plan that must be adopted by the hospital. Beginning January 1, 2019, each hospital shall submit its staffing plan to the department and thereafter on an annual basis and at any time in between that the plan is updated.

(7) Beginning January 1, 2019, each hospital shall implement the staffing plan and assign nursing personnel to each patient care unit in accordance with the plan.

(a) A registered nurse may report to the staffing committee any variations where the nurse personnel assignment in a patient care unit is not in accordance with the adopted staffing plan and may make a complaint to the committee based on the variations.

(b) Shift-to-shift adjustments in staffing levels required by the plan may be made by the appropriate hospital personnel overseeing patient care operations. If a registered nurse on a patient care unit objects to a shift-to-shift adjustment, the registered nurse may submit the complaint to the staffing committee.

(c) Staffing committees shall develop a process to examine and respond to data submitted under (a) and (b) of this subsection, including the ability to determine if a specific complaint is resolved or dismissing a complaint based on unsubstantiated data.

(8) Each hospital shall post, in a public area on each patient care unit, the nurse staffing plan and the nurse staffing schedule for that shift on that unit, as well as the relevant clinical staffing for that shift. The staffing plan and current staffing levels must also be made available to patients and visitors upon request.

(9) A hospital may not retaliate against or engage in any form of intimidation of:

(a) An employee for performing any duties or responsibilities in connection with the nurse staffing committee; or

(b) An employee, patient, or other individual who notifies the nurse staffing committee or the hospital administration of his or her concerns on nurse staffing.

(10) This section is not intended to create unreasonable burdens on critical access hospitals under 42 U.S.C. Sec. 1395i-4. Critical access hospitals may develop flexible approaches to accomplish the requirements of this section that may include but are not limited to having nurse staffing committees work by telephone or email. [2017 c 249 § 2; 2008 c 47 § 3.]

**Findings—Short title—Expiration date—2017 c 249:** See notes following RCW 70.41.425.

**Findings—Intent—2008 c 47:** See note following RCW 70.41.410.

**70.41.420 Nurse staffing committee.** ***(Effective June 1, 2023.)*** (1) By September 1, 2008, each hospital shall establish a nurse staffing committee, either by creating a new committee or assigning the functions of a nurse staffing committee to an existing committee. At least one-half of the members of the nurse staffing committee shall be registered nurses currently providing direct patient care and up to one-half of the members shall be determined by the hospital administration. The selection of the registered nurses providing direct patient care shall be according to the collective bargaining agreement if there is one in effect at the hospital. If there is no applicable collective bargaining agreement, the members of the nurse staffing committee who are registered nurses providing direct patient care shall be selected by their peers.

(2) Participation in the nurse staffing committee by a hospital employee shall be on scheduled work time and compensated at the appropriate rate of pay. Nurse staffing com-

mittee members shall be relieved of all other work duties during meetings of the committee.

(3) Primary responsibilities of the nurse staffing committee shall include:

(a) Development and oversight of an annual patient care unit and shift-based nurse staffing plan, based on the needs of patients, to be used as the primary component of the staffing budget. Factors to be considered in the development of the plan should include, but are not limited to:

(i) Census, including total numbers of patients on the unit on each shift and activity such as patient discharges, admissions, and transfers;

(ii) Level of intensity of all patients and nature of the care to be delivered on each shift;

(iii) Skill mix;

(iv) Level of experience and specialty certification or training of nursing personnel providing care;

(v) The need for specialized or intensive equipment;

(vi) The architecture and geography of the patient care unit, including but not limited to placement of patient rooms, treatment areas, nursing stations, medication preparation areas, and equipment; and

(vii) Staffing guidelines adopted or published by national nursing professional associations, specialty nursing organizations, and other health professional organizations;

(b) Semiannual review of the staffing plan against patient need and known evidence-based staffing information, including the nursing sensitive quality indicators collected by the hospital;

(c) Review, assessment, and response to staffing concerns presented to the committee.

(4) In addition to the factors listed in subsection (3)(a) of this section, hospital finances and resources may be taken into account in the development of the nurse staffing plan.

(5) The staffing plan must not diminish other standards contained in state or federal law and rules, or the terms of an applicable collective bargaining agreement, if any, between the hospital and a representative of the nursing staff.

(6) The committee will produce the hospital's annual nurse staffing plan. If this staffing plan is not adopted by the hospital, the chief executive officer shall provide a written explanation of the reasons why to the committee.

(7) Each hospital shall post, in a public area on each patient care unit, the nurse staffing plan and the nurse staffing schedule for that shift on that unit, as well as the relevant clinical staffing for that shift. The staffing plan and current staffing levels must also be made available to patients and visitors upon request.

(8) A hospital may not retaliate against or engage in any form of intimidation of:

(a) An employee for performing any duties or responsibilities in connection with the nurse staffing committee; or

(b) An employee, patient, or other individual who notifies the nurse staffing committee or the hospital administration of his or her concerns on nurse staffing.

(9) This section is not intended to create unreasonable burdens on critical access hospitals under 42 U.S.C. Sec. 1395i-4. Critical access hospitals may develop flexible approaches to accomplish the requirements of this section that may include but are not limited to having nurse staffing committees work by telephone or electronic mail. [2008 c 47 § 3.]

**Findings—Intent—2008 c 47:** See note following RCW 70.41.410.

**70.41.425 Nurse staffing—Department investigations.** ***(Expires June 1, 2023.)*** (1)(a) The department shall investigate a complaint submitted under this section for violation of RCW 70.41.420 following receipt of a complaint with documented evidence of failure to:

(i) Form or establish a staffing committee;

(ii) Conduct a semiannual review of a nurse staffing plan;

(iii) Submit a nurse staffing plan on an annual basis and any updates; or

(iv)(A) Follow the nursing personnel assignments in a patient care unit in violation of RCW 70.41.420(7)(a) or shift-to-shift adjustments in staffing levels in violation of RCW 70.41.420(7)(b).

(B) The department may only investigate a complaint under this subsection (1)(a)(iv) after making an assessment that the submitted evidence indicates a continuing pattern of unresolved violations of RCW 70.41.420(7) (a) or (b), that were submitted to the nurse staffing committee excluding complaints determined by the nurse staffing committee to be resolved or dismissed. The submitted evidence must include the aggregate data contained in the complaints submitted to the hospital's nurse staffing committee that indicate a continuing pattern of unresolved violations for a minimum sixty-day continuous period leading up to receipt of the complaint by the department.

(C) The department may not investigate a complaint under this subsection (1)(a)(iv) in the event of unforeseeable emergency circumstances or if the hospital, after consultation with the nurse staffing committee, documents it has made reasonable efforts to obtain staffing to meet required assignments but has been unable to do so.

(b) After an investigation conducted under (a) of this subsection, if the department determines that there has been a violation, the department shall require the hospital to submit a corrective plan of action within forty-five days of the presentation of findings from the department to the hospital.

(2) In the event that a hospital fails to submit or submits but fails to follow such a corrective plan of action in response to a violation or violations found by the department based on a complaint filed pursuant to subsection (1) of this section, the department may impose, for all violations asserted against a hospital at any time, a civil penalty of one hundred dollars per day until the hospital submits or begins to follow a corrective plan of action or takes other action agreed to by the department.

(3) The department shall maintain for public inspection records of any civil penalties, administrative actions, or license suspensions or revocations imposed on hospitals under this section.

(4) For purposes of this section, "unforeseeable emergency circumstance" means:

(a) Any unforeseen national, state, or municipal emergency;

(b) When a hospital disaster plan is activated;

(c) Any unforeseen disaster or other catastrophic event that substantially affects or increases the need for health care services; or

(d) When a hospital is diverting patients to another hospital or hospitals for treatment or the hospital is receiving patients who are from another hospital or hospitals.

(5) Nothing in this section shall be construed to preclude the ability to otherwise submit a complaint to the department for failure to follow RCW 70.41.420.

(6) The department shall submit a report to the legislature on December 31, 2020. This report shall include the number of complaints submitted to the department under this section, the disposition of these complaints, the number of investigations conducted, the associated costs for complaint investigations, and recommendations for any needed statutory changes. The department shall also project, based on experience, the impact, if any, on hospital licensing fees over the next four years. Prior to the submission of the report, the secretary shall convene a stakeholder group consisting of the Washington state hospital association, the Washington state nurses association, service employees international union healthcare 1199NW, and united food and commercial workers 21. The stakeholder group shall review the report prior to its submission to review findings and jointly develop any legislative recommendations to be included in the report.

(7) No fees shall be increased to implement chapter 249, Laws of 2017 prior to July 1, 2021. [2017 c 249 § 3.]

**Findings—2017 c 249:** "The legislature finds that:

(1) Research demonstrates that registered nurses play a critical role in improving patient safety and quality of care;

(2) Appropriate staffing of hospital personnel including registered nurses available for patient care assists in reducing errors, complications, and adverse patient care events and can improve staff safety and satisfaction and reduce incidences of workplace injuries;

(3) Health care professional, technical, and support staff comprise vital components of the patient care team, bringing their particular skills and services to ensuring quality patient care;

(4) Assuring sufficient staffing of hospital personnel, including registered nurses, is an urgent public policy priority in order to protect patients and support greater retention of registered nurses and safer working conditions; and

(5) Steps should be taken to promote evidence-based nurse staffing and increase transparency of health care data and decision making based on the data." [2017 c 249 § 1.]

**Expiration date—2017 c 249:** "This act expires June 1, 2023." [2017 c 249 § 4.]

**Short title—2017 c 249:** "This act may be known and cited as the Washington state patient safety act." [2017 c 249 § 5.]

**70.41.430 Prevention and control of the transmission of pathogens of epidemiological concern—Policy adoption—Reporting—Definitions.** (1) Each hospital licensed under this chapter shall, by January 1, 2023, adopt a policy regarding prevention and control of the transmission of pathogens of epidemiological concern. The policy shall, at a minimum, contain the following elements:

(a) A facility risk assessment to identify pathogens of epidemiological concern that considers elements such as the probability of occurrence as determined via surveillance, potential impact, and measures the hospital has implemented to mitigate the risk to patients, health care workers, and visitors; and

(b) Appropriate evidence-based procedures and intervention strategies to identify and help prevent patients from transmitting pathogens of epidemiological concern to other patients and health care workers.

(2) A hospital that has identified through appropriate testing a patient who has a pathogen of epidemiological concern that is required to be reported to the national healthcare safety network of the United States centers for disease control and prevention shall report the event as required by the United States centers for medicare and medicaid services.

(3) For the purposes of this section "pathogens of epidemiological concern" means infectious agents that have one or more of the following characteristics:

(a) A propensity for transmission within health care facilities based on published reports from the centers for disease control and prevention and the occurrence of temporal or geographic clusters of two or more patients;

(b) Antimicrobial resistance implications;

(c) Association with serious clinical disease or increased morbidity and mortality; or

(d) A newly discovered or reemerging pathogen. [2022 c 207 § 2; 2009 c 244 § 1.]

**Finding—2022 c 207:** "The legislature finds that a singular focus on methicillin-resistant staphylococcus aureus does not reflect the reality that there are many more pathogens of epidemiological concern. Modernization of state law is needed. Hospitals must prepare and respond effectively to pathogens of epidemiological concern within their facilities through a broad facility risk assessment that identifies pathogens of epidemiological concern that pose risks to patients, health care workers, and visitors. Department of health oversight and surveys will ensure risk assessments are appropriate and current. Lab identified pathogens must be reported to the national healthcare safety network of the United States centers for disease control and prevention pursuant to requirements from the centers for medicare and medicaid services." [2022 c 207 § 1.]

**70.41.440 Duty to report violent injuries—Preservation of evidence—Immunity—Privilege.** (1) A hospital shall report to a local law enforcement authority as soon as reasonably possible, taking into consideration a patient's emergency care needs, when the hospital provides treatment for a bullet wound, gunshot wound, or stab wound to a patient. A hospital shall establish a written policy to identify the person or persons responsible for making the report.

(2) The report required under subsection (1) of this section must include the following information, if known:

(a) The name, residence, sex, and age of the patient;

(b) Whether the patient has received a bullet wound, gunshot wound, or stab wound; and

(c) The name of the health care provider providing treatment for the bullet wound, gunshot wound, or stab wound.

(3) Nothing in this section shall limit a person's duty to report under RCW 26.44.030 or 74.34.035.

(4) Any bullets, clothing, or other foreign objects that are removed from a patient for whom a hospital is required to make a report pursuant to subsection (1) of this section shall be preserved and kept in custody in such a way that the identity and integrity thereof are reasonably maintained until the bullets, clothing, or other foreign objects are taken into possession by a law enforcement authority or the hospital's normal period for retention of such items expires, whichever occurs first.

(5) Any hospital or person who in good faith, and without gross negligence or willful or wanton misconduct, makes a report required by this section, cooperates in an investigation or criminal or judicial proceeding related to such report,

or maintains bullets, clothing, or other foreign objects, or provides such items to a law enforcement authority as described in subsection (4) of this section, is immune from civil or criminal liability or professional licensure action arising out of or related to the report and its contents or the absence of information in the report, cooperation in an investigation or criminal or judicial proceeding, and the maintenance or provision to a law enforcement authority of bullets, clothing, or other foreign objects under subsection (4) of this section.

(6) The physician-patient privilege described in RCW 5.60.060(4), the registered nurse-patient privilege described in RCW 5.62.020, and any other health care provider-patient privilege created or recognized by law are not a basis for excluding as evidence in any criminal proceeding any report, or information contained in a report made under this section.

(7) All reporting, preservation, or other requirements of this section are secondary to patient care needs and may be delayed or compromised without penalty to the hospital or person required to fulfill the requirements of this section.

(8) If the patient states his or her injury is the result of domestic violence, the hospital shall follow its established processes to inform the patient of resources to assure the safety of the patient and his or her family. [2013 c 252 § 1; 2009 c 359 § 2.]

**70.41.450 Estimated charges of hospital services—Notice.** Hospitals licensed under this chapter shall post a sign in patient registration areas containing at least the following language: "Information about the estimated charges of your hospital services is available upon request. Please do not hesitate to ask for information." [2009 c 529 § 2.]

**70.41.460 Contract with department of corrections.** As a condition of licensure, a hospital must contract with the department of corrections pursuant to RCW 72.10.030. [2012 c 237 § 3.]

**70.41.470 Information to be made widely available by certain hospitals—Community health needs assessment—Description of community served—Community benefit implementation strategy.** (1) As of January 1, 2013, each hospital that is recognized by the internal revenue service as a 501(c)(3) nonprofit entity must make its federally required community health needs assessment widely available to the public and submit it to the department within fifteen days of submission to the internal revenue service. Following completion of the initial community health needs assessment, each hospital in accordance with the internal revenue service shall complete and make widely available to the public and submit to the department an assessment once every three years. The department must post the information submitted to it pursuant to this subsection on its website.

(2)(a) Unless contained in the community health needs assessment under subsection (1) of this section, a hospital subject to the requirements under subsection (1) of this section shall make public and submit to the department a description of the community served by the hospital, including both a geographic description and a description of the general population served by the hospital; and demographic information such as leading causes of death, levels of chronic illness, and descriptions of the medically underserved, low-income, and minority, or chronically ill populations in the community.

(b)(i) Beginning July 1, 2022, a hospital, other than a hospital designated by medicare as a critical access hospital or sole community hospital, that is subject to the requirements under subsection (1) of this section must annually submit to the department an addendum which details information about activities identified as community health improvement services with a cost of $5,000 or more. The addendum must include the type of activity, the method in which the activity was delivered, how the activity relates to an identified community need in the community health needs assessment, the target population for the activity, strategies to reach the target population, identified outcome metrics, the cost to the hospital to provide the activity, the methodology used to calculate the hospital's costs, and the number of people served by the activity. If a community health improvement service is administered by an entity other than the hospital, the other entity must be identified in the addendum.

(ii) Beginning July 1, 2022, a hospital designated by medicare as a critical access hospital or sole community hospital that is subject to the requirements under subsection (1) of this section must annually submit to the department an addendum which details information about the 10 highest cost activities identified as community health improvement services. The addendum must include the type of activity, the method in which the activity was delivered, how the activity relates to an identified community need in the community health needs assessment, the target population for the activity, strategies to reach the target population, identified outcome metrics, the cost to the hospital to provide the activity, the methodology used to calculate the hospital's costs, and the number of people served by the activity. If a community health improvement service is administered by an entity other than the hospital, the other entity must be identified in the addendum.

(iii) The department shall require the reporting of demographic information about participant race, ethnicity, any disability, gender identity, preferred language, and zip code of primary residency. The department, in consultation with interested entities, may revise the required demographic information according to an established six-year review cycle about participant race, ethnicity, disabilities, gender identity, preferred language, and zip code of primary residence that must be reported under (b)(i) and (ii) of this subsection (2). At a minimum, the department's consultation process shall include community organizations that provide community health improvement services, communities impacted by health inequities, health care workers, hospitals, and the governor's interagency coordinating council on health disparities. The department shall establish a six-year cycle for the review of the information requested under this subsection (2)(b)(iii).

(iv) The department shall provide guidance on participant data collection and the reporting requirements under this subsection (2)(b). The guidance shall include a standard form for the reporting of information under this subsection (2)(b). The standard form must allow for the reporting of community health improvement services that are repeated within a reporting period to be combined within the addendum as a single project with the number of instances of the services listed. The department must develop the guidelines in consul-

tation with interested entities, including an association representing hospitals in Washington, labor unions representing workers who work in hospital settings, and community health board associations. The department must post the information submitted to it pursuant to this subsection (2)(b) on its website.

(3)(a) Each hospital subject to the requirements of subsection (1) of this section shall make widely available to the public a community benefit implementation strategy within one year of completing its community health needs assessment. In developing the implementation strategy, hospitals shall consult with community-based organizations and stakeholders, and local public health jurisdictions, as well as any additional consultations the hospital decides to undertake. Unless contained in the implementation strategy under this subsection (3)(a), the hospital must provide a brief explanation for not accepting recommendations for community benefit proposals identified in the assessment through the stakeholder consultation process, such as excessive expense to implement or infeasibility of implementation of the proposal.

(b) Implementation strategies must be evidence-based, when available; or development and implementation of innovative programs and practices should be supported by evaluation measures.

(4) When requesting demographic information under subsection (2)(b) of this section, a hospital must inform participants that providing the information is voluntary. If a hospital fails to report demographic information under subsection (2)(b) of this section because a participant refused to provide the information, the department may not take any action against the hospital for failure to comply with reporting requirements or other licensing standards on that basis.

(5) For the purposes of this section, the term "widely available to the public" has the same meaning as in the internal revenue service guidelines. [2021 c 162 § 5; 2012 c 103 § 1.]

**70.41.480 Findings—Intent—Authority to prescribe prepackaged emergency medications—Definitions.** (1) The legislature finds that high quality, safe, and compassionate health care services for patients of Washington state must be available at all times. The legislature further finds that there is a need for patients being released from hospital emergency departments to maintain access to emergency medications when community or hospital pharmacy services are not available, including medication for opioid overdose reversal and for the treatment for opioid use disorder as appropriate. It is the intent of the legislature to accomplish this objective by allowing practitioners with prescriptive authority to prescribe limited amounts of prepackaged emergency medications to patients being discharged from hospital emergency departments when access to community or outpatient hospital pharmacy services is not otherwise available.

(2) A hospital may allow a practitioner to prescribe prepackaged emergency medications and allow a practitioner or a registered nurse licensed under chapter 18.79 RCW to distribute prepackaged emergency medications to patients being discharged from a hospital emergency department in the following circumstances:

(a) During times when community or outpatient hospital pharmacy services are not available within 15 miles by road; or

(b) When, in the judgment of the practitioner and consistent with hospital policies and procedures, a patient has no reasonable ability to reach the local community or outpatient pharmacy.

(3) A hospital may only allow this practice if: The director of the hospital pharmacy, in collaboration with appropriate hospital medical staff, develops policies and procedures regarding the following:

(a) Development of a list, preapproved by the pharmacy director, of the types of emergency medications to be prepackaged and distributed;

(b) Assurances that emergency medications to be prepackaged pursuant to this section are prepared by a pharmacist or under the supervision of a pharmacist licensed under chapter 18.64 RCW;

(c) Development of specific criteria under which emergency prepackaged medications may be prescribed and distributed consistent with the limitations of this section;

(d) Assurances that any practitioner authorized to prescribe prepackaged emergency medication or any nurse authorized to distribute prepackaged emergency medication is trained on the types of medications available and the circumstances under which they may be distributed;

(e) Procedures to require practitioners intending to prescribe prepackaged emergency medications pursuant to this section to maintain a valid prescription either in writing or electronically in the patient's records prior to a medication being distributed to a patient;

(f) Establishment of a limit of no more than a 48 hour supply of emergency medication as the maximum to be dispensed to a patient, except when community or hospital pharmacy services will not be available within 48 hours. In no case may the policy allow a supply exceeding 96 hours be dispensed;

(g) Assurances that prepackaged emergency medications will be kept in a secure location in or near the emergency department in such a manner as to preclude the necessity for entry into the pharmacy; and

(h) Assurances that nurses or practitioners will distribute prepackaged emergency medications to patients only after a practitioner has counseled the patient on the medication.

(4) The delivery of a single dose of medication for immediate administration to the patient is not subject to the requirements of this section.

(5) Nothing in this section restricts the authority of a practitioner in a hospital emergency department to distribute opioid overdose reversal medication under RCW 69.41.095.

(6) A practitioner or a nurse in a hospital emergency department must dispense or distribute opioid overdose reversal medication in compliance with RCW 70.41.485.

(7) For purposes of this section:

(a) "Emergency medication" means any medication commonly prescribed to emergency department patients, including those drugs, substances or immediate precursors listed in schedules II through V of the uniform controlled substances act, chapter 69.50 RCW, as now or hereafter amended.

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

(c) "Opioid overdose reversal medication" has the same meaning as provided in RCW 69.41.095.

(d) "Practitioner" means any person duly authorized by law or rule in the state of Washington to prescribe drugs as defined in RCW 18.64.011(29).

(e) "Nurse" means a registered nurse or licensed practical nurse as defined in chapter 18.79 RCW. [2022 c 25 § 1; 2021 c 273 § 2; 2019 c 314 § 18; 2015 c 234 § 1.]

**Effective date—2022 c 25:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 11, 2022]." [2022 c 25 § 2.]

**Effective date—2021 c 273 §§ 2-4:** "Sections 2 through 4 of this act take effect January 1, 2022." [2021 c 273 § 14.]

**Findings—Intent—2021 c 273:** "(1) The legislature finds that:

(a) Opioid use disorder is a treatable brain disease from which people recover;

(b) Individuals living with opioid use disorder are at high risk for fatal overdose;

(c) Overdose deaths are preventable with lifesaving opioid overdose reversal medications like naloxone;

(d) Just as individuals with life-threatening allergies should carry an EpiPen, individuals with opioid use disorder should carry opioid overdose reversal medication;

(e) There are 53,000 individuals in Washington enrolled in apple health, Washington's medicaid program, that have a diagnosis of opioid use disorder and yet there are alarmingly few medicaid claims for opioid overdose reversal medication; and

(f) Most of the opioid overdose reversal medication distributed in Washington is currently paid for with flexible federal and state dollars and distributed in bulk, rather than appropriately billed to a patient's insurance. Those finite flexible funds should instead be used for nonmedicaid eligible expenses or for opioid overdose reversal medication distributed in nonmedicaid eligible settings or to nonmedicaid eligible persons. The state's current methods for acquisition and distribution of opioid overdose reversal medication are not sustainable and insufficient to reach all Washingtonians living with opioid use disorder.

(2) Therefore, it is the intent of the legislature to increase access for all individuals with opioid use disorder to opioid overdose reversal medication so that if they experience an overdose, they will have a second chance. As long as there is breath, there is hope for recovery." [2021 c 273 § 1.]

**Declaration—2019 c 314:** See note following RCW 18.22.810.

**Effective date—2015 c 234 § 1:** "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2015]." [2015 c 234 § 5.]

**70.41.485 Opioid overdose reversal medications—Distribution—Labeling—Liability.** (1) A hospital shall provide a person who presents to an emergency department with symptoms of an opioid overdose, opioid use disorder, or other adverse event related to opioid use with opioid overdose reversal medication upon discharge, unless the treating practitioner determines in their clinical and professional judgment that dispensing or distributing opioid overdose reversal medication is not appropriate or the practitioner has confirmed that the patient already has opioid overdose reversal medication. If the hospital dispenses or distributes opioid overdose reversal medication it must provide directions for use.

(2) The opioid overdose reversal medication may be dispensed with technology used to dispense medications.

(3) A person who is provided opioid overdose reversal medication under this section must be provided information and resources about medication for opioid use disorder and harm reduction strategies and services which may be available, such as substance use disorder treatment services and substance use disorder peer counselors. This information should be available in all languages relevant to the communities that the hospital serves.

(4) The labeling requirements of RCW 69.41.050 and 18.64.246 do not apply to opioid overdose reversal medications dispensed or distributed in accordance with this section.

(5) Until the opioid overdose reversal medication bulk purchasing and distribution program established in RCW 70.14.170 is operational:

(a) If the patient is enrolled in a medical assistance program under chapter 74.09 RCW, the hospital must bill the patient's medicaid benefit for the patient's opioid overdose reversal medication utilizing the appropriate billing codes established by the health care authority. This billing must be separate from and in addition to the payment for the other services provided during the hospital visit.

(b) If the patient has available health insurance coverage other than medical assistance under chapter 74.09 RCW, the hospital must bill the patient's health plan for the cost of the opioid overdose reversal medication.

(c) For patients who are not enrolled in medical assistance and do not have any other available insurance coverage, the hospital must bill the health care authority for the cost of the patient's opioid overdose reversal medication.

(6) This section does not prohibit a hospital from dispensing opioid overdose reversal medication to a patient at no cost to the patient out of the hospital's prepurchased supply.

(7) Nothing in this section prohibits or modifies a hospital's ability or responsibility to bill a patient's health insurance or to provide financial assistance as required by state or federal law.

(8) A hospital, its employees, and its practitioners are immune from suit in any action, civil or criminal, or from professional or other disciplinary action, for action or inaction in compliance with this section.

(9) For purposes of this section:

(a) "Opioid overdose reversal medication" has the meaning provided in RCW 69.41.095.

(b) "Practitioner" has the meaning provided in RCW 18.64.011. [2021 c 273 § 3.]

**Effective date—2021 c 273 §§ 2-4:** See note following RCW 70.41.480.

**Findings—Intent—2021 c 273:** See note following RCW 70.41.480.

**70.41.490 Authorization for certain transfers of drugs between hospitals and their affiliated companies.** (1) The legislature recognizes that in order for hospitals to ensure drugs are accessible to patients and the public to meet hospital and community health care needs, certain transfers of drugs must be authorized between hospitals and their affiliated or related companies under common ownership and control of the corporate entity and for emergency medical reasons.

(2) A licensed hospital pharmacy is permitted, without a wholesaler license, to:

(a) Engage in intracompany sales, being defined as any transaction or transfer between any division, subsidiary, parent company, affiliated company, or related company under

common ownership and control of the corporate entity, unless the transfer occurs between a wholesale distributor and a health care entity or practitioner; and

(b) Sell, purchase, or trade a drug or offer to sell, purchase, or trade a drug for emergency medical reasons. For the purposes of this subsection, "emergency medical reasons" includes transfers of prescription drugs to alleviate a temporary shortage, except that the gross dollar value of the transfers may not exceed five percent of the total prescription drug sale revenue of either the transferor or transferee pharmacy during any twelve consecutive month period. [2015 c 234 § 2.]

**70.41.500 Down syndrome—Parent information.** A hospital that provides a parent with a positive prenatal or postnatal diagnosis of Down syndrome shall provide the parent with the information prepared by the department under RCW 43.70.738 at the time the hospital provides the parent with the Down syndrome diagnosis. [2016 c 70 § 9.]

**70.41.510 Pattern of balance billing protection act violations by hospital—Fines and disciplinary action.** If the insurance commissioner reports to the department that he or she has cause to believe that a hospital has engaged in a pattern of violations of RCW 48.49.020 or 48.49.030, and the report is substantiated after investigation, the department may levy a fine upon the hospital in an amount not to exceed one thousand dollars per violation and take other formal or informal disciplinary action as permitted under the authority of the department. [2019 c 427 § 18.]

**Findings—Intent—Effective date—2019 c 427:** See RCW 48.49.003 and 48.49.900.

**70.41.520 Access to care policies for admission, nondiscrimination, and reproductive health care—Requirement to submit, post on website, and use department-created form.** (1) By September 1, 2019, every hospital must submit to the department its policies related to access to care regarding:

(a) Admission;

(b) Nondiscrimination; and

(c) Reproductive health care.

(2) The department shall post a copy of the policies received under subsection (1) of this section on its website.

(3) If a hospital makes changes to any of the policies listed under subsection (1) of this section, it must submit a copy of the changed policy to the department within thirty days after the hospital approves the changes.

(4) A hospital must post a copy of the policies provided to the department under subsection (1) of this section and the form required under subsection (5) of this section to the hospital's own website in a location where the policies are readily accessible to the public without a required login or other restriction.

(5) By September 1, 2019, the department shall, in consultation with stakeholders including a hospital association and patient advocacy groups, develop a simple and clear form to be submitted by hospitals along with the policies required in subsection (1) of this section. The form must provide the public with specific information about which reproductive health care services are and are not generally available at each hospital. The form must include contact information for the hospital in case patients have specific questions about services available at the hospital. [2019 c 399 § 4.]

**Findings—Short title—2019 c 399:** See notes following RCW 74.09.875.

**Recommendations—Preexposure and postexposure prophylaxis financial support awareness—2019 c 399:** See note following RCW 48.43.072.

**70.41.530 Audio-only telemedicine—Facility fees.** A hospital that is an originating site or distant site for audio-only telemedicine may not charge a facility fee. [2022 c 126 § 1.]

**70.41.900 Severability—1955 c 267.** If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part can then be administered for the purpose of establishing and maintaining standards for hospitals. [1955 c 267 § 21.]

## Chapter 70.42 RCW
## MEDICAL TEST SITES

Sections



**70.42.005 Intent—Construction.** The legislature intends that medical test sites meet criteria known to promote accurate and reliable analysis, thus improving health care through uniform test site licensure and regulation including quality control, quality assurance, and proficiency testing. The legislature also intends to meet the requirements of federal laws licensing and regulating medical testing.

The legislature intends that nothing in this chapter shall be interpreted to place any liability whatsoever on the state for the action or inaction of test sites or test site personnel. The legislature further intends that nothing in this chapter shall be interpreted to expand the state's role regarding medi-

cal testing beyond the provisions of this chapter. [1989 c 386 § 1.]

**70.42.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

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

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

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

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

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

(8) "Test site" means any facility or site, public or private, which analyzes materials derived from the human body for the purposes of health care, treatment, or screening. A test site does not mean a facility or site, including a residence, where a test approved for home use by the federal food and drug administration is used by an individual to test himself or herself without direct supervision or guidance by another and where this test is not part of a commercial transaction. [1989 c 386 § 2.]

***Reviser's note:** 1989 1st ex.s. c 14 created the department of health.

**70.42.020 License required.** After July 1, 1990, no person may advertise, operate, manage, own, conduct, open, or maintain a test site without first obtaining a license for the tests to be performed, except as provided in RCW 70.42.030. [1989 c 386 § 3.]

**70.42.030 Waiver of license—Conditions.** (1) As a part of the application for licensure, a test site may request a waiver from licensure under this chapter if the test site performs only examinations which are determined to have insignificant risk of an erroneous result, including those which (a) are approved by the federal food and drug administration for home use; (b) are so simple and accurate as to render the likelihood of erroneous results negligible; or (c) pose no reasonable risk of harm to the patient if performed incorrectly.

(2) The department shall determine by rule which tests meet the criteria in subsection (1) of this section and shall be exempt from coverage of this chapter. The standards applied in developing the list shall be consistent with federal law and regulations.

(3) The department shall grant a waiver from licensure for two years for a valid request based on subsections (1) and (2) of this section.

(4) Any test site which has received a waiver under subsection (3) of this section shall report to the department any changes in the type of tests it intends to perform thirty days in advance of the changes. In no case shall a test site with a waiver perform tests which require a license under this chapter. [1989 c 386 § 4.]

**70.42.040 Sites approved under federal law—Automatic licensure.** Test sites accredited, certified, or licensed by an organization or agency approved by the department consistent with federal law and regulations shall receive a license under RCW 70.42.110. [1989 c 386 § 5.]

**70.42.050 Permission to perform tests not covered by license—License amendment.** A licensee that desires to perform tests for which it is not currently licensed shall notify the department. To the extent allowed by federal law and regulations, upon notification and pending the department's determination, the department shall grant the licensee temporary permission to perform the additional tests. The department shall amend the license if it determines that the licensee meets all applicable requirements. [1989 c 386 § 6.]

**70.42.060 Quality control, quality assurance, recordkeeping, and personnel standards.** The department shall adopt standards established in rule governing test sites for quality control, quality assurance, recordkeeping, and personnel consistent with federal laws and regulations. "Recordkeeping" for purposes of this chapter means books, files, or records necessary to show compliance with the quality control and quality assurance requirements adopted by the department. [1989 c 386 § 7.]

**70.42.070 Proficiency testing program.** (1) Except where there is no reasonable proficiency test, each licensed test site must participate in a department-approved proficiency testing program appropriate to the test or tests which it performs. The department may approve proficiency testing programs offered by private or public organizations when the program meets the standards set by the department. Testing shall be conducted quarterly except as otherwise provided for in rule.

(2) The department shall establish proficiency testing standards by rule which include a measure of acceptable performance for tests, and a system for grading proficiency testing performance for tests. The standards may include an evaluation of the personnel performing tests. [1989 c 386 § 8.]

**70.42.080 Test site supervisor.** A test site shall have a designated test site supervisor who shall meet the qualifications determined by the department in rule. The designated test site supervisor shall be responsible for the testing functions of the test site. [1989 c 386 § 9.]

**70.42.090 Fees—Account.** (1) The department shall establish a schedule of fees for license applications, renewals, amendments, and waivers. In fixing said fees, the department shall set the fees at a sufficient level to defray the cost of administering the licensure program. All such fees shall be fixed by rule adopted in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. In determining the fee schedule, the department shall consider the following: (a) Complexity of the license required; (b) number and type of tests performed at the test site; (c) degree of supervision required from the department staff; (d) whether the license is granted under RCW 70.42.040; and (e) general administrative costs of the test site licensing program established under this chapter. For each category of license, fees charged shall be related to program costs.

(2) The medical test site licensure account is created in the state treasury. The state treasurer shall transfer into the medical test site licensure account all revenue received from medical test site license fees. Funds for this account may only be appropriated for the support of the activities defined under this chapter. For the 2013-2015 fiscal biennium, moneys in the account may be spent for laboratory services in the department of health.

(3) The department may establish separate fees for repeat inspections and repeat audits it performs under RCW 70.42.170. [2013 2nd sp.s. c 4 § 988; 1989 c 386 § 10.]

**Effective dates—2013 2nd sp.s. c 4:** See note following RCW 2.68.020.

**70.42.100 Applicants—Requirements.** An applicant for issuance or renewal of a medical test site license shall:

(1) File a written application on a form provided by the department;

(2) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(3) Cooperate with any on-site review which may be conducted by the department prior to licensure or renewal. [1989 c 386 § 11.]

**70.42.110 Issuance of license—Renewal.** Upon receipt of an application for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. All persons operating test sites before July 1, 1990, shall submit applications by July 1, 1990. A license issued under this chapter shall not be transferred or assigned without thirty days' prior notice to the department and the department's timely approval. A license, unless suspended or revoked, shall be effective for a period of two years. The department may establish penalty fees or take other appropriate action pursuant to this chapter for failure to apply for licensure or renewal as required by this chapter. [1989 c 386 § 12.]

**70.42.120 Denial of license.** Under this chapter, and chapter 34.05 RCW, the department may deny a license to any applicant who:

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

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

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

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

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

(6) Misrepresented, or was fraudulent in, any aspect of the applicant's business. [1989 c 386 § 13.]

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

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

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

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

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

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

(6) Misrepresented, or was fraudulent in, any aspect of the licensee's business. [1989 c 386 § 14.]

**70.42.140 Suspension of license.** Under this chapter, and chapter 34.05 RCW, the department may suspend the license of any licensee who:

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

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

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

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

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

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

(7) Used false or fraudulent advertising; or

(8) Failed to pay any civil monetary penalty assessed by the department under this chapter within twenty-eight days after the assessment becomes final. [1989 c 386 § 15.]

**70.42.150 Revocation of license.** Under this chapter, and chapter 34.05 RCW, the department may revoke the license of any licensee who:

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

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

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

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

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

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

(7) Used false or fraudulent advertising; or

(8) Failed to pay any civil monetary penalty assessed by the department pursuant to this chapter within twenty-eight days after the assessment becomes final.

The department may summarily revoke a license when it finds continued licensure of a test site immediately jeopardizes the public health, safety, or welfare. [1989 c 386 § 16.]

**70.42.160 Penalties—Acts constituting violations.** Under this chapter, and chapter 34.05 RCW, the department may assess monetary penalties of up to ten thousand dollars per violation in addition to or in lieu of conditioning, suspending, or revoking a license. A violation occurs when a licensee:

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

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

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

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

(5) Willfully prevents or interferes with preservation of evidence of any known violation of this chapter or the rules adopted under this chapter;

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

(7) Uses advertising which is false or fraudulent.

Each day of a continuing violation is a separate violation. [1989 c 386 § 17.]

**70.42.162 Pattern of balance billing protection act violations by medical test site—Fines and disciplinary action.** If the insurance commissioner reports to the department that he or she has cause to believe that a medical testing [test] site has engaged in a pattern of violations of RCW 48.49.020 or 48.49.030, and the report is substantiated after investigation, the department may levy a fine upon the medical testing [test] site in an amount not to exceed one thousand dollars per violation and take other formal or informal disciplinary action as permitted under the authority of the department. [2019 c 427 § 20.]

**Findings—Intent—Effective date—2019 c 427:** See RCW 48.49.003 and 48.49.900.

**70.42.170 On-site reviews.** The department may at any time conduct an on-site review of a licensee or applicant in order to determine compliance with this chapter. When the department has reason to believe a waivered site is conducting tests requiring a license, the department may conduct an on-site review of the waivered site in order to determine compliance. The department may also examine and audit records necessary to determine compliance with this chapter. The right to conduct an on-site review and audit and examination of records shall extend to any premises and records of persons whom the department has reason to believe are opening, owning, conducting, maintaining, managing, or otherwise operating a test site without a license.

Following an on-site review, the department shall give written notice of any violation of this chapter or the rules adopted under this chapter. The notice shall describe the reasons for noncompliance and inform the licensee or applicant or test site operator that it shall comply within a specified reasonable time. If the licensee or applicant or test site operator fails to comply, the department may take disciplinary action under RCW 70.42.120 through 70.42.150, or further action as authorized by this chapter. [1989 c 386 § 18.]

**70.42.180 Operating without a license—Injunctions or other remedies—Penalty.** Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the advertising, operating, maintaining, managing, or opening of a test site without a license under this chapter. It is a misdemeanor to own, operate, or maintain a test site without a license. [1989 c 386 § 19.]

**70.42.190 Petition of superior court for review of disciplinary action.** Any test site which has had a denial, condition, suspension, or revocation of its license, or a civil monetary penalty upheld after administrative review under chapter 34.05 RCW, may, within sixty days of the administrative determination, petition the superior court for review of the decision. [1989 c 386 § 20.]

**70.42.200 Persons who may not own or operate test site.** No person who has owned or operated a test site that has had its license revoked may own or operate a test site within two years of the final adjudication of a license revocation. [1989 c 386 § 21.]

**70.42.210 Confidentiality of certain information.** All information received by the department through filed reports, audits, or on-site reviews, as authorized under this chapter

shall not be disclosed publicly in any manner that would identify persons who have specimens of material from their bodies at a test site, absent a written release from the person, or a court order. [1989 c 386 § 22.]

**70.42.220 Rules.** The department shall adopt rules under chapter 34.05 RCW necessary to implement the purposes of this chapter. [1989 c 386 § 23.]

**70.42.900 Effective dates—1989 c 386.** (1) RCW 70.42.005 through 70.42.210 shall take effect July 1, 1990.

(2) RCW 70.42.220 is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989. [1989 c 386 § 25.]

## Chapter 70.43 RCW
## HOSPITAL STAFF MEMBERSHIP OR PRIVILEGES

Sections



**70.43.010 Applications for membership or privileges—Standards and procedures.** Within one hundred eighty days of June 11, 1986, the governing body of every hospital licensed under chapter 70.41 RCW shall set standards and procedures to be applied by the hospital and its medical staff in considering and acting upon applications for staff membership or professional privileges. [1986 c 205 § 1.]

**70.43.020 Applications for membership or privileges—Discrimination based on type of license prohibited—Exception.** The governing body of any hospital, except any hospital which employs its medical staff, in considering and acting upon applications for staff membership or professional privileges within the scope of the applicants' respective licenses, shall not discriminate against a qualified person solely on the basis of whether such person is licensed under chapters 18.71, 18.57, or 18.22 RCW. [1986 c 205 § 2.]

**70.43.030 Violations of RCW 70.43.010 or 70.43.020—Injunctive relief.** Any person may apply to superior court for a preliminary or permanent injunction restraining a violation of RCW 70.43.010 or 70.43.020. This action is an additional remedy not dependent on the adequacy of the remedy at law. Nothing in this chapter shall require a hospital to grant staff membership or professional privileges until a final determination is made upon the merits by the hospital governing body. [1986 c 205 § 3.]

## Chapter 70.44 RCW
## PUBLIC HOSPITAL DISTRICTS

Sections



*County hospitals: Chapter 36.62 RCW.*

*Limitation of indebtedness prescribed: RCW 39.36.020.*

*Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.*

**70.44.003 Purpose.** The purpose of chapter 70.44 RCW is to authorize the establishment of public hospital districts to own and operate hospitals and other health care facilities and to provide hospital services and other health care

services for the residents of such districts and other persons. [1982 c 84 § 1.]

**70.44.007 Definitions.** As used in this chapter, the following words have the meanings indicated:

(1) "Other health care facilities" means nursing home, extended care, long-term care, outpatient, and rehabilitative facilities; ambulances; facilities that promote health, wellness, and prevention of illness and injury; and such other facilities as are appropriate to the health and wellness needs of the population served.

(2) "Other health care services" means nursing home, extended care, long-term care, outpatient, rehabilitative, and ambulance services; services that promote health, wellness, and prevention of illness and injury; and such other services as are appropriate to the health needs of the population served.

(3) "Public hospital district" or "district" means public health care service district. [2018 c 134 § 1; 1997 c 332 § 15; 1982 c 84 § 12; 1974 ex.s. c 165 § 5.]

**70.44.010 Districts authorized.** Municipal corporations, to be known as public hospital districts, are hereby authorized and may be established within the several counties of the state as hereinafter provided. [1947 c 225 § 1; 1945 c 264 § 2; Rem. Supp. 1947 § 6090-31. FORMER PART OF SECTION: 1945 c 264 § 1 now codified as RCW 70.44.005.]

**70.44.015 Validation of existing districts.** Each and all of the respective areas of land heretofore attempted to be organized into public hospital districts under the provisions of this chapter are validated and declared to be duly existing hospital districts having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question, and by the files of such districts. [1955 c 135 § 2.]

**70.44.016 Validation of districts.** Each and all of the respective areas of land attempted to be organized into public hospital districts prior to June 10, 1982, under the provisions of chapter 70.44 RCW where the canvass of the election on the proposition of creating a public hospital district shows the passage of the proposition are validated and declared to be duly existing public hospital districts having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the legislative authority of the county in question, and by the files of such districts. [1982 c 84 § 10.]

**70.44.020 Resolution—Petition for countywide district—Conduct of elections.** At any general election or at any special election which may be called for that purpose, the county legislative authority of a county may, or on petition of ten percent of the registered voters of the county based on the total vote cast in the last general county election, shall, by resolution, submit to the voters of the county the proposition of creating a public hospital district coextensive with the limits of the county. The petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereon and certify to the sufficiency thereof, and for that purpose the auditor shall have access to all registration books in the possession of election officers in the county. If the petition is found to be insufficient, it shall be returned to the persons filing it, who may amend or add names thereto for ten days, when it shall be returned to the auditor, who shall have an additional fifteen days to examine it and attach the certificate thereto. No person signing the petition may withdraw his or her name therefrom after filing. When the petition is certified as sufficient, the auditor shall forthwith transmit it, together with the certificate of sufficiency attached thereto, to the county legislative authority, who shall immediately transmit the proposition to the supervisor of elections or other election officer of the county, and he or she shall submit the proposition to the voters at the next general election or if such petition so requests, shall call a special election on such proposition in accordance with RCW 29A.04.321 and 29A.04.330. The notice of the election shall state the boundaries of the proposed district and the object of the election, and shall in other respects conform to the requirements of law governing the time and manner of holding elections. In submitting the question to the voters, the proposition shall be expressed on the ballot substantially in the following terms:

For public hospital district No. . . . .
Against public hospital district No. . . . .

[2012 c 117 § 378; 1990 c 259 § 38; 1955 c 135 § 1; 1945 c 264 § 3; Rem. Supp. 1945 § 6090-32.]

**70.44.028 Limitation on legal challenges.** Unless commenced within thirty days after the date of the filing of the certificate of the canvass of an election on the proposition of creating a new public hospital district pursuant to chapter 70.44 RCW, no lawsuit whatever may be maintained challenging in any way the legal existence of such district or the validity of the proceedings had for the organization and creation thereof. If the creation of a district is not challenged within the period specified in this section, the district conclusively shall be deemed duly and regularly organized under the laws of this state. [1982 c 84 § 9.]

**70.44.030 Petition for lesser district—Procedure.** Any petition for the formation of a public hospital district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed containing not less than ten percent of the voters of the proposed district who voted at the last general election, certified by the auditor in like manner as for a countywide district, the board of county commissioners shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when such petition will be heard. Such publications required by this chapter shall be in a newspaper published in the proposed or established public hospital district, or, if there be no such newspaper, then in a newspaper published in the county in which such district is situated, and of general circulation in such county. The hearing on such petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the board of county commissioners shall find that any lands have been unjustly or improperly included

within the proposed public hospital district the said board shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public hospital district: PROVIDED, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of such lands. Thereafter the same procedure shall be followed as prescribed in this chapter for the formation of a public hospital district including an entire county, except that the petition and election shall be confined solely to the lesser public hospital district. [1945 c 264 § 4; Rem. Supp. 1945 § 6090-33.]

**70.44.035 Petition for district lying in more than one county—Procedure.** Any petition for the formation of a public hospital district may describe an area lying in more than one county, the boundaries of which shall follow the then existing precinct boundaries and not divide a voting precinct; and if a petition is filed with the county auditor of the respective counties in which a portion of the proposed district is located, containing not less than ten percent of the voters of that area of each county of the proposed district who voted at the last general election, certified by the said respective auditors in like manner as for a countywide district, the board of county commissioners of each of the counties in which a portion of the proposed district is located shall fix a date for a hearing on the petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the hearing, together with a notice stating the time of the meeting when the petition will be heard. The publication required by this chapter shall be in a newspaper published in the portion of each county lying within the proposed district, or if there be no such newspaper published in any such portion of a county, then in one published in the county wherein such portion of said district is situated, and of general circulation in the county. The hearing before the respective county commissioners may be adjourned from time to time not exceeding four weeks in all. If upon the final hearing the respective boards of county commissioners find that any land has been unjustly or improperly included within the proposed district they may change and fix the boundary lines of the portion of said district located within their respective counties in such manner as they deem reasonable and just and conducive to the welfare and convenience, and enter an order establishing and defining the boundary lines of the proposed district located within their respective counties: PROVIDED, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of the land to be so included. Thereafter the same procedure shall be followed as prescribed for the formation of a district including an entire county, except that the petition and election shall be confined solely to the portions of each county lying within the proposed district. [1953 c 267 § 1.]

**70.44.040 Elections—Commissioners, terms, districts.** (1) The provisions of Title 29A RCW relating to elections shall govern public hospital districts, except as provided in this chapter.

A public hospital district shall be created when the ballot proposition authorizing the creation of the district is approved by a simple majority vote of the voters of the proposed district voting on the proposition and the total vote cast upon the proposition exceeds forty percent of the total number of votes cast in the proposed district at the preceding state general election.

A public hospital district initially may be created with three, five, or seven commissioner districts. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three, five, or seven commissioners shall be elected from either three, five, or seven commissioner districts, or at large positions, or both, as determined by resolution of the county commissioners of the county or counties in which the proposed public hospital district is located, all in accordance with RCW 70.44.054. The election of the initial commissioners shall be null and void if the district is not authorized to be created.

No primary shall be held. A special filing period shall be opened as provided in RCW 29A.24.171 and 29A.24.181. The person receiving the greatest number of votes for the commissioner of each commissioner district or at large position shall be elected as the commissioner of that district. The terms of office of the initial public hospital district commissioners shall be staggered, with the length of the terms assigned so that the person or persons who are elected receiving the greater number of votes being assigned a longer term or terms of office and each term of an initial commissioner running until a successor assumes office who is elected at one of the next three following district general elections the first of which occurs at least one hundred twenty days after the date of the election where voters approved the ballot proposition creating the district, as follows:

(a) If the public hospital district will have three commissioners, the successor to one initial commissioner shall be elected at such first following district general election, the successor to one initial commissioner shall be elected at the second following district general election, and the successor to one initial commissioner shall be elected at the third following district general election;

(b) If the public hospital district will have five commissioners, the successor to one initial commissioner shall be elected at such first following district general election, the successors to two initial commissioners shall be elected at the second following district general election, and the successors to two initial commissioners shall be elected at the third following district general election;

(c) If the public hospital district will have seven commissioners, the successors to two initial commissioners shall be elected at such first following district general election, the successors to two initial commissioners shall be elected at the second following district general election, and the successors to three initial commissioners shall be elected at the third following district general election.

The initial commissioners shall take office immediately when they are elected and qualified. The term of office of each successor shall be six years. Each commissioner shall serve until a successor is elected and qualified and assumes office in accordance with *RCW 29A.20.040.

(2) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a

commissioner of the commissioner district. Voters of the entire public hospital district may vote at a primary or general election to elect a person as a commissioner of the commissioner district.

If the proposed public hospital district initially will have three commissioner districts and the public hospital district is countywide, and if the county has three county legislative authority districts, the county legislative authority districts shall be used as public hospital district commissioner districts. In all other instances the county auditor of the county in which all or the largest portion of the proposed public hospital district is located shall draw the initial public hospital district commissioner districts and designate at large positions, if appropriate, as provided in RCW 70.44.054. Each of the commissioner positions shall be numbered consecutively and associated with the commissioner district or at large position of the same number.

The commissioners of a public hospital district that is not coterminous with the boundaries of a county that has three county legislative authority districts shall at the times required in chapter 29A.76 RCW and may from time to time redraw commissioner district boundaries in a manner consistent with chapter 29A.76 RCW.

(3) No person may hold office as a commissioner while serving as an employee of the public hospital district. [2006 c 322 § 1; 1997 c 99 § 1; 1994 c 223 § 78; 1990 c 259 § 39; 1979 ex.s. c 126 § 41; 1957 c 11 § 1; 1955 c 82 § 1; 1953 c 267 § 2; 1947 c 229 § 1; 1945 c 264 § 5; Rem. Supp. 1947 § 6090-34.]

***Reviser's note:** RCW 29A.20.040 was recodified as RCW 29A.60.280 pursuant to 2013 c 11 § 93.

**Purpose—1979 ex.s. c 126:** See RCW 29A.60.280(1).

Additional notes found at www.leg.wa.gov

**70.44.041 Validity of appointment or election of commissioners—Compliance with 1994 c 223.** No appointment to fill a vacant position on or election to the board of commissioners of any public hospital district made after June 9, 1994, and before April 21, 1997, is deemed to be invalid solely due to the public hospital district's failure to redraw its commissioner district boundaries if necessary to comply with chapter 223, Laws of 1994. [1997 c 99 § 7.]

Additional notes found at www.leg.wa.gov

**70.44.042 Commissioner districts—Resolution to abolish—Proposition to reestablish.** Notwithstanding any provision in RCW 70.44.040 to the contrary, any board of public hospital district commissioners may, by resolution, abolish commissioner districts and permit candidates for any position on the board to reside anywhere in the public hospital district.

At any general or special election which may be called for that purpose, the board of public hospital district commissioners may, or on petition of ten percent of the voters based on the total vote cast in the last district general election in the public hospital district shall, by resolution, submit to the voters of the district the proposition to reestablish commissioner districts. [1997 c 99 § 2; 1967 c 227 § 2.]

Additional notes found at www.leg.wa.gov

**70.44.045 Commissioners—Vacancies.** A vacancy in the office of commissioner shall occur as provided in chapter 42.12 RCW or by nonattendance at meetings of the commission for sixty days, unless excused by the commission. A vacancy shall be filled as provided in chapter 42.12 RCW. [1994 c 223 § 79; 1982 c 84 § 13; 1955 c 82 § 2.]

**70.44.047 Redrawn boundaries—Assignment of commissioners to districts.** If, as the result of redrawing the boundaries of commissioner districts as permitted or required under the provisions of this chapter, chapter 29A.76 RCW, or any other statute, more than the correct number of commissioners who are associated with commissioner districts reside in the same commissioner district, a commissioner or commissioners residing in that redrawn commissioner district equal in number to the number of commissioners in excess of the correct number shall be assigned to the drawn commissioner district or districts in which less than the correct number of commissioners associated with commissioner districts reside. The commissioner or commissioners who are so assigned shall be those with the shortest unexpired term or terms of office, but if the number of such commissioners with the same terms of office exceeds the number that are to be assigned, the board of commissioners shall select by lot from those commissioners which one or ones are assigned. A commissioner who is so assigned shall be deemed to be a resident of the commissioner district to which he or she is assigned for purposes of determining whether a position is vacant. [2015 c 53 § 93; 1997 c 99 § 6.]

Additional notes found at www.leg.wa.gov

**70.44.050 Commissioners—Compensation and expenses—Insurance—Resolutions by majority vote—Officers—Rules.** Each commissioner shall receive ninety dollars for each day or portion thereof spent in actual attendance at official meetings of the district commission, or in performance of other official services or duties on behalf of the district, to include meetings of the commission of his or her own district, or meetings attended by one or more commissioners of two or more districts called to consider business common to them, except that the total compensation paid to such commissioner during any one year shall not exceed eight thousand six hundred forty dollars. The commissioners may not be compensated for services performed of a ministerial or professional nature.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioners with the same coverage. Each commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his or her subsistence and lodging and travel while away from his or her place of residence. No resolution shall be adopted without a majority vote of the

whole commission. The commission shall organize by election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning January 1, 2024, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2020 c 83 § 7; 2008 c 31 § 2; 2007 c 469 § 7; 1998 c 121 § 7; 1985 c 330 § 7; 1982 c 84 § 14; 1975 c 42 § 1; 1965 c 157 § 1; 1945 c 264 § 15; Rem. Supp. 1945 § 6090-44.]

**70.44.053 Increase in number of commissioners—Proposition to voters.** At any general or special election which may be called for that purpose the board of public hospital district commissioners may, or on petition of ten percent of the voters based on the total vote cast in the last district general election in the public hospital district shall, by resolution, submit to the voters of the district the proposition increasing the number of commissioners to either five or seven members. The petition or resolution shall specify whether it is proposed to increase the number of commissioners to either five or seven members. [1997 c 99 § 3; 1994 c 223 § 80; 1967 c 77 § 2.]

Additional notes found at www.leg.wa.gov

**70.44.054 Increase in number of commissioners—Commissioner districts.** If the voters of the district approve the ballot proposition authorizing the increase in the number of commissioners to either five or seven members, the additional commissioners shall be elected at large from the entire district; provided that, the board of commissioners of the district may by resolution redistrict the public hospital district into five commissioner districts if the district has five commissioners or seven commissioner districts if the district has seven commissioners. The board of commissioners shall draw the boundaries of each commissioner district to include as nearly as possible equal portions of the total population of the public hospital district.

If the board of commissioners increases the number of commissioner districts as provided in this section, one commissioner shall be elected from each commissioner district, and no commissioner may be elected from a commissioner district in which another commissioner resides. [1997 c 99 § 4.]

Additional notes found at www.leg.wa.gov

**70.44.056 Increase in number of commissioners—Appointments—Election—Terms.** In all existing public hospital districts in which an increase in the number of district commissioners is proposed, the additional commissioner positions shall be deemed to be vacant and the board of commissioners of the public hospital district shall appoint qualified persons to fill those vacancies in accordance with RCW 42.12.070.

Each person who is appointed shall serve until a qualified person is elected at the next general election of the district occurring one hundred twenty days or more after the date of the election at which the voters of the district approved the ballot proposition authorizing the increase in the number of commissioners. If needed, special filing periods shall be authorized as provided in RCW 29A.24.171 and 29A.24.181 for qualified persons to file for the vacant office. A primary shall be held to nominate candidates if sufficient time exists to hold a primary and more than two candidates file for the vacant office. Otherwise, no primary shall be held and the candidate receiving the greatest number of votes for each position shall be elected. Except for the initial terms of office, persons elected to each of these additional commissioner positions shall be elected to a six-year term. The newly elected commissioners shall assume office as provided in RCW 29A.60.280.

The initial terms of the new commissioners shall be staggered as follows: (1) When the number of commissioners is increased from three to five, the person elected receiving the greatest number of votes shall be elected to a six-year term of office, and the other person shall be elected to a four-year term; (2) when the number of commissioners is increased from three or five to seven, the terms of the new commissioners shall be staggered over the next three district general elections so that two commissioners will be elected at the first district general election following the election where the additional commissioners are elected, two commissioners will be at the second district general election after the election of the additional commissioners, and three commissioners will be elected at the third district general election following the election of the additional commissioners, with the persons elected receiving the greatest number of votes elected to serve the longest terms. [2015 c 53 § 94; 1997 c 99 § 5.]

Additional notes found at www.leg.wa.gov

**70.44.059 Chaplains—Authority to employ.** Public hospital districts may employ chaplains for their hospitals, health care facilities, and hospice programs. [1993 c 234 § 1.]

Additional notes found at www.leg.wa.gov

**70.44.060 Powers and duties.** All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: PROVIDED, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2) of this section.

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the municipal revenue bond act, chapter 35.41 RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 and 70.44.130, as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a fund pending deposit in such fund of money sufficient to redeem such warrants and to be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW. In connection with the issuance of bonds, a public hospital district is, in addition to its other powers, authorized to grant a lien on any or all of its property, whether then owned or thereafter acquired, including the revenues and receipts from the property, pursuant to a mortgage, deed of trust, security agreement, or any other security instrument now or hereafter authorized by applicable law: PROVIDED, That such bonds are issued in connection with a federal program providing mortgage insurance, including but not limited to the mortgage insurance programs administered by the United States department of housing and urban development pursuant to sections 232, 241, and 242 of Title II of the national housing act, as amended.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed fifty cents per thousand dollars of assessed value, and an additional annual tax on all taxable property within such public hospital district not to exceed twenty-five cents per thousand dollars of assessed value, or such further amount as has been or shall be authorized by a vote of the people. Although public hospital districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW. Public hospital districts are authorized to levy such a general tax in excess of their regular property taxes when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition or propositions to levy taxes in excess of its regular property taxes. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first day of November. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks, at least one time each week, in a newspaper printed and of general circulation in

said county. On or before the fifteenth day of November the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: PROVIDED, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians or other health care practitioners who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, which expenses may include expenses incurred by family members accompanying the candidate, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(10) To employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make all contracts useful or necessary to carry out the provisions of this chapter, including, but not limited to, (a) contracts with private or public institutions for employee retirement programs, and (b) contracts with current or prospective employees, physicians, or other health care practitioners providing for the payment or reimbursement by the public hospital district of health care training or education expenses, including but not limited to debt obligations, incurred by current or prospective employees, physicians, or other health care practitioners in return for their agreement to provide services beneficial to the public hospital district; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter.

(11) To solicit and accept gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise, and to sell, lease, exchange, invest, or expend gifts or the proceeds, rents, profits, and income therefrom, and to enter into contracts with for-profit or nonprofit organizations to support the purposes of this subsection, including, but not limited to, contracts providing for the use of district facilities, property, personnel, or services. [2011 c 37 § 1; 2010 c 95 § 1; 2003 c 125 § 1; 2001 c 76 § 1; 1997 c 3 § 206 (Referendum Bill No. 47, approved November 4, 1997); 1990 c 234 § 2; 1984 c 186 § 59; 1983 c 167 § 172; 1982 c 84 § 15; 1979 ex.s. c 155 § 1; 1979 ex.s. c 143 § 4; 1977 ex.s. c 211 § 1; 1974 ex.s. c 165 § 2; 1973 1st ex.s. c 195 § 83; 1971 ex.s. c 218 § 2; 1970 ex.s. c 56 § 85; 1969 ex.s. c 65 § 1; 1967 c 164 § 7; 1965 c 157 § 2; 1949 c 197 § 18; 1945 c 264 § 6; Rem. Supp. 1949 § 6090-35.]

**Intent—1997 c 3 §§ 201-207:** See note following RCW 84.55.010.

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**Purpose—Severability—1967 c 164:** See notes following RCW 4.96.010.

*Eminent domain*
*by cities: Chapter 8.12 RCW.*
*generally: State Constitution Art. 1 § 16.*

*Limitation on levies: State Constitution Art. 7 § 2; RCW 84.52.050.*

*Port districts, collection of taxes: RCW 53.36.020.*

*Tortious conduct of political subdivisions, municipal corporations and quasi-municipal corporations, liability for damages: Chapter 4.96 RCW.*

Additional notes found at www.leg.wa.gov

**70.44.062 Commissioners' meetings, proceedings, and deliberations concerning health care providers' clinical or staff privileges to be confidential—Final action in public session.** (1) All meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider as that term is defined in RCW 7.70.020, if such other providers at the discretion of the district's commissioners are considered for such privileges, shall be confidential and may be conducted in executive session: PROVIDED, That the final action of the board as to the denial, revocation, or restriction of clinical or staff privileges of a physician or other health care provider as defined in RCW 7.70.020 shall be done in public session.

(2) All meetings, proceedings, and deliberations of a quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200 and all meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, to review the report or the activities of a quality improvement committee established under RCW 4.24.250, 43.70.510, or 70.41.200 may, at the discretion of the quality improvement committee or the board of commissioners, be confidential and may be conducted in executive session. Any review conducted by the board of commissioners or quality improvement committee, or their staffs or agents, shall be subject to the same protections, limitations, and exemptions that apply to quality improvement committee activities under RCW 4.24.240, 4.24.250, 43.70.510, and 70.41.200. However, any final action of the board of commissioners on the report of the quality improvement committee shall be done in public session. [2005 c 169 § 1; 1985 c 166 § 1.]

**70.44.067 Community revitalization financing—Public improvements.** In addition to other authority that a

public hospital district possesses, a public hospital district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a public hospital district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 22.]

**70.44.070 Superintendent—Appointment—Removal—Compensation.** (1) The public hospital district commission shall appoint a superintendent, who shall be appointed for an indefinite time and be removable at the will of the commission. Appointments and removals shall be by resolution, introduced at a regular meeting and adopted at the same or a subsequent regular meeting by a majority vote. The superintendent shall receive such compensation as the commission shall fix by resolution.

(2) Where a public hospital district operates more than one hospital, the commission may in its discretion appoint up to one superintendent per hospital and assign among the superintendents the powers and duties set forth in RCW 70.44.080 and 70.44.090 as deemed appropriate by the commission. [2018 c 134 § 2; 1987 c 58 § 1; 1982 c 84 § 16; 1945 c 264 § 7; Rem. Supp. 1945 § 6090-36.]

**70.44.080 Superintendent—Powers.** (1) The superintendent shall be the chief administrative officer of the public district hospital and shall have control of administrative functions of the district. The superintendent shall be responsible to the commission for the efficient administration of all affairs of the district. In case of the absence or temporary disability of the superintendent a competent person shall be appointed by the commission. The superintendent shall be entitled to attend all meetings of the commission and its committees and to take part in the discussion of any matters pertaining to the district, but shall have no vote.

(2) Where the commission has appointed more than one superintendent as provided in RCW 70.44.070, the commission shall assign among the superintendents the powers set forth in this section as deemed appropriate by the commission. [1987 c 58 § 2; 1982 c 84 § 17; 1945 c 264 § 9; Rem. Supp. 1945 § 6090-38.]

**70.44.090 Superintendent—Duties.** (1) The public hospital district superintendent shall have the power, and duty:

(a) To carry out the orders of the commission, and to see that all the laws of the state pertaining to matters within the functions of the district are duly enforced.

(b) To keep the commission fully advised as to the financial condition and needs of the district. To prepare, each year, an estimate for the ensuing fiscal year of the probable expenses of the district, and to recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made, during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions. To certify to the commission all the bills, allowances and payrolls, including claims due contractors of public works. To recommend to the commission a range of salaries to be paid to district employees.

(2) Where the commission has appointed more than one superintendent as provided in RCW 70.44.070, the commission shall assign among the superintendents the duties set forth in this section as deemed appropriate by the commission. [1987 c 58 § 3; 1982 c 84 § 18; 1945 c 264 § 11; Rem. Supp. 1945 § 6090-40.]

**70.44.110 Plan to construct or improve—General obligation bonds.** Whenever the commission deems it advisable that the district acquire or construct a public hospital, or other health care facilities, or make additions or betterments thereto, or extensions thereof, it shall provide therefor by resolution, which shall specify and adopt the plan proposed, declare the estimated cost thereof, and specify the amount of indebtedness to be incurred therefor. General indebtedness may be incurred by the issuance of general obligation bonds or short-term obligations in anticipation of such bonds. General obligation bonds shall mature in not to exceed thirty years. The incurring of such indebtedness shall be subject to the applicable limitations and requirements provided in section 1, chapter 143, Laws of 1917, as last amended by section 4, chapter 107, Laws of 1967, and RCW 39.36.020, as now or hereafter amended. Such general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 60; 1974 ex.s. c 165 § 3; 1969 ex.s. c 65 § 2; 1955 c 56 § 1; 1945 c 264 § 12; Rem. Supp. 1945 § 6090-41.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**70.44.130 Bonds—Payment—Security for deposits.** The principal and interest of such general bonds shall be paid by levying each year a tax upon the taxable property within the district sufficient, together with other revenues of the district available for such purpose, to pay said interest and principal of said bonds, which tax shall be due and collectible as any other tax. All bonds and warrants issued under the authority of this chapter shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer, as security for deposits, in lieu of a surety bond, under any law relating to deposits of public moneys. [1984 c 186 § 61; 1971 ex.s. c 218 § 3; 1945 c 264 § 14; Rem. Supp. 1945 § 6090-43.]

**Purpose—1984 c 186:** See note following RCW 39.46.110.

**70.44.140 Contracts for material and work—Call for bids—Alternative procedures—Exemptions.** (1) All materials purchased and work ordered, the estimated cost of which is in excess of seventy-five thousand dollars, shall be by contract. Before awarding any such contract, the commission shall publish a notice at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work. The plans and specifications must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: PROVIDED, HOWEVER, That the commission may at the same time, and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by bidders. The notice shall state generally the work to be done, and shall call for proposals for doing the same, to be

sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications. If, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders. If the contract is let, then all bid proposal security shall be returned to the bidders, except that of the successful bidder, which is retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into the contract in accordance with the bid and furnish such bond within ten days from the date at which the bidder is notified that he or she is the successful bidder, the bid proposal security and the amount thereof shall be forfeited to the public hospital district. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to the requirements of subsection (1) of this section, a public hospital district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchases with an estimated cost of up to fifteen thousand dollars may be made using the process provided in RCW 39.04.190.

(4) The commission may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2016 c 51 § 1; 2009 c 229 § 12; 2002 c 106 § 1; 2000 c 138 § 213; 1999 c 99 § 1; 1998 c 278 § 9; 1996 c 18 § 15; 1993 c 198 § 22; 1965 c 83 § 1; 1945 c 264 § 17; Rem. Supp. 1945 § 6090-46.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

*Contractor's bond: Chapter 39.08 RCW.*

*Lien on public works, retained percentage of contractor's earnings: Chapter 60.28 RCW.*

**70.44.171 Treasurer—Duties—Funds—Depositaries—Surety bonds, cost.** The treasurer of the county in which a public hospital district is located shall be treasurer of the district, except that the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the district. If the treasurer is not the county treasurer, the commission shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

All district funds shall be paid to the treasurer and shall be disbursed by him or her only on warrants issued by an auditor appointed by the commission, upon orders or vouchers approved by it. The treasurer shall establish a public hospital district fund, into which shall be paid all district funds, and he or she shall maintain such special funds as may be created by the commission, into which he or she shall place all money as the commission may, by resolution, direct.

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries. If the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in *RCW 36.48.020 for deposit of county funds. Such surety bond or securities in lieu thereof shall be filed or deposited with the treasurer of the district, and approved by resolution of the commission.

All interest collected on district funds shall belong to the district and be deposited to its credit in the proper district funds.

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district. The district may pay the premium on such bond. [2012 c 117 § 379; 1967 c 227 § 1.]

***Reviser's note:** RCW 36.48.020 was repealed by 1984 c 177 § 21.

**70.44.185 Change of district boundary lines to allow farm units to be wholly within one hospital district—Notice.** Notwithstanding any other provision of law, including RCW 70.44.040, whenever the boundary line between contiguous hospital districts bisects an irrigation block unit placing part of the unit in one hospital district and the balance thereof in another such district, the county auditor, upon his or her approval of a request therefor after public hearing thereon, shall change the hospital district boundary lines so that the entire farm unit of the person so requesting shall be wholly in one of such hospital districts and give notice thereof to those hospital district and county officials as he or she shall deem appropriate therefor. [2012 c 117 § 380; 1971 ex.s. c 218 § 4.]

**70.44.190 Consolidation of districts.** Two or more contiguous hospital districts, whether the territory therein lies in one or more counties, may consolidate by following the procedure outlined in chapter 35.10 RCW with reference to consolidation of cities and towns. [1953 c 267 § 3.]

**70.44.200 Annexation of territory.** (1) A public hospital district may annex territory outside the existing boundaries of such district and contiguous thereto, whether the territory lies in one or more counties, in accordance with this section.

(2) A petition for annexation of territory contiguous to a public hospital district may be filed with the commission of the district to which annexation is proposed. The petition must be signed by the owners, as prescribed by *RCW

35A.01.040(9) (a) through (e), of not less than sixty percent of the area of land within the territory proposed to be annexed. Such petition shall describe the boundaries of the territory proposed to be annexed and shall be accompanied by a map which outlines the boundaries of such territory.

(3) Whenever such a petition for annexation is filed with the commission of a public hospital district, the commission may entertain the same, fix a date for public hearing thereon, and cause notice of the hearing to be published once a week for at least two consecutive weeks in a newspaper of general circulation within the territory proposed to be annexed. The notice shall also be posted in three public places within the territory proposed to be annexed, shall contain a description of the boundaries of such territory, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation.

(4) Following the hearing, if the commission of the district determines to accomplish the annexation, it shall do so by resolution. The resolution may annex all or any portion of the proposed territory but may not include in the annexation any property not described in the petition. Upon passage of the annexation resolution, the territory annexed shall become part of the district and a certified copy of such resolution shall be filed with the legislative authority of the county or counties in which the annexed property is located.

(5) If the petition for annexation and the annexation resolution so provide, as the commission may require, and such petition has been signed by the owners of all the land within the boundaries of the territory being annexed, the annexed property shall assume and be assessed and taxed to pay for all or any portion of the outstanding indebtedness of the district to which it is annexed at the same rates as other property within such district. Unless so provided in the petition and resolution, property within the boundaries of the territory annexed shall not be assessed or taxed to pay for all or any portion of the indebtedness of the district to which it is annexed that was contracted prior to or which existed at the date of annexation. In no event shall any such annexed property be released from any assessments or taxes previously levied against it or from its existing liability for the payment of outstanding bonds or warrants issued prior to such annexation.

(6) The annexation procedure provided for in this section shall be an alternative method of annexation applicable only if at the time the annexation petition is filed either there are no registered voters residing in the territory proposed to be annexed or the petition is also signed by all of the registered voters residing in the territory proposed to be annexed. [1993 c 489 § 1; 1979 ex.s. c 143 § 1; 1953 c 267 § 4.]

***Reviser's note:** RCW 35A.01.040 was amended by 2008 c 196 § 2, changing subsection (9)(e) to subsection (9)(f).

Additional notes found at www.leg.wa.gov

**70.44.210 Alternate method of annexation—Contents of resolution calling for election.** As an alternate method of annexation to public hospital districts, any territory adjacent to a public hospital district may be annexed thereto by vote of the qualified electors residing in the territory to be annexed, in the manner provided in RCW 70.44.210 through 70.44.230. An election to annex such territory may be called pursuant to a resolution calling for such an election adopted by the district commissioners.

Any resolution calling for such an election shall describe the boundaries of the territory to be annexed, state that the annexation of such territory to the public hospital district will be conducive to the welfare and benefit of the persons or property within the district and within the territory proposed to be annexed, and fix the date, time and place for a public hearing thereon which date shall be not more than sixty nor less than forty days following the adoption of such resolution. [1967 c 227 § 6.]

**70.44.220 Alternate method of annexation—Publication and contents of notice of hearing—Hearing—Resolution—Special election.** Notice of such hearing shall be published once a week for at least two consecutive weeks in one or more newspapers of general circulation within the territory proposed to be annexed. The notice shall contain a description of the boundaries of the territory proposed to be annexed and shall state the time and place of the hearing thereon and the fact that any changes in the boundaries of such territory will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the proposed annexation. The district commissioners may make such changes in the boundaries of the territory proposed to be annexed as it shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands. If the district commissioners shall determine that any additional territory should be included in the territory to be annexed, a second hearing shall be held and notice given in the same manner as for the original hearing. The district commissioners may adjourn the hearing on the proposed annexation from time to time not exceeding thirty days in all. At the next regular meeting following the conclusion of such hearing, the district commissioners shall, if it finds that the annexation of such territory will be conducive to the welfare and benefit of the persons and property therein and the welfare and benefit of the persons and property within the public hospital district, adopt a resolution fixing the boundaries of the territory to be annexed and causing to be called a special election on such annexation to be held not more than one hundred twenty days nor less than sixty days following the adoption of such resolution. [1967 c 227 § 7.]

**70.44.230 Alternate method of annexation—Conduct and canvass of election—Notice—Ballot.** An election on the annexation of territory to a public hospital district shall be conducted and canvassed in the same manner as provided for the conduct of an election on the formation of a public hospital district except that notice of such election shall be published in one or more newspapers of general circulation in the territory proposed to be annexed and the ballot proposition shall be in substantially the following form:

ANNEXATION TO (herein insert name of public hospital district)

"Shall the territory described in a resolution of the public hospital district commissioners of (here insert name of public hospital district) adopted on

. . . ., . . . . . ., 19. . . [. . . . (year)], be annexed to such district?

YES . . . . . □
NO . . . . . □"

If a majority of those voting on such proposition vote in favor thereof, the territory shall thereupon be annexed to the public hospital district. [1967 c 227 § 8.]

**70.44.235 Withdrawal or reannexation of areas.** (1) As provided in this section, a public hospital district may withdraw areas from its boundaries, or reannex areas into the public hospital district that previously had been withdrawn from the public hospital district under this section.

(2) The withdrawal of an area shall be authorized upon: (a) Adoption of a resolution by the hospital district commissioners requesting the withdrawal and finding that, in the opinion of the commissioners, inclusion of this area within the public hospital district will result in a reduction of the district's tax levy rate under the provisions of RCW 84.52.010; and (b) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the withdrawal, if the area is located outside of a city or town. A withdrawal shall be effective at the end of the day on the thirty-first day of December in the year in which the resolutions are adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution.

The withdrawal of an area from the boundaries of a public hospital district shall not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the public hospital district existing at the time of the withdrawal.

(3) An area that has been withdrawn from the boundaries of a public hospital district under this section may be reannexed into the public hospital district upon: (a) Adoption of a resolution by the hospital district commissioners proposing the reannexation; and (b) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the reannexation, if the area is located outside of a city or town. The reannexation shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the second resolution occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution. Referendum action on the proposed reannexation may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or county legislative authority, within a thirty-day period after the adoption of the second resolution, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date according to RCW 29A.04.330. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [2006 c 344 § 39; 1987 c 138 § 4.]

Additional notes found at www.leg.wa.gov

**70.44.240 Contracting or joining with other districts, hospitals, corporations, or individuals to provide services or facilities.** Any public hospital district may contract or join with any other public hospital district, publicly owned hospital, nonprofit hospital, legal entity, or individual to acquire, own, operate, manage, or provide any hospital or other health care facilities or hospital services or other health care services to be used by individuals, districts, hospitals, or others, including providing health maintenance services. If a public hospital district chooses to contract or join with another party or parties pursuant to the provisions of this chapter, it may do so through establishing a nonprofit corporation, partnership, limited liability company, or other legal entity of its choosing in which the public hospital district and the other party or parties participate. The governing body of such legal entity shall include representatives of the public hospital district, which representatives may include members of the public hospital district's board of commissioners. A public hospital district contracting or joining with another party pursuant to the provisions of this chapter may appropriate funds and may sell, lease, or otherwise provide property, personnel, and services to the legal entity established to carry out the contract or joint activity. [2004 c 261 § 7; 1997 c 332 § 16; 1982 c 84 § 19; 1974 ex.s. c 165 § 4; 1967 c 227 § 3.]

**70.44.260 Contracts for purchase of real or personal property.** Any public hospital district may execute an executory conditional sales contract with any other municipal corporation, the state, or any of its political subdivisions, the government of the United States, or any private party for the purchase of any real or personal property, or property rights, in connection with the exercise of any powers or duties which such districts now or hereafter are authorized to exercise, if the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of the limitation imposed by RCW 39.36.020, as now or hereafter amended, to be incurred without the assent of the voters of the district: PROVIDED, That if such a proposed contract would result in a total indebtedness in excess of three-fourths of one percent of the value of taxable property in such public hospital district, a proposition in regard to whether or not such a contract may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters. The term "value of taxable property" shall have the meaning set forth in RCW 39.36.015. [1975-'76 2nd ex.s. c 78 § 1.]

**70.44.300 Sale of surplus real property.** (1) The board of commissioners of any public hospital district may sell and convey at public or private sale real property of the district if the board determines by resolution that the property is no lon-

ger required for public hospital district purposes or determines by resolution that the sale of the property will further the purposes of the public hospital district.

(2) Any sale of district real property authorized pursuant to this section shall be preceded, not more than one year prior to the date of sale, by market value appraisals by three licensed real estate brokers or professionally designated real estate appraisers as defined in *RCW 74.46.020 or three independent experts in valuing health care property, selected by the board of commissioners, and no sale shall take place if the sale price would be less than ninety percent of the average of such appraisals.

(3) When the board of commissioners of any public hospital district proposes a sale of district real property pursuant to this section and the value of the property exceeds one hundred thousand dollars, the board shall publish a notice of its intention to sell the property. The notice shall be published at least once each week during two consecutive weeks in a legal newspaper of general circulation within the public hospital district. The notice shall describe the property to be sold and designate the place where and the day and hour when a hearing will be held. The board shall hold a public hearing upon the proposal to dispose of the public hospital district property at the place and the day and hour fixed in the notice and consider evidence offered for and against the propriety and advisability of the proposed sale.

(4) If in the judgment of the board of commissioners of any district the sale of any district real property not needed for public hospital district purposes would be facilitated and greater value realized through use of the services of licensed real estate brokers, a contract for such services may be negotiated and concluded. The fee or commissions charged for any broker service shall not exceed seven percent of the resulting sale price for a single parcel. No licensed real estate broker or professionally designated real estate appraisers as defined in *RCW 74.46.020 or independent expert in valuing health care property selected by the board to appraise the market value of a parcel of property to be sold may be a party to any contract with the public hospital district to sell such property for a period of three years after the appraisal. [1997 c 332 § 17; 1984 c 103 § 4; 1982 c 84 § 2.]

***Reviser's note:** RCW 74.46.020 was amended by 2010 1st sp.s. c 34 § 2, deleting the definition of "professionally designated real estate appraiser."

**70.44.310 Lease of surplus real property.** The board of commissioners of any public hospital district may lease or rent out real property of the district which the board has determined by resolution presently is not required for public hospital district purposes in such manner and upon such terms and conditions as the board in its discretion finds to be in the best interest of the district. [1982 c 84 § 3.]

**70.44.315 Evaluation criteria and requirements for acquisition of district hospitals.** (1) When evaluating a potential acquisition, the commissioners shall determine their compliance with the following requirements:

(a) That the acquisition is authorized under chapter 70.44 RCW and other laws governing public hospital districts;

(b) That the procedures used in the decision-making process allowed district officials to thoroughly fulfill their due diligence responsibilities as municipal officers, including those covered under chapter 42.23 RCW governing conflicts of interest and chapter 42.20 RCW prohibiting malfeasance of public officials;

(c) That the acquisition will not result in the revocation of hospital privileges;

(d) That sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(e) That the acquisition is allowed under Article VIII, section 7 of the state Constitution, which prohibits gifts of public funds or lending of credit and Article XI, section 14, prohibiting private use of public funds;

(f) That the public hospital district will retain control over district functions as required under chapter 70.44 RCW and other laws governing hospital districts;

(g) That the activities related to the acquisition process complied with chapters 42.56 and *42.32 RCW, governing disclosure of public records, and chapter 42.30 RCW, governing public meetings;

(h) That the acquisition complies with the requirements of RCW 70.44.300 relating to fair market value; and

(i) Other state laws affecting the proposed acquisition.

(2) The commissioners shall also determine whether the public hospital district should retain a right of first refusal to repurchase the assets by the public hospital district if the hospital is subsequently sold to, acquired by, or merged with another entity.

(3)(a) Prior to approving the acquisition of a district hospital, the board of commissioners of the hospital district shall obtain a written opinion from a qualified independent expert or the Washington state department of health as to whether or not the acquisition meets the standards set forth in RCW 70.45.080.

(b) Upon request, the hospital district and the person seeking to acquire its hospital shall provide the department or independent expert with any needed information and documents. The department shall charge the hospital district for any costs the department incurs in preparing an opinion under this section. The hospital district may recover from the acquiring person any costs it incurs in obtaining the opinion from either the department or the independent expert. The opinion shall be delivered to the board of commissioners no later than ninety days after it is requested.

(c) Within ten working days after it receives the opinion, the board of commissioners shall publish notice of the opinion in at least one newspaper of general circulation within the hospital district, stating how a person may obtain a copy, and giving the time and location of the hearing required under (d) of this subsection. It shall make a copy of the report and the opinion available to anyone upon request.

(d) Within thirty days after it received the opinion, the board of commissioners shall hold a public hearing regarding the proposed acquisition. The board of commissioners may vote to approve the acquisition no sooner than thirty days following the public hearing.

(4)(a) For purposes of this section, "acquisition" means an acquisition by a person of any interest in a hospital owned by a public hospital district, whether by purchase, merger, lease, or otherwise, that results in a change of ownership or control of twenty percent or more of the assets of a hospital currently licensed and operating under RCW 70.41.090.

Acquisition does not include an acquisition where the other party or parties to the acquisition are nonprofit corporations having a substantially similar charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include an acquisition where the other party is an organization that is a limited liability corporation, a partnership, or any other legal entity and the members, partners, or otherwise designated controlling parties of the organization are all nonprofit corporations having a charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include activities between two or more governmental organizations, including organizations acting pursuant to chapter 39.34 RCW, regardless of the type of organizational structure used by the governmental entities.

(b) For purposes of this subsection (4), "person" means an individual, a trust or estate, a partnership, a corporation including associations, a limited liability company, a joint stock company, or an insurance company. [2005 c 274 § 334; 1997 c 332 § 18.]

***Reviser's note:** The only section in chapter 42.32 RCW, RCW 42.32.030, was recodified as RCW 42.30.035 pursuant to 2017 3rd sp.s. c 25 § 30.

**70.44.320 Disposal of surplus personal property.** The board of commissioners of any public hospital district may sell or otherwise dispose of surplus personal property of the district which the board has determined by resolution is no longer required for public hospital district purposes in such manner and upon such terms and conditions as the board in its discretion finds to be in the best interest of the district. [1982 c 84 § 4.]

**70.44.350 Dividing a district.** An existing public hospital district upon resolution of its board of commissioners may be divided into two new public hospital districts, in the manner provided in RCW 70.44.350 through 70.44.380, subject to the approval of the plan therefor by the superior court in the county where such district is located and by a majority of the voters voting on the proposition for such approval at a special election to be held in each of the proposed new districts. The board of commissioners of an existing district shall by resolution or resolutions find that such division is in the public interest; adopt and approve a plan of division; authorize the filing of a petition in the superior court in the county in which the district is located to obtain court approval of the plan of division; request the calling of a special election to be held, following such court approval, for the purpose of submitting to the voters in each of the proposed new districts the proposition of whether the plan of division should be approved and carried out; and direct all officers and employees of the existing district to take whatever actions are reasonable and necessary in order to carry out the division, subject to the approval of the plan therefor by the court and the voters. [1982 c 84 § 5.]

**70.44.360 Dividing a district—Plan.** The plan of division authorized by RCW 70.44.350 shall include: Proposed names for the new districts; a description of the boundaries of the new districts, which boundaries shall follow insofar as reasonably possible the then-existing precinct boundaries and include all of the territory encompassed by the existing district; a division of all the assets of the existing district between the resulting new districts, including funds, rights, and property, both real and personal; the assumption of all the outstanding obligations of the existing district by the resulting new districts, including general obligation and revenue bonds, contracts, and any other liabilities or indebtedness; the establishing and constituting of new boards of three commissioners for each of the new districts, including fixing the boundaries of commissioner districts within such new districts following insofar as reasonably possible the then-existing precinct boundaries; and such other matters as the board of commissioners of the existing district may deem appropriate. Unless the plan of division provides otherwise, all the area and property of the existing district shall remain subject to the outstanding obligations of that district, and the boards of commissioners of the new districts shall make such levies or charges for services as may be necessary to pay such outstanding obligations in accordance with their terms from the sources originally pledged or otherwise liable for that purpose. [1982 c 84 § 6.]

**70.44.370 Dividing a district—Petition to court, hearing, order.** After adoption of a resolution approving the plan of division by the board of commissioners of an existing district pursuant to RCW 70.44.350 through 70.44.380, the district shall petition the superior court in the county where such district is located requesting court approval of the plan. The court shall conduct a hearing on the plan of division, after reasonable and proper notice of such hearing (including notice to bondholders) is given in the manner fixed and directed by such court. At the conclusion of the hearing, the court may enter its order approving the division of the existing district and of its assets and outstanding obligations in the manner provided by the plan after finding such division to be fair and equitable and in the public interest. [1982 c 84 § 7.]

**70.44.380 Dividing a district—Election—Creation of new districts—Challenges.** Following the entry of the court order pursuant to RCW 70.44.370, the county officer authorized to call and conduct elections in the county in which the existing district is located shall call a special election as provided by the resolution of the board of commissioners of such district for the purpose of submitting to the voters in each of the proposed new districts the proposition of whether the plan of division should be approved and carried out. Notice of the election describing the boundaries of the proposed new districts and stating the objects of the election shall be given and the election conducted in accordance with the general election laws. The proposition expressed on the ballots at such election shall be substantially as follows:

"Shall the plan of division of public hospital district No. . . . ., approved by the Superior Court on . . . . . (insert date), be approved and carried out?

Yes □ No □"

At such election three commissioners for each of the proposed new districts nominated by petition pursuant to RCW

54.12.010 shall be elected to hold office pursuant to RCW 70.44.040. If at such election a majority of the voters voting on the proposition in each of the proposed new districts shall vote in favor of the plan of division, the county canvassing board shall so declare in its canvass of the returns of such election and upon the filing of the certificate of such canvass: The division of the existing district shall be effective; such original district shall cease to exist; the creation of the two new public hospital districts shall be complete; all assets of the original district shall vest in and become the property of the new districts, respectively, pursuant to the plan of division; all the outstanding obligations of the original district shall be assumed by the new districts, respectively, pursuant to such plan; the commissioners of the original district shall cease to hold office; and the affairs of the new districts shall be governed by the newly elected commissioners of such respective new districts. Unless commenced within thirty days after the date of the filing of the certificate of the canvass of such election, no lawsuit whatever may be maintained challenging in any way the legal existence of the resulting new districts, the validity of the proceedings had for the organization and creation thereof, or the lawfulness of the plan of division. Upon the petition of either or both new districts, the superior court in the county where they are located may take whatever actions are reasonable and necessary to complete or confirm the carrying out of such plan. [1982 c 84 § 8.]

**70.44.400 Withdrawal of territory from public hospital district.** Territory within a public hospital district may be withdrawn therefrom in the same manner provided by law for withdrawal of territory from water-sewer districts, as provided by chapter 57.28 RCW. For purposes of conforming with such procedure, the public hospital district shall be deemed to be the water-sewer district and the public hospital board of commissioners shall be deemed to be the water-sewer district board of commissioners. [1999 c 153 § 65; 1984 c 100 § 1.]

Additional notes found at www.leg.wa.gov

**70.44.450 Rural public hospital districts—Cooperative agreements and contracts.** In addition to other powers granted to public hospital districts by chapter 39.34 RCW, rural public hospital districts may enter into cooperative agreements and contracts with other rural public hospital districts in order to provide for the health care needs of the people served by the hospital districts. These agreements and contracts are specifically authorized to include:

(1) Allocation of health care services among the different facilities owned and operated by the districts;

(2) Combined purchases and allocations of medical equipment and technologies;

(3) Joint agreements and contracts for health care service delivery and payment with public and private entities; and

(4) Other cooperative arrangements consistent with the intent of chapter 161, Laws of 1992. The provisions of chapter 39.34 RCW shall apply to the development and implementation of the cooperative contracts and agreements. [1992 c 161 § 3.]

**Intent—1992 c 161:** "The legislature finds that maintaining the viability of health care service delivery in rural areas of Washington is a primary goal of state health policy. The legislature also finds that most hospitals located in rural Washington are operated by public hospital districts authorized under chapter 70.44 RCW and declares that it is not cost-effective, practical, or desirable to provide quality health and hospital care services in rural areas on a competitive basis because of limited patient volume and geographic isolation. It is the intent of this act to foster the development of cooperative and collaborative arrangements among rural public hospital districts by specifically authorizing cooperative agreements and contracts for these entities under the interlocal cooperation act." [1992 c 161 § 1.]

**70.44.460 Rural public hospital district defined.** Unless the context clearly requires otherwise, the definition in this section applies throughout RCW 70.44.450.

"Rural public hospital district" means a public hospital district authorized under chapter 70.44 RCW whose geographic boundaries do not include a city with a population greater than fifty thousand. [2011 c 95 § 1; 1992 c 161 § 2.]

**Intent—1992 c 161:** See note following RCW 70.44.450.

**70.44.470 Chapter not applicable to certain transfers of property.** This chapter does not apply to transfers of property under *sections 1 and 2 of this act. [2006 c 35 § 9.]

***Reviser's note:** The reference to "sections 1 and 2 of this act" appears to be erroneous. Reference to "sections 2 and 3 of this act" codified as RCW 43.99C.070 and 43.83D.120 was apparently intended. RCW 43.99C.070 and 43.83D.120 were recodified as RCW 43.83.400 and 43.83.410, respectively, by the code reviser September 2015.

**Findings—2006 c 35:** See note following RCW 43.83.400.

**70.44.900 Severability—Construction—1945 c 264.** Adjudication of invalidity of any section, clause or part of a section of this act [1945 c 264] shall not impair or otherwise affect the validity of the act as a whole or any other part thereof. The rule of strict construction shall have no application to this act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this act is intended. When this act comes in conflict with any provisions, limitation or restriction in any other law, this act shall govern and control. [1945 c 264 § 21; no RRS.]

**70.44.901 Severability—Construction—1974 ex.s. c 165.** If any section, clause, or other provision of this 1974 amendatory act, or its application to any person or circumstance, is held invalid, the remainder of such 1974 amendatory act, or the application of such section, clause, or provision to other persons or circumstances, shall not be affected. The rule of strict construction shall have no application to this 1974 amendatory act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this 1974 amendatory act is intended. When this 1974 amendatory act comes in conflict with any provision, limitation, or restriction in any other law, this 1974 amendatory act shall govern and control. [1974 ex.s. c 165 § 6.]

**70.44.903 Savings—1982 c 84.** All debts, contracts, and obligations made or incurred prior to June 10, 1982, by or in favor of any public hospital district, and all bonds, warrants, or other obligations issued by such district, and all other actions and proceedings relating thereto done or taken by such public hospital districts or by their respective officers within their authority are hereby declared to be legal and valid and of full force and effect from the date thereof. [1982 c 84 § 11.]

**70.44.910 Construction—1945 c 264.** This act [1945 c 264 § 22] shall not be deemed or construed to repeal or affect any existing act, or any part thereof, relating to the construction, operation and maintenance of public hospitals, but shall be supplemental thereto and concurrent therewith. [1945 c 264 § 22; no RRS.]

## Chapter 70.45 RCW
## ACQUISITION OF NONPROFIT HOSPITALS

Sections



**70.45.010 Legislative findings.** The health of the people of our state is a most important public concern. The state has an interest in assuring the continued existence of accessible, affordable health care facilities that are responsive to the needs of the communities in which they exist. The state also has a responsibility to protect the public interest in nonprofit hospitals and to clarify the responsibilities of local public hospital district boards with respect to public hospital district assets by making certain that the charitable and public assets of those hospitals are managed prudently and safeguarded consistent with their mission under the laws governing nonprofit and municipal corporations. [1997 c 332 § 1.]

**70.45.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the Washington state department of health.

(2) "Hospital" means any entity that is: (a) Defined as a hospital in RCW 70.41.020 and is required to obtain a license under RCW 70.41.090; or (b) a psychiatric hospital required to obtain a license under chapter 71.12 RCW.

(3) "Acquisition" means an acquisition by a person of an interest in a nonprofit hospital, whether by purchase, merger, lease, gift, joint venture, or otherwise, that results in a change of ownership or control of twenty percent or more of the assets of the hospital, or that results in the acquiring person holding or controlling fifty percent or more of the assets of the hospital, but acquisition does not include an acquisition if the acquiring person: (a) Is a nonprofit corporation having a substantially similar charitable health care purpose as the nonprofit corporation from whom the hospital is being acquired, or is a government entity; (b) is exempt from federal income tax under section 501(c)(3) of the internal revenue code or as a government entity; and (c) will maintain representation from the affected community on the local board of the hospital.

(4) "Nonprofit hospital" means a hospital owned by a nonprofit corporation organized under Title 24 RCW.

(5) "Person" means an individual, a trust or estate, a partnership, a corporation including associations, limited liability companies, joint stock companies, and insurance companies. [1997 c 332 § 2.]

**70.45.030 Department approval required—Application—Fees.** (1) A person may not engage in the acquisition of a nonprofit hospital without first having applied for and received the approval of the department under this chapter.

(2) An application must be submitted to the department on forms provided by the department, and at a minimum must include: The name of the hospital being acquired, the name of the acquiring person or other parties to the acquisition, the acquisition price, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria in RCW 70.45.070, and all other related documents. The applications and all related documents are considered public records for purposes of chapter 42.56 RCW.

(3) The department shall charge an applicant fees sufficient to cover the costs of implementing this chapter. The fees must include the cost of the attorney general's opinion under RCW 70.45.060. The department shall transfer this portion of the fee, upon receipt, to the attorney general. [2005 c 274 § 335; 1997 c 332 § 3.]

**70.45.040 Applications—Deficiencies—Public notice.** (1) The department, in consultation with the attorney general, shall determine if the application is complete for the purposes of review. The department may find that an application is incomplete if a question on the application form has not been answered in whole or in part, or has been answered in a manner that does not fairly meet the question addressed, or if the application does not include attachments of supporting documents as required by RCW 70.45.030. If the department determines that an application is incomplete, it shall notify the applicant within fifteen working days after the date the application was received stating the reasons for its determination of incompleteness, with reference to the particular questions for which a deficiency is noted.

(2) Within five working days after receipt of a completed application, the department shall publish notice of the application in a newspaper of general circulation in the county or counties where the hospital is located and shall notify by first-class United States mail, electronic mail, or facsimile transmission, any person who has requested notice of the filing of such applications. The notice must state that an application has been received, state the names of the parties to the agreement, describe the contents of the application, and state the date by which a person may submit written comments about the application to the department. [1997 c 332 § 4.]

**70.45.050 Public hearings.** During the course of review under this chapter, the department shall conduct one or more public hearings, at least one of which must be in the county where the hospital to be acquired is located. At the hearings, anyone may file written comments and exhibits or

appear and make a statement. The department may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of the hearing and at any time prior to making a decision on the application.

A hearing must be held not later than forty-five days after receipt of a completed application. At least ten days' public notice must be given before the holding of a hearing. [1997 c 332 § 5.]

**70.45.060 Attorney general review and opinion—Department review and decision—Adjudicative proceedings.** (1) The department shall provide the attorney general with a copy of a completed application upon receiving it. The attorney general shall review the completed application, and within forty-five days of the first public hearing held under RCW 70.45.050 shall provide a written opinion to the department as to whether or not the acquisition meets the requirements for approval in RCW 70.45.070.

(2) The department shall review the completed application to determine whether or not the acquisition meets the requirements for approval in RCW 70.45.070 and 70.45.080. Within thirty days after receiving the written opinion of the attorney general under subsection (1) of this section, the department shall:

(a) Approve the acquisition, with or without any specific modifications or conditions; or

(b) Disapprove the acquisition.

(3) The department may not make its decision subject to any condition not directly related to requirements in RCW 70.45.070 or 70.45.080, and any condition or modification must bear a direct and rational relationship to the application under review.

(4) A person engaged in an acquisition and affected by a final decision of the department has the right to an adjudicative proceeding under chapter 34.05 RCW. The opinion of the attorney general provided under subsection (1) of this section may not constitute a final decision for purposes of review.

(5) The department or the attorney general may extend, by not more than thirty days, any deadline established under this chapter one time during consideration of any application, for good cause. [1997 c 332 § 6.]

**70.45.070 Department review—Criteria to safeguard charitable assets.** The department shall only approve an application if the parties to the acquisition have taken the proper steps to safeguard the value of charitable assets and ensure that any proceeds from the acquisition are used for appropriate charitable health purposes. To this end, the department may not approve an application unless, at a minimum, it determines that:

(1) The acquisition is permitted under chapter 24.03A RCW, the Washington nonprofit corporation act, and other laws governing nonprofit entities, trusts, or charities;

(2) The nonprofit corporation that owns the hospital being acquired has exercised due diligence in authorizing the acquisition, selecting the acquiring person, and negotiating the terms and conditions of the acquisition;

(3) The procedures used by the nonprofit corporation's board of trustees and officers in making its decision fulfilled their fiduciary duties, that the board and officers were sufficiently informed about the proposed acquisition and possible alternatives, and that they used appropriate expert assistance;

(4) No conflict of interest exists related to the acquisition, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the nonprofit corporation, acquiring person, or other parties to the acquisition;

(5) The nonprofit corporation will receive fair market value for its assets. The attorney general or the department may employ, at the expense of the acquiring person, reasonably necessary expert assistance in making this determination. This expense must be in addition to the fees charged under RCW 70.45.030;

(6) Charitable funds will not be placed at unreasonable risk, if the acquisition is financed in part by the nonprofit corporation;

(7) Any management contract under the acquisition will be for fair market value;

(8) The proceeds from the acquisition will be controlled as charitable funds independently of the acquiring person or parties to the acquisition, and will be used for charitable health purposes consistent with the nonprofit corporation's original purpose, including providing health care to the disadvantaged, the uninsured, and the underinsured and providing benefits to promote improved health in the affected community;

(9) Any charitable entity established to hold the proceeds of the acquisition will be broadly based in and representative of the community where the hospital to be acquired is located, taking into consideration the structure and governance of such entity; and

(10) A right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained if the hospital is subsequently sold to, acquired by, or merged with another entity. [2021 c 176 § 5237; 1997 c 332 § 7.]

**Effective date—2021 c 176:** See note following RCW 24.03A.005.

**70.45.080 Department review—Criteria for continued existence of accessible, affordable health care.** The department shall only approve an application if the acquisition in question will not detrimentally affect the continued existence of accessible, affordable health care that is responsive to the needs of the community in which the hospital to be acquired is located. To this end, the department shall not approve an application unless, at a minimum, it determines that:

(1) Sufficient safeguards are included to assure the affected community continued access to affordable care, and that alternative sources of care are available in the community should the acquisition result in a reduction or elimination of particular health services;

(2) The acquisition will not result in the revocation of hospital privileges;

(3) Sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(4) The acquiring person and parties to the acquisition are committed to providing health care to the disadvantaged, the uninsured, and the underinsured and to providing benefits

to promote improved health in the affected community. Activities and funding provided under RCW 70.45.070(8) may be considered in evaluating compliance with this commitment; and

(5) Sufficient safeguards are included to avoid conflict of interest in patient referral. [1997 c 332 § 8.]

**70.45.090 Approval of acquisition required—Injunctions.** (1) The secretary of state may not accept any forms or documents in connection with any acquisition of a nonprofit hospital until the acquisition has been approved by the department under this chapter.

(2) The attorney general may seek an injunction to prevent any acquisition not approved by the department under this chapter. [1997 c 332 § 9.]

**70.45.100 Compliance—Department authority—Hearings—Revocation or suspension of hospital license—Referral to attorney general for action.** The department shall require periodic reports from the nonprofit corporation or its successor nonprofit corporation or foundation and from the acquiring person or other parties to the acquisition to ensure compliance with commitments made. The department may subpoena information and documents and may conduct on-site compliance audits at the acquiring person's expense.

If the department receives information indicating that the acquiring person is not fulfilling commitments to the affected community under RCW 70.45.080, the department shall hold a hearing upon ten days' notice to the affected parties. If after the hearing the department determines that the information is true, it may revoke or suspend the hospital license issued to the acquiring person pursuant to the procedure established under RCW 70.41.130, refer the matter to the attorney general for appropriate action, or both. The attorney general may seek a court order compelling the acquiring person to fulfill its commitments under RCW 70.45.080. [1997 c 332 § 10.]

**70.45.110 Authority of attorney general to ensure compliance.** The attorney general has the authority to ensure compliance with commitments that inure to the public interest. [1997 c 332 § 11.]

**70.45.120 Acquisitions completed before July 27, 1997, not subject to this chapter.** An acquisition of a hospital completed before July 27, 1997, and an acquisition in which an application for a certificate of need under chapter 70.38 RCW has been granted by the department before July 27, 1997, is not subject to this chapter. [1997 c 332 § 12.]

**70.45.130 Common law and statutory authority of attorney general.** No provision of this chapter derogates from the common law or statutory authority of the attorney general. [1997 c 332 § 13.]

**70.45.140 Rule-making and contracting authority.** The department may adopt rules necessary to implement this chapter and may contract with and provide reasonable reimbursement to qualified persons to assist in determining whether the requirements of RCW 70.45.070 and 70.45.080 have been met. [1997 c 332 § 14.]

## Chapter 70.46 RCW
## HEALTH DISTRICTS

Sections



*Local health departments, provisions relating to health districts: Chapter 70.05 RCW.*

**70.46.020 Districts of two or more counties—District boards of health—Membership—Chair.** (1) Except as provided in subsections (2) and (3) of this section, health districts consisting of two or more counties may be created whenever two or more boards of county commissioners shall by resolution establish a district for such purpose. Such a district shall consist of all the area of the combined counties. The district board of health of such a district shall consist of not less than five members for districts of two counties and seven members for districts of more than two counties, including two representatives from each county who are members of the board of county commissioners and who are appointed by the board of county commissioners of each county within the district, and members selected under (a) and (e) of this subsection, and shall have a jurisdiction coextensive with the combined boundaries.

(a) The remaining board members must be persons who are not elected officials and must be selected from the following categories consistent with the requirements of this section and the rules adopted by the state board of health under RCW 43.20.300:

(i) Public health, health care facilities, and providers. This category consists of persons practicing or employed in the health district who are:

(A) Medical ethicists;

(B) Epidemiologists;

(C) Experienced in environmental public health, such as a registered sanitarian;

(D) Community health workers;

(E) Holders of master's degrees or higher in public health or the equivalent;

(F) Employees of a hospital located in the health district; or

(G) Any of the following providers holding an active or retired license in good standing under Title 18 RCW:

(I) Physicians or osteopathic physicians;

(II) Advanced registered nurse practitioners;

(III) Physician assistants or osteopathic physician assistants;

(IV) Registered nurses;

(V) Dentists;

(VI) Naturopaths; or

(VII) Pharmacists;

(ii) Consumers of public health. This category consists of health district residents who have self-identified as having

faced significant health inequities or as having lived experiences with public health-related programs such as: The special supplemental nutrition program for women, infants, and children; the supplemental nutrition program; home visiting; or treatment services. It is strongly encouraged that individuals from historically marginalized and underrepresented communities are given preference. These individuals may not be elected officials, and may not have any fiduciary obligation to a health facility or other health agency, and may not have a material financial interest in the rendering of health services; and

(iii) Other community stakeholders. This category consists of persons representing the following types of organizations located in the health district:

(A) Community-based organizations or nonprofits that work with populations experiencing health inequities in the health district;

(B) Active, reserve, or retired armed services members;

(C) The business community; or

(D) The environmental public health regulated community.

(b) The board members selected under (a) of this subsection must be approved by a majority vote of the board of county commissioners.

(c) If the number of board members selected under (a) of this subsection is evenly divisible by three, there must be an equal number of members selected from each of the three categories. If there are one or two members over the nearest multiple of three, those members may be selected from any of the three categories. However, if the board of health demonstrates that it attempted to recruit members from all three categories and was unable to do so, the board may select members only from the other two categories.

(d) There may be no more than one member selected under (a) of this subsection from one type of background or position.

(e) If a federally recognized Indian tribe holds reservation, trust lands, or has usual and accustomed areas within the health district, or if a 501(c)(3) organization registered in Washington that serves American Indian and Alaska Native people and provides services within the health district, the board of health must include a tribal representative selected by the American Indian health commission.

(f) The boards of county commissioners may by resolution or ordinance provide for elected officials from cities and towns and persons other than elected officials as members of the district board of health so long as the city and county elected officials do not constitute a majority of the total membership of the board.

(g) Except as provided in (a) and (e) of this subsection, a resolution or ordinance adopted under this section must specify the provisions for the appointment, term, and compensation, or reimbursement of expenses.

(h) At the first meeting of a district board of health the members shall elect a chair to serve for a period of one year.

(i) The jurisdiction of the local board of health shall be coextensive with the boundaries of the county.

(j) The local health officer, as described in RCW 70.05.050, shall be appointed by the official designated under the provisions of the county charter. The same official designated under the provisions of the county charter may appoint an administrative officer, as described in RCW 70.05.045.

(k) The number of members selected under (a) and (e) of this subsection must equal the number of city and county elected officials on the board of health.

(l) Any decision by the board of health related to the setting or modification of permit, licensing, and application fees may only be determined by the city and county elected officials on the board.

(2) A local board of health comprised solely of elected officials may retain this composition if the local health jurisdiction had a public health advisory committee or board with its own bylaws established on January 1, 2021. By January 1, 2022, the public health advisory committee or board must meet the requirements established in RCW 70.46.140 for community health advisory boards. Any future changes to local board of health composition must meet the requirements of subsection (1) of this section.

(3) A local board of health comprised solely of elected officials and made up of three counties east of the Cascade mountains may retain their current composition if the local health jurisdiction has a public health advisory committee or board that meets the requirements established in RCW 70.46.140 for community health advisory boards by July 1, 2022. If such a local board of health does not establish the required community health advisory board by July 1, 2022, it must comply with the requirements of subsection (1) of this section. Any future changes to local board of health composition must meet the requirements of subsection (1) of this section. [2021 c 205 § 5; 1995 c 43 § 10; 1993 c 492 § 247; 1967 ex.s. c 51 § 6; 1945 c 183 § 2; Rem. Supp. 1945 § 6099-11.]

**Effective date—2021 c 205 §§ 3-6:** See note following RCW 70.05.030.

**Finding—2021 c 205:** See note following RCW 43.70.675.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.46.031 Districts of one county—District boards of health—Membership.** (1) Except as provided in subsection (2) of this section, a health district to consist of one county may be created whenever the county legislative authority of the county shall pass a resolution or ordinance to organize such a health district under chapter 70.05 RCW and this chapter. The resolution or ordinance may specify the membership, representation on the district health board, or other matters relative to the formation or operation of the health district. In addition to the membership of the district health board determined through resolution or ordinance, the district health board must also include the members selected under (a) and (e) of this subsection.

(a) The remaining board members must be persons who are not elected officials and must be selected from the following categories consistent with the requirements of this section and the rules adopted by the state board of health under RCW 43.20.300:

(i) Public health, health care facilities, and providers. This category consists of persons practicing or employed in the county who are:

(A) Medical ethicists;

(B) Epidemiologists;

(C) Experienced in environmental public health, such as a registered sanitarian;

(D) Community health workers;

(E) Holders of master's degrees or higher in public health or the equivalent;

(F) Employees of a hospital located in the county; or

(G) Any of the following providers holding an active or retired license in good standing under Title 18 RCW:

(I) Physicians or osteopathic physicians;

(II) Advanced registered nurse practitioners;

(III) Physician assistants or osteopathic physician assistants;

(IV) Registered nurses;

(V) Dentists;

(VI) Naturopaths; or

(VII) Pharmacists;

(ii) Consumers of public health. This category consists of county residents who have self-identified as having faced significant health inequities or as having lived experiences with public health-related programs such as: The special supplemental nutrition program for women, infants, and children; the supplemental nutrition program; home visiting; or treatment services. It is strongly encouraged that individuals from historically marginalized and underrepresented communities are given preference. These individuals may not be elected officials and may not have any fiduciary obligation to a health facility or other health agency, and may not have a material financial interest in the rendering of health services; and

(iii) Other community stakeholders. This category consists of persons representing the following types of organizations located in the county:

(A) Community-based organizations or nonprofits that work with populations experiencing health inequities in the county;

(B) The business community; or

(C) The environmental public health regulated community.

(b) The board members selected under (a) of this subsection must be approved by a majority vote of the board of county commissioners.

(c) If the number of board members selected under (a) of this subsection is evenly divisible by three, there must be an equal number of members selected from each of the three categories. If there are one or two members over the nearest multiple of three, those members may be selected from any of the three categories. If there are two members over the nearest multiple of three, each member over the nearest multiple of three must be selected from a different category. However, if the board of health demonstrates that it attempted to recruit members from all three categories and was unable to do so, the board may select members only from the other two categories.

(d) There may be no more than one member selected under (a) of this subsection from one type of background or position.

(e) If a federally recognized Indian tribe holds reservation, trust lands, or has usual and accustomed areas within the county, or if a 501(c)(3) organization registered in Washington that serves American Indian and Alaska Native people and provides services within the county, the board of health must include a tribal representative selected by the American Indian health commission.

(f) The county legislative authority may appoint elected officials from cities and towns and persons other than elected officials as members of the health district board so long as the city and county elected officials do not constitute a majority of the total membership of the board.

(g) Except as provided in (a) and (e) of this subsection, a resolution or ordinance adopted under this section must specify the provisions for the appointment, term, and compensation, or reimbursement of expenses.

(h) The jurisdiction of the local board of health shall be coextensive with the boundaries of the county.

(i) The local health officer, as described in RCW 70.05.050, shall be appointed by the official designated under the provisions of the resolution or ordinance. The same official designated under the provisions of the resolution or ordinance may appoint an administrative officer, as described in RCW 70.05.045.

(j) At the first meeting of a district board of health the members shall elect a chair to serve for a period of one year.

(k) The number of members selected under (a) and (e) of this subsection must equal the number of city and county elected officials on the board of health.

(l) Any decision by the board of health related to the setting or modification of permit, licensing, and application fees may only be determined by the city and county elected officials on the board.

(2) A local board of health comprised solely of elected officials may retain this composition if the local health jurisdiction had a public health advisory committee or board with its own bylaws established on January 1, 2021. By January 1, 2022, the public health advisory committee or board must meet the requirements established in RCW 70.46.140 for community health advisory boards. Any future changes to local board of health composition must meet the requirements of subsection (1) of this section. [2021 c 205 § 6; 1995 c 43 § 11.]

**Effective date—2021 c 205 §§ 3-6:** See note following RCW 70.05.030.

**Finding—2021 c 205:** See note following RCW 43.70.675.

Additional notes found at www.leg.wa.gov

**70.46.060 District health board—Powers and duties.** The district board of health shall constitute the local board of health for all the territory included in the health district, and shall supersede and exercise all the powers and perform all the duties by law vested in the county board of health of any county included in the health district. [1993 c 492 § 248; 1967 ex.s. c 51 § 11; 1945 c 183 § 6; Rem. Supp. 1945 § 6099-15.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.46.080 District health funds.** Each health district shall establish a fund to be designated as the "district health fund", in which shall be placed all sums received by the district from any source, and out of which shall be expended all sums disbursed by the district. In a district composed of more than one county the county treasurer of the county having the largest population shall be the custodian of the fund, and the

county auditor of said county shall keep the record of the receipts and disbursements, and shall draw and the county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the board.

Each county which is included in the district shall contribute such sums towards the expense for maintaining and operating the district as shall be agreed upon between it and the local board of health in accordance with guidelines established by the state board of health. [1993 c 492 § 249; 1971 ex.s. c 85 § 10; 1967 ex.s. c 51 § 19; 1945 c 183 § 8; Rem. Supp. 1945 § 6099-17.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.46.082 District health funds—Health district as custodian.** (1) A health district, with the consent of the county legislative authority, the county treasurer, the county auditor, and the health district board, may act as custodian of funds, may keep the record of the receipts and disbursements, and may draw and may honor and pay all warrants or checks, which shall be approved before issuance and payment as directed by the board.

(2) The county may not charge a health district that does not utilize the option in subsection (1) of this section for those services provided. [2016 sp.s. c 3 § 1.]

**70.46.085 County to bear expense of providing public health services.** The expense of providing public health services shall be borne by each county within the health district. [1993 c 492 § 250; 1967 ex.s. c 51 § 20.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

*Expenses of enforcing health laws: RCW 70.05.130.*

Additional notes found at www.leg.wa.gov

**70.46.090 Withdrawal of county.** Any county may withdraw from membership in said health district any time after it has been within the district for a period of two years, but no withdrawal shall be effective except at the end of the calendar year in which the county gives at least six months' notice of its intention to withdraw at the end of the calendar year. No withdrawal shall entitle any member to a refund of any moneys paid to the district nor relieve it of any obligations to pay to the district all sums for which it obligated itself due and owing by it to the district for the year at the end of which the withdrawal is to be effective. Any county which withdraws from membership in said health district shall immediately establish a health department or provide health services which shall meet the standards for health services promulgated by the state board of health. No local health department may be deemed to provide adequate public health services unless there is at least one full time professionally trained and qualified physician as set forth in RCW 70.05.050. [1993 c 492 § 251; 1967 ex.s. c 51 § 21; 1945 c 183 § 9; Rem. Supp. 1945 § 6099-18.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.46.100 Power to acquire, maintain, or dispose of property—Contracts.** In addition to all other powers and duties, a health district shall have the power to own, construct, purchase, lease, add to, and maintain any real and personal property or property rights necessary for the conduct of the affairs of the district. A health district may sell, lease, convey or otherwise dispose of any district real or personal property no longer necessary for the conduct of the affairs of the district. A health district may enter into contracts to carry out the provisions of this section. [1957 c 100 § 2.]

**70.46.120 License or permit fees.** In addition to all other powers and duties, health districts shall have the power to charge fees in connection with the issuance or renewal of a license or permit required by law: PROVIDED, That the fees charged shall not exceed the actual cost involved in issuing or renewing the license or permit. [1993 c 492 § 252; 1963 c 121 § 1.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.46.140 Community health advisory boards—Membership—Meetings.** (1) A community health advisory board shall:

(a) Provide input to the local board of health in the recruitment and selection of an administrative officer, pursuant to RCW 70.05.045, and local health officer, pursuant to RCW 70.05.050;

(b) Use a health equity framework to conduct, assess, and identify the community health needs of the jurisdiction, and review and recommend public health policies and priorities for the local health jurisdiction and advisory board to address community health needs;

(c) Evaluate the impact of proposed public health policies and programs, and assure identified health needs and concerns are being met;

(d) Promote public participation in and identification of local public health needs;

(e) Provide community forums and hearings as assigned by the local board of health;

(f) Establish community task forces as assigned by the local board of health;

(g) Review and make recommendations to the local health jurisdiction and local board of health for an annual budget and fees; and

(h) Review and advise on local health jurisdiction progress in achieving performance measures and outcomes to ensure continuous quality improvement and accountability.

(2) The advisory board shall consist of nine to 21 members appointed by the local board of health. The local health officer and a member of the local board of health shall serve as ex officio members of the board.

(3) The advisory board must be broadly representative of the character of the community. Membership preference shall be given to tribal, racial, ethnic, and other minorities. The advisory board must consist of a balance of members with expertise, career experience, and consumer experience in areas impacting public health and with populations served by the health department. The board's composition shall include:

(a) Members with expertise in and experience with:

(i) Health care access and quality;

(ii) Physical environment, including built and natural environments;

(iii) Social and economic sectors, including housing, basic needs, education, and employment;

(iv) Business and philanthropy;

(v) Communities that experience health inequities;

(vi) Government; and

(vii) Tribal communities and tribal government;

(b) Consumers of public health services;

(c) Community members with lived experience in any of the areas listed in (a) of this subsection; and

(d) Community stakeholders, including nonprofit organizations, the business community, and those regulated by public health.

(4) The local health jurisdiction and local board of health must actively recruit advisory board members in a manner that solicits broad diversity to assure representation from marginalized communities including tribal, racial, ethnic, and other minorities.

(5) Advisory board members shall serve for staggered three-year terms. This does not preclude any member from being reappointed.

(6) The advisory board shall, at the first meeting of each year, select a chair and vice chair. The chair shall preside over all advisory board meetings and work with the local health jurisdiction administrator, or their designee, to establish board meeting agendas.

(7) Staffing for the advisory board shall be provided by the local health jurisdiction.

(8) The advisory board shall hold meetings monthly, or as otherwise determined by the advisory board at a place and time to be decided by the advisory board. Special meetings may be held on call of the local board of health or the chairperson of the advisory board.

(9) Meetings of the advisory board are subject to the open public meetings act, chapter 42.30 RCW, and meeting minutes must be submitted to the local board of health. [2021 c 205 § 7.]

**Finding—2021 c 205:** See note following RCW 43.70.675.

## Chapter 70.47 RCW
## BASIC HEALTH PLAN—HEALTH CARE ACCESS ACT

Sections



**70.47.002 Intent—2002 c 2 (Initiative Measure No. 773).** It is the intent of the people to improve the health of low-income children and adults by expanding access to basic health care and by reducing tobacco-related and other diseases and illnesses that disproportionately affect low-income persons. [2002 c 2 § 1 (Initiative Measure No. 773, approved November 6, 2001).]

**70.47.005 Transfer power, duties, and functions to Washington state health care authority.** The powers, duties, and functions of the Washington basic health plan are hereby transferred to the Washington state health care authority. All references to the *administrator of the Washington basic health plan in the Revised Code of Washington shall be construed to mean the *administrator of the Washington state health care authority. [1993 c 492 § 201.]

***Reviser's note:** The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.47.010 Legislative findings—Purpose—Director to coordinate eligibility.** (1)(a) The legislature finds that limitations on access to health care services for enrollees in the state, such as in rural and underserved areas, are particularly challenging for the basic health plan. Statutory restrictions have reduced the options available to the director to address the access needs of basic health plan enrollees. It is the intent of the legislature to authorize the director to develop alternative purchasing strategies to ensure access to basic health plan enrollees in all areas of the state, including: (i) The use of differential rating for managed health care systems based on geographic differences in costs; and (ii) limited use of self-insurance in areas where adequate access cannot be assured through other options.

(b) In developing alternative purchasing strategies to address health care access needs, the director shall consult with interested persons including health carriers, health care providers, and health facilities, and with other appropriate state agencies including the office of the insurance commissioner and the office of community and rural health. In pursuing such alternatives, the director shall continue to give priority to prepaid managed care as the preferred method of assuring access to basic health plan enrollees followed, in priority

order, by preferred providers, fee-for-service, and self-funding.

(2) The legislature further finds that:

(a) A significant percentage of the population of this state does not have reasonably available insurance or other coverage of the costs of necessary basic health care services;

(b) This lack of basic health care coverage is detrimental to the health of the individuals lacking coverage and to the public welfare, and results in substantial expenditures for emergency and remedial health care, often at the expense of health care providers, health care facilities, and all purchasers of health care, including the state; and

(c) The use of managed health care systems has significant potential to reduce the growth of health care costs incurred by the people of this state generally, and by low-income pregnant women, and at-risk children and adolescents who need greater access to managed health care.

(3) The purpose of this chapter is to provide or make more readily available necessary basic health care services in an appropriate setting to working persons and others who lack coverage, at a cost to these persons that does not create barriers to the utilization of necessary health care services. To that end, this chapter establishes a program to be made available to those residents not eligible for medicare who share in a portion of the cost or who pay the full cost of receiving basic health care services from a managed health care system.

(4) It is not the intent of this chapter to provide health care services for those persons who are presently covered through private employer-based health plans, nor to replace employer-based health plans. However, the legislature recognizes that cost-effective and affordable health plans may not always be available to small business employers. Further, it is the intent of the legislature to expand, wherever possible, the availability of private health care coverage and to discourage the decline of employer-based coverage.

(5)(a) It is the purpose of this chapter to acknowledge the initial success of this program that has (i) assisted thousands of families in their search for affordable health care; (ii) demonstrated that low-income, uninsured families are willing to pay for their own health care coverage to the extent of their ability to pay; and (iii) proved that local health care providers are willing to enter into a public-private partnership as a managed care system.

(b) As a consequence, the legislature intends to extend an option to enroll to certain citizens above two hundred percent of the federal poverty guidelines within the state who reside in communities where the plan is operational and who collectively or individually wish to exercise the opportunity to purchase health care coverage through the basic health plan if the purchase is done at no cost to the state. It is also the intent of the legislature to allow employers and other financial sponsors to financially assist such individuals to purchase health care through the program so long as such purchase does not result in a lower standard of coverage for employees.

(c) The legislature intends that, to the extent of available funds, the program be available throughout Washington state to subsidized and nonsubsidized enrollees. It is also the intent of the legislature to enroll subsidized enrollees first, to the maximum extent feasible.

(d) The legislature directs that the basic health plan director identify enrollees who are likely to be eligible for medical assistance and assist these individuals in applying for and receiving medical assistance. Enrollees receiving medical assistance are not eligible for the Washington basic health plan. [2011 1st sp.s. c 15 § 82; 2009 c 568 § 1; 2000 c 79 § 42; 1993 c 492 § 208; 1987 1st ex.s. c 5 § 3.]

**Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15:** See notes following RCW 74.09.010.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.47.015 Enrollment—Findings—Intent—Enrollee premium share—Expedited application and enrollment process—Commission for insurance producers.** (1) The legislature finds that the basic health plan has been an effective program in providing health coverage for uninsured residents. Further, since 1993, substantial amounts of public funds have been allocated for subsidized basic health plan enrollment.

(2) Effective January 1, 1996, basic health plan enrollees whose income is less than one hundred twenty-five percent of the federal poverty level shall pay at least a ten-dollar premium share.

(3) No later than July 1, 1996, the *administrator shall implement procedures whereby hospitals licensed under chapters 70.41 and 71.12 RCW, health carrier, rural health care facilities regulated under chapter 70.175 RCW, and community and migrant health centers funded under RCW 41.05.220, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process.

(4) No later than July 1, 1996, the *administrator shall implement procedures whereby disability insurance producers, licensed under chapter 48.17 RCW, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. Insurance producers may receive a commission for each individual sale of the basic health plan to anyone not signed up within the previous five years and a commission for each group sale of the basic health plan, if funding for this purpose is provided in a specific appropriation to the health care authority. No commission shall be provided upon a renewal. Commissions shall be determined based on the estimated annual cost of the basic health plan, however, commissions shall not result in a reduction in the premium amount paid to health carriers. For purposes of this section "health carrier" is as defined in RCW 48.43.005. The *administrator may establish: (a) Minimum educational requirements that must be completed by the insurance producers; (b) an appointment process for insurance producers marketing the basic health plan; or (c) standards for revocation of the appointment of an insurance producer to submit applications for cause, including untrustworthy or incompetent conduct or harm to the public. The health care authority and the department of social and health services shall make every effort to simplify and expedite the

application and enrollment process. [2009 c 479 § 49; 2008 c 217 § 99; 1997 c 337 § 1; 1995 c 265 § 1.]

***Reviser's note:** The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

Additional notes found at www.leg.wa.gov

**70.47.020 Definitions *(as amended by 2011 c 284).*** As used in this chapter:

(1) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(2) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under *RCW 70.47.100(7).

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who is accepted for enrollment by the administrator as provided in **RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire under **RCW 48.43.018, or, based upon the results of the standard health questionnaire, the potential enrollee would not qualify for coverage under the Washington state health insurance pool; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) who chooses to obtain basic health care coverage from a particular managed health care system; and (f) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Premium" means a periodic payment, which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(7) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees in the plan and in that system.

(8) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Subsidized enrollee" means:

(a) An individual, or an individual plus the individual's spouse or dependent children:

(i) Who is not eligible for medicare;

(ii) Who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;

(iii) Who is not a full-time student who has received a temporary visa to study in the United States;

(iv) Who resides in an area of the state served by a managed health care system participating in the plan;

(v) Whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(vi) Who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan; and

(vii) Who is not receiving ((~~medical assistance administered by the department of social and health services~~)) or has not been determined to be currently eligible for federally financed categorically needy or medically needy programs under chapter 74.09 RCW, except as provided under RCW 70.47.110;

(b) An individual who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and who is a foster parent licensed under chapter 74.15 RCW and whose gross family income at the time of enrollment does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, an individual, or an individual's spouse or dependent children, who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(10) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter. [2011 c 284 § 1. Prior: 2009 c 568 § 2; 2007 c 259 § 35; 2005 c 188 § 2; 2004 c 192 § 1; 2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5; prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

**Reviser's note:** *(1) RCW 70.47.100 was amended by 2011 1st sp.s. c 9 § 4, changing subsection (7) to subsection (9).

**(2) RCW 48.43.018 was repealed by 2019 c 33 § 7.

**70.47.020 Definitions *(as amended by 2011 1st sp.s. c 9).*** As used in this chapter:

(1) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(2) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(((~~7~~))) (9).

(5) "Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity, acting within their authorized scope of practice or licensure, that does not have a written contract to participate in a managed health care system's provider network, but provides services to plan enrollees who receive coverage through the managed health care system.

(6) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who is accepted for enrollment by the administrator as provided in *RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire under *RCW 48.43.018, or, based upon the results of the standard health questionnaire, the potential enrollee would not qualify for coverage under the Washington state health insurance pool; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) who chooses to obtain basic health care coverage from a particular managed health care system; and (f) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(((~~(6)~~))) (7) "Premium" means a periodic payment, which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(((~~(7)~~))) (8) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees in the plan and in that system.

(((~~(8)~~))) (9) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(((~~(9)~~))) (10) "Subsidized enrollee" means:

(a) An individual, or an individual plus the individual's spouse or dependent children:

(i) Who is not eligible for medicare;

(ii) Who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;

(iii) Who is not a full-time student who has received a temporary visa to study in the United States;

(iv) Who resides in an area of the state served by a managed health care system participating in the plan;

(v) Until March 1, 2011, whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(vi) Who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan;

(vii) Who is not receiving medical assistance administered by the department of social and health services; and

(viii) After February 28, 2011, who is in the basic health transition eligibles population under 1115 medicaid demonstration project number 11-W-00254/10;

(b) An individual who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and who is a foster parent licensed under chapter 74.15 RCW and whose gross family income at the time of enrollment does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, an individual, or an individual's spouse or dependent children, who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(((~~(10)~~))) (11) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter. [2011 1st sp.s. c 9 § 3. Prior: 2011 c 205 § 1; prior: 2009 c 568 § 2; 2007 c 259 § 35; 2005 c 188 § 2; 2004 c 192 § 1; 2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5; prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

***Reviser's note:** RCW 48.43.018 was repealed by 2019 c 33 § 7.

**Findings—Intent—2011 1st sp.s. c 9:** "(1) The legislature finds that:

(a) There is an increasing level of dispute and uncertainty regarding the amount of payment nonparticipating providers may receive for health care services provided to enrollees of state purchased health care programs designed to serve low-income individuals and families, such as basic health and the medicaid managed care programs;

(b) The dispute has resulted in litigation, including a recent Washington superior court ruling that determined nonparticipating providers were entitled to receive billed charges from a managed health care system for services provided to medicaid and basic health plan enrollees. The decision would allow a nonparticipating provider to demand and receive payment in an amount exceeding the payment managed health care system network providers receive for the same services. Similar provider lawsuits have now been filed in other jurisdictions in the state;

(c) In the biennial operating budget, the legislature has previously indicated its intent that payment to nonparticipating providers for services provided to medicaid managed care enrollees should be limited to amounts paid to medicaid fee-for-service providers. The duration of these provisions is limited to the period during which the operating budget is in effect. A more permanent resolution of these issues is needed; and

(d) Continued failure to resolve this dispute will have adverse impacts on state purchased health care programs serving low-income enrollees, including: (i) Diminished ability for the state to negotiate cost-effective contracts with managed health care systems; (ii) a potential for significant reduction in the willingness of providers to participate in managed health care system provider networks; (iii) a reduction in providers participating in the managed health care systems; and (iv) increased exposure for program enrollees to balance billing practices by nonparticipating providers. Ultimately, fewer eligible people will get the care they need as state purchased health care programs will operate with less efficiency and reduced access to cost-effective and quality health care coverage for program enrollees.

(2) It is the intent of the legislature to create a legislative solution that reduces the cost borne by the state to provide public health care coverage to low-income enrollees in managed health care systems, protects enrollees and state purchased health care programs from balance billing by nonparticipating providers, provides appropriate payment to health care providers for services provided to enrollees of state purchased health care programs, and limits the risk for managed health care systems that contract with the state programs." [2011 1st sp.s. c 9 § 1.]

**70.47.020 Definitions *(as amended by 2011 1st sp.s. c 15)*.** As used in this chapter:

(1) ((~~"Administrator" means the Washington basic health plan administrator, who also holds the position of administrator~~)) "Director" means the director of the Washington state health care authority.

(2) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the ((~~administrator~~)) director and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under *RCW 70.47.100(7).

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the ((~~administrator~~)) director; (c) who is accepted for enrollment by the ((~~administrator~~)) director as provided in **RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire under **RCW 48.43.018, or, based upon the results of the standard health questionnaire, the potential enrollee would not qualify for coverage under the Washington state health insurance pool; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) who chooses to obtain basic health care coverage from a particular managed health care system; and (f) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Premium" means a periodic payment, which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(7) "Rate" means the amount, negotiated by the ((~~administrator~~)) director with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees in the plan and in that system.

(8) "Subsidy" means the difference between the amount of periodic payment the ((~~administrator~~)) director makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Subsidized enrollee" means:

(a) An individual, or an individual plus the individual's spouse or dependent children:

(i) Who is not eligible for medicare;

(ii) Who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the ((~~administrator~~)) director;

(iii) Who is not a full-time student who has received a temporary visa to study in the United States;

(iv) Who resides in an area of the state served by a managed health care system participating in the plan;

(v) Until March 1, 2011, whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(vi) Who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan;

(vii) Who is not receiving medical assistance administered by the ((~~department of social and health services~~)) authority; and

(viii) After February 28, 2011, who is in the basic health transition eligibles population under 1115 medicaid demonstration project number 11-W-00254/10;

(b) An individual who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and who is a foster parent licensed under chapter 74.15 RCW and whose gross family income at the time of enrollment does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, an individual, or an individual's spouse or dependent children, who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(10) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan ((~~administrator~~)) director through participating managed health care systems, created by this chapter. [2011 1st sp.s. c 15 § 83; 2011 c 205 § 1; 2009 c 568 § 2; 2007 c 259 § 35; 2005 c 188 § 2; 2004 c 192 § 1; 2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5. Prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

**Reviser's note:** *(1) RCW 70.47.100 was amended by 2011 1st sp.s. c 9 § 4, changing subsection (7) to subsection (9).

**(2) RCW 48.43.018 was repealed by 2019 c 33 § 7.

(3) RCW 70.47.020 was amended three times during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15:** See notes following RCW 74.09.010.

**Intent—2011 c 205:** "The legislature intends to define eligibility for the basic health plan for periods subsequent to expiration of the 1115 medicaid demonstration project based upon recommendations from its joint select committee on health reform regarding whether the basic health plan should be offered as an enrollment option for persons who qualify for federal premium subsidies under the federal patient protection and affordable care act of 2010." [2011 c 205 § 2.]

**Findings—2005 c 188:** "The legislature finds that the basic health plan is a valuable means of providing access to affordable health insurance coverage for low-income families and individuals in Washington state. The legislature further finds that persons studying in the United States as full-time students under temporary visas must show, as a condition of receiving their temporary visa, that they have sufficient funds available for self-support during their entire proposed course of study. For this reason, the legislature finds that it is not appropriate to provide subsidized basic health plan coverage to this group of students." [2005 c 188 § 1.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.47.030 Basic health plan trust account—Basic health plan subscription account.** (1) The basic health plan trust account is hereby established in the state treasury. Any nongeneral fund-state funds collected for this program shall be deposited in the basic health plan trust account and may be expended without further appropriation. Moneys in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of enrollees in the plan and payment of costs of administering the plan.

During the 1995-97 fiscal biennium, the legislature may transfer funds from the basic health plan trust account to the state general fund.

(2) The basic health plan subscription account is created in the custody of the state treasurer. All receipts from amounts due from or on behalf of nonsubsidized enrollees and health coverage tax credit eligible enrollees shall be deposited into the account. Funds in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of nonsubsidized enrollees and health coverage tax credit eligible enrollees in the plan and payment of costs of administering the plan. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(3) The *administrator shall take every precaution to see that none of the funds in the separate accounts created in this section or that any premiums paid either by subsidized or nonsubsidized enrollees are commingled in any way, except that the *administrator may combine funds designated for administration of the plan into a single administrative account. [2004 c 192 § 2; 1995 2nd sp.s. c 18 § 913; 1993 c 492 § 210; 1992 c 232 § 907. Prior: 1991 sp.s. c 13 § 68; 1991 sp.s. c 4 § 1; 1987 1st ex.s. c 5 § 5.]

***Reviser's note:** The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.47.040 Basic health plan—Health care authority head to be administrator—Joint operations.** (1) The Washington basic health plan is created as a program within the Washington state health care authority. The administrative head and appointing authority of the plan shall be the *administrator of the Washington state health care authority. The *administrator shall appoint a medical director. The medical director and up to five other employees of the plan shall be exempt from the civil service law, chapter 41.06 RCW.

(2) The *administrator shall employ such other staff as are necessary to fulfill the responsibilities and duties of the *administrator, such staff to be subject to the civil service law, chapter 41.06 RCW. In addition, the *administrator may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise. Any such contractor or consultant shall be prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility without specific permission of the plan. The *administrator may call upon other agencies of the state to provide available information as necessary to assist the *administrator in meeting its

responsibilities under this chapter, which information shall be supplied as promptly as circumstances permit.

(3) The *administrator may appoint such technical or advisory committees as he or she deems necessary.

(4) The *administrator may apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects relating to health care costs and access to health care.

(5) Whenever feasible, the *administrator shall reduce the administrative cost of operating the program by adopting joint policies or procedures applicable to both the basic health plan and employee health plans. [2010 1st sp.s. c 7 § 7; 1993 c 492 § 211; 1987 1st ex.s. c 5 § 6.]

***Reviser's note:** The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.47.050 Rules.** The *administrator may promulgate and adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1987 1st ex.s. c 5 § 7.]

***Reviser's note:** The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**70.47.060 Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment.** The *administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care. In addition, the *administrator may, to the extent that funds are available, offer as basic health plan services chemical dependency services, mental health services, and organ transplant services. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic health care services in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the *administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the *administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.47.030, and such other factors as the *administrator deems appropriate. The *administrator shall encourage enrollees who have been continually enrolled on basic health for a period of one year or more to complete a health risk assessment and participate in programs approved by the *administrator that may include wellness, smoking cessation, and chronic disease management programs. In approving programs, the *administrator shall consider evidence that any such programs are proven to improve enrollee health status.

(2)(a) To design and implement a structure of periodic premiums due the *administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (11) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (12) of this section.

(b) To determine the periodic premiums due the *administrator from subsidized enrollees under **RCW 70.47.020(9)(b). Premiums due for foster parents with gross family income up to two hundred percent of the federal poverty level shall be set at the minimum premium amount charged to enrollees with income below sixty-five percent of the federal poverty level. Premiums due for foster parents with gross family income between two hundred percent and three hundred percent of the federal poverty level shall not exceed one hundred dollars per month.

(c) To determine the periodic premiums due the *administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(d) To determine the periodic premiums due the *administrator from health coverage tax credit eligible enrollees. Premiums due from health coverage tax credit eligible enrollees must be in an amount equal to the cost charged by the managed health care system provider to the state for the plan, plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201. The *administrator will consider the impact of eligibility determination by the appropriate federal agency designated by the Trade Act of 2002 (P.L. 107-210) as well as the premium collection and remittance activities by the United States internal revenue service when determining the administrative cost charged for health coverage tax credit eligible enrollees.

(e) An employer or other financial sponsor may, with the prior approval of the *administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the *administrator. The *administrator shall establish a mechanism for receiving premium payments from the United States internal revenue service for health coverage tax credit eligible enrollees.

(f) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as config-

ured on January 1, 2001, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(g) To collect from all public employees a voluntary opt-in donation of varying amounts through a monthly or one-time payroll deduction as provided for in RCW 41.04.230. The donation must be deposited in the health services account established in ***RCW 43.72.900 to be used for the sole purpose of maintaining enrollment capacity in the basic health plan.

The *administrator shall send an annual notice to state employees extending the opportunity to participate in the opt-in donation program for the purpose of saving enrollment slots for the basic health plan. The first such notice shall be sent to public employees no later than June 1, 2009.

The notice shall include monthly sponsorship levels of fifteen dollars per month, thirty dollars per month, fifty dollars per month, and any other amounts deemed reasonable by the *administrator. The sponsorship levels shall be named "safety net contributor," "safety net hero," and "safety net champion" respectively. The donation amounts provided shall be tied to the level of coverage the employee will be purchasing for a working poor individual without access to health care coverage.

The *administrator shall ensure that employees are given an opportunity to establish a monthly standard deduction or a one-time deduction towards the basic health plan donation program. The basic health plan donation program shall be known as the "save the safety net program."

The donation permitted under this subsection may not be collected from any public employee who does not actively opt in to the donation program. Written notification of intent to discontinue participation in the donation program must be provided by the public employee at least fourteen days prior to the next standard deduction.

(3) To evaluate, with the cooperation of participating managed health care system providers, the impact on the basic health plan of enrolling health coverage tax credit eligible enrollees. The *administrator shall issue to the appropriate committees of the legislature preliminary evaluations on June 1, 2005, and January 1, 2006, and a final evaluation by June 1, 2006. The evaluation shall address the number of persons enrolled, the duration of their enrollment, their utilization of covered services relative to other basic health plan enrollees, and the extent to which their enrollment contributed to any change in the cost of the basic health plan.

(4) To end the participation of health coverage tax credit eligible enrollees in the basic health plan if the federal government reduces or terminates premium payments on their behalf through the United States internal revenue service.

(5) To design and implement a structure of enrollee cost-sharing due a managed health care system from subsidized, nonsubsidized, and health coverage tax credit eligible enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(6) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the *administrator finds that there is danger of such an overexpenditure, the *administrator shall close enrollment until the *administrator finds the danger no longer exists. Such a closure does not apply to health coverage tax credit eligible enrollees who receive a premium subsidy from the United States internal revenue service as long as the enrollees qualify for the health coverage tax credit program. To prevent the risk of overexpenditure, the *administrator may disenroll persons receiving subsidies from the program based on criteria adopted by the *administrator. The criteria may include: Length of continual enrollment on the program, income level, or eligibility for other coverage. The *administrator shall identify enrollees who are eligible for other coverage, and, working with the department of social and health service as provided in RCW 70.47.010(5)(d), transition enrollees currently eligible for federally financed categorically needy or medically needy programs administered under chapter 74.09 RCW to that coverage. The *administrator shall develop criteria for persons disenrolled under this subsection to reapply for the program.

(7) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the *administrator.

(8) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(9) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan for subsidized enrollees, nonsubsidized enrollees, or health coverage tax credit eligible enrollees. The *administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the *administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(10) To receive periodic premiums from or on behalf of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(11) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized, nonsubsidized, or health coverage tax credit eligible enrollees, to give priority to members of the Washington national guard and reserves who served in Operation Enduring Freedom, Operation Iraqi

Freedom, or Operation Noble Eagle, and their spouses and dependents, for enrollment in the Washington basic health plan, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. The application is also considered an application for medical assistance under chapter 74.09 RCW and must include a social security number, if available, for each family member requesting coverage. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and 74.13A.005 through 74.13A.080 shall not be counted toward a family's current gross family income for the purposes of this chapter. When an enrollee fails to report income or income changes accurately, the *administrator shall have the authority either to bill the enrollee for the amounts overpaid by the state or to impose civil penalties of up to two hundred percent of the amount of subsidy overpaid due to the enrollee incorrectly reporting income. The *administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the *administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(12) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The *administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The *administrator may require that a business owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The *administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the *administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(13) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same or actuarially equivalent for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the *administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the *administrator finds relevant.

(14) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the *administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The *administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(15) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(16) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(17) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(18) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

(19) To administer the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington state health insurance pool.

(20) To give priority in enrollment to persons who disenrolled from the program in order to enroll in medicaid, and subsequently became ineligible for medicaid coverage. [2011 c 284 § 2; 2009 c 568 § 3; 2007 c 259 § 36; 2006 c 343 § 9; 2004 c 192 § 3; 2001 c 196 § 13; 2000 c 79 § 34. Prior: 1998 c 314 § 17; 1998 c 148 § 1; prior: 1997 c 337 § 2; 1997 c 335 § 2; 1997 c 245 § 6; 1997 c 231 § 206; prior: 1995 c 266 § 1; 1995 c 2 § 4; 1994 c 309 § 5; 1993 c 492 § 212; 1992 c 232 § 908; prior: 1991 sp.s. c 4 § 2; 1991 c 3 § 339; 1987 1st ex.s. c 5 § 8.]

**Reviser's note:** *(1) The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**(2) RCW 70.47.020 was amended by 2011 1st sp.s. c 9 § 3, changing subsection (9)(b) to subsection (10)(b).

***(3) RCW 43.72.900 was repealed by 2009 c 479 § 29.

**Findings—2006 c 343:** See note following RCW 43.60A.160.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.47.0601 Income determination—Unemployment compensation.** The *administrator shall not count the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in **RCW 50.20.1202

when determining an individual's gross family income, eligibility, and premium share. [2011 c 4 § 18.]

**Reviser's note:** *(1) The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**(2) RCW 50.20.1202 was repealed by 2021 c 2 § 27.

Additional notes found at www.leg.wa.gov

**70.47.070 Benefits from other coverages not reduced.** The benefits available under the basic health plan shall be excess to the benefits payable under the terms of any insurance policy issued to or on the behalf of an enrollee that provides payments toward medical expenses without a determination of liability for the injury. Except where in conflict with federal or state law, the benefits of any other health plan or insurance which covers an enrollee shall be determined before the benefits of the basic health plan. The *administrator shall require that managed health care systems conduct and report on coordination of benefits activities as provided under this section. [2009 c 568 § 4; 1987 1st ex.s. c 5 § 9.]

***Reviser's note:** The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**70.47.080 Enrollment of applicants—Participation limitations.** On and after July 1, 1988, the *administrator shall accept for enrollment applicants eligible to receive covered basic health care services from the respective managed health care systems which are then participating in the plan.

Thereafter, total subsidized enrollment shall not result in expenditures that exceed the total amount that has been made available by the legislature in any act appropriating funds to the plan. To the extent that new funding is appropriated for expansion, the *administrator shall endeavor to secure participation contracts from managed health care systems in geographic areas of the state that are unserved by the plan at the time at which the new funding is appropriated. In the selection of any such areas the *administrator shall take into account the levels and rates of unemployment in different areas of the state, the need to provide basic health care coverage to a population reasonably representative of the portion of the state's population that lacks such coverage, and the need for geographic, demographic, and economic diversity.

The *administrator shall at all times closely monitor growth patterns of enrollment so as not to exceed that consistent with the orderly development of the plan as a whole, in any area of the state or in any participating managed health care system. The annual or biennial enrollment limitations derived from operation of the plan under this section do not apply to nonsubsidized enrollees as defined in **RCW 70.47.020(5). [1993 c 492 § 213; 1987 1st ex.s. c 5 § 10.]

**Reviser's note:** *(1) The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**(2) RCW 70.47.020 was amended by 2011 1st sp.s. c 9 § 3, changing subsection (5) to subsection (6).

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.47.090 Removal of enrollees.** Any enrollee whose premium payments to the plan are delinquent or who moves his or her residence out of an area served by the plan may be dropped from enrollment status. An enrollee whose premium is the responsibility of the department of social and health services under RCW 70.47.110 may not be dropped solely because of nonpayment by the department. The *administrator shall provide delinquent enrollees with advance written notice of their removal from the plan and shall provide for a hearing under chapters 34.05 and 34.12 RCW for any enrollee who contests the decision to drop the enrollee from the plan. Upon removal of an enrollee from the plan, the *administrator shall promptly notify the managed health care system in which the enrollee has been enrolled, and shall not be responsible for payment for health care services provided to the enrollee (including, if applicable, members of the enrollee's family) after the date of notification. A managed health care system may contest the denial of payment for coverage of an enrollee through a hearing under chapters 34.05 and 34.12 RCW. [1987 1st ex.s. c 5 § 11.]

***Reviser's note:** The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**70.47.100 Participation by a managed health care system—Expiration of subsections.** (1) A managed health care system participating in the plan shall do so by contract with the director and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the director as long as payments from the director on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The director may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the director to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) A managed health care system shall pay a nonparticipating provider that provides a service covered under this chapter to the system's enrollee no more than the lowest amount paid for that service under the managed health care system's contracts with similar providers in the state.

(3) Pursuant to federal managed care access standards, 42 C.F.R. Sec. 438, managed health care systems must maintain a network of appropriate providers that is supported by written agreements sufficient to provide adequate access to all services covered under the contract with the authority, including hospital-based physician services. The authority will monitor and periodically report on the proportion of services provided by contracted providers and nonparticipating providers, by county, for each managed health care system to ensure that managed health care systems are meeting network adequacy requirements. No later than January 1st of each year, the authority will review and report its findings to the appropriate policy and fiscal committees of the legislature for the preceding state fiscal year.

(4) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating

managed health care systems serving their respective areas. The director shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the director shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another participating managed health care system at any time upon a showing of good cause for the transfer.

(5) Prior to negotiating with any managed health care system, the director shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state.

(6) In negotiating with managed health care systems for participation in the plan, the director shall adopt a uniform procedure that includes at least the following:

(a) The director shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(b) The director shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(c) The director may then select one or more systems to provide the covered services within a local area; and

(d) The director may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(7)(a) The director may contract with a managed health care system to provide covered basic health care services to subsidized enrollees, nonsubsidized enrollees, health coverage tax credit eligible enrollees, or any combination thereof. At a minimum, such contracts issued on or after January 1, 2012, must include:

(i) Provider reimbursement methods that incentivize chronic care management within health homes;

(ii) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use; and

(iii) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocation of funds to support provider participation in the training unless the managed care system is an integrated health delivery system that has programs in place for chronic care management.

(b) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(c) For the purposes of this subsection, "chronic care management," "chronic condition," and "health home" have the same meaning as in RCW 74.09.010.

(d) Contracts that include the items in (a)(i) through (iii) of this subsection must not exceed the rates that would be paid in the absence of these provisions.

(8) The director may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (6) of this section, upon a determination by the director that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

(9) Subsections (2) and (3) of this section expire July 1, 2016. [2013 c 251 § 7. Prior: 2011 1st sp.s. c 9 § 4; 2011 c 316 § 5; 2009 c 568 § 5; 2004 c 192 § 4; 2000 c 79 § 35; 1987 1st ex.s. c 5 § 12.]

**Residual balance of funds—Effective date—2013 c 251:** See notes following RCW 41.06.280.

**Findings—Intent—2011 1st sp.s. c 9:** See note following RCW 70.47.020.

Additional notes found at www.leg.wa.gov

**70.47.110 Enrollment of medical assistance recipients.** The health care authority may make payments to managed health care systems, as defined in RCW 74.09.522 or in this chapter, on behalf of any person who is a recipient of medical care under chapter 74.09 RCW, up to the maximum rate allowable for federal matching purposes under Title XIX of the social security act. Any enrollee on whose behalf the health care authority makes such payments may continue as an enrollee, making premium payments based on the enrollee's own income as determined under the sliding scale, after eligibility for coverage under chapter 74.09 RCW has ended, as long as the enrollee remains eligible under this chapter. Nothing in this section affects the right of any person eligible for coverage under chapter 74.09 RCW to receive the services offered to other persons under that chapter but not included in the schedule of basic health care services covered by the plan. The director shall seek to determine which enrollees or prospective enrollees may be eligible for medical care under chapter 74.09 RCW and may require these individuals to complete the eligibility determination process under chapter 74.09 RCW prior to enrollment or continued participation in the plan. The director shall adopt procedures to facilitate the transition of plan enrollees and payments on their behalf between the plan and the programs established under chapter 74.09 RCW. [2014 c 198 § 1; 2011 1st sp.s. c 15 § 84; 1991 sp.s. c 4 § 3; 1987 1st ex.s. c 5 § 13.]

**Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15:** See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

**70.47.115 Enrollment of persons in timber impact areas.** (1) The *administrator, when specific funding is provided and where feasible, shall make the basic health plan available in timber impact areas. The *administrator shall prioritize making the plan available under this section to the timber impact areas meeting the following criteria, as determined by the employment security department: (a) A lumber and wood products employment location quotient at or above the state average; (b) a direct lumber and wood products job loss of one hundred positions or more; and (c) an annual unemployment rate twenty percent above the state average.

(2) Persons assisted under this section shall meet the requirements of enrollee as defined in **RCW 70.47.020(4).

(3) For purposes of this section, "timber impact area" means:

(a) A county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year such data is available: (i) A lumber and wood products employment location quotient at or above the state average; (ii) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (iii) an annual unemployment rate twenty percent or more above the state average; or

(b) Additional communities as the economic recovery coordinating board, established in ***RCW 43.31.631, designates based on a finding by the board that each designated community is socially and economically integrated with areas that meet the definition of a timber impact area under (a) of this subsection. [1992 c 21 § 7; 1991 c 315 § 22.]

**Reviser's note:** *(1) The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**(2) RCW 70.47.020 was amended by 2004 c 192 § 1, changing subsection (4) to subsection (6), effective January 1, 2005. RCW 70.47.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (6) to subsection (9). RCW 70.47.020 was subsequently amended by 2011 1st sp.s. c 9 § 3, changing subsection (9) to subsection (10).

***(3) RCW 43.31.631 was repealed by 1995 c 226 § 33 and 1995 c 269 § 1902, effective July 1, 1995.

**Intent—1991 c 315:** See note following RCW 28B.50.030.

Additional notes found at www.leg.wa.gov

**70.47.120 Administrator—Contracts for services.** In addition to the powers and duties specified in RCW 70.47.040 and 70.47.060, the *administrator has the power to enter into contracts for the following functions and services:

(1) With public or private agencies, to assist the *administrator in her or his duties to design or revise the schedule of covered basic health care services, and/or to monitor or evaluate the performance of participating managed health care systems.

(2) With public or private agencies, to provide technical or professional assistance to health care providers, particularly public or private nonprofit organizations and providers serving rural areas, who show serious intent and apparent capability to participate in the plan as managed health care systems.

(3) With public or private agencies, including health care service contractors registered under RCW 48.44.015, and doing business in the state, for marketing and administrative services in connection with participation of managed health care systems, enrollment of enrollees, billing and collection services to the *administrator, and other administrative functions ordinarily performed by health care service contractors, other than insurance. Any activities of a health care service contractor pursuant to a contract with the *administrator under this section shall be exempt from the provisions and requirements of Title 48 RCW except that persons appointed or authorized to solicit applications for enrollment in the basic health plan shall comply with chapter 48.17 RCW. [1997 c 337 § 7; 1987 1st ex.s. c 5 § 14.]

***Reviser's note:** The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**70.47.130 Exemption from insurance code.** (1) The activities and operations of the Washington basic health plan under this chapter, including those of managed health care systems to the extent of their participation in the plan, are exempt from the provisions and requirements of Title 48 RCW except:

(a) Benefits as provided in RCW 70.47.070;

(b) Managed health care systems are subject to the provisions of RCW 48.43.022, 48.43.500, 70.02.045, 48.43.505 through 48.43.535, 48.43.537, 48.43.545, 48.43.550, 70.02.110, and 70.02.900;

(c) Persons appointed or authorized to solicit applications for enrollment in the basic health plan, including employees of the health care authority, must comply with chapter 48.17 RCW. For purposes of this subsection (1)(c), "solicit" does not include distributing information and applications for the basic health plan and responding to questions;

(d) Amounts paid to a managed health care system by the basic health plan for participating in the basic health plan and providing health care services for nonsubsidized enrollees in the basic health plan must comply with RCW 48.14.0201; and

(e) Administrative simplification requirements as provided in chapter 298, Laws of 2009.

(2) The purpose of the 1994 amendatory language to this section in chapter 309, Laws of 1994 is to clarify the intent of the legislature that premiums paid on behalf of nonsubsidized enrollees in the basic health plan are subject to the premium and prepayment tax. The legislature does not consider this clarifying language to either raise existing taxes nor to impose a tax that did not exist previously. [2016 c 139 § 5; 2009 c 298 § 4; 2004 c 115 § 2; 2000 c 5 § 21; 1997 c 337 § 8; 1994 c 309 § 6; 1987 1st ex.s. c 5 § 15.]

**Intent—Purpose—2000 c 5:** See RCW 48.43.500.

Additional notes found at www.leg.wa.gov

**70.47.140 Reservation of legislative power.** The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or any acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time. [1987 1st ex.s. c 5 § 2.]

**70.47.150 Confidentiality.** Notwithstanding the provisions of chapter 42.56 RCW, (1) records obtained, reviewed by, or on file with the plan containing information concerning medical treatment of individuals shall be exempt from public inspection and copying; and (2) actuarial formulas, statistics, and assumptions submitted in support of a rate filing by a managed health care system or submitted to the *administrator upon his or her request shall be exempt from public inspection and copying in order to preserve trade secrets or prevent unfair competition. [2005 c 274 § 336; 1990 c 54 § 1.]

***Reviser's note:** The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**70.47.160 Right of individuals to receive services—Right of providers, carriers, and facilities to refuse to participate in or pay for services for reason of conscience or religion—Requirements.** (1) The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected. Therefore, while recognizing the right of conscientious objection to participating in specific health services, the state shall also recognize the right of individuals enrolled with the basic health plan to receive the full range of services covered under the basic health plan.

(2)(a) No individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objection.

(b) The provisions of this section are not intended to result in an enrollee being denied timely access to any service included in the basic health plan. Each health carrier shall:

(i) Provide written notice to enrollees, upon enrollment with the plan, listing services that the carrier refuses to cover for reason of conscience or religion;

(ii) Provide written information describing how an enrollee may directly access services in an expeditious manner; and

(iii) Ensure that enrollees refused services under this section have prompt access to the information developed pursuant to (b)(ii) of this subsection.

(c) The *administrator shall establish a mechanism or mechanisms to recognize the right to exercise conscience while ensuring enrollees timely access to services and to assure prompt payment to service providers.

(3)(a) No individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reason of conscience or religion.

(b) The provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's or another individual's exercise of the conscience clause in (a) of this subsection.

(c) The *administrator shall define the process through which health carriers may offer the basic health plan to individuals and organizations identified in (a) and (b) of this subsection in accordance with the provisions of subsection (2)(c) of this section.

(4) Nothing in this section requires the health care authority, health carriers, health care facilities, or health care providers to provide any basic health plan service without payment of appropriate premium share or enrollee cost sharing. [1995 c 266 § 3.]

***Reviser's note:** The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

Additional notes found at www.leg.wa.gov

**70.47.170 Annual reporting requirement.** (1) Beginning in November 2012, the health care authority, in coordination with the department of social and health services, shall by November 15th of each year report to the legislature:

(a) The number of basic health plan enrollees who: (i) Upon enrollment or recertification had reported being employed, and beginning with the 2008 report, the month and year they reported being hired; or (ii) upon enrollment or recertification had reported being the dependent of someone who was employed, and beginning with the 2008 report, the month and year they reported the employed person was hired; and (iii) the total cost to the state for these enrollees. The information shall be reported by employer size for employers having more than fifty employees as enrollees or with dependents as enrollees. This information shall be provided for the preceding January and June of that year.

(b) The following aggregated information: (i) The number of employees who are enrollees or with dependents as enrollees by private and governmental employers; (ii) the number of employees who are enrollees or with dependents as enrollees by employer size for employers with fifty or fewer employees, fifty-one to one hundred employees, one hundred one to one thousand employees, one thousand one to five thousand employees and more than five thousand employees; and (iii) the number of employees who are enrollees or with dependents as enrollees by industry type.

(2) For each aggregated classification, the report will include the number of hours worked and total cost to the state for these enrollees. This information shall be for each quarter of the preceding year. [2009 c 568 § 7; 2006 c 264 § 1.]

**70.47.200 Mental health services—Definition—Coverage required, when.** (1) For the purposes of this section, "mental health services" means:

(a) For any schedule of benefits established or renewed by the Washington basic health plan before January 1, 2021, medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on June 11, 2020, or such subsequent date as may be determined by the director, by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (i) Substance related disorders; (ii) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (iii) skilled nursing facility services, home health care, residential treatment, and custodial care; and (iv) court ordered treatment, unless the Washington basic health plan's or contracted managed health care system's medical director or designee determines the treatment to be medically necessary; and

(b) For any schedule of benefits established or renewed by the Washington basic health plan on or after January 1, 2021, medically necessary outpatient and inpatient services provided to treat mental health and substance use disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental health or substance use disorders, published by the American

psychiatric association, on June 11, 2020, or such subsequent date as may be determined by the director by rule, consistent with the purposes of chapter 6, Laws of 2005.

(2) Any schedule of benefits established or renewed by the Washington basic health plan shall provide coverage for:

(a) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the schedule of benefits. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the schedule of benefits imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the schedule of benefits imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(b) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered under the schedule of benefits.

(3) This section does not prohibit a requirement that mental health services be medically necessary, if a comparable requirement is applicable to medical and surgical services.

(4) Nothing in this section shall be construed to prevent the management of mental health services if a comparable requirement is applicable to medical and surgical services. [2020 c 228 § 7; 2005 c 6 § 6.]

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**70.47.201 Mental health services—Rules.** The *administrator may adopt rules to implement RCW 70.47.200. [2005 c 6 § 11.]

***Reviser's note:** The definition of "administrator" was changed to "director" in RCW 70.47.020 by 2011 1st sp.s. c 15 § 83.

**Findings—Intent—Severability—2005 c 6:** See notes following RCW 41.05.600.

**70.47.210 Prostate cancer screening.** (1) Any schedule of benefits established or renewed by the Washington basic health plan after December 31, 2006, shall provide coverage for prostate cancer screening, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant.

(2) This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits, such as deductible or copayment provisions. This section does not limit the authority of the health care authority to negotiate rates and contract with specific providers for the delivery of prostate cancer screening services. [2006 c 367 § 7.]

**70.47.220 Increase in reimbursement rates not applicable.** The increases in inpatient and outpatient reimbursement rates included in chapter 74.60 RCW shall not be reflected in hospital payment rates for services provided to basic health enrollees under this chapter. [2010 1st sp.s. c 30 § 15.]

Additional notes found at www.leg.wa.gov

**70.47.240 Discontinuation of health coverage—Preexisting condition.** If a person was previously enrolled in a group health benefit plan, an individual health benefit plan, or a catastrophic health plan that is discontinued by the carrier by July 1, 2012, at any time during the sixty-three day period immediately preceding their application date for nonsubsidized coverage in the basic health plan as a nonsubsidized enrollee, the basic health plan must credit the applicant's period of prior coverage toward any preexisting condition waiting period applicable under the basic health plan if the benefits under the previous plan provide equivalent or greater overall benefit coverage than that provided in the basic health plan for nonsubsidized enrollees. [2012 c 64 § 3.]

**Effective date—2012 c 64:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2012]." [2012 c 64 § 4.]

**70.47.250 Federal basic health option—Report to legislature—Certification—Director's findings—Program's guiding principles.** (1) On or before December 1, 2012, the director of the health care authority shall submit a report to the legislature on whether to proceed with implementation of a federal basic health option, under section 1331 of P.L. 111-148 of 2010, as amended. The report shall address whether:

(a) Sufficient funding is available to support the design and development work necessary for the program to provide health coverage to enrollees beginning January 1, 2014;

(b) Anticipated federal funding under section 1331 will be sufficient, absent any additional state funding, to cover the provision of essential health benefits and costs for administering the basic health plan. Enrollee premium levels will be below the levels that would apply to persons with income between one hundred thirty-four and two hundred percent of the federal poverty level through the exchange; and

(c) Health plan payment rates will be sufficient to ensure enrollee access to a robust provider network and health homes, as described under RCW 70.47.100.

(2) If the legislature determines to proceed with implementation of a federal basic health option, the director shall provide the necessary certifications to the secretary of the federal department of health and human services under section 1331 of P.L. 111-148 of 2010, as amended, to proceed with adoption of the federal basic health program option.

(3) Prior to making this finding, the director shall:

(a) Actively consult with the board of the Washington health benefit exchange, the office of the insurance commissioner, consumer advocates, provider organizations, carriers, and other interested organizations;

(b) Consider any available objective analysis specific to Washington state, by an independent nationally recognized consultant that has been actively engaged in analysis and eco-

nomic modeling of the federal basic health program option for multiple states.

(4) The director shall report any findings and supporting analysis made under this section to the governor and relevant policy and fiscal committees of the legislature.

(5) To the extent funding is available specifically for this purpose in the operating budget, the health care authority shall assume the federal basic health plan option will be implemented in Washington state, and initiate the necessary design and development work. If the legislature determines under subsection (1) of this section not to proceed with implementation, the authority may cease activities related to basic health program implementation.

(6) If implemented, the federal basic health program must be guided by the following principles:

(a) Meeting the minimum state certification standards in section 1331 of the federal patient protection and affordable care act;

(b) To the extent allowed by the federal department of health and human services, twelve-month continuous eligibility for the basic health program, and corresponding twelve-month continuous enrollment in standard health plans by enrollees; or, in lieu of twelve-month continuous eligibility, financing mechanisms that enable enrollees to remain with a plan for the entire plan year;

(c) Achieving an appropriate balance between:

(i) Premiums and cost-sharing minimized to increase the affordability of insurance coverage;

(ii) Standard health plan contracting requirements that minimize plan and provider administrative costs, while incentivizing improvements in quality and enrollee health outcomes; and

(iii) Health plan payment rates and provider payment rates that are sufficient to ensure enrollee access to a robust provider network and health homes, as described under RCW 70.47.100; and

(d) Transparency in program administration, including active and ongoing consultation with basic health program enrollees and interested organizations, and ensuring adequate enrollee notice and appeal rights. [2012 c 87 § 15.]

**Spiritual care services—2012 c 87:** See RCW 43.71.901.

**70.47.900 Short title.** This chapter shall be known and may be cited as the health care access act of 1987. [1987 1st ex.s. c 5 § 1.]

**70.47.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 151.]

Additional notes found at www.leg.wa.gov

## Chapter 70.48 RCW
## CITY AND COUNTY JAILS ACT

Sections



**70.48.020 Definitions.** As used in this chapter the words and phrases in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Administration" means the direct application of a drug whether by ingestion or inhalation, to the body of an inmate by a practitioner or nonpractitioner jail personnel.

(2) "Correctional facility" means a facility operated by a governing unit primarily designed, staffed, and used for the housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

(3) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of medication whether or not there is an agency relationship.

(4) "Detention facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing or persons serving terms not to exceed ninety days.

(5) "Drug" and "legend drug" have the same meanings as provided in RCW 69.41.010.

(6) "Governing unit" means the city and/or county or any combinations of cities and/or counties responsible for the operation, supervision, and maintenance of a jail.

(7) "Health care" means preventive, diagnostic, and rehabilitative services provided by licensed health care professionals and/or facilities; such care to include providing prescription drugs where indicated.

(8) "Holding facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed thirty days.

(9) "Jail" means any holding, detention, special detention, or correctional facility as defined in this section.

(10) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(11) "Major urban" means a county or combination of counties which has a city having a population greater than twenty-six thousand based on the 1978 projections of the office of financial management.

(12) "Medication" means a drug, legend drug, or controlled substance requiring a prescription or an over-the-counter or nonprescription drug.

(13) "Medication assistance" means assistance rendered by nonpractitioner jail personnel to an inmate residing in a jail to facilitate the individual's self-administration of a legend drug or controlled substance or nonprescription medication. "Medication assistance" includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand.

(14) "Medium urban" means a county or combination of counties which has a city having a population equal to or greater than ten thousand but less than twenty-six thousand based on the 1978 projections of the office of financial management.

(15) "Nonpractitioner jail personnel" means appropriately trained staff who are authorized to manage, deliver, or administer prescription and nonprescription medication under RCW 70.48.490.

(16) "Office" means the office of financial management.

(17) "Physical restraint" means the use of any bodily force or physical intervention to control an offender or limit an offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent an offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive offender who is unwilling to leave the area voluntarily; or

(c) Guide an offender from one location to another.

(18) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the woman or youth leaves the hospital, birthing center, or clinic.

(19) "Practitioner" has the same meaning as provided in RCW 69.41.010.

(20) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

(21) "Rural" means a county or combination of counties which has a city having a population less than ten thousand based on the 1978 projections of the office of financial management.

(22) "Special detention facility" means a minimum security facility operated by a governing unit primarily designed, staffed, and used for the housing of special populations of sentenced persons who do not require the level of security normally provided in detention and correctional facilities including, but not necessarily limited to, persons convicted of offenses under RCW 46.61.502 or 46.61.504.

(23) "Transportation" means the conveying, by any means, of an incarcerated pregnant woman or youth from the correctional facility or any facility covered by this chapter to another location from the moment she leaves the correctional facility or any facility covered by this chapter to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated woman or youth from the correctional facility or facility covered by this chapter to a transport vehicle and from the vehicle to the other location. [2010 c 181 § 4; 2009 c 411 § 3; 1987 c 462 § 6; 1986 c 118 § 1; 1983 c 165 § 34; 1981 c 136 § 25; 1979 ex.s. c 232 § 11; 1977 ex.s. c 316 § 2.]

**Legislative finding, intent—Effective dates—Severability—1983 c 165:** See notes following RCW 46.20.308.

Additional notes found at www.leg.wa.gov

**70.48.071 Standards for operation—Adoption by units of local government.** All units of local government that own or operate adult correctional facilities shall, individ-

ually or collectively, adopt standards for the operation of those facilities no later than January 1, 1988. Cities and towns shall adopt the standards after considering guidelines established collectively by the cities and towns of the state; counties shall adopt the standards after considering guidelines established collectively by the counties of the state. These standards shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the public's health, safety, and welfare. Local correctional facilities shall be operated in accordance with these standards. [1987 c 462 § 17.]

Additional notes found at www.leg.wa.gov

**70.48.090 Interlocal contracts for jail services—Neighboring states—Responsibility for operation of jail—City or county departments of corrections authorized.** (1) Contracts for jail services may be made between a county and a city, and among counties and cities. The contracts shall: Be in writing, give one governing unit the responsibility for the operation of the jails, specify the responsibilities of each governing unit involved, and include the applicable charges for custody of the prisoners as well as the basis for adjustments in the charges. The contracts may be terminated only by ninety days written notice to the governing units involved and to the office. The notice shall state the grounds for termination and the specific plans for accommodating the affected jail population.

(2) A city or county may contract for jail services with an adjacent county, or city in an adjacent county, in a neighboring state. A person convicted in the courts of this state and sentenced to a term of confinement in a city or county jail may be transported to a jail in the adjacent county to be confined until: (a) The term of confinement is completed; or (b) that person is returned to be confined in a city or county jail in this state.

(3) The contract authorized in subsection (1) of this section shall be for a minimum term of ten years when state funds are provided to construct or remodel a jail in one governing unit that will be used to house prisoners of other governing units. The contract may not be terminated prior to the end of the term without the office's approval. If the contract is terminated, or upon the expiration and nonrenewal of the contract, the governing unit whose jail facility was built or remodeled to hold the prisoners of other governing units shall pay to the state treasurer the amount set by the *corrections standards board or office when it authorized disbursal of state funds for the remodeling or construction under **RCW 70.48.120. This amount shall be deposited in the local jail improvement and construction account and shall fairly represent the construction costs incurred in order to house prisoners from other governing units. The office may pay the funds to the governing units which had previously contracted for jail services under rules which the office may adopt. The acceptance of state funds for constructing or remodeling consolidated jail facilities constitutes agreement to the proportionate amounts set by the office. Notice of the proportionate amounts shall be given to all governing units involved. This subsection shall not apply to interlocal agreements under RCW 39.34.180(6).

(4) A city or county primarily responsible for the operation of a jail or jails may create a department of corrections to be in charge of such jail and of all persons confined therein by law, subject to the authority of the governing unit. If such department is created, it shall have charge of jails and persons confined therein. If no such department of corrections is created, the chief law enforcement officer of the city or county primarily responsible for the operation of said jail shall have charge of the jail and of all persons confined therein.

(5) A city or county may enter into an interlocal agreement for the sharing of costs for sanctions imposed by a jurisdiction hosting probation supervision services pursuant to an interlocal agreement under RCW 39.34.180(6). [2021 c 41 § 3; 2007 c 13 § 1; 2002 c 125 § 1; 1987 c 462 § 7; 1986 c 118 § 6; 1979 ex.s. c 232 § 15; 1977 ex.s. c 316 § 9.]

**Reviser's note:** *(1) The corrections standards board no longer exists. See 1987 c 462 § 21.

**(2) RCW 70.48.120 was repealed by 1991 sp.s. c 13 § 122, effective July 1, 1991.

Additional notes found at www.leg.wa.gov

**70.48.095 Regional jails.** (1) Regional jails may be created and operated between two or more local governments, or one or more local governments and the state, and may be governed by representatives from multiple jurisdictions.

(2) A jurisdiction that confines persons prior to conviction in a regional jail in another county is responsible for providing private telephone, videoconferencing, or in-person contact between the defendant and his or her public defense counsel.

(3) The creation and operation of any regional jail must comply with the interlocal cooperation act described in chapter 39.34 RCW.

(4) Nothing in this section prevents counties and cities from contracting for jail services as described in RCW 70.48.090. [2002 c 124 § 1.]

**70.48.100 Jail register, open to the public—Records confidential—Exception.** (1) A department of corrections or chief law enforcement officer responsible for the operation of a jail shall maintain a jail register, open to the public, into which shall be entered in a timely basis:

(a) The name of each person confined in the jail with the hour, date and cause of the confinement; and

(b) The hour, date and manner of each person's discharge.

(2) Except as provided in subsections (3) and (4) of this section, the records of a person confined in jail shall be held in confidence and shall be made available only to criminal justice agencies as defined in RCW 43.43.705; or

(a) For use in inspections made pursuant to *RCW 70.48.070;

(b) In jail certification proceedings;

(c) For use in court proceedings upon the written order of the court in which the proceedings are conducted;

(d) To the Washington association of sheriffs and police chiefs;

(e) To the Washington institute for public policy, research and data analysis division of the department of social and health services, higher education institutions of Washington state, Washington state health care authority,

state auditor's office, caseload forecast council, office of financial management, or the successor entities of these organizations, for the purpose of research in the public interest. Data disclosed for research purposes must comply with relevant state and federal statutes;

(f) To federal, state, or local agencies to determine eligibility for services such as medical, mental health, chemical dependency treatment, or veterans' services, and to allow for the provision of treatment to inmates during their stay or after release. Records disclosed for eligibility determination or treatment services must be held in confidence by the receiving agency, and the receiving agency must comply with all relevant state and federal statutes regarding the privacy of the disclosed records; or

(g) Upon the written permission of the person.

(3) The records of a person confined in jail may be made available to a managed health care system, including managed care organizations and behavioral health administrative services organizations as defined in RCW 71.24.025, for the purpose of care coordination activities. The receiving system or organization must hold records in confidence and comply with all relevant state and federal statutes regarding privacy of disclosed records.

(4)(a) Law enforcement may use booking photographs of a person arrested or confined in a local or state penal institution to assist them in conducting investigations of crimes.

(b) Photographs and information concerning a person convicted of a sex offense as defined in RCW 9.94A.030 may be disseminated as provided in RCW 4.24.550, 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 43.43.745, 46.20.187, 70.48.470, 72.09.330, and **section 401, chapter 3, Laws of 1990.

(5) Any jail that provides inmate records in accordance with subsection (2) or (3) of this section is not responsible for any unlawful secondary dissemination of the provided inmate records.

(6) For purposes of this section:

(a) "Managed care organization" and "behavioral health administrative services organization" have the same meaning as in RCW 71.24.025.

(b) "Managed health care system" has the same meaning as in RCW 74.09.522. [2020 c 282 § 1; 2016 c 154 § 6; 2014 c 225 § 105; 1990 c 3 § 130; 1977 ex.s. c 316 § 10.]

**Reviser's note:** *(1) RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.

**(2) 1990 c 3 § 401 appears as a note following RCW 9A.44.130.

**Intent—2016 c 154:** See note following RCW 74.09.670.

Additional notes found at www.leg.wa.gov

**70.48.130 Emergency or necessary medical and health care for confined persons—Reimbursement procedures—Conditions—Limitations.** (1) It is the intent of the legislature that all jail inmates receive appropriate and cost-effective emergency and necessary medical care. Governing units, the health care authority, and medical care providers shall cooperate to achieve the best rates consistent with adequate care.

(2) Payment for emergency or necessary health care shall be by the governing unit, except that the health care authority shall directly reimburse the provider pursuant to chapter 74.09 RCW, in accordance with the rates and benefits established by the authority, if the confined person is eligible under the authority's medical care programs as authorized under chapter 74.09 RCW. After payment by the authority, the financial responsibility for any remaining balance, including unpaid client liabilities that are a condition of eligibility or participation under chapter 74.09 RCW, shall be borne by the medical care provider and the governing unit as may be mutually agreed upon between the medical care provider and the governing unit. In the absence of mutual agreement between the medical care provider and the governing unit, the financial responsibility for any remaining balance shall be borne equally between the medical care provider and the governing unit. Total payments from all sources to providers for care rendered to confined persons eligible under chapter 74.09 RCW shall not exceed the amounts that would be paid by the authority for similar services provided under Title XIX medicaid, unless additional resources are obtained from the confined person.

(3) For inpatient, outpatient, and ancillary services for confined persons that are not paid by the medicaid program pursuant to subsection (2) of this section, unless other rates are agreed to by the governing unit and the hospital, providers of hospital services that are hospitals licensed under chapter 70.41 RCW must accept as payment in full by the governing units the applicable facility's percent of allowed charges rate or fee schedule as determined, maintained, and posted by the Washington state department of labor and industries pursuant to chapter 51.04 RCW.

(4) As part of the screening process upon booking or preparation of an inmate into jail, general information concerning the inmate's ability to pay for medical care shall be identified, including insurance or other medical benefits or resources to which an inmate is entitled. The inmate may also be evaluated for medicaid eligibility and, if deemed potentially eligible, enrolled in medicaid. This information shall be made available to the authority, the governing unit, and any provider of health care services. To the extent that federal law allows, a jail or the jail's designee is authorized to act on behalf of a confined person for purposes of applying for medicaid.

(5) The governing unit or provider may obtain reimbursement from the confined person for the cost of health care services not provided under chapter 74.09 RCW, including reimbursement from any insurance program or from other medical benefit programs available to the confined person. Nothing in this chapter precludes civil or criminal remedies to recover the costs of medical care provided jail inmates or paid for on behalf of inmates by the governing unit. As part of a judgment and sentence, the courts are authorized to order defendants to repay all or part of the medical costs incurred by the governing unit or provider during confinement.

(6) To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for the authority's medical care programs under chapter 74.09 RCW, or for coverage from private sources, and in the absence of an interlocal agreement or other contracts to the contrary, the governing unit may obtain reimbursement for the cost of such medical services from the unit of government whose law enforcement officers initiated the charges on which the person is being held in the jail: PROVIDED, That reimbursement for the cost of such services shall be by the

state for state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.

(7) There shall be no right of reimbursement to the governing unit from units of government whose law enforcement officers initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW.

(8) Under no circumstance shall necessary medical services be denied or delayed because of disputes over the cost of medical care or a determination of financial responsibility for payment of the costs of medical care provided to confined persons.

(9) Nothing in this section shall limit any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided. [2015 c 267 § 8; 2011 1st sp.s. c 15 § 85; 1993 c 409 § 1; (2007 c 259 § 66 expired June 30, 2009); 1986 c 118 § 9; 1977 ex.s. c 316 § 13.]

**Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15:** See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

**70.48.135 Pregnant inmates—Midwifery or doula services—Reasonable accommodations.** (1) Jails must make reasonable accommodations for the provision of available midwifery or doula services to inmates who are pregnant or who have given birth in the last six weeks. Persons providing midwifery or doula services must be granted appropriate facility access, must be allowed to attend and provide assistance during labor and childbirth where feasible, and must have access to the inmate's relevant health care information, as defined in RCW 70.02.010, if the inmate authorizes disclosure.

(2) For purposes of this section, the following definitions apply:

(a) "Doula services" are services provided by a trained doula and designed to provide physical, emotional, or informational support to a pregnant woman before, during, and after delivery of a child. Doula services may include, but are not limited to: Support and assistance during labor and childbirth; prenatal and postpartum education; breastfeeding assistance; parenting education; and support in the event that a woman has been or will become separated from her child.

(b) "Midwifery services" means medical aid rendered by a midwife to a woman during prenatal, intrapartum, or postpartum stages or to a woman's newborn up to two weeks of age.

(c) "Midwife" means a midwife licensed under chapter 18.50 RCW or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(3) Nothing in this section requires governing units to establish or provide funding for midwifery or doula services, or prevents the adoption of policy guidelines for the delivery of midwifery or doula services to inmates. Services provided under this section may not supplant health care services routinely provided to the inmate. [2018 c 41 § 2.]

**70.48.140 Confinement pursuant to authority of the United States.** A person having charge of a jail shall receive and keep in such jail, when room is available, all persons confined or committed thereto by process or order issued under authority of the United States until discharged according to law, the same as if such persons had been committed under process issued under authority of the state, if provision is made by the United States for the support of such persons confined, and for any additional personnel required. [1977 ex.s. c 316 § 14.]

Additional notes found at www.leg.wa.gov

**70.48.160 Post-approval limitation on funding.** Having received approval pursuant to *RCW 70.48.060, a governing unit shall not be eligible for further funding for physical plant standards for a period of ten years from the date of the completion of the approved project. A jail shall not be closed for noncompliance to physical plant standards within this same ten year period. This section does not apply if:

(1) The state elects to fund phased components of a jail project for which a governing unit has applied. In that instance, initially funded components do not constitute full funding within the meaning of *RCW 70.48.060(1) and **70.48.070(2) and the state may fund subsequent phases of the jail project;

(2) There is destruction of the facility because of an act of God or the result of a negligent and/or criminal act. [1987 c 462 § 9; 1986 c 118 § 10; 1981 c 276 § 3; 1977 ex.s. c 316 § 16.]

**Reviser's note:** *(1) RCW 70.48.060 was repealed by 1987 c 462 § 23, effective January 1, 1988.

**(2) RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.

Additional notes found at www.leg.wa.gov

**70.48.170 Short title.** This chapter shall be known and may be cited as the City and County Jails Act. [1977 ex.s. c 316 § 17.]

Additional notes found at www.leg.wa.gov

**70.48.180 Authority to locate and operate jail facilities—Counties.** Counties may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place designated by the county legislative authority within the territorial limits of the county. The facilities shall comply with chapter 70.48 RCW and the rules adopted thereunder. [1983 c 165 § 37; 1979 ex.s. c 232 § 16.]

**Legislative finding, intent—Effective dates—Severability—1983 c 165:** See notes following RCW 46.20.308.

**70.48.190 Authority to locate and operate jail facilities—Cities and towns.** Cities and towns may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place within the territorial limits of the county in which the city or town is situated, as may be selected by the legislative authority of the municipality. The facilities comply with the provisions of chapter 70.48 RCW and rules adopted thereunder. [1983 c 165 § 38; 1977 ex.s. c 316 § 19; 1965 c 7 § 35.21.330. Prior: 1917 c 103 § 1; RRS § 10204. Formerly RCW 35.21.330.]

**Legislative finding, intent—Effective dates—Severability—1983 c 165:** See notes following RCW 46.20.308.

Additional notes found at www.leg.wa.gov

**70.48.210 Farms, camps, work release programs, and special detention facilities.** (1) All cities and counties are authorized to establish and maintain farms, camps, and work release programs and facilities, as well as special detention facilities. The facilities shall meet the requirements of chapter 70.48 RCW and any rules adopted thereunder.

(2) Farms and camps may be established either inside or outside the territorial limits of a city or county. A sentence of confinement in a city or county jail may include placement in a farm or camp. Unless directed otherwise by court order, the chief law enforcement officer or department of corrections, may transfer the prisoner to a farm or camp. The sentencing court, chief law enforcement officer, or department of corrections may not transfer to a farm or camp a greater number of prisoners than can be furnished with constructive employment and can be reasonably accommodated.

(3) The city or county may establish a city or county work release program and housing facilities for the prisoners in the program. In such regard, factors such as employment conditions and the condition of jail facilities should be considered. When a work release program is established the following provisions apply:

(a) A person convicted of a felony and placed in a city or county jail is eligible for the work release program. A person sentenced to a city or county jail is eligible for the work release program. The program may be used as a condition of probation for a criminal offense. Good conduct is a condition of participation in the program.

(b) The court may permit a person who is currently, regularly employed to continue his or her employment. The chief law enforcement officer or department of corrections shall make all necessary arrangements if possible. The court may authorize the person to seek suitable employment and may authorize the chief law enforcement officer or department of corrections to make reasonable efforts to find suitable employment for the person. A person participating in the work release program may not work in an establishment where there is a labor dispute.

(c) The work release prisoner shall be confined in a work release facility or jail unless authorized to be absent from the facility for program-related purposes, unless the court directs otherwise.

(d) Each work release prisoner's earnings may be collected by the chief law enforcement officer or a designee. The chief law enforcement officer or a designee may deduct from the earnings moneys for the payments for the prisoner's board, personal expenses inside and outside the jail, a share of the administrative expenses of this section, court-ordered victim compensation, and court-ordered restitution. Support payments for the prisoner's dependents, if any, shall be made as directed by the court. With the prisoner's consent, the remaining funds may be used to pay the prisoner's preexisting debts. Any remaining balance shall be returned to the prisoner.

(e) The prisoner's sentence may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the work release facility. The earned early release time shall be for good behavior and good performance as determined by the facility. The facility shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.

(f) If the work release prisoner violates the conditions of custody or employment, the prisoner shall be returned to the sentencing court. The sentencing court may require the prisoner to spend the remainder of the sentence in actual confinement and may cancel any earned reduction of the sentence.

(4) A special detention facility may be operated by a noncorrectional agency or by noncorrectional personnel by contract with the governing unit. The employees shall meet the standards of training and education established by the criminal justice training commission as authorized by RCW 43.101.080. The special detention facility may use combinations of features including, but not limited to, low-security or honor prisoner status, work farm, work release, community review, prisoner facility maintenance and food preparation, training programs, or alcohol or drug rehabilitation programs. Special detention facilities may establish a reasonable fee schedule to cover the cost of facility housing and programs. The schedule shall be on a sliding basis that reflects the person's ability to pay. [1990 c 3 § 203; 1989 c 248 § 3; 1985 c 298 § 1; 1983 c 165 § 39; 1979 ex.s. c 232 § 17.]

**Legislative finding, intent—Effective dates—Severability—1983 c 165:** See notes following RCW 46.20.308.

Additional notes found at www.leg.wa.gov

**70.48.215 Booking patients of state hospitals.** A jail may not refuse to book a patient of a state hospital solely based on the patient's status as a state hospital patient, but may consider other relevant factors that apply to the individual circumstances in each case. [2012 c 256 § 11.]

**Purpose—Effective date—2012 c 256:** See notes following RCW 10.77.068.

**70.48.220 Confinement may be wherever jail services are contracted—Defendant contact with defense counsel.** A person confined for an offense punishable by imprisonment in a city or county jail may be confined in the jail of any city or county contracting with the prosecuting city or county for jail services.

A jurisdiction that confines persons prior to conviction in a jail in another county is responsible for providing private telephone, videoconferencing, or in-person contact between the defendant and his or her public defense counsel. [2002 c 125 § 2; 1979 ex.s. c 232 § 19.]

**70.48.230 Transportation and temporary confinement of prisoners.** The jurisdiction having immediate authority over a prisoner is responsible for the transportation expenses. The transporting officer shall have custody of the prisoner within any Washington county while being transported. Any jail within the state may be used for the tempo-

rary confinement of the prisoner with the only charge being for the reasonable cost of board. [1979 ex.s. c 232 § 18.]

**70.48.240 Transfer of felons from jail to state institution—Time limit.** A person imprisoned in a jail and sentenced to a state institution for a felony conviction shall be transferred to a state institution before the forty-first day from the date of sentencing.

This section does not apply to persons sentenced for a felony who are held in the facility as a condition of probation or who are specifically sentenced to confinement in the facility.

Payment for persons sentenced to state institutions and remaining in a jail from the eighth through the fortieth days following sentencing shall be in accordance with the procedure prescribed under this chapter. [1984 c 235 § 8; 1979 ex.s. c 232 § 20.]

Additional notes found at www.leg.wa.gov

**70.48.245 Transfer of persons with developmental disabilities or traumatic brain injuries from jail to department of corrections facility.** When a jail has determined that a person in custody has or may have a developmental disability as defined in RCW 71A.10.020 or a traumatic brain injury, upon transfer of the person to a department of corrections facility or other jail facility, every reasonable effort shall be made by the transferring jail staff to communicate to receiving staff the nature of the disability, as determined by the jail and any necessary accommodation for the person as identified by the transferring jail staff. [2011 c 236 § 2.]

**70.48.380 Special detention facilities—Fees for cost of housing.** The legislative authority of a county or city that establishes a special detention facility as defined in RCW 70.48.020 for persons convicted of violating RCW 46.61.502 or 46.61.504 may establish a reasonable fee schedule to cover the cost of housing in the facility. The schedule shall be on a sliding basis that reflects the person's ability to pay. [1983 c 165 § 36.]

**Legislative finding, intent—Effective dates—Severability—1983 c 165:** See notes following RCW 46.20.308.

**70.48.390 Fee payable by person being booked.** A governing unit may require that each person who is booked at a city, county, or regional jail pay a fee based on the jail's actual booking costs or one hundred dollars, whichever is less, to the sheriff's department of the county or police chief of the city in which the jail is located. The fee is payable immediately from any money then possessed by the person being booked, or any money deposited with the sheriff's department or city jail administration on the person's behalf. If the person has no funds at the time of booking or during the period of incarceration, the sheriff or police chief may notify the court in the county or city where the charges related to the booking are pending, and may request the assessment of the fee. Unless the person is held on other criminal matters, if the person is not charged, is acquitted, or if all charges are dismissed, the sheriff or police chief shall return the fee to the person at the last known address listed in the booking records. [2003 c 99 § 1; 1999 c 325 § 3.]

**70.48.400 Sentences to be served in state institutions—When—Sentences that may be served in jail—Financial responsibility of city or county.** Persons sentenced to felony terms or a combination of terms of more than three hundred sixty-five days of incarceration shall be committed to state institutions under the authority of the department of corrections. Persons serving sentences of three hundred sixty-five consecutive days or less may be sentenced to a jail as defined in RCW 70.48.020. All persons convicted of felonies or misdemeanors and sentenced to jail shall be the financial responsibility of the city or county. [1987 c 462 § 11; 1984 c 235 § 1.]

Additional notes found at www.leg.wa.gov

**70.48.410 Financial responsibility for convicted felons.** Persons convicted of a felony as defined by chapter 9A.20 RCW and committed to the care and custody of the department of corrections shall be the financial responsibility of the department of corrections not later than the eighth day, excluding weekends and holidays, following sentencing for the felony and notification that the prisoner is available for movement to a state correctional institution. However, if good cause is shown, a superior court judge may order the prisoner detained in the jail beyond the eight-day period for an additional period not to exceed ten days. If a superior court orders a convicted felon to be detained beyond the eighth day following sentencing, the county or city shall retain financial responsibility for that ten-day period or portion thereof ordered by the court. [1984 c 235 § 2.]

Additional notes found at www.leg.wa.gov

**70.48.420 Financial responsibility for persons detained on parole hold.** A person detained in jail solely by reason of a parole hold is the financial responsibility of the city or the county detaining the person until the sixteenth day, at which time the person shall become the financial responsibility of the department of corrections. Persons who are detained in a jail on a parole hold and for whom the prosecutor has filed a felony charge remain the responsibility of the city or county. [1984 c 235 § 3.]

Additional notes found at www.leg.wa.gov

**70.48.430 Financial responsibility for work release inmates detained in jail.** Inmates, as defined by *RCW 72.09.020, who reside in a work release facility and who are detained in a city or county jail are the financial responsibility of the department of corrections. [1984 c 235 § 4.]

***Reviser's note:** RCW 72.09.020 was repealed by 1995 1st sp.s. c 19 § 36.

Additional notes found at www.leg.wa.gov

**70.48.440 Office of financial management to establish reimbursement rate for cities and counties—Rate until June 30, 1985—Reestablishment of rates.** The office of financial management shall establish a uniform equitable rate for reimbursing cities and counties for the care of sentenced felons who are the financial responsibility of the department of corrections and are detained or incarcerated in a city or county jail.

Until June 30, 1985, the rate for the care of sentenced felons who are the financial responsibility of the department of

corrections shall be ten dollars per day. Cost of extraordinary emergency medical care incurred by prisoners who are the financial responsibility of the department of corrections under this chapter shall be reimbursed. The department of corrections shall be advised as far in advance as practicable by competent medical authority of the nature and course of treatment required to ensure the most efficient use of state resources to address the medical needs of the offender. In the event emergency medical care is needed, the department of corrections shall be advised as soon as practicable after the offender is treated.

Prior to June 30, 1985, the office of financial management shall meet with the *corrections standards board to establish criteria to determine equitable rates regarding variable costs for sentenced felons who are the financial responsibility of the department of corrections after June 30, 1985. The office of financial management shall reestablish these rates each even-numbered year beginning in 1986. [1984 c 235 § 5.]

***Reviser's note:** The corrections standards board no longer exists. See 1987 c 462 § 21.

Additional notes found at www.leg.wa.gov

**70.48.450 Local jail reporting form—Information to be provided by city or county requesting payment for prisoners from state.** The department of corrections is responsible for developing a reporting form for the local jails. The form shall require sufficient information to identify the person, type of state responsibility, method of notification for availability for movement, and the number of days for which the state is financially responsible. The information shall be provided by the city or county requesting payment for prisoners who are the financial responsibility of the department of corrections. [1984 c 235 § 6.]

Additional notes found at www.leg.wa.gov

**70.48.460 Contracts for incarceration services for prisoners not covered by RCW 70.48.400 through 70.48.450.** Nothing in RCW 70.48.400 through 70.48.450 precludes the establishment of mutually agreeable contracts between the department of corrections and counties for incarceration services of prisoners not covered by RCW 70.48.400 through 70.48.450. [1984 c 235 § 7.]

Additional notes found at www.leg.wa.gov

**70.48.470 Sex, kidnapping offenders—Notices to offenders, law enforcement officials.** (1) A person having charge of a jail shall notify in writing any confined person who is in the custody of the jail for a conviction of a sex offense or a kidnapping offense as defined in RCW 9A.44.128 of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement, and shall obtain written acknowledgment of such notification. The person shall also obtain from the inmate the county of the inmate's residence upon release from jail and, where applicable, the city.

(2) When a sex offender or kidnapping offender under local government jurisdiction will reside in a county other than the county of conviction upon discharge or release, the chief law enforcement officer of the jail or his or her designee shall give notice of the inmate's discharge or release to the sheriff of the county and, where applicable, to the police chief of the city where the offender will reside. [2010 c 267 § 14; 2000 c 91 § 4. Prior: 1997 c 364 § 3; 1997 c 113 § 7; 1996 c 215 § 2; 1990 c 3 § 406.]

**Reviser's note:** The definitions in RCW 9A.44.128 apply to this section.

**Findings—1997 c 113:** See note following RCW 4.24.550.

Additional notes found at www.leg.wa.gov

**70.48.475 Release of offender or defendant subject to a discharge review—Required notifications.** (1) A person having charge of a jail, or that person's designee, shall notify the designated crisis responder seventy-two hours prior to the release to the community of an offender or defendant who was subject to a discharge review under RCW 71.05.232. If the person having charge of the jail does not receive seventy-two hours notice of the release, the notification to the designated crisis responder shall be made as soon as reasonably possible, but not later than the actual release to the community of the defendant or offender.

(2) When a person having charge of a jail, or that person's designee, releases an offender or defendant who was the subject of a discharge review under RCW 71.05.232, the person having charge of a jail, or that person's designee, shall notify the state hospital from which the offender or defendant was released. [2016 sp.s. c 29 § 418; 2004 c 166 § 14.]

**Effective dates—2016 sp.s. c 29:** See note following RCW 71.05.760.

**Short title—Right of action—2016 sp.s. c 29:** See notes following RCW 71.05.010.

Additional notes found at www.leg.wa.gov

**70.48.480 Communicable disease prevention guidelines.** (1) Local jail administrators shall develop and implement policies and procedures for the uniform distribution of communicable disease prevention guidelines to all jail staff who, in the course of their regularly assigned job responsibilities, may come within close physical proximity to offenders or detainees with communicable diseases.

(2) The guidelines shall identify special precautions necessary to reduce the risk of transmission of communicable diseases.

(3) For the purposes of this section, "communicable disease" means a sexually transmitted disease, as defined in RCW 70.24.017, diseases caused by blood-borne pathogens, or any other illness caused by an infectious agent that can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. [1997 c 345 § 5.]

**Findings—Intent—1997 c 345:** See note following RCW 70.24.340.

**70.48.490 Delivery and administration of medications and medication assistance by nonpractitioner jail personnel—Conditions.** Jails may provide for the delivery and administration of medications and medication assistance for inmates in their custody by nonpractitioner jail personnel, subject to the following conditions:

(1) The jail administrator or his or her designee, or chief law enforcement executive or his or her designee, shall enter into an agreement between the jail and a licensed pharmacist, pharmacy, or other licensed practitioner or health care facility

to ensure access to pharmaceutical services on a twenty-four hour a day basis, including consultation and dispensing services.

(2) The jail administrator or chief law enforcement executive shall adopt policies which address the designation and training of nonpractitioner jail personnel who may deliver and administer medications or provide medication assistance to inmates as provided in this chapter. The policies must address the administration of prescriptions from licensed practitioners prescribing within the scope of their prescriptive authority, the identification of medication to be delivered and administered or administered through medication assistance, the means of securing medication with attention to the safeguarding of legend drugs, and the means of maintaining a record of the delivery, administration, self-administration, or medication assistance of all medication. The jail administrator or chief law enforcement executive shall designate a physician licensed under chapter 18.71 RCW, or a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW, to train the designated nonpractitioner jail personnel in proper medication procedures and monitor their compliance with the procedures.

(3) The jail administrator or chief law enforcement executive shall consult with one or more pharmacists, and one or more licensed physicians or nurses, in the course of developing the policies described in subsections (1) and (2) of this section. A jail shall provide the Washington association of sheriffs and police chiefs with a copy of the jail's current policies regarding medication management.

(4) The practitioner or nonpractitioner jail personnel delivering, administering, or providing medication assistance is in receipt of (a) for prescription drugs, a written, current, and unexpired prescription, and instructions for administration from a licensed practitioner prescribing within the scope of his or her prescriptive authority for administration of the prescription drug; (b) for nonprescription drugs, a written, current, and unexpired instruction from a licensed practitioner regarding the administration of the nonprescription drug; and (c) for minors under the age of eighteen, a written, current consent from the minor's parent, legal guardian, or custodian consenting to the administration of the medication.

(5) Nonpractitioner jail personnel may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that the medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications.

(6) Nonpractitioner jail personnel shall not include inmates.

(7) All medication is delivered and administered and all medication assistance is provided by a practitioner or nonpractitioner jail personnel pursuant to the policies adopted in this section, and in compliance with the prescription of a practitioner prescribing within the scope of his or her prescriptive authority, or the written instructions as provided in this section.

(8) The jail administrator or the chief law enforcement executive shall ensure that all nonpractitioner jail personnel authorized to deliver, administer, and provide medication assistance are trained pursuant to the policies adopted in this section prior to being permitted to deliver, administer, or provide medication assistance to an inmate. [2009 c 411 § 4.]

**70.48.500 Use of restraints on pregnant women or youth in custody—Allowed in extraordinary circumstances.** (1) Except in extraordinary circumstances no restraints of any kind may be used on any pregnant woman or youth incarcerated in a correctional facility or any facility covered by this chapter during transportation to and from visits to medical providers and court proceedings during the third trimester of her pregnancy, or during postpartum recovery. For purposes of this section, "extraordinary circumstances" exist where a corrections officer or employee of the correctional facility or any facility covered by this chapter makes an individualized determination that restraints are necessary to prevent an incarcerated pregnant woman or youth from escaping, or from injuring herself, medical or correctional personnel, or others. In the event the corrections officer or employee of the correctional facility or any facility covered by this chapter determines that extraordinary circumstances exist and restraints are used, the corrections officer or employee must fully document in writing the reasons that he or she determined such extraordinary circumstances existed such that restraints were used. As part of this documentation, the corrections officer or employee must also include the kind of restraints used and the reasons those restraints were considered the least restrictive available and the most reasonable under the circumstances.

(2) While the pregnant woman or youth is in labor or in childbirth no restraints of any kind may be used. Nothing in this section affects the use of hospital restraints requested for the medical safety of a patient by treating physicians licensed under Title 18 RCW.

(3) Anytime restraints are permitted to be used on a pregnant woman or youth, the restraints must be the least restrictive available and the most reasonable under the circumstances, but in no case shall leg irons or waist chains be used on any woman or youth known to be pregnant.

(4) No correctional personnel or employee of the correctional facility or any facility covered by this chapter shall be present in the room during the pregnant woman's or youth's labor or childbirth, unless specifically requested by medical personnel. If the employee's presence is requested by medical personnel, the employee should be female, if practicable.

(5) If the doctor, nurse, or other health professional treating the pregnant woman or youth requests that restraints not be used, the corrections officer or employee accompanying the pregnant woman or youth shall immediately remove all restraints. [2010 c 181 § 5.]

**70.48.501 Use of restraints on pregnant women or youth in custody—Provision of information to staff, women, or youth of childbearing age in custody.** (1) The jail administrator or his or her designee or chief law enforcement executive or his or her designee shall provide notice of the requirements of chapter 181, Laws of 2010 to the appropriate staff at a correctional facility or a facility covered by this chapter. Appropriate staff shall include all medical staff and staff who are involved in the transportation of pregnant women and youth as well as such other staff deemed appropriate.

(2) The jail administrator or his or her designee or chief law enforcement executive or his or her designee shall cause the requirements of chapter 181, Laws of 2010 to be provided to all women and youth of childbearing age at intake. In addition, the jail administrator or his or her designee or chief law enforcement executive or his or her designee shall cause a notice containing the requirements of chapter 181, Laws of 2010 to be posted in locations in which medical care is provided within the facilities. [2010 c 181 § 6.]

**70.48.502 Use of restraints on pregnant women or youth in custody—Limited immunity from liability.** No civil liability may be imposed by any court on the county or its jail officers or employees under RCW 70.48.500 and 70.48.501 except upon proof of gross negligence. [2010 c 181 § 14.]

**70.48.510 Unexpected fatality review—Records—Discovery.** (1)(a) A city or county department of corrections or chief law enforcement officer responsible for the operation of a jail shall conduct an unexpected fatality review in any case in which the death of an individual confined in the jail is unexpected.

(b) The city or county department of corrections or chief law enforcement officer shall convene an unexpected fatality review team and determine the membership of the review team. The team shall comprise of individuals with appropriate expertise including, but not limited to, individuals whose professional expertise is pertinent to the dynamics of the case. The city or county department of corrections or chief law enforcement officer shall ensure that the unexpected fatality review team is made up of individuals who had no previous involvement in the case.

(c) The primary purpose of the unexpected fatality review shall be the development of recommendations to the governing unit with primary responsibility for the operation of the jail and legislature regarding changes in practices or policies to prevent fatalities and strengthen safety and health protections for individuals in custody.

(d) Upon conclusion of an unexpected fatality review required pursuant to this section, the city or county department of corrections or chief law enforcement officer shall, within 120 days following the fatality, issue a report on the results of the review, unless an extension has been granted by the chief executive or, if appropriate, the county legislative authority of the governing unit with primary responsibility for the operation of the jail. Reports must be distributed to the governing unit with primary responsibility for the operation of the jail and appropriate committees of the legislature, and the department of health shall create a public website where all unexpected fatality review reports required under this section must be posted and maintained. An unexpected fatality review report completed pursuant to this section is subject to public disclosure and must be posted on the department of health public website, except that confidential information may be redacted by the city or county department of corrections or chief law enforcement officer consistent with the requirements of applicable state and federal laws.

(e) The city or county department of corrections or chief law enforcement officer shall develop and implement procedures to carry out the requirements of this section.

(2) In any review of an unexpected fatality, the city or county department of corrections or chief law enforcement officer and the unexpected fatality review team shall have access to all records and files regarding the person or otherwise relevant to the review that have been produced or retained by the agency.

(3)(a) An unexpected fatality review completed pursuant to this section is subject to discovery in a civil or administrative proceeding, but may not be admitted into evidence or otherwise used in a civil or administrative proceeding except pursuant to this section.

(b) An employee of a city or county department of corrections or law enforcement employee responsible for conducting an unexpected fatality review, or member of an unexpected fatality review team, may not be examined in a civil or administrative proceeding regarding: (i) The work of the unexpected fatality review team; (ii) the incident under review; (iii) his or her statements, deliberations, thoughts, analyses, or impressions relating to the work of the unexpected fatality review team or the incident under review; or (iv) the statements, deliberations, thoughts, analyses, or impressions of any other member of the unexpected fatality review team, or any person who provided information to the unexpected fatality review team relating to the work of the unexpected fatality review team or the incident under review.

(c) Documents prepared by or for an unexpected fatality review team are inadmissible and may not be used in a civil or administrative proceeding, except that any document that exists before its use or consideration in an unexpected fatality review, or that is created independently of such review, does not become inadmissible merely because it is reviewed or used by an unexpected fatality review team. A person is not unavailable as a witness merely because the person has been interviewed by, or has provided a statement for, an unexpected fatality review, but if the person is called as a witness, the person may not be examined regarding the person's interactions with the unexpected fatality review including, without limitation, whether the person was interviewed during such review, the questions that were asked during such review, and the answers that the person provided during such review. This section may not be construed as restricting the person from testifying fully in any proceeding regarding his or her knowledge of the incident under review.

(d) The restrictions set forth in this section do not apply in a licensing or disciplinary proceeding arising from an agency's effort to revoke or suspend the license of any licensed professional based in whole or in part upon allegations of wrongdoing in connection with an unexpected fatality reviewed by an unexpected fatality review team.

(4) No provision of this section may be interpreted to require a jail to disclose any information in a report that would, as determined by the jail, reveal security information about the jail.

(5) For the purposes of this section:

(a) "City or county department of corrections" means a department of corrections created by a city or county to be in charge of the jail and all persons confined in the jail pursuant to RCW 70.48.090.

(b) "Chief law enforcement officer" means the chief law enforcement officer who is in charge of the jail and all per-

sons confined in the jail if no department of corrections was created by a city or county pursuant to RCW 70.48.090.

(c) "Unexpected fatality review" means a review of any death that was not the result of a diagnosed or documented terminal illness or other debilitating or deteriorating illness or condition where the death was anticipated, and includes the death of any person under the care and custody of the city or county department of corrections or chief local enforcement officer, regardless of where the death actually occurred. A review must include an analysis of the root cause or causes of the unexpected fatality, and an associated corrective action plan for the jail to address identified root causes and recommendations made by the unexpected fatality review team under this section. [2021 c 139 § 3.]

**70.48.520 Collaboration with managed care organizations.** A department of corrections or chief law enforcement officer responsible for the operation of a jail shall make reasonable efforts to collaborate with managed care organizations, as defined in RCW 71.24.025, for the purposes of care coordination activities and improving health care delivery and release planning for persons confined in the jail. [2021 c 166 § 3.]

**Findings—Intent—Conflict with federal requirements—2021 c 166:** See notes following RCW 74.09.670.

**70.48.800 Use of restraints on pregnant women or youth in custody—Informational packet.** The Washington association of sheriffs and police chiefs, the department of corrections, the department of social and health services, juvenile rehabilitation administration, and the criminal justice training commission shall jointly develop an informational packet on the requirements of chapter 181, Laws of 2010. The packet shall be ready for distribution no later than September 1, 2010. [2010 c 181 § 13.]

**70.48.801 Jail standards task force.** (1) A joint legislative task force on jail standards is established, with members as provided in this subsection.

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(c) The president of the senate and the speaker of the house of representatives jointly shall appoint 13 members representing the interests of: Prosecutors, defense attorneys, law enforcement, counties, cities, jail administrators, superior courts, district and municipal courts, a state designated protection and advocacy agency, medical and mental health service providers, a statewide civil legal aid organization, persons with lived experience, and other entities involved with or interested in the operation of local jails.

(2) The legislative membership shall convene the initial meeting of the task force. The task force shall choose its chair from among its legislative membership.

(3) Staff support for the task force must be provided by the office of the attorney general.

(4)(a) Legislative members of the task force may be reimbursed for travel expenses in accordance with RCW 44.04.120. Except as provided in (b) of this subsection, nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(b) Nonlegislative members of the task force who demonstrate financial hardship must be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060, as well as other expenses as needed for each day a nonlegislative task force member attends a task force meeting to provide consultative assistance.

(5) The expenses of the task force must be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house executive rules committee, or their successor committees.

(6) The task force shall review the following issues:

(a) The adequacy of standards adopted and used by jails including, but not limited to, standards for conditions and operations, inspections, enforcement, and oversight;

(b) Current data on jails in the state including, but not limited to, square footage of living space per individual, jail capacity, average daily population over the previous five years, medical and dental services, mental health services, treatment programming options, accreditation status, use of force incidents over the previous five years, and in-custody deaths and the causes of those deaths;

(c) How the jails in the state compare to jail standards and practices in other states regarding safety and physical conditions; health and welfare; access to medical, mental health, dental care, and substance use disorder treatment; food quality and quantity; use of force; use of solitary confinement; and recreational activities and programming;

(d) The revenue sources and funding mechanisms used by other states to pay for local jails and the kinds of services that are provided to inmates in jails in other states, including identifying the entity that is responsible for financing those services;

(e) Inmate's access to jail telecommunication, electronic media, and commissary services, including the rates and fees charged by the jail for these services that are often borne by families of incarcerated individuals; and

(f) Other issues the task force deems relevant to the conditions of jails.

(7) The task force shall make recommendations regarding:

(a) Statewide minimum jail standards, oversight, or other policy changes to ensure jail conditions meet state and federal constitutional and statutory standards and include adequate safety and welfare safeguards for incarcerated persons and staff; and

(b) Restoration of a statewide authority to set mandatory minimum jail standards and conduct inspections of jails for compliance and enforcement of those standards.

(8) The task force shall consult with organizations and entities with interest or experience in jail standards and operations including, but not limited to, treatment providers, victims' advocates, inmate advocates, organizations representing jail employees and officers, and other community organizations.

(9) The Washington association of sheriffs and police chiefs and representatives from county, city, and regional jails must provide any data or information that is requested by the task force to perform its duties under this section.

(10) The task force shall report findings and recommendations to the governor and the appropriate committees of the legislature by June 30, 2023. [2021 c 334 § 957.]

**Conflict with federal requirements—Effective date—2021 c 334:** See notes following RCW 43.79.555.

## Chapter 70.50 RCW
## STATE OTOLOGIST

Sections



**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

*Hearing tests for public school children: RCW 28A.210.020.*

**70.50.010 Appointment—Salary.** The secretary of health shall appoint and employ an otologist skilled in diagnosis of diseases of the ear and defects in hearing, especially for school children with an impaired sense of hearing, and shall fix the salary of such otologist in a sum not exceeding the salary of the secretary. [1991 c 3 § 340; 1979 c 141 § 108; 1945 c 23 § 1; Rem. Supp. 1945 § 6010-10.]

**70.50.020 Duties.** The otologist shall cooperate with the state department of public instruction, and with the state, county, and city health officers, seeking for the children in the schools who are hard of hearing, or have an impaired sense of hearing, and making otological inspections and examinations of children referred to him or her by such departments and officers. Where necessary or proper, he or she shall make recommendations to parents or guardians of such children, and urge them to submit such recommendations to physicians to be selected by such parents or guardians. [2012 c 117 § 381; 1945 c 23 § 2; Rem. Supp. 1945 § 6010-11.]

## Chapter 70.54 RCW
## MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

Sections



*Control of cities and towns over water pollution: Chapter 35.88 RCW.*

*Council for children and families: Chapter 43.121 RCW.*

*Nuisances, generally: Chapters 7.48 and 9.66 RCW.*

*Water pollution control: Chapter 90.48 RCW.*

**70.54.005 Transfer of duties to the department of health.** The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 250.]

Additional notes found at www.leg.wa.gov

**70.54.010 Polluting water supply—Penalty.** Every person who shall deposit or suffer to be deposited in any spring, well, stream, river or lake, the water of which is or may be used for drinking purposes, or on any property owned, leased or otherwise controlled by any municipal corporation, corporation or person as a watershed or drainage basin for a public or private water system, any matter or thing whatever, dangerous or deleterious to health, or any matter or thing which may or could pollute the waters of such spring, well, stream, river, lake or water system, shall be guilty of a gross misdemeanor. [1909 c 249 § 290; RRS § 2542.]

**70.54.020 Furnishing impure water—Penalty.** Every owner, agent, manager, operator or other person having charge of any waterworks furnishing water for public or private use, who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity or healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor. [1909 c 249 § 291; RRS § 2543.]

**70.54.030 Pollution of watershed of city in adjoining state—Penalty.** Any person who shall place or cause to be placed within any watershed from which any city or municipal corporation of any adjoining state obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute or impair the quality of said water supply, or the owner of any dead animal who shall knowingly leave or cause to be left the carcass or any portion thereof within any such watershed in such condition as to in any way corrupt or pollute such water supply shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine in any sum not exceeding five hundred dollars. [1909 c 16 § 2; RRS § 9281.]

**70.54.040 Secretary to advise local authorities on sanitation.** The commissioners of any county or the mayor of any city may call upon the secretary of health for advice relative to improving sanitary conditions or disposing of garbage and sewage or obtaining a pure water supply, and when so called upon the secretary shall either personally or by an assistant make a careful examination into the conditions existing and shall make a full report containing his or her advice to the county or city making such request. [1991 c 3 § 341; 1979 c 141 § 109; 1909 c 208 § 3; RRS § 6006.]

**70.54.050 Exposing contagious disease—Penalty.** Every person who shall willfully expose himself or herself to another, or any animal affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his or her or its necessary removal in a manner not dangerous to the public health; and every person so affected who shall expose any other person thereto without his or her knowledge, shall be guilty of a misdemeanor. [2012 c 117 § 382; 1909 c 249 § 287; RRS § 2539.]

**70.54.060 Ambulances and drivers.** (1) The drivers of all ambulances shall be required to take the advanced first aid course as prescribed by the American Red Cross.

(2) All ambulances must be at all times equipped with first aid equipment consisting of leg and arm splints and standard twenty-four unit first aid kit as prescribed by the American Red Cross. [1945 c 65 § 1; Rem. Supp. 1945 § 6131-1. FORMER PART OF SECTION: 1945 c 65 § 2 now codified as RCW 70.54.060, part.]

**70.54.065 Ambulances and drivers—Penalty.** Any person violating any of the provisions herein shall be guilty of a misdemeanor. [1945 c 65 § 2; Rem. Supp. 1945 § 6131-2. Formerly RCW 70.54.060, part.]

**70.54.070 Door of public buildings to swing outward—Penalty.** The doors of all theaters, opera houses, school buildings, churches, public halls, or places used for public entertainments, exhibitions or meetings, which are used exclusively or in part for admission to or egress from the same, or any part thereof, shall be so hung and arranged as to open outwardly, and during any exhibition, entertainment or meeting, shall be kept unlocked and unfastened, and in such condition that in case of danger or necessity, immediate escape from such building shall not be prevented or delayed; and every agent or lessee of any such building who shall rent the same or allow it to be used for any of the aforesaid public purposes without having the doors thereof hung and arranged as hereinbefore provided, shall, for each violation of any provision of this section, be guilty of a misdemeanor. [1909 c 249 § 273; RRS § 2525.]

**70.54.080 Liability of person handling steamboat or steam boiler.** Every person who shall apply, or cause to be applied to a steam boiler a higher pressure of steam than is allowed by law, or by any inspector, officer or person authorized to limit the same; every captain or other person having charge of the machinery or boiler in a steamboat used for the conveyance of passengers on the waters of this state, who, from ignorance or gross neglect, or for the purpose of increasing the speed of such boat, shall create or cause to be created an undue or unsafe pressure of steam; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or employing steam, who shall wilfully or from ignorance or gross neglect, create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident, whereby human life is endangered, shall be guilty of a gross misdemeanor. [1909 c 249 § 280; RRS § 2532.]

*Boilers and unfired pressure vessels: Chapter 70.79 RCW.*

*Industrial safety and health: Chapter 43.22 RCW.*

**70.54.090 Attachment of objects to utility poles—Penalty.** (1) It shall be unlawful to attach to utility poles any of the following: Advertising signs, posters, vending machines, or any similar object which presents a hazard to, or endangers the lives of, electrical workers. Any attachment to utility poles shall only be made with the permission of the utility involved, and shall be placed not less than twelve feet above the surface of the ground.

(2) A person violating this section is guilty of a misdemeanor. [2003 c 53 § 351; 1953 c 185 § 1.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.54.120 Immunity from implied warranties and civil liability relating to blood, blood products, tissues, organs, or bones—Scope—Effective date.** The procurement, processing, storage, distribution, administration, or use of whole blood, plasma, blood products and blood derivatives for the purpose of injecting or transfusing the same, or any of them, or of tissues, organs, or bones for the purpose of transplanting them, or any of them, into the human body is declared to be, for all purposes whatsoever, the rendition of a service by each and every person, firm, or corporation participating therein, and is declared not to be covered by any implied warranty under the Uniform Commercial Code, Title 62A RCW, or otherwise, and no civil liability shall be

incurred as a result of any of such acts, except in the case of wilful or negligent conduct: PROVIDED, HOWEVER, That this section shall apply only to liability alleged in the contraction of hepatitis, malaria, and acquired immune deficiency disease [immunodeficiency syndrome] and shall not apply to any transaction in which the donor receives compensation: PROVIDED FURTHER, That this section shall only apply where the person, firm or corporation rendering the above service shall have maintained records of donor suitability and donor identification: PROVIDED FURTHER, That nothing in this section shall be considered by the courts in determining or applying the law to any blood transfusion occurring before June 10, 1971 and the court shall decide such case as though this section had not been passed. [1987 c 84 § 1; 1985 c 321 § 1; 1971 c 56 § 1.]

Additional notes found at www.leg.wa.gov

**70.54.130 Laetrile—Legislative declaration.** It is the intent of the legislature that passage of RCW 70.54.130 through 70.54.150 shall not constitute any endorsement whatever of the efficacy of amygdalin (Laetrile) in the treatment of cancer, but represents only the legislature's endorsement of a patient's freedom of choice, so long as the patient has been given sufficient information in writing to make an informed decision regarding his/her treatment and the substance is not proven to be directly detrimental to health. [1977 ex.s. c 122 § 1.]

**70.54.140 Laetrile—Interference with physician/patient relationship by health facility—Pharmacy quality assurance commission, duties.** No hospital or health facility may interfere with the physician/patient relationship by restricting or forbidding the use of amygdalin (Laetrile) when prescribed or administered by a physician licensed pursuant to chapter 18.57 or 18.71 RCW and requested by a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

For the purposes of RCW 70.54.130 through 70.54.150, the pharmacy quality assurance commission shall provide for the certification as to the identity of amygdalin (Laetrile) by random sample testing or other testing procedures, and shall promulgate rules and regulations necessary to implement and enforce its authority under this section. [2013 c 19 § 123; 1977 ex.s. c 122 § 2.]

**70.54.150 Physicians not subject to disciplinary action for prescribing or administering laetrile—Conditions.** No physician may be subject to disciplinary action by any entity of either the state of Washington or a professional association for prescribing or administering amygdalin (Laetrile) to a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

It is not the intent of this section to shield a physician from acts or omissions which otherwise would constitute unprofessional conduct. [1986 c 259 § 150; 1977 ex.s. c 122 § 3.]

Additional notes found at www.leg.wa.gov

**70.54.160 Public restrooms—Pay facilities—Penalty.** (1) Every establishment which maintains restrooms for use by the public shall not discriminate in charges required between facilities used by men and facilities used by women.

(2) When coin lock controls are used, the controls shall be so allocated as to allow for a proportionate equality of free toilet units available to women as compared with those units available to men, and at least one-half of the units in any restroom shall be free of charge. As used in this section, toilet units are defined as constituting commodes and urinals.

(3) In situations involving coin locks placed on restroom entry doors, admission keys shall be readily provided without charge when requested, and notice as to the availability of the keys shall be posted on the restroom entry door.

(4) Any owner, agent, manager, or other person charged with the responsibility of the operation of an establishment who operates such establishment in violation of this section is guilty of a misdemeanor. [2003 c 53 § 352; 1977 ex.s. c 97 § 1.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.54.180 Deaf persons access to emergency services—Telecommunication devices.** (1) For the purpose of this section "telecommunication device" means an instrument for telecommunication in which speaking or hearing is not required for communicators.

(2) The county legislative authority of each county with a population of eighteen thousand or more and the governing body of each city with a population in excess of ten thousand shall provide by July 1, 1980, for a telecommunication device in their jurisdiction or through a central dispatch office that will assure access to police, fire, or other emergency services.

(3) The county legislative authority of each county with a population of eighteen thousand or less shall by July 1, 1980, make a determination of whether sufficient need exists with their respective counties to require installation of a telecommunication device. Reconsideration of such determination will be made at any future date when a deaf individual indicates a need for such an instrument. [1991 c 363 § 142; 1979 ex.s. c 63 § 2.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Purpose—1979 ex.s. c 63:** "The legislature finds that many citizens of this state who are unable to utilize telephone services in a regular manner due to hearing defects are able to communicate by teletypewriters where hearing is not required for communication. Hence, it is the purpose of section 2 of this act [RCW 70.54.180] to require that telecommunication devices for the deaf be installed." [1979 ex.s. c 63 § 1.]

**70.54.190 DMSO (dimethyl sulfoxide)—Use—Liability.** No hospital or health facility may interfere with the physician/patient relationship by restricting or forbidding the use of DMSO (dimethyl sulfoxide) when prescribed or administered by a physician licensed pursuant to chapter 18.57 or 18.71 RCW and requested by a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

No physician may be subject to disciplinary action by any entity of either the state of Washington or a professional association for prescribing or administering DMSO (dimethyl sulfoxide) to a patient under his/her care who has

requested the substance after having been given sufficient information in writing to make an informed decision.

It is not the intent of this section to shield a physician from acts or omissions which otherwise would constitute unprofessional conduct. [1986 c 259 § 151; 1981 c 50 § 2.]

*DMSO authorized: RCW 69.04.565.*

Additional notes found at www.leg.wa.gov

**70.54.200 Fees for repository of vaccines, biologics.** The department shall prescribe by rule a schedule of fees predicated on the cost of providing a repository of emergency vaccines and other biologics. [1981 c 284 § 2.]

**Reviser's note:** Although 1981 c 284 directs this section be added to chapter 74.04 RCW, codification here is considered more appropriate. The "department" referred to is apparently the department of social and health services.

**70.54.220 Practitioners to provide information on prenatal testing and cord blood banking.** All persons licensed or certified by the state of Washington to provide prenatal care or to practice medicine shall provide information to all pregnant women in their care regarding:

(1) The use and availability of prenatal tests; and

(2) Using objective and standardized information: (a) The differences between and potential benefits and risks involved in public and private cord blood banking that is sufficient to allow a pregnant woman to make an informed decision before her third trimester of pregnancy on whether to participate in a private or public cord blood banking program; and (b) the opportunity to donate, to a public cord blood bank, blood and tissue extracted from the placenta and umbilical cord following delivery of a newborn child. [2009 c 495 § 9; (2009 c 495 § 8 expired July 1, 2010); 2008 c 56 § 2; 1988 c 276 § 5.]

**Purpose—Effective date—2008 c 56:** See note following RCW 70.54.222.

Additional notes found at www.leg.wa.gov

**70.54.222 Cord blood banks—Regulation—Application of consumer protection act—Definitions.** (1) A cord blood bank advertising, offering to provide, or providing private cord blood banking services to residents in this state must:

(a) Have all applicable licenses, accreditations, and other authorizations required under federal and Washington state law to engage in cord blood banking;

(b) Include, in any advertising or educational materials made available to the general public or provided to health services providers or potential cord blood donors: (i) A statement identifying the cord blood bank's licenses, accreditations, and other authorizations required in (a) of this subsection; and (ii) information about the cord blood bank's rate of success in collecting, processing, and storing sterile cord blood units that have adequate, viable yields of targeted cells; and

(c)(i) Provide to the cord blood donor the results of appropriate quality control tests performed on the donor's collected cord blood; and

(ii) If the test results provided under (c)(i) of this subsection demonstrate that the collected cord blood may not be recommended for long-term storage and potential future medical uses because of low cell yield, foreign contamination, or other reasons determined by the cord blood bank's medical director, provide the cord blood donor with the option not to be charged fees for processing or storage services, including a refund of any fees paid. The cord blood bank must provide the cord blood donor with sufficient information to make an informed decision regarding this option.

(2) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Autologous use" means the transplantation, including implanting, transplanting, infusion, or transfer, of cord blood into the individual from whom the cord blood was collected.

(b) "Cord blood bank" means an operation engaged in collecting, processing, storing, distributing, or transplanting hematopoietic progenitor cells present in placental or umbilical cord blood.

(c) "Hematopoietic progenitor cells" means pluripotential cells that may be capable of self-renewal and differentiation into any mature blood cell.

(d) "Private cord blood banking" means a cord blood bank that provides, for a fee, cord blood banking services for the autologous use of the cord blood. [2008 c 56 § 3.]

**Purpose—2008 c 56:** "The purpose of this act is to promote public awareness and education of the general public and potential cord blood donors on the benefits of public or private cord blood banking, and to establish safeguards related to effective private banking of cord blood." [2008 c 56 § 1.]

Additional notes found at www.leg.wa.gov

**70.54.230 Cancer registry program.** The secretary of health may contract with either a recognized regional cancer research institution or regional tumor registry, or both, which shall hereinafter be called the contractor, to establish a statewide cancer registry program and to obtain cancer reports from all or a portion of the state as required in RCW 70.54.240 and to make available data for use in cancer research and for purposes of improving the public health. [1990 c 280 § 2.]

**Intent—1990 c 280:** "It is the intent of the legislature to establish a system to accurately monitor the incidence of cancer in the state of Washington for the purposes of understanding, controlling, and reducing the occurrence of cancer in this state. In order to accomplish this, the legislature has determined that cancer cases shall be reported to the department of health, and that there shall be established a statewide population-based cancer registry." [1990 c 280 § 1.]

**70.54.240 Cancer registry program—Reporting requirements.** (1) The department of health shall adopt rules as to which types of cancer shall be reported, who shall report, and the form and timing of the reports. A patient's usual occupation or, if the patient is retired, the primary occupation of the patient before retirement must be reported.

(2) Every health care facility and independent clinical laboratory, and those physicians or others providing health

care who diagnose or treat any patient with cancer who is not hospitalized within one month of diagnosis, will provide the contractor with the information required under subsection (1) of this section. The required information may be collected on a regional basis where such a system exists and forwarded to the contractor in a form suitable for the purposes of RCW 70.54.230 through 70.54.270. Such reporting arrangements shall be reduced to a written agreement between the contractor and any regional reporting agency which shall detail the manner, form, and timeliness of the reporting. [2011 c 38 § 1; 1990 c 280 § 3.]

**Intent—1990 c 280:** See note following RCW 70.54.230.

**70.54.250 Cancer registry program—Confidentiality.** (1) Data obtained under RCW 70.54.240 shall be used for statistical, scientific, medical research, and public health purposes only.

(2) The department and its contractor shall ensure that access to data contained in the registry is consistent with federal law for the protection of human subjects and consistent with chapter 42.48 RCW. [1990 c 280 § 4.]

**Intent—1990 c 280:** See note following RCW 70.54.230.

**70.54.260 Liability.** Providing information required under RCW 70.54.240 or 70.54.250 shall not create any liability on the part of the provider nor shall it constitute a breach of confidentiality. The contractor shall, at the request of the provider, but not more frequently than once a year, sign an oath of confidentiality, which reads substantially as follows:

"As a condition of conducting research concerning persons who have received services from (name of the health care provider or facility), I . . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such research that could lead to identification of such persons receiving services, or to the identification of their health care providers. I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law."

[1990 c 280 § 5.]

**Intent—1990 c 280:** See note following RCW 70.54.230.

**70.54.270 Rule making.** The department shall adopt rules to implement RCW 70.54.230 through 70.54.260, including but not limited to a definition of cancer. [1990 c 280 § 6.]

**Intent—1990 c 280:** See note following RCW 70.54.230.

**70.54.280 Bone marrow donor recruitment and education program—Generally—Target minority populations—Report.** The department of health shall establish a bone marrow donor recruitment and education program to educate residents of the state about:

(1) The need for bone marrow donors;

(2) The procedures required to become registered as a potential bone marrow donor, including procedures for determining a person's tissue type;

(3) The procedures a donor must undergo to donate bone marrow or other sources of blood stem cells; and

(4) The ability to obtain information about bone marrow donation when applying for or renewing a personal driver's license or identicard with the department of licensing.

The department of health shall make special efforts to educate and recruit citizens from minority populations to volunteer as potential bone marrow donors. Means of communication may include use of press, radio, and television, and placement of educational materials in appropriate health care facilities, blood banks, and state and local agencies. The department of health in conjunction with the department of licensing shall make educational materials available at all places where and when drivers' licenses are issued or renewed.

By December 1, 2019, the department of health, in conjunction with the department of licensing, must provide a report to the appropriate committees of the legislature on the results and outcomes of the efforts in increasing public awareness of bone marrow donation and the number of individuals being placed on the bone marrow donor registry from Washington state as a result of RCW 46.20.1132. [2018 c 192 § 3; 1992 c 109 § 2.]

**Findings—Intent—Effective date—2018 c 192:** See notes following RCW 46.20.1132.

**Findings—1992 c 109:** "The legislature finds that an estimated sixteen thousand American children and adults are stricken each year with leukemia, aplastic anemia, or other fatal blood diseases. For many of these individuals, bone marrow transplantation is the only chance for survival. Nearly seventy percent cannot find a suitable bone marrow match within their own families. The chance that a patient will find a matching, unrelated donor in the general population is between one in a hundred and one in a million.

The legislature further finds that because tissue types are inherited, and different tissue types are found in different ethnic groups, the chances of finding an unrelated donor vary according to the patient's ethnic and racial background. Patients from minority groups are therefore less likely to find matching, unrelated donors.

It is the intent of the legislature to establish a statewide bone marrow donor education and recruitment program in order to increase the number of Washington residents who become bone marrow donors, and to increase the chance that patients in need of bone marrow transplants will find a suitable bone marrow match." [1992 c 109 § 1.]

**70.54.290 Bone marrow donor recruitment and education program—State employees to be recruited.** The department of health shall make special efforts to educate and recruit state employees to volunteer as potential bone marrow donors. Such efforts shall include, but not be limited to, conducting a bone marrow donor drive to encourage state employees to volunteer as potential bone marrow donors. The drive shall include educational materials furnished by the national bone marrow donor program and presentations that explain the need for bone marrow donors, and the procedures for becoming registered as potential bone marrow donors. The cost of educational materials and presentations to state employees shall be borne by the national marrow donor program. [1992 c 109 § 3.]

**Findings—1992 c 109:** See note following RCW 70.54.280.

**70.54.300 Bone marrow donor recruitment and education program—Private sector and community involvement.** In addition to educating and recruiting state employees, the department of health shall make special efforts to encourage community and private sector businesses and associations to initiate independent efforts to achieve the goals of chapter 109, Laws of 1992. [1992 c 109 § 4.]

**Findings—1992 c 109:** See note following RCW 70.54.280.

**70.54.305 Bone marrow donation—Status as minor not a disqualifying factor.** A person's status as a minor may not disqualify him or her from bone marrow donation. [2000 c 116 § 1.]

**70.54.310 Semiautomatic external defibrillator—Duty of acquirer—Immunity from civil liability.** (1) As used in this section, "defibrillator" means a semiautomatic external defibrillator as prescribed by a physician licensed under chapter 18.71 RCW or an osteopath licensed under chapter 18.57 RCW.

(2) A person or entity who acquires a defibrillator shall ensure that:

(a) Expected defibrillator users receive reasonable instruction in defibrillator use and cardiopulmonary resuscitation by a course approved by the department of health;

(b) The defibrillator is maintained and tested by the acquirer according to the manufacturer's operational guidelines;

(c) Upon acquiring a defibrillator, medical direction is enlisted by the acquirer from a licensed physician in the use of the defibrillator and cardiopulmonary resuscitation;

(d) The person or entity who acquires a defibrillator shall notify the local emergency medical services organization about the existence and the location of the defibrillator; and

(e) The defibrillator user shall call 911 or its local equivalent as soon as possible after the emergency use of the defibrillator and shall assure that appropriate follow-up data is made available as requested by emergency medical service or other health care providers.

(3) A person who uses a defibrillator at the scene of an emergency and all other persons and entities providing services under this section are immune from civil liability for any personal injury that results from any act or omission in the use of the defibrillator in an emergency setting.

(4) The immunity from civil liability does not apply if the acts or omissions amount to gross negligence or willful or wanton misconduct.

(5) The requirements of subsection (2) of this section shall not apply to any individual using a defibrillator in an emergency setting if that individual is acting as a good samaritan under RCW 4.24.300. [1998 c 150 § 1.]

**70.54.320 Electrology and tattooing—Findings.** The legislature finds and declares that the practices of electrology and tattooing involve an invasive procedure with the use of needles and instruments which may be dangerous when improperly sterilized presenting a risk of infecting the client with blood-borne pathogens such as HIV and Hepatitis B. It is in the interests of the public health, safety, and welfare to establish requirements for the sterilization procedures in the commercial practices of electrology and tattooing in this state. [2001 c 194 § 1.]

**70.54.330 Electrology and tattooing—Definitions.** The definitions in this section apply throughout RCW 70.54.320, 70.54.340, and 70.54.350 unless the context clearly requires otherwise.

(1) "Electrologist" means a person who practices the business of electrology for a fee.

(2) "Electrology" means the process by which hair is permanently removed through the utilization of solid needle/probe electrode epilation, including thermolysis, being of shortwave, high frequency type, and including electrolysis, being of galvanic type, or a combination of both which is accomplished by a superimposed or sequential blend.

(3) "Tattoo artist" means a person who practices the business of tattooing for a fee.

(4) "Tattooing" means the indelible mark, figure, or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being for cosmetic or figurative purposes. [2001 c 194 § 2.]

**70.54.340 Electrology, body art, body piercing, and tattooing—Rules, sterilization requirements.** The secretary of health shall adopt by rule requirements, in accordance with nationally recognized professional standards, for precautions against the spread of disease, including the sterilization of needles and other instruments, including sharps and jewelry, employed by electrologists, persons engaged in the practice of body art, body piercing, and tattoo artists. The secretary shall consider the standard precautions for infection control, as recommended by the United States centers for disease control, and guidelines for infection control, as recommended by national industry standards in the adoption of these sterilization requirements. [2009 c 412 § 19; 2001 c 194 § 3.]

*Definition of body art, body piercing, and tattooing: RCW 18.300.010.*

Additional notes found at www.leg.wa.gov

**70.54.350 Electrology and tattooing—Practitioners to comply with rules—Penalty.** (1) Any person who practices electrology or tattooing shall comply with the rules adopted by the department of health under *RCW 70.54.340.

(2) A violation of this section is a misdemeanor. [2001 c 194 § 4.]

***Reviser's note:** RCW 70.54.340 was amended by 2009 c 412 § 19, adding body art and body piercing to its application.

**70.54.355 Scleral tattooing prohibited—Penalties—Enforcement.** (1) A person may not perform or offer to perform scleral tattooing on another person.

(2) A person who violates this section is subject to a civil penalty not to exceed ten thousand dollars for each violation, as determined by the court.

(3)(a) The attorney general may receive, investigate, and prosecute complaints against alleged violators of this section.

(b) The attorney general may institute and conduct an action in the name of the state of Washington for any of the following:

(i) An injunction in any court of this state for injunctive relief to restrain a person from continuing any activity that violates this section.

(ii) The assessment and recovery of civil penalties provided in subsection (2) of this section.

(4) The attorney general must be reimbursed through civil penalties collected under this section for the costs incurred in providing the services described in subsection (3)

of this section. Any remaining funds must be deposited in the state general fund.

(5) For the purposes of this section, "scleral tattooing" means the practice of producing an indelible mark or figure on the human eye by scarring or inserting a pigment on, in, or under: (a) The fornix conjunctiva; (b) the bulbar conjunctiva; (c) the ocular conjunctiva; or (d) another ocular surface; using needles, scalpels, or other related equipment. [2019 c 307 § 1.]

**70.54.370 Meningococcal disease—Students to receive informational materials.** (1) Except for community and technical colleges, each degree-granting public or private postsecondary residential campus that provides on-campus or group housing shall provide information on meningococcal disease to each enrolled matriculated first-time student. Community and technical colleges must provide the information only to those students who are offered on-campus or group housing. The information about meningococcal disease shall include:

(a) Symptoms, risks, especially as the risks relate to circumstances of group living arrangements, and treatment; and

(b) Current recommendations from the United States centers for disease control and prevention regarding the receipt of vaccines for meningococcal disease and where the vaccination can be received.

(2) This section shall not be construed to require the department of health or the postsecondary educational institution to provide the vaccination to students.

(3) The department of health shall be consulted regarding the preparation of the information materials provided to the first-time students.

(4) If institutions provide electronic enrollment or registration to first-time students, the information required by this section shall be provided electronically and acknowledged by the student before completion of electronic enrollment or registration.

(5) This section does not create a private right of action. [2003 c 398 § 1.]

**Reviser's note:** Substitute House Bill No. 1059, Substitute House Bill No. 1173, and Engrossed Substitute House Bill No. 1827 were enacted during the 2003 regular session of the legislature, but were vetoed in part by the governor. A stipulated judgment, No. 03-2-01988-4 filed in the Superior Court of Thurston County, between the governor and the legislature, settled litigation over the governor's use of veto powers and declared the vetoes of SHB 1059, SHB 1173, and ESHB 1827 null and void. Consequently, the text of this section has been returned to the version passed by the legislature prior to the vetoes. For vetoed text and message, see chapter 398, Laws of 2003.

Additional notes found at www.leg.wa.gov

**70.54.400 Retail restroom access—Customers with medical conditions—Penalty.** (1) For purposes of this section:

(a) "Customer" means an individual who is lawfully on the premises of a retail establishment.

(b) "Eligible medical condition" means:

(i) Crohn's disease, ulcerative colitis, or any other inflammatory bowel disease;

(ii) Irritable bowel syndrome;

(iii) Any condition requiring use of an ostomy device; or

(iv) Any permanent or temporary medical condition that requires immediate access to a restroom.

(c) "Employee restroom" means a restroom intended for employees only in a retail facility and not intended for customers.

(d) "Health care provider" means an advanced registered nurse practitioner licensed under chapter 18.79 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, a physician or surgeon licensed under chapter 18.71 RCW, or a physician assistant licensed under chapter 18.71A RCW.

(e) "Retail establishment" means a place of business open to the general public for the sale of goods or services. Retail establishment does not include any structure such as a filling station, service station, or restaurant of eight hundred square feet or less that has an employee restroom located within that structure.

(2) A retail establishment that has an employee restroom must allow a customer with an eligible medical condition to use that employee restroom during normal business hours if:

(a) The customer requesting the use of the employee restroom provides in writing either:

(i) A signed statement by the customer's health care provider on a form that has been prepared by the department of health under subsection (4) of this section; or

(ii) An identification card that is issued by a nonprofit organization whose purpose includes serving individuals who suffer from an eligible medical condition; and

(b) One of the following conditions are met:

(i) The employee restroom is reasonably safe and is not located in an area where providing access would create an obvious health or safety risk to the customer; or

(ii) Allowing the customer to access the restroom facility does not pose a security risk to the retail establishment or its employees.

(3) A retail establishment that has an employee restroom must allow a customer to use that employee restroom during normal business hours if:

(a)(i) Three or more employees of the retail establishment are working at the time the customer requests use of the employee restroom; and

(ii) The retail establishment does not normally make a restroom available to the public; and

(b)(i) The employee restroom is reasonably safe and is not located in an area where providing access would create an obvious health or safety risk to the customer; or

(ii) Allowing the customer to access the employee restroom does not pose a security risk to the retail establishment or its employees.

(4) The department of health shall develop a standard electronic form that may be signed by a health care provider as evidence of the existence of an eligible medical condition as required by subsection (2) of this section. The form shall include a brief description of a customer's rights under this section and shall be made available for a customer or his or her health care provider to access by computer. Nothing in this section requires the department to distribute printed versions of the form.

(5) Fraudulent use of a form as evidence of the existence of an eligible medical condition is a misdemeanor punishable under RCW 9A.20.010.

(6) For a first violation of this section, the city or county attorney shall issue a warning letter to the owner or operator

of the retail establishment, and to any employee of a retail establishment who denies access to an employee restroom in violation of this section, informing the owner or operator of the establishment and employee of the requirements of this section. A retail establishment or an employee of a retail establishment that violates this section after receiving a warning letter is guilty of a class 2 civil infraction under chapter 7.80 RCW.

(7) A retail establishment is not required to make any physical changes to an employee restroom under this section and may require that an employee accompany a customer or a customer with an eligible medical condition to the employee restroom.

(8) A retail establishment or an employee of a retail establishment is not civilly liable for any act or omission in allowing a customer or a customer with an eligible medical condition to use an employee restroom if the act or omission meets all of the following:

(a) It is not willful or grossly negligent;

(b) It occurs in an area of the retail establishment that is not accessible to the public; and

(c) It results in an injury to or death of the customer or the customer with an eligible medical condition or any individual other than an employee accompanying the customer or the customer with an eligible medical condition. [2020 c 80 § 46; 2009 c 438 § 1.]

**Effective date—2020 c 80 §§ 12-59:** See note following RCW 7.68.030.

**Intent—2020 c 80:** See note following RCW 18.71A.010.

**70.54.410 Unintended pregnancies—Sexual health education funding.** (1) To reduce unintended pregnancies, state agencies may apply for sexual health education funding for programs that are medically and scientifically accurate, including, but not limited to, programs on abstinence, the prevention of sexually transmitted diseases, and the prevention of unintended pregnancies. The state shall ensure that such programs:

(a) Are evidence-based;

(b) Use state funds cost-effectively;

(c) Maximize the use of federal matching funds; and

(d) Are consistent with RCW 28A.300.475, the state's healthy youth act, as existing on July 26, 2009.

(2) As used in this section:

(a) "Medically and scientifically accurate" has the same meaning as in RCW 28A.300.475, as existing on July 26, 2009; and

(b) "Evidence-based" means a program that uses practices proven to the greatest extent possible through research in compliance with scientific methods to be effective and beneficial for the target population. [2009 c 303 § 1.]

**70.54.420 Accountable care organization pilot projects—Report to the legislature.** (1) The administrator shall within available resources appoint a lead organization by January 1, 2011, to support at least one integrated health care delivery system and one network of nonintegrated community health care providers in establishing two distinct accountable care organization pilot projects. The intent is that at least two accountable care organization pilot projects be in the process of implementation no later than January 1, 2012. In order to obtain expert guidance and consultation in design and implementation of the pilots, the lead organization shall contract with a recognized national learning collaborative with a reputable research organization having expertise in the development and implementation of accountable care organizations and payment systems.

(2) The lead organization designated by the administrator under this section shall:

(a) Be representative of health care providers and payors across the state;

(b) Have expertise and knowledge in medical payment and practice reform;

(c) Be able to support the costs of its work without recourse to state funding. The administrator and the lead organization are authorized and encouraged to seek federal funds, as well as solicit, receive, contract for, collect, and hold grants, donations, and gifts to support the implementation of this section and may scale back implementation to fall within resulting resource parameters;

(d) In collaboration with the health care authority, identify and convene work groups, as needed, to accomplish the goals of chapter 220, Laws of 2010; and

(e) Submit regular reports to the administrator on the progress of implementing the requirements of chapter 220, Laws of 2010.

(3) As used in this section, an "accountable care organization" is an entity that enables networks consisting of health care providers or a health care delivery system to become accountable for the overall costs and quality of care for the population they jointly serve and to share in the savings created by improving quality and slowing spending growth while relying on the following principles:

(a) Local accountability:

(i) Accountable care organizations must be composed of local delivery systems; and

(ii) Accountable care organizations spending benchmarks must make the local system accountable for cost, quality, and capacity;

(b) Appropriate payment and delivery models:

(i) Accountable care organizations with expenditures below benchmarks are recognized and rewarded with appropriate financial incentives;

(ii) Payment models have financial incentives that allow stakeholders to make investments that improve care and slow cost growth such as health information technology; and

(iii) Patient-centered medical homes are an integral component to an accountable care organization with a focus on improving patient outcomes, optimizing the use of health care information technology, patient registries, and chronic disease management, thereby improving the primary care team, and achieving cost savings through lowering health care utilization;

(c) Performance measurement:

(i) Measurement is essential to ensure that appropriate care is being delivered and that cost savings are not the result of limiting necessary care; and

(ii) Accountable care organizations must report patient experience data in addition to clinical process and outcome measures.

(4) The lead organization, subject to available resources, shall research other opportunities to establish accountable

care organization pilot projects, which may become available through participation in a demonstration project in medicaid, payment reform in medicare, national health care reform, or other federal changes that support the development of accountable care organizations.

(5) The lead organization, subject to available resources, shall coordinate the accountable care organization selection process with the primary care medical home reimbursement pilot projects established in *RCW 70.54.380 and the ongoing joint project of the department of health and the Washington academy of family physicians patient-centered medical home collaborative being put into practice under section 2, chapter 295, Laws of 2008, as well as other private and public efforts to promote adoption of medical homes within the state.

(6) The lead organization shall make a report to the health care committees of the legislature, by January 1, 2013, on the progress of the accountable care organization pilot projects, recommendations about further expansion, and needed changes to the statute to more broadly implement and oversee accountable care organizations in the state.

(7) As used in this section, "administrator," "health care provider," "lead organization," and "payor" have the same meaning as provided in RCW 41.05.036. [2010 c 220 § 2.]

***Reviser's note:** RCW 70.54.380 expired July 1, 2013, pursuant to 2009 c 305 § 4.

**Findings—Intent—2010 c 220:** "(1)(a) The legislature finds that a necessary component of bending the health care cost curve is innovative payment and practice reforms that capitalize on current incentives and create new incentives in the delivery system to further the goals of increased quality, accessibility, and affordability.

(b) The legislature further finds that accountable care organizations have received significant attention in the recent health care reform debate and have been found by the congressional budget office to be one of the few comprehensive reform models that can be relied on to reduce costs.

(c) The legislature further finds that accountable care organizations present an intriguing path forward on reform that builds on current provider referral patterns and offers shared savings payments to providers willing to be held accountable for quality and costs.

(d) The legislature further finds that the accountable care organization framework offers a basic method of decoupling volume and intensity from revenue and profit and is thus a crucial step toward achieving a truly sustainable health care delivery system.

(2) The legislature declares that collaboration among public payors, private health carriers, third-party purchasers, health care delivery systems, and providers to identify appropriate reimbursement methods to align incentives in support of accountable care organizations is in the best interest of the public. The legislature therefore intends to exempt from state antitrust laws, and to provide immunity from federal antitrust laws through the state action doctrine, for activities undertaken pursuant to pilots designed and implemented under RCW 70.54.420 that might otherwise be constrained by such laws. The legislature does not intend and does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state and federal antitrust laws including, but not limited to, agreements among competing health care providers or health carriers as to the price or specific level of reimbursement for health care services.

(3) The legislature further finds that public-private partnerships and joint projects, such as the Washington patient-centered medical home collaborative administered and funded jointly between the department of health and the Washington academy of family physicians, are research-supported, evidence-based primary care delivery projects that should be encouraged to the fullest extent possible because they improve health outcomes for patients and increase primary care clinical effectiveness, thereby reducing the overall costs in our health care system." [2010 c 220 § 1.]

**70.54.430 First responders—Emergency response service—Contact information.** (1) When requested by first responders during an emergency, employees of companies providing personal emergency response services must provide to first responders the name, address, and any other information necessary for first responders to contact subscribers within the jurisdiction of the emergency.

(2) Companies providing personal emergency response services may adopt policies to respond to requests from first responders to release subscriber contact information during an emergency. Policies may include procedures to:

(a) Verify that the requester is a first responder;

(b) Verify that the request is made pursuant to an emergency;

(c) Fulfill the request by providing the subscriber contact information; and

(d) Deny the request if no emergency exists or if the requester is not a first responder.

(3) Information received by a first responder under subsection (1) of this section is confidential and exempt from disclosure under chapter 42.56 RCW, and may be used only in responding to the emergency that prompted the request for information. Any first responder receiving the information must destroy it at the end of the emergency.

(4) It is not a violation of this section if a personal emergency response services company or an employee makes a good faith effort to comply with this section. In addition, the company or employee is immune from civil liability for a good faith effort to comply with this section. Should a company or employee prevail upon the defense provided in this section, the company or employee is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense.

(5) First responders and their employing jurisdictions are not liable for failing to request the information in subsection (1) of this section. In addition, chapter 30, Laws of 2015 does not create a private right of action nor does it create any civil liability on the part of the state or any of its subdivisions, including first responders.

(6) For the purposes of this section:

(a) "Emergency" means an occurrence that renders the personal emergency response services system inoperable for a period of twenty-four or more continuous hours, and that requires the attention of first responders acting within the scope of their official duties.

(b) "First responder" means firefighters, law enforcement officers, coroners and medical examiners, and emergency medical personnel, as licensed or certificated by this state.

(c) "Personal emergency response services" means a service provided for profit that allows persons in need of emergency assistance to contact a call center by activating a wearable device, such as a pendant or bracelet.

(7) This section does not require a personal emergency response services company to:

(a) Provide first responders with subscriber contact information in nonemergency situations; or

(b) Provide subscriber contact information to entities other than first responders. [2021 c 122 § 5; 2015 c 30 § 1.]

**Finding—Intent—2021 c 122:** See note following RCW 2.32.050.

**70.54.440 Epinephrine autoinjectors—Prescribing to certain entities—Training—Liability—Incident reporting.** (1) An authorized health care provider may prescribe

epinephrine autoinjectors in the name of an authorized entity for use in accordance with this section, and pharmacists, advanced registered nurse practitioners, and physicians may dispense epinephrine autoinjectors pursuant to a prescription issued in the name of an authorized entity.

(2) An authorized entity may acquire and stock a supply of epinephrine autoinjectors pursuant to a prescription issued in accordance with this section. The epinephrine autoinjectors must be stored in a location readily accessible in an emergency and in accordance with the epinephrine autoinjector's instructions for use and any additional requirements that may be established by the department of health. An authorized entity shall designate employees or agents who have completed the training required by subsection (4) of this section to be responsible for the storage, maintenance, and general oversight of epinephrine autoinjectors acquired by the authorized entity.

(3) An employee or agent of an authorized entity, or other individual, who has completed the training required by subsection (4) of this section may, on the premises of or in connection with the authorized entity, use epinephrine autoinjectors prescribed pursuant to subsection (1) of this section to:

(a) Provide an epinephrine autoinjector to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis for immediate self-administration, regardless of whether the individual has a prescription for an epinephrine autoinjector or has previously been diagnosed with an allergy.

(b) Administer an epinephrine autoinjector to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, regardless of whether the individual has a prescription for an epinephrine autoinjector or has previously been diagnosed with an allergy.

(4)(a) An employee, agent, or other individual described in subsection (3) of this section must complete an anaphylaxis training program prior to providing or administering an epinephrine autoinjector made available by an authorized entity. The training must be conducted by a nationally recognized organization experienced in training laypersons in emergency health treatment or an entity or individual approved by the department of health. Training may be conducted online or in person and, at a minimum, must cover:

(i) Techniques on how to recognize symptoms of severe allergic reactions, including anaphylaxis;

(ii) Standards and procedures for the storage and administration of an epinephrine autoinjector; and

(iii) Emergency follow-up procedures.

(b) The entity that conducts the training shall issue a certificate, on a form developed or approved by the department of health, to each person who successfully completes the anaphylaxis training program.

(5) An authorized entity that possesses and makes available epinephrine autoinjectors and its employees, agents, and other trained individuals; an authorized health care provider that prescribes epinephrine autoinjectors to an authorized entity; and an individual or entity that conducts the training described in subsection (4) of this section is not liable for any injuries or related damages that result from the administration or self-administration of an epinephrine autoinjector, the failure to administer an epinephrine autoinjector, or any other act or omission taken pursuant to this section: PROVIDED, However, this immunity does not apply to acts or omissions constituting gross negligence or willful or wanton misconduct. The administration of an epinephrine autoinjector in accordance with this section is not the practice of medicine. This section does not eliminate, limit, or reduce any other immunity or defense that may be available under state law, including that provided under RCW 4.24.300. An entity located in this state is not liable for any injuries or related damages that result from the provision or administration of an epinephrine autoinjector by its employees or agents outside of this state if the entity or its employee or agent (a) would not have been liable for the injuries or related damages had the provision or administration occurred within this state, or (b) are [is] not liable for the injuries or related damages under the law of the state in which the provision or administration occurred.

(6) An authorized entity that possesses and makes available epinephrine autoinjectors shall submit to the department of health, on a form developed by the department of health, a report of each incident on the authorized entity's premises that involves the administration of the authorized entity's epinephrine autoinjector. The department of health shall annually publish a report that summarizes and analyzes all reports submitted to it under this subsection.

(7) As used in this section:

(a) "Administer" means the direct application of an epinephrine autoinjector to the body of an individual.

(b) "Authorized entity" means any entity or organization at or in connection with which allergens capable of causing anaphylaxis may be present, including, but not limited to, restaurants, recreation camps, youth sports leagues, amusement parks, colleges, universities, and sports arenas.

(c) "Authorized health care provider" means an individual allowed by law to prescribe and administer prescription drugs in the course of professional practice.

(d) "Epinephrine autoinjector" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(e) "Provide" means the supply of one or more epinephrine autoinjectors to an individual.

(f) "Self-administration" means a person's discretionary use of an epinephrine autoinjector. [2016 c 10 § 1.]

**70.54.450 Maternal mortality review panel—Duties—Confidentiality, testimonial privilege, and liability—Identification of maternal deaths—Reports—Data-sharing agreements.** (1) For the purposes of this section, "maternal mortality" or "maternal death" means a death of a woman while pregnant or within one year of the end of a pregnancy, from any cause.

(2) A maternal mortality review panel is established to conduct comprehensive, multidisciplinary reviews of maternal deaths in Washington to identify factors associated with the deaths and make recommendations for system changes to improve health care services for women in this state. The members of the panel must be appointed by the secretary of the department of health, must include at least one tribal representative, must serve without compensation, and may include at the discretion of the department:

(a) Women's medical, nursing, and service providers;

(b) Perinatal medical, nursing, and service providers;

(c) Obstetric medical, nursing, and service providers;

(d) Newborn or pediatric medical, nursing, and service providers;

(e) Birthing hospital or licensed birth center representative;

(f) Coroners, medical examiners, or pathologists;

(g) Behavioral health and service providers;

(h) State agency representatives;

(i) Individuals or organizations that represent the populations most affected by pregnancy-related deaths or pregnancy-associated deaths and lack of access to maternal health care services;

(j) A representative from the department of health who works in the field of maternal and child health; and

(k) A department of health epidemiologist with experience analyzing perinatal data.

(3) The maternal mortality review panel must conduct comprehensive, multidisciplinary reviews of maternal mortality in Washington. The panel may not call witnesses or take testimony from any individual involved in the investigation of a maternal death or enforce any public health standard or criminal law or otherwise participate in any legal proceeding relating to a maternal death.

(4)(a) Information, documents, proceedings, records, and opinions created, collected, or maintained by the maternity mortality review panel or the department of health in support of the maternal mortality review panel are confidential and are not subject to public inspection or copying under chapter 42.56 RCW and are not subject to discovery or introduction into evidence in any civil or criminal action.

(b) Any person who was in attendance at a meeting of the maternal mortality review panel or who participated in the creation, collection, or maintenance of the panel's information, documents, proceedings, records, or opinions may not be permitted or required to testify in any civil or criminal action as to the content of such proceedings, or the panel's information, documents, records, or opinions. This subsection does not prevent a member of the panel from testifying in a civil or criminal action concerning facts which form the basis for the panel's proceedings of which the panel member had personal knowledge acquired independently of the panel or which is public information.

(c) Any person who, in substantial good faith, participates as a member of the maternal mortality review panel or provides information to further the purposes of the maternal mortality review panel may not be subject to an action for civil damages or other relief as a result of the activity or its consequences.

(d) All meetings, proceedings, and deliberations of the maternal mortality review panel may, at the discretion of the maternal mortality review panel, be confidential and may be conducted in executive session.

(e) The maternal mortality review panel and the department of health may retain identifiable information regarding facilities where maternal deaths occur, or facilities from which a patient whose record is or will be examined by the maternal mortality review panel was transferred, and geographic information on each case for the purposes of determining trends, performing analysis over time, and for quality improvement efforts. All individually identifiable information must be removed before any case review by the panel.

(5) The department of health shall review department available data to identify maternal deaths. To aid in determining whether a maternal death was related to or aggravated by the pregnancy, whether it was preventable, and to coordinate quality improvement efforts, the department of health has the authority to:

(a) Request and receive data for specific maternal deaths including, but not limited to, all medical records, autopsy reports, medical examiner reports, coroner reports, and social service records; and

(b) Request and receive data as described in (a) of this subsection from health care providers, health care facilities, clinics, laboratories, medical examiners, coroners, professions and facilities licensed by the department of health, local health jurisdictions, the health care authority and its licensees and providers, the department of social and health services and its licensees and providers, and the department of children, youth, and families and its licensees and providers.

(6) Upon request by the department of health, health care providers, health care facilities, clinics, laboratories, medical examiners, coroners, professions and facilities licensed by the department of health, local health jurisdictions, the health care authority and its licensees and providers, the department of social and health services and its licensees and providers, and the department of children, youth, and families and its licensees and providers must provide all medical records, autopsy reports, medical examiner reports, coroner reports, social services records, information and records related to sexually transmitted diseases, and other data requested for specific maternal deaths as provided for in subsection (5) of this section to the department.

(7) By October 1, 2019, and every three years thereafter, the maternal mortality review panel must submit a report to the secretary of the department of health and the health care committees of the senate and house of representatives. The report must protect the confidentiality of all decedents and other participants involved in any incident. The report must be distributed to relevant stakeholder groups for performance improvement. Interim results may be shared with the Washington state hospital association coordinated quality improvement program. The report must include the following:

(a) A description of the maternal deaths reviewed by the panel, including statistics and causes of maternal deaths presented in the aggregate, but the report must not disclose any identifying information of patients, decedents, providers, and organizations involved; and

(b) Evidence-based system changes and possible legislation to improve maternal outcomes and reduce preventable maternal deaths in Washington.

(8) Upon the approval of the department of health and with a signed written data-sharing agreement, the department of health may release either data or findings with indirect identifiers, or both, to the centers for disease control and prevention, regional maternal mortality review efforts, local health jurisdictions of Washington state, or tribes at the discretion of the department.

(a) A written data-sharing agreement under this section must, at a minimum:

(i) Include a description of the proposed purpose of the request, the scientific justification for the proposal, the type of data needed, and the purpose for which the data will be used;

(ii) Include the methods to be used to protect the confidentiality and security of the data;

(iii) Prohibit redisclosure of any identifiers without express written permission from the department of health;

(iv) Prohibit the recipient of the data from attempting to determine the identity of persons or parties whose information is included in the data set or use the data in any manner that identifies individuals or their family members, or health care providers and facilities;

(v) State that ownership of data provided under this section remains with the department of health, and is not transferred to those authorized to receive and use the data under the agreement; and

(vi) Require the recipient of the data to include appropriate citations when the data is used in research reports or publications of research findings.

(b) The department of health may deny a request to share either data or findings, or both, that does not meet the requirements.

(c) For the purposes of this subsection:

(i) "Direct identifier" means a single data element that identifies an individual person.

(ii) "Indirect identifier" means a single data element that on its own might not identify an individual person, but when combined with other indirect identifiers is likely to identify an individual person.

(9) For the purposes of the maternal mortality review, hospitals and licensed birth centers must make a reasonable and good faith effort to report all deaths that occur during pregnancy or within forty-two days of the end of pregnancy to the local coroner or medical examiner:

(a) These deaths must be reported within thirty-six hours after death.

(b) Local coroners or medical examiners to whom the death was reported must conduct a death investigation, with autopsy strongly recommended.

(c) Autopsies must follow the guidelines for performance of an autopsy published by the department of health.

(d) Reimbursement of these autopsies must be at one hundred percent to the counties for autopsy services. [2019 c 317 § 1; 2016 c 238 § 1.]

**70.54.460 Breast health information—Mammography report—Notice.** ***(Expires January 1, 2025.)*** (1) All health care facilities shall include in the summary of the mammography report, required by federal law to be provided to a patient, information that identifies the patient's individual breast density classification based on the breast imaging reporting and data system established by the American College of Radiology. If a physician at, employed by, or under contract with, the health care facility determines that a patient has heterogeneously or extremely dense breasts, the summary of the mammography report must include the following notice:

"Your mammogram indicates that you may have dense breast tissue. Roughly half of all women have dense breast tissue which is normal. Dense breast tissue may make it more difficult to evaluate your mammogram. We are sharing this information with you and your health care provider to help raise your awareness of breast density. We encourage you to talk with your health care provider about this and other breast cancer risk factors. Together, you can decide which screening options are right for you."

(2) Patients who receive diagnostic or screening mammograms may be directed to informative material about breast density. This informative material may include the American College of Radiology's most current brochure on the subject of breast density.

(3) This section does not create a duty of care for any health care facility or any health care providers or other legal obligation beyond the duty to provide notice as set forth in this section.

(4) This section does not require a notice that is inconsistent with the provisions of the federal mammography quality standards act (42 U.S.C. Sec. 263b) or any regulations adopted under that act.

(5) For the purposes of this section:

(a) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where mammography examinations are performed.

(b) "Physician" means a person licensed to practice medicine under chapter 18.57 or 18.71 RCW.

(6) This section expires January 1, 2025. [2018 c 122 § 1.]

**Effective date—2018 c 122 § 1:** "Section 1 of this act takes effect January 1, 2019." [2018 c 122 § 2.]

**70.54.470 Medical debt—Limits on sale or assignment.** (1) No health care provider or health care facility may sell or assign medical debt to any person licensed under chapter 19.16 RCW until at least one hundred twenty days after the initial billing statement for that medical debt has been transmitted to the patient or other responsible party.

(2) For the purposes of this section:

(a) "Health care facility" has the same meaning as provided in RCW 70.02.010.

(b) "Health care provider" has the same meaning as provided in RCW 70.02.010.

(c) "Medical debt" has the same meaning as provided in RCW 19.16.100. [2019 c 227 § 7.]

**70.54.480 Drayage truck operators—Access to restroom facilities.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Drayage truck operator" means the driver of any in-use on-road vehicle with a gross vehicle weight rating greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading, or transporting cargo, including containerized, bulk, or break-bulk goods.

(b)(i) "Terminal operator" means the business entity operating a marine terminal for loading and unloading cargo to and from marine vessels.

(ii) "Terminal operator" includes the port if the port is directly operating the marine terminal in loading and unloading cargo to and from marine vessels.

(2) A terminal operator must provide a sufficient number of restrooms for use by drayage truck operators in areas of the terminal that drayage truck operators typically have access to, such as inside the gate and truck queuing lots. Restrooms may include fixed bathrooms with flush toilets or portable chemical toilets. At least one restroom provided by the terminal operator must be a private space suitable for and dedicated to expressing breast milk.

(3) A terminal operator is deemed in compliance with this section if the terminal operator:

(a) Allows drayage truck operators access to existing restrooms while the drayage truck operators are on port property in areas of the terminal that drayage truck operators typically have access to and when access does not pose an obvious safety risk to the drayage truck operators and other workers in the area and does not violate federal terminal security requirements;

(b) When necessary, provides additional restrooms at locations where there is the most need. To determine need, the terminal operator must assess the use and accessibility of existing restrooms and conduct a survey of drayage truck operators; and

(c) Has a policy that allows drayage truck operators to leave their vehicles at reasonable times and locations for purposes of accessing restrooms.

(4) Restrooms for drayage truck operators must be located in areas where access would not pose an obvious health or safety risk to the drayage truck operators or other workers in the area.

(5)(a) The departments of health and labor and industries have jurisdiction to enforce this section.

(b) The department of health may issue a warning letter to the port terminal operator for a first violation of this section, informing the port terminal operator of the requirements of this section. A port terminal operator that violates this section after receiving a warning letter is guilty of a class 2 civil infraction under chapter 7.80 RCW.

(c) Failure of a terminal operator to comply with this section is a violation of chapter 49.17 RCW.

(d) The departments may not take duplicate enforcement actions against an individual or business for violations arising from the same conduct. [2022 c 204 § 1.]

## Chapter 70.56 RCW
## ADVERSE HEALTH EVENTS AND INCIDENT REPORTING SYSTEM

Sections



**70.56.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adverse health event" or "adverse event" means the list of serious reportable events adopted by the national quality forum in 2002, in its consensus report on serious reportable events in health care. The department shall update the list, through adoption of rules, as subsequent changes are made by the national quality forum. The term does not include an incident.

(2) "Ambulatory surgical facility" means a facility licensed under chapter 70.230 RCW.

(3) "Childbirth center" means a facility licensed under chapter 18.46 RCW.

(4) "Correctional medical facility" means a part or unit of a correctional facility operated by the department of corrections under chapter 72.10 RCW that provides medical services for lengths of stay in excess of twenty-four hours to offenders.

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

(6) "Health care worker" means an employee, independent contractor, licensee, or other individual who is directly involved in the delivery of health services in a medical facility.

(7) "Hospital" means a facility licensed under chapter 70.41 RCW.

(8) "Incident" means an event, occurrence, or situation involving the clinical care of a patient in a medical facility that:

(a) Results in unanticipated injury to a patient that is not related to the natural course of the patient's illness or underlying condition and does not constitute an adverse event; or

(b) Could have injured the patient but did not either cause an unanticipated injury or require the delivery of additional health care services to the patient.

"Incident" does not include an adverse event.

(9) "Independent entity" means that entity that the department of health contracts with under RCW 70.56.040 to receive notifications and reports of adverse events and incidents, and carry out the activities specified in RCW 70.56.040.

(10) "Medical facility" means a childbirth center, hospital, psychiatric hospital, or correctional medical facility. An ambulatory surgical facility shall be considered a medical facility for purposes of this chapter upon the effective date of any requirement for state registration or licensure of ambulatory surgical facilities.

(11) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW. [2007 c 273 § 20; 2006 c 8 § 105.]

Additional notes found at www.leg.wa.gov

**70.56.020 Notification of adverse health events—Notification and report required—Rules.** (1) The legislature intends to establish an adverse health events and incident notification and reporting system that is designed to facilitate quality improvement in the health care system, improve patient safety, assist the public in making informed health care choices, and decrease medical errors in a nonpunitive manner. The notification and reporting system shall not be designed to punish errors by health care practitioners or health care facility employees.

(2) When a medical facility confirms that an adverse event has occurred, it shall submit to the department of health:

(a) Notification of the event, with the date, type of adverse event, and any additional contextual information the facility chooses to provide, within forty-eight hours; and

(b) A report regarding the event within forty-five days.

The notification and report shall be submitted to the department using the internet-based system established under RCW 70.56.040(2) if the system is operational.

(c) A medical facility may amend the notification or report within sixty days of the submission.

(3) The notification and report shall be filed in a format specified by the department after consultation with medical facilities and the independent entity if an independent entity has been contracted for under RCW 70.56.040(1). The format shall identify the facility, but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department of health or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180.

(4) As part of the report filed under subsection (2)(b) of this section, the medical facility must conduct a root cause analysis of the event, describe the corrective action plan that will be implemented consistent with the findings of the analysis, or provide an explanation of any reasons for not taking corrective action. The department shall adopt rules, in consultation with medical facilities and the independent entity if an independent entity has been contracted for under RCW 70.56.040(1), related to the form and content of the root cause analysis and corrective action plan. In developing the rules, consideration shall be given to existing standards for root cause analysis or corrective action plans adopted by the joint commission on accreditation of health facilities and other national or governmental entities.

(5) If, in the course of investigating a complaint received from an employee of a medical facility, the department determines that the facility has not provided notification of an adverse event or undertaken efforts to investigate the occurrence of an adverse event, the department shall direct the facility to provide notification or to undertake an investigation of the event.

(6) The protections of RCW 43.70.075 apply to notifications of adverse events that are submitted in good faith by employees of medical facilities. [2009 c 495 § 12; 2008 c 136 § 1; 2006 c 8 § 106.]

Additional notes found at www.leg.wa.gov

**70.56.030 Department of health—Duties—Rules.** (1) The department shall:

(a) Receive and investigate, where necessary, notifications and reports of adverse events, including root cause analyses and corrective action plans submitted as part of reports, and communicate to individual facilities the department's conclusions, if any, regarding an adverse event reported by a facility; and

(b) Adopt rules as necessary to implement this chapter.

(2) The department may enforce the reporting requirements of RCW 70.56.020 using its existing enforcement authority provided in chapter 18.46 RCW for childbirth centers, chapter 70.41 RCW for hospitals, and chapter 71.12 RCW for psychiatric hospitals. [2009 c 495 § 13; 2009 c 488 § 1; 2007 c 259 § 13; 2006 c 8 § 107.]

**Reviser's note:** This section was amended by 2009 c 488 § 1 and by 2009 c 495 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

**70.56.040 Contract with independent entity—Duties of independent entity—Establishment of notification and reporting system—Annual reports to governor, legislature.** (1) To the extent funds are appropriated specifically for this purpose, the department shall contract with a qualified, independent entity to receive notifications and reports of adverse events and incidents, and carry out the activities specified in this section. In establishing qualifications for, and choosing the independent entity, the department shall strongly consider the patient safety organization criteria included in the federal patient safety and quality improvement act of 2005, P.L. 109-41, and any regulations adopted to implement this chapter.

(2) If an independent entity is contracted for under subsection (1) of this section, the independent entity shall:

(a) In collaboration with the department of health, establish an internet-based system for medical facilities and the health care workers of a medical facility to submit notifications and reports of adverse events and incidents, which shall be accessible twenty-four hours a day, seven days a week. The system shall be a portal to report both adverse events and incidents, and notifications and reports of adverse events shall be immediately transmitted to the department. The system shall be a secure system that protects the confidentiality of personal health information and provider and facility specific information submitted in notifications and reports, including appropriate encryption and an accurate means of authenticating the identity of users of the system. When the system becomes operational, medical facilities shall submit all notifications and reports by means of the system;

(b) Collect, analyze, and evaluate data regarding notifications and reports of adverse events and incidents, including the identification of performance indicators and patterns in frequency or severity at certain medical facilities or in certain regions of the state;

(c) Develop recommendations for changes in health care practices and procedures, which may be instituted for the purpose of reducing the number or severity of adverse events and incidents;

(d) Directly advise reporting medical facilities of immediate changes that can be instituted to reduce adverse events or incidents;

(e) Issue recommendations to medical facilities on a facility-specific or on a statewide basis regarding changes, trends, and improvements in health care practices and procedures for the purpose of reducing the number and severity of adverse events or incidents. Prior to issuing recommendations, consideration shall be given to the following factors: Expectation of improved quality of care, implementation feasibility, other relevant implementation practices, and the cost impact to patients, payers, and medical facilities. Statewide

recommendations shall be issued to medical facilities on a continuing basis and shall be published and posted on a publicly accessible website. The recommendations made to medical facilities under this section shall not be considered mandatory for licensure purposes unless they are adopted by the department as rules pursuant to chapter 34.05 RCW; and

(f) Monitor implementation of reporting systems addressing adverse events or their equivalent in other states and make recommendations to the governor and the legislature as necessary for modifications to this chapter to keep the system as nearly consistent as possible with similar systems in other states.

(3)(a) The independent entity shall report no later than January 1, 2008, and annually thereafter in any year that an independent entity is contracted for under subsection (1) of this section to the governor and the legislature on the activities under this chapter in the preceding year. The report shall include:

(i) The number of adverse events and incidents reported by medical facilities, in the aggregate, on a geographical basis, and a summary of actions taken by facilities in response to the adverse events or incidents;

(ii) In the aggregate, the information derived from the data collected, including any recognized trends concerning patient safety;

(iii) Recommendations for statutory or regulatory changes that may help improve patient safety in the state; and

(iv) Information, presented in the aggregate, to inform and educate consumers and providers, on best practices and prevention tools that medical facilities are implementing to prevent adverse events as well as other patient safety initiatives medical facilities are undertaking to promote patient safety.

(b) The annual report shall be made available for public inspection and shall be posted on the department's and the independent entity's website.

(4) The independent entity shall conduct all activities under this section in a manner that preserves the confidentiality of facilities, documents, materials, or information made confidential by RCW 70.56.050.

(5) Medical facilities and health care workers may provide notification of incidents to the independent entity. The notification shall be filed in a format specified by the independent entity, after consultation with the department and medical facilities, and shall identify the facility but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180. The protections of RCW 43.70.075 apply to notifications of incidents that are submitted in good faith by employees of medical facilities. [2009 c 495 § 14; 2008 c 136 § 2; 2006 c 8 § 108.]

Additional notes found at www.leg.wa.gov

**70.56.050 Confidentiality of notifications and reports.** (1)(a) When notification of an adverse event under RCW 70.56.020(2)(a) or of an incident under RCW 70.56.040(5), or a report regarding an adverse event under RCW 70.56.020(2)(b) is made by or through a coordinated quality improvement program under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, information and documents, including complaints and incident reports, created specifically for and collected and maintained by a quality improvement committee for the purpose of preparing a notification of an adverse event or incident or a report regarding an adverse event, the report itself, and the notification of an incident, shall be subject to the confidentiality protections of those laws and RCW 42.56.360(1)(c).

(b) The notification of an adverse event under RCW 70.56.020(2)(a), shall be subject to public disclosure and not exempt from disclosure under chapter 42.56 RCW. Any public disclosure of an adverse event notification must include any contextual information the medical facility chose to provide under RCW 70.56.020(2)(a).

(2)(a) When notification of an adverse event under RCW 70.56.020(2)(a) or of an incident under RCW 70.56.040(5), or a report regarding an adverse event under RCW 70.56.020(2)(b), made by a health care worker uses information and documents, including complaints and incident reports, created specifically for and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200 or a peer review committee under RCW 4.24.250, a notification of an incident, the report itself, and the information or documents used for the purpose of preparing notifications or the report, shall be subject to the confidentiality protections of those laws and RCW 42.56.360(1)(c).

(b) The notification of an adverse event under RCW 70.56.020(2)(a) shall be subject to public disclosure and not exempt from disclosure under chapter 42.56 RCW. Any public disclosure of an adverse event notification must include any contextual information the medical facility chose to provide under RCW 70.56.020(2)(a). [2008 c 136 § 3; 2006 c 8 § 110.]

**70.56.900 Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8.** See notes following RCW 5.64.010.

## Chapter 70.58 RCW
## VITAL STATISTICS

Sections



*Vital statistics, registration of: RCW 43.70.150.*

**70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee.** It is unlawful for any person to inter; deposit in a vault, grave, or tomb; perform alkaline hydrolysis or natural organic reduction as defined in RCW 68.04.310; or otherwise dispose of, or disinter or remove from one registration district to another, or hold for more than three business days after death, the human remains of any person whose death occurred in this state or any human remains which shall be found in this state, without obtaining, from the local registrar of the district in which the death occurred or in which the human remains were found, a permit for the burial, disinterment, or removal of the human remains. However, a licensed funeral director or embalmer of this state or a funeral establishment licensed in another state contiguous to Wash-

ington, with a current certificate of removal registration issued by the director of the department of licensing, may remove human remains from the district where the death occurred to another registration district or Oregon or Idaho without having obtained a permit but in such cases the funeral director or embalmer must at the time of removing human remains file with or mail to the local registrar of the district where the death occurred a notice of removal upon a blank to be furnished by the state registrar. The notice of removal must be signed or electronically approved by the funeral director or embalmer and must contain the name and address of the local registrar with whom the certificate of death will be filed and the burial-transit permit secured. Every local registrar, accepting a death certificate and issuing a burial-transit permit for a death that occurred outside his or her district, is entitled to a fee of one dollar to be paid by the funeral director or embalmer at the time the death certificate is accepted and the permit is secured. It is unlawful for any person to bring into or transport within the state or inter, deposit in a vault, grave, or tomb, or cremate or otherwise dispose of human remains of any person whose death occurred outside this state unless the human remains are accompanied by a removal or transit permit issued in accordance with the law and health regulations in force where the death occurred, or unless a special permit for bringing the human remains into this state is obtained from the state registrar. [2019 c 432 § 30; 2009 c 231 § 4; 2005 c 365 § 157; 1961 ex.s. c 5 § 16; 1915 c 180 § 3; 1907 c 83 § 4; RRS § 6021.]

**Reviser's note:** RCW 70.58.230 was amended by 2019 c 432 § 30, effective May 1, 2020, without cognizance of its repeal by 2019 c 148 § 40, effective January 1, 2021. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Effective date—2019 c 432:** See note following RCW 68.05.175.

*Cemeteries and human remains: Title 68 RCW.*

**70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee.**

**Reviser's note:** RCW 70.58.230 was amended by 2019 c 432 § 30 without cognizance of its repeal by 2019 c 148 § 40, effective January 1, 2021. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**70.58.260 Burial grounds—Duties of individual in charge of the premises.** It is unlawful for any person in charge of any premises in which bodies of deceased persons are interred, cremated, or otherwise permanently disposed of, to permit the final disposition, or other disposition of any body upon such premises unless it is accompanied by a burial, removal, or transit permit as provided in this chapter. It is the duty of the person in charge of any such premises to, in case of the interment, cremation, alkaline hydrolysis, natural organic reduction as defined in RCW 68.04.310, or other disposition of human remains therein, endorse upon the permit the date and character of such disposition, over his or her signature or electronic approval, to return all permits so endorsed to the local registrar of the district in which the death occurred within ten days from the date of such disposition, and to keep a record of all human remains disposed of on the premises under his or her charge, stating, in each case, the name of the deceased person, if known, the place of death, the date of burial or other disposition, and the name and address of the undertaker, which record must at all times be open to public inspection, and it is the duty of every undertaker, or person acting as such, when burying human remains in a cemetery or burial grounds having no person in charge, to sign or electronically approve the burial, removal, or transit permit, giving the date of burial, write across the face of the permit the words "no person in charge," and file the burial, removal, or transit permit within ten days with the registrar of the district in which the death occurred. [2019 c 432 § 31; 2009 c 231 § 7; 2005 c 365 § 159; 1915 c 180 § 7; 1907 c 83 § 10; RRS § 6027.]

**Reviser's note:** RCW 70.58.260 was amended by 2019 c 432 § 31, effective May 1, 2020, without cognizance of its repeal by 2019 c 148 § 40, effective January 1, 2021. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Effective date—2019 c 432:** See note following RCW 68.05.175.

**70.58.260 Burial grounds—Duties of individual in charge of the premises.**

**Reviser's note:** RCW 70.58.260 was amended by 2019 c 432 § 31, effective May 1, 2020, without cognizance of its repeal by 2019 c 148 § 40, effective January 1, 2021. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

# Chapter 70.58A RCW
# VITAL STATISTICS

Sections



## GENERAL PROVISIONS

**70.58A.005 Purpose.** (1) Protection of public health requires a vital records system that provides proof of vital life events and gathers population health data for assessment, evaluation, research, and other public health purposes. An efficient and effective vital records system is a foundational public health service to support a healthy and productive population.

(2) The purpose of this chapter is to provide a framework for ongoing administration of a single comprehensive vital records system in the state that is operated and maintained by the department, under the supervision of the state registrar, to preserve the security, integrity, and confidentiality of state vital records and vital statistics, established under RCW 43.70.130 and this chapter. [2019 c 148 § 1.]

**70.58A.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult" means a person who is at least eighteen years of age, or an emancipated minor under chapter 13.64 RCW.

(2) "Amendment" means a change to a certification item on the vital record.

(3) "Authorized representative" means a person permitted to receive a certification who is:

(a) Identified in a notarized statement signed by a qualified applicant; or

(b) An agent identified in a power of attorney as defined in chapter 11.125 RCW.

(4) "Certification" means the document, in either paper or electronic format, containing all or part of the information contained in the original vital record from which the document is derived, and is issued from the central vital records system. A certification includes an attestation by the state or local registrar to the accuracy of information, and has the full force and effect of the original vital record.

(5) "Certification item" means any item of information that appears on certifications.

(6) "Coroner" means the person elected or appointed in a county under chapter 36.16 RCW to serve as the county coroner and fulfill the responsibilities established under chapter 36.24 RCW.

(7) "Cremated remains" has the same meaning as "cremated human remains" in chapter 68.04 RCW.

(8) "Delayed report of live birth" means the report submitted to the department for the purpose of registering the live birth of a person born in state that was not registered within one year of the date of live birth.

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

(10) "Domestic partner" means a party to a state registered domestic partnership established under chapter 26.60 RCW.

(11) "Facility" means any licensed establishment, public or private, located in state, which provides inpatient or outpatient medical, surgical, or diagnostic care or treatment; or nursing, custodial, or domiciliary care. The term also includes establishments to which persons are committed by law including, but not limited to:

(a) Mental illness detention facilities designated to assess, diagnose, and treat individuals detained or committed, under chapter 71.05 RCW;

(b) City and county jails;

(c) State department of corrections facilities; and

(d) Juvenile correction centers governed by Title 72 RCW.

(12) "Fetal death" means any product of conception that shows no evidence of life, such as breathing, beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles after complete expulsion or extraction from the individual who gave birth that is not an induced termination of pregnancy and:

(a) Has completed twenty or more weeks of gestation as calculated from the date the last menstrual period of the individual who gave birth began, to the date of expulsion or extraction; or

(b) Weighs three hundred fifty grams or more, if weeks of gestation are not known.

(13) "Final disposition" means the burial, interment, entombment, cremation, removal from the state, or other manner of disposing of human remains as authorized under chapter 68.50 RCW.

(14) "Funeral director" means a person licensed under chapter 18.39 RCW as a funeral director.

(15) "Funeral establishment" means a place of business licensed under chapter 18.39 RCW as a funeral establishment.

(16) "Government agencies" include state boards, commissions, committees, departments, educational institutions, or other state agencies which are created by or pursuant to statute, other than courts and the legislature; county or city agencies, United States federal agencies, and federally recognized tribes and tribal organizations.

(17) "Human remains" means the body of a deceased person, includes the body in any stage of decomposition, and includes cremated human remains, but does not include human remains that are or were at any time under the jurisdiction of the state physical anthropologist under chapter 27.44 RCW.

(18) "Individual" means a natural person.

(19) "Induced termination of pregnancy" means the purposeful interruption of an intrauterine pregnancy with an intention other than to produce a live-born infant, and which does not result in a live birth.

(20) "Informational copy" means a birth or death record issued from the central vital records system, containing all or part of the information contained in the original vital record from which the document is derived, and indicating it cannot be used for legal purposes on its face.

(21) "Legal guardian" means a person who serves as a guardian for the purpose of either legal or custodial matters, or both, relating to the person for whom the guardian is appointed. The term legal guardian includes, but is not limited to, guardians appointed pursuant to chapters 11.130 and 13.36 RCW.

(22) "Legal representative" means a licensed attorney representing either the subject of the record or qualified applicant.

(23) "Live birth" means the complete expulsion or extraction of a product of human conception from the individual who gave birth, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(24) "Local health officer" has the same meaning as in chapter 70.05 RCW.

(25) "Medical certifier" for a death or fetal death means an individual required to attest to the cause of death information provided on a report of death or fetal death. Each individual certifying cause of death or fetal death may certify cause

of death only as permitted by that individual's professional scope of practice. These individuals include:

(a) A physician, physician's assistant, or an advanced registered nurse practitioner last in attendance at death or who treated the decedent through examination, medical advice, or medications within the twelve months preceding the death;

(b) A midwife, only in cases of fetal death; and

(c) A physician performing an autopsy, when the decedent was not treated within the last twelve months and the person died a natural death.

(26) "Medical examiner" means the person appointed under chapter 36.24 RCW to fulfill the responsibilities established under chapter 36.24 RCW.

(27) "Midwife" means a person licensed to practice midwifery pursuant to chapter 18.50 RCW.

(28) "Physician" means a person licensed to practice medicine, naturopathy, or osteopathy pursuant to Title 18 RCW.

(29) "Registration" or "register" means the process by which a report is approved and incorporated as a vital record into the vital records system.

(30) "Registration date" means the month, day, and year a report is incorporated into the vital records system.

(31) "Report" means an electronic or paper document containing information related to a vital life event for the purpose of registering the vital life event.

(32) "Sealed record" means the original record of a vital life event and the evidence submitted to support a change to the original record.

(33) "Secretary" means the secretary of the department of health.

(34) "State" means Washington state unless otherwise specified.

(35) "State registrar" means the person appointed by the secretary to administer the vital records system under RCW 70.58A.030.

(36) "Territory of the United States" means American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands.

(37) "Vital life event" means a birth, death, fetal death, marriage, dissolution of marriage, dissolution of domestic partnership, declaration of invalidity of marriage, declaration of invalidity of domestic partnership, and legal separation.

(38) "Vital record" or "record" means a report of a vital life event that has been registered and supporting documentation.

(39) "Vital records system" means the statewide system created, operated, and maintained by the department under this chapter.

(40) "Vital statistics" means the aggregated data derived from vital records, including related reports, and supporting documentation. [2020 c 312 § 729; 2019 c 148 § 2.]

**Effective dates—2020 c 312:** See note following RCW 11.130.915.

**70.58A.020 Rule-making authority.** (1) The secretary shall have charge of the state vital records system and shall adopt rules to ensure implementation of the vital records system and this chapter.

(2) The secretary may adopt rules to set fees for services related to the vital records system including, but not limited to, expediting requests, verification and access for government agencies, registering reports of delayed birth, amending vital records, and releasing vital records and vital statistics.

(3) The state board of health may adopt, amend, or repeal rules requiring statistical information related to birth and manner of delivery. [2019 c 148 § 3.]

**70.58A.030 Appointment of the state registrar.** The secretary shall appoint the state registrar in accordance with RCW 43.70.020 and 43.70.150. [2019 c 148 § 4.]

**70.58A.040 Duties of the state registrar.** (1) The state registrar shall administer and enforce the provisions of this chapter and shall:

(a) Administer the operation and maintenance of the vital records system to preserve the security, integrity, and confidentiality of state vital records and vital statistics established under RCW 43.70.130 and 43.70.150 and this chapter;

(b) Prescribe paper and electronic forms needed to carry out the purposes of this chapter;

(c) Prescribe the information required in forms, reports, vital records, certifications, or other documents authorized by this chapter;

(d) Prescribe the means for transmission of data, including electronic submission, necessary to accomplish the purpose of complete, accurate, and timely reporting and registration;

(e) Review reports to determine if additional information is necessary to register the report. If any reports are incomplete, the state registrar shall require submission of information necessary to make the record complete;

(f) Deny or revoke registration of a report or application for an amendment, or withhold or deny issuance of a certification for the reasons permitted by this chapter;

(g) Prepare and publish vital statistics pursuant to this chapter;

(h) Prepare a plan to provide for the continuity of operations of the vital records system in the event of an emergency;

(i) Take measures to prevent the fraudulent use of vital records; and

(j) Perform data quality assurance and record matching activities.

(2) The state registrar may delegate functions and duties vested in the state registrar under this section to employees of the department.

(3) The state registrar may appoint a deputy state registrar, with the concurrence of the secretary, with the same authority granted to the state registrar under this chapter. [2019 c 148 § 5.]

**70.58A.050 Appointment of local and deputy registrars.** (1) Under the direction and control of the state registrar, the local health officer of each health jurisdiction is and shall serve as local registrar.

(2) Subject to the approval of the state registrar, each local registrar shall appoint a sufficient number of deputy registrars to perform the duties prescribed by this chapter applicable to local registrars. The local registrar shall submit each proposed appointment to the state registrar in writing.

The state registrar shall either approve or deny the appointment in writing prior to the assumption of duties by the deputy registrar. The state registrar may deny an appointment for good cause.

(3) The state registrar shall authorize a local or deputy registrar to access the electronic vital records databases to issue birth or death certifications upon the local or deputy registrar's appointment. Access and use of the database by the local or deputy registrar must be consistent with this chapter.

(4) The state board of health may remove the local health officer as local registrar upon finding evidence of neglect in the performance of duties as local registrar. [2019 c 148 § 6.]

**70.58A.060 Vital records system security requirements—Fraud detection—Data validation.** (1) A person may not prepare or issue any vital record that purports to be an original, certification of, or copy of a vital record except as authorized in this chapter.

(2) All certifications of vital records must include security features to deter alteration, counterfeiting, or simulation without ready detection.

(3) All informational copies must indicate that they cannot be used for legal purposes on their face.

(4) The state registrar may:

(a) Authorize users of the vital records system to access specific components of the vital records system based on their official duties;

(b) Require users authorized under this section to acknowledge having read and understood security procedures and penalties;

(c) Revoke user access of the vital records system when the user violates security procedures or when the user no longer needs access to conduct official duties;

(d) Ensure that state birth records are marked as deceased upon receipt of death records; and

(e) Periodically test and audit the vital records system for purposes of detecting fraud. If fraud is suspected, the state registrar may provide copies of the evidence to appropriate authorities for further investigation consistent with the provisions of RCW 70.58A.580. The state registrar may retain the results of such tests and audits, which are not subject to inspection or copying except upon order of a court of competent jurisdiction.

(5) The state registrar may, at the state registrar's discretion, validate data provided in reports filed for registration through site visits or with independent sources outside the vital records system at a frequency specified by the state registrar to maximize the integrity of the data collected. [2019 c 148 § 7.]

**70.58A.070 Mandatory use of prescribed forms, reporting of data required for registration.** (1) Forms prescribed by the state registrar must be used in reporting, registering, and issuing certifications and informational copies, and preserving vital records, or in otherwise carrying out the purpose of this chapter.

(2) Reports must contain the data required for registration. No report may be held to be complete and correct that does not supply all items of information required under this chapter, or that does not satisfactorily account for the omission of required items. [2019 c 148 § 8.]

LIVE BIRTH

**70.58A.100 Live birth of child of known parentage—Reporting and registration requirements.** (1) A facility representative or midwife shall prepare and submit a report of live birth for each live birth at which that person attended that occurs in this state to the department within ten calendar days after the birth occurs. The facility representative or midwife shall:

(a) Include all data and evidence required to establish the facts of live birth under this section;

(b) Include parentage information consistent with chapters 26.26A and 26.26B RCW;

(c) Include all statistical information required about the individual who gave birth;

(d) Ensure the accuracy of the personal data entered on the report; and

(e) Attest the child was born alive at the place and time, and on the date stated on the report.

(2) The health care provider or facility representative providing prenatal care shall provide the prenatal care information required for the report of live birth to the facility where the delivery is expected to occur not less than thirty calendar days prior to the expected delivery date.

(3) When a live birth occurs in a facility or en route to a facility, the facility representative shall submit the report of live birth consistent with this section.

(4) When a live birth occurs outside a facility and not en route to a facility, the report of live birth must be filed consistent with this section by the:

(a) Health care provider in attendance of the live birth; or

(b) Facility representative where the individual who gave birth and child are examined, if that examination happens within ten calendar days of live birth.

(5) For an unattended live birth not reported under subsection (4) of this section, a report of live birth and an affidavit stating the facts of the birth must be filed with the department within ten calendar days of the live birth.

(a) The report of live birth must be completed and signed by a person with knowledge of the facts of the birth other than the individual who gave birth to the child.

(b) The affidavit attesting to the facts of the birth must be completed and signed by the individual who gave birth, other parent, or other person with knowledge of the facts of the birth.

(c) The report of live birth and affidavit must not be signed by the same person.

(6) When the live birth occurs on a moving conveyance:

(a) Within the United States, and the child is first removed from the conveyance in state, the place where the child is first removed from the conveyance must be registered as the place of live birth;

(b) While in international waters or air space, or in a foreign country or its air space, and the child is first removed from the conveyance in state, the live birth must be registered in this state. The report of live birth under this subsection must show the actual place of live birth insofar as can be determined.

(7) The facility representative or midwife shall provide written and oral information and required forms, furnished by the department of social and health services and the state reg-

istrar, to the parents of a child about establishing parentage pursuant to chapter 26.26A RCW.

(8) The state registrar may not register a report of live birth unless it has been completed and filed in accordance with this chapter.

(9) A report of a live born child of unknown parentage must be registered in accordance with RCW 70.58A.110.

(10) A delayed report of live birth filed after one year from the date of live birth must be registered in accordance with RCW 70.58A.120. [2019 c 148 § 9.]

**70.58A.110 Live birth of child of unknown parentage—Reporting and registration requirements.** (1) When a child is found for whom no record of live birth is known to be on file, within ten calendar days of the child being found, a report of a live birth must be filed with the department in a manner prescribed by the state registrar.

(2) If the child is identified at a later date and another live birth record is found, the state registrar shall void the record registered under subsection (1) of this section.

(3) This section cannot be used when the report of live birth is considered a delayed registration under RCW 70.58A.120 or an unattended live birth under RCW 70.58A.100(5). [2019 c 148 § 10.]

**70.58A.120 Delayed report of live birth—Registration requirements.** (1) An individual requesting a delayed report of live birth shall submit to the state registrar a completed and signed delayed report of live birth. Each report must include documentary evidence establishing the facts of the live birth and any applicable fees. The completed delayed report of live birth must be signed and sworn under penalty of perjury by the individual whose live birth is to be registered if the individual is an adult, or by the parent or legal guardian if the individual whose live birth is to be registered is not an adult.

(2) An individual requesting the delayed report of live birth of an individual under twelve years of age must establish the facts concerning full name, date, and place of live birth.

(3) An individual requesting the delayed report of live birth of an individual twelve years of age or over must establish the facts concerning full name, date, and place of live birth and the full name prior to first marriage of the individual who gave birth. Documentary evidence for an individual twelve years of age or over, other than affidavits, must have been established at least five years prior to the date of application.

(4) Each piece of documentary evidence must come from a unique source in the form of the original record or an exact copy thereof. The individual requesting the delayed report of live birth must either be able to authenticate the source of each document presented to the department, or present to the department a signed statement from the custodian of the record or document which attests to the authenticity of the document and the accuracy of the facts contained in the document.

(5) The state registrar may verify the authenticity and accuracy of documentary evidence provided by the individual requesting a delayed report of live birth.

(6) The state registrar shall not register a delayed report of live birth until all applicable provisions of this chapter have been met to the satisfaction of the state registrar.

(7) Upon review and approval of a delayed report of live birth, the state registrar shall register a delayed report of live birth. The delayed birth record must include a description of the evidence used to establish the delayed birth record.

(8) If the state registrar denies a delayed report of live birth, RCW 70.58A.130 is the sole remedy for decisions made under this section. The administrative procedure act, chapter 34.05 RCW, does not govern review of decisions on registration of delayed reports of live birth made by the state registrar under this section. [2019 c 148 § 11.]

**70.58A.130 Court-ordered registration of a delayed report of live birth—Petition and hearing requirements—Burden and standard of proof.** (1) If the state registrar denies a delayed report of live birth under the provisions of RCW 70.58A.120, the individual requesting the delayed report of live birth may petition a court of competent jurisdiction for an order establishing a record of the name, date, and place of the live birth, and parentage of the individual whose live birth is to be registered.

(2) The petition must allege:

(a) The individual for whom a delayed report of live birth is sought was born in state;

(b) No report of live birth of the individual can be found in the vital records system;

(c) Diligent efforts by the petitioner have failed to obtain the evidence required in accordance with RCW 70.58A.120; and

(d) The state registrar has denied a delayed report of live birth.

(3) The petition must be accompanied by a statement of the state registrar made in accordance with RCW 70.58A.120 and all documentary evidence to support such registration which was filed with the state registrar.

(4) The court shall fix a time and place for hearing the petition. The petitioner shall serve the state registrar with notice of the time and place for hearing and shall include with such notice the petition filed with the court. The petitioner shall give the state registrar notice at least thirty calendar days prior to the date set for the hearing.

(5) The state registrar, or the state registrar's designee, may present at the hearing any information the state registrar believes will be useful to the court. The state registrar is not required to attend or appear for the hearing, and the court may proceed without the state registrar if the state registrar does not appear at the designated time and place set for hearing in the notice.

(6) The burden of proof is on the petitioner.

(7) If the court finds, by clear and convincing evidence, that the individual for whom a delayed report of live birth is sought was born in state, the court shall issue an order requiring the state registrar to establish a delayed record of live birth. This order must include, at a minimum, the following findings:

(a) The full name, city and county of live birth, and birthdate to be registered of the individual whose live birth is to be registered;

(b) The full name, state or country of birth, and date of birth of the individual who gave birth; and

(c) A statement of the evidence relied on by the court in making the order.

(8) The clerk of the court shall forward the order to the state registrar within five business days after the order is entered.

(9) The state registrar shall register the live birth upon receipt of an order to register a delayed report of live birth from a court of competent jurisdiction, and must include the court case number and the date of the order in the vital record. [2019 c 148 § 12.]

## DEATH

**70.58A.200 Reports of death—Filing and registration requirements.** (1)(a) Reports of death and fetal death must comply with the requirements of this section.

(b) For the purposes of this section, "death" includes "fetal death" as defined in RCW 70.58A.010.

(2) A complete report of death must be filed with the local registrar in the local health jurisdiction where the death occurred for each death that occurs in this state. Except for circumstances covered by subsection (7) of this section, the report must be filed within five calendar days after the death or finding of human remains and prior to final disposition of the human remains as required by this section.

(a) If the place of death is unknown and the human remains are found in state prior to final disposition, the death must be filed in state and the place where the human remains were found is the place of death.

(b) When death occurs in a moving conveyance within or outside the United States and the human remains are first removed from the conveyance in state, the death must be filed in state and the place of death is the place where the remains were removed from the moving conveyance.

(c) In all other cases, the place where death is pronounced is the place where death occurred.

(d) An approximate date of death may be used if date of death is unknown. If the date cannot be determined by approximation, the date of death must be the date the human remains were found.

(3) If the death occurred with medical attendance, a funeral director, funeral establishment, or person having the right to control the disposition of the human remains under RCW 68.50.160 shall:

(a) Obtain and enter personal data on the report of death about the decedent from the person best qualified to provide the information;

(b) Provide the report of death to the medical certifier within two calendar days after the death or finding of human remains;

(c) File the completed report of death with the local registrar; and

(d) Obtain a burial-transit permit prior to the disposition of the human remains as required in RCW 70.58A.210.

(4) The medical certifier shall:

(a) Attest to the cause, date, and time of death; and

(b) Return the report of death to the funeral director, funeral establishment, or person having the right to control the disposition of the human remains under RCW 68.50.160 within two calendar days.

(5) The report of death may be completed by another individual qualified to be a medical certifier as defined in RCW 70.58A.010 who has access to the medical history of the decedent when:

(a) The medical certifier is absent or unable to attest to the cause, date, and time of death; or

(b) The death occurred due to natural causes, and the medical certifier gives approval.

(6) If the death occurred without medical attendance, the funeral director, funeral establishment, or person having the right to control the disposition of the human remains under RCW 68.50.160 shall provide the report of death to the coroner, medical examiner, or local health officer as allowed by (a) of this subsection.

(a) If the death occurred due to natural causes, the coroner, medical examiner, or local health officer shall determine whether to certify the report of death. If the coroner, medical examiner, or local health officer decides to certify the report of death, the person certifying the report shall:

(i) Attest to the manner, cause, and date of death without holding an inquest or performing an autopsy or postmortem, based on statements of relatives, persons in attendance during the last sickness, persons present at the time of death, or other persons having adequate knowledge of the facts;

(ii) Note that there was no medical attendance at the time of death; and

(iii) Return the report of death to the funeral home within two calendar days.

(b) If the death appears to be the result of unlawful or unnatural causes, the coroner or medical examiner shall:

(i) Attest to the cause, place, and date of death;

(ii) Note that there was no medical attendance at the time of death;

(iii) Note when the cause of death is pending investigation; and

(iv) Return the report of death to the funeral director, funeral establishment, or person having the right to control the disposition of the human remains under RCW 68.50.160 within two calendar days.

(7) When there is no funeral director, funeral establishment, or person having the right to control the disposition of human remains under chapter 68.50 RCW, the coroner, medical examiner, or local health officer shall file the completed report of death with the local registrar as required by subsection (2) of this section.

(8) When a coroner or medical examiner determines that there is sufficient circumstantial evidence to indicate that an individual has died in the county or in waters contiguous to the county, and that it is unlikely that the body will be recovered, the coroner or medical examiner shall file a report of death, including the cause, place, and date of death, to the extent possible.

(9) The coroner or medical examiner in a county in which a decedent was last known to be alive may file a report of death with the local registrar when the county in which the presumed death occurred cannot be determined with certainty. The coroner or medical examiner shall file a report of death, including the cause, place, and date of death, to the extent possible.

(10) The coroner or medical examiner having jurisdiction may release information contained in a report of death according to RCW 68.50.300.

(11) The local registrar shall:

(a) Review filed reports of death to ensure completion in accordance with this chapter;

(b) Request missing information or corrections;

(c) Ensure issuance of the burial-transit permit as required under RCW 70.58A.210;

(d) Register a report of death with the department if it has been completed and submitted in accordance with this section.

(12) A medical certifier, coroner, medical examiner, or local health officer shall submit an affidavit of correction to the state registrar to amend the report of death within five calendar days of receipt of an autopsy result or other information that completes or amends the cause of death from that originally filed with the department.

(13) The department may require a medical certifier, coroner, medical examiner, or local health officer to provide additional or clarifying information to properly code and classify cause of death. [2019 c 148 § 13.]

**70.58A.210 Final disposition of human remains—Issuance of burial-transit and disinterment permits.** (1)(a) Reports of death and fetal death must comply with the requirements of this section.

(b) For the purposes of this section, "death" includes "fetal death" as defined in RCW 70.58A.010.

(2) If a report of death is completed and filed in accordance with this chapter, the local registrar shall issue a burial-transit permit or disinterment permit to the funeral director, funeral establishment, or person having the right to control the disposition of the human remains under RCW 68.50.160.

(3) A person may not provide for final disposition of human remains until the following have occurred:

(a) The report of death has been registered in accordance with RCW 70.58A.200; and

(b) The funeral director, funeral establishment, or person having the right to control the disposition of the human remains under RCW 68.50.160 has obtained a burial-transit permit authorizing final disposition.

(4) A funeral director, funeral establishment, or person having the right to control the disposition of the human remains under RCW 68.50.160 shall:

(a) Deliver the burial-transit permit to the person in charge of the funeral establishment licensed under chapter 18.39 RCW, crematory with a permit or endorsement under RCW 68.05.175, or cemetery authority as defined in RCW 68.04.190 before interring the human remains; or

(b) Attach the burial-transit permit to the container holding the human remains when shipped by a transportation company.

(5) Final disposition of human remains must be completed in accordance with chapter 68.50 RCW.

(6) A person in charge of a funeral establishment licensed under chapter 18.39 RCW or cemetery authority as defined in RCW 68.04.190:

(a) May not allow the final disposition of human remains unless accompanied by a burial-transit permit;

(b) Shall indicate on the burial-transit permit the date and type of final disposition;

(c) Shall return all completed and signed or electronically approved burial-transit permits to the local registrar for the county in which the death occurred within ten days of final disposition;

(d) Shall keep a record of all human remains disposed of on the premises, including the:

(i) Name of the deceased individual;

(ii) Place of death;

(iii) Date of disposition; and

(iv) Name and address of the funeral director, funeral establishment, or other person having the right to control the disposition of the human remains under RCW 68.50.160.

(7) When there is no person in charge of the place of final disposition, the funeral director, funeral establishment, or person having the right to control the disposition of the human remains under RCW 68.50.160 shall write across the face of the permit the words "no person in charge."

(8) A funeral director, funeral establishment, or person having the right to control the disposition of the human remains under RCW 68.50.160 must obtain a disinterment permit from the local registrar to disinter human remains or a burial-transit permit from the local registrar to reinter human remains.

(9) A person may not bring into or transport within this state; inter, deposit in a vault, grave, or tomb; or cremate or otherwise dispose of the human remains of any person whose death occurred outside the state, unless the human remains are accompanied by a burial-transit permit or other document issued in accordance with the laws in force where the death occurred. A burial-transit permit is not required for the spreading of cremated remains in accordance with the laws regulating the scattering of cremated remains in state, federal, and international lands or water.

(10) A funeral director or funeral establishment licensed under chapter 18.39 RCW, or a funeral establishment licensed in Oregon or Idaho, may remove human remains from the local health jurisdiction where the death occurred to another local health jurisdiction or Oregon or Idaho without having obtained a burial-transit permit if the funeral director or funeral establishment:

(a) Has been issued a certificate of removal registration by the director of the department of licensing; and

(b) Initiates a report of death with the local registrar where the death occurred. [2019 c 148 § 14.]

## MARRIAGE AND DOMESTIC PARTNERSHIP

**70.58A.300 Registration of reports of marriage.** The state registrar shall register reports of marriage received from a state county auditor pursuant to chapter 26.04 RCW. [2019 c 148 § 15.]

**70.58A.310 Registration of reports of legal separation, dissolution, and declaration of invalidity of marriage or domestic partnership.** The state registrar shall register reports of legal separation, dissolution of marriage, dissolution of domestic partnership, declaration of invalidity of marriage, and declaration of invalidity of domestic partnership

from the clerk of each state superior court pursuant to chapter 26.09 RCW. [2019 c 148 § 16.]

ADOPTION

**70.58A.400 Adoption—Amendment of birth record or registration of birth—Sealing of original birth record.** (1) The state registrar shall amend the birth record of a child born in state to reflect an adoption decree received from a Washington state court of competent jurisdiction upon receipt of:

(a) An application to register an adoption;

(b) A certified copy of the adoption decree entered pursuant to chapter 26.33 RCW; and

(c) Applicable fees established under this chapter and by rule.

(2) The state registrar shall amend the live birth record of a child born in state to reflect an adoption report from any other state or territory of the United States, and the District of Columbia, upon receipt of:

(a) A certified copy of an adoption report, or an application to register an adoption and a certified copy of the adoption decree; and

(b) Applicable fees established under this chapter and by rule.

(3) The state registrar shall register the birth of a child born outside the United States and its territories and adopted after January 1, 1985, in a Washington state court of competent jurisdiction upon receipt of:

(a) An application to register an adoption;

(b) A certified copy of a decree of adoption entered pursuant to chapter 26.33 RCW; and

(c) Applicable fees established under this chapter and by rule.

(4) The state registrar shall register the birth of a child born outside the United States and its territories and adopted before January 1, 1985, in a Washington state court of competent jurisdiction upon receipt of:

(a) An application to register an adoption;

(b) A certified copy of a decree of adoption entered pursuant to chapter 26.33 RCW;

(c) Documentary evidence as to the child's birthdate and birthplace provided by:

(i) The original birth certification;

(ii) A certified copy, extract, or translation of the original birth certification; or

(iii) A certified copy of another document essentially equivalent to the original birth certification including, but not limited to, the records of the United States citizenship and immigration services or the United States department of state; and

(d) Applicable fees established under this chapter and by rule.

(5) The state registrar shall retain and seal the original birth record including the adoption report, certified copy of the adoption decree, and other documentary evidence filed pursuant to chapter 26.33 RCW. The sealed record is not subject to public inspection or copying pursuant to chapter 42.56 RCW and may be released only as allowed by RCW 26.33.345. [2019 c 148 § 17.]

ADMINISTRATION AND ENFORCEMENT

**70.58A.500 Amendment of vital records—When authorized—Grounds for denial.** (1) The state registrar may amend certification items on state vital records.

(2) The state registrar may amend a live birth record to change the name of a person born in state:

(a) Upon receipt of a complete and signed amendment application with applicable fees and a certified copy of an order of a court of competent jurisdiction, including the name of the person as it appears on the current live birth record and the new name to be designated on the amended live birth record, under RCW 4.24.130; or

(b) As authorized under 18 U.S.C. Sec. 3521, the federal witness relocation and protection act.

(3) The state registrar shall seal the original live birth record amended under subsection (2)(b) of this section. The sealed record is not subject to public inspection and copying under chapter 42.56 RCW except upon order of a court of competent jurisdiction.

(4) The state registrar may amend a vital record to change the sex designation of the subject of the record. The state registrar shall include a nonbinary option for sex designation on the record.

(5) The state registrar may amend vital records for purposes other than those established in this section.

(6) The state registrar may deny an application to amend a vital record when:

(a) The application is not completed or filed in accordance with this chapter;

(b) The state registrar has cause to question the validity or adequacy of the applicant's statements or documentary evidence; or

(c) The deficiencies under (a) or (b) of this subsection are not addressed to the satisfaction of the state registrar.

(7) The state registrar shall provide notice of the denial of an application to amend a vital record and state the reasons for the denial. If the state registrar denies an amendment to a vital record under the provisions of this section, a person may appeal the decision under RCW 70.58A.550. [2019 c 148 § 18.]

**70.58A.510 Preservation of vital records—Transfer to state archives.** (1) The state registrar shall develop and implement a preservation management policy for the vital records system for permanent preservation while in the custody of the state registrar.

(2) The state registrar shall transfer the custody of vital records to the state archives in accordance with state archival procedures when:

(a) One hundred years have elapsed after the date of live birth or fetal death;

(b) Twenty-five years have elapsed after the date of death; and

(c) Twenty-five years have elapsed after the date of marriage, divorce, dissolution of marriage, dissolution of domestic partnership, declaration of invalidity of marriage, declaration of invalidity of domestic partnership, or legal separation.

(3) The state archives may provide noncertified copies of original vital records in the custody of the state archives, due to a transfer under subsection (2) of this section, to the public.

(4) The state archives may not:

(a) Charge the department a fee or pass along costs to transfer the vital records to state archives or maintain the vital records in the state archives, other than those charged through the central services billing model for the cost of operating the state archives; or

(b) Alter, amend, or delete certification items on the vital records.

(5) Sealed records must remain sealed and in the custody of the department.

(6) In consultation with the state archives, the state registrar shall prescribe the format and method of delivery of vital records transferred to the state archives.

(7) The department may retain records for the purpose of issuing certifications under RCW 70.58A.530. [2019 c 148 § 19.]

**70.58A.520 Disclosure of vital records, data, and vital statistics—When authorized.** (1) The department may disclose vital records information for persons named in any birth, death, or fetal death record only as provided under this chapter.

(2) Proposals for research and public health purposes must be reviewed and approved as to scientific merit and adequacy of confidentiality safeguards in accordance with this section.

(3) The department may release birth and fetal death record data that includes direct identifiers for research with approval of the state institutional review board and receipt of a signed confidentiality agreement with the department.

(4) The department may release birth and fetal death record data that includes direct identifiers for nonresearch public health purposes to a government agency upon receipt of a signed written data-sharing agreement with the department.

(5) The department may release birth and fetal death record data that contains only indirect identifiers to anyone upon receipt of a signed written data-sharing agreement with the department.

(6) The department may release death record data to anyone upon approval of the department and receipt of a signed written data-sharing agreement with the department.

(7) A written data-sharing agreement required under subsections (4) through (6) and (14) through (17) of this section must, at a minimum:

(a) Include a description of the type of data needed and the purpose for how the data will be used;

(b) Include the methods to be used to protect the confidentiality and security of the data;

(c) State that ownership of the data provided under this section remains with the department, and is not transferred to those authorized to receive and use the data under the agreement; and

(d) Include the applicable fees for use of the data.

(8) In addition to the conditions required by subsection (7) of this section, the written data-sharing agreement for birth and fetal death record data for public health purposes under subsection (4) of this section must:

(a) Prohibit redisclosure of any direct or indirect identifiers without explicit permission from the department; and

(b) Prohibit the recipient of the data from contacting or attempting to contact the person whose information is included in the data set or that person's family members without explicit permission from the department.

(9) In addition to the conditions required by subsection (7) of this section, the written data-sharing agreement for birth or fetal death record data with indirect identifiers under subsection (5) of this section must prohibit the recipient of the data from attempting to determine the identity of persons whose information is included in the data set or use the data in any manner that identifies individuals or their family members.

(10) The department and the state institutional review board shall apply the most restrictive law governing data release to proposals for research and public health purposes requesting data sets with direct identifiers for linkage to other data sets.

(11) The department may provide the fewest birth and fetal death record data elements necessary for the purpose described in the proposal for research or public health purposes.

(12) The department may deny a request for data for cause including, but not limited to, when:

(a) Indirect identifiers are sufficient for the purpose described in the proposal for research or public health purposes;

(b) The research or public health proposal lacks scientific merit;

(c) The department lacks resources or the request would result in an unreasonable use of resources related to data preparation and analysis;

(d) The requestor cannot meet the requirements in a data-sharing agreement for protecting the confidentiality of the data; or

(e) The requestor is out of compliance with an existing data-sharing agreement.

(13) The department must provide notice of the denial to the requestor and include a statement of the reasons for the denial. If the state registrar denies a request for data under the provisions of this section, a person may appeal the decision under RCW 70.58A.550.

(14) The department may release vital records to government agencies in the conduct of official duties upon approval of the state registrar and receipt of a signed written data-sharing agreement with the department that prohibits redisclosure of any direct or indirect identifiers without explicit permission from the department. Vital records information released by the department under this subsection may be limited to only the information necessary to perform the official duties of the agencies to which the information is released. The department may deny requests according to subsection (12) of this section. Government agencies may access records electronically and use of records must be limited to the information needed for official business. The agreement may include cost sharing for support of the electronic system.

(15) The department shall make available to the department of social and health services, division of child support, the social security numbers of parents listed on birth records as required for establishing child support upon receipt of a signed written data-sharing agreement with the department.

(16) The department may release vital records to the national center for health statistics to be used solely for national statistics upon approval of the state registrar and receipt of a signed written data-sharing agreement with the department.

(17) The department may release copies of vital records through an interjurisdictional exchange agreement to offices of vital statistics in states or territories of the United States, the District of Columbia, New York City, or neighboring countries. The records must relate to a resident of, a person born in, or a person who died in the requesting state, territory, the District of Columbia, New York City, or neighboring country.

(18) The department may release indices of death, marriage, and divorce records annually to the state archives.

(19) Nothing in this chapter may be construed as giving authority to the state or local registrar, department, government agencies, or data recipients to sell or provide access to lists of individuals when requested for commercial purposes.

(20) For the purposes of this section:

(a) "Data" means a data file containing multiple records.

(b) "Direct identifier" means a single data element that identifies an individual person.

(c) "Indirect identifier" means a single data element that on its own does not identify an individual person, but when combined with other indirect identifiers can be used to identify an individual person.

(d) "Public health purpose" means a purpose that seeks to support or evaluate public health activities which include, but are not limited to, health surveillance; identifying population health trends; health assessments; implementing educational programs; program evaluation; developing and implementing policies; determining needs for access to services and administering services; creating emergency response plans; promoting healthy lifestyles; and preventing, detecting, and responding to infectious diseases, injury, and chronic and inheritable conditions. Public health purpose does not include research as defined in this section.

(e) "Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. [2019 c 148 § 20.]

**70.58A.530 Issuance of certifications and informational copies of vital records.** ***(Effective until October 1, 2022.)*** (1)(a) A certification issued in accordance with this section is considered for all purposes the same as the original vital record and is prima facie evidence of the facts stated therein.

(b) An informational copy is not considered the same as the original vital record and does not serve as prima facie evidence of the facts stated therein.

(2) The state and local registrar shall issue all certifications registered in the vital records system from the state's central vital records system database upon submission by a qualified applicant of all required information and documentation required either by this chapter or by rule, or both, and shall ensure that all certifications include:

(a) The date of registration; and

(b) Security features that deter altering, counterfeiting, or simulation without ready detection as required under this chapter.

(3) A person requesting a certification of birth, death, or fetal death must submit an application, identity documentation, evidence of eligibility, and the applicable fee established in RCW 70.58A.560 to the state or local registrar.

(4) For a certification of birth, the state or local registrar may release the certification only to:

(a) The subject of the record or the subject of the record's spouse or domestic partner, child, parent, stepparent, stepchild, sibling, grandparent, great grandparent, grandchild, legal guardian, legal representative, or authorized representative; or

(b) A government agency or court, if the certification will be used in the conduct of the agency's or court's official duties.

(5) The state registrar may issue an heirloom certification of birth to a qualified applicant consistent with subsection (4) of this section. The heirloom certification of birth must contain the state seal and be signed by the governor.

(6) The state registrar may issue a certification of a birth record registered as delayed under RCW 70.58A.120 or 70.58A.130 to a qualified applicant consistent with subsection (4) of this section. The certification must:

(a) Be marked as delayed; and

(b) Include a description of the evidence or court order number used to establish the delayed record.

(7) The state registrar may issue a certification of a birth record for a person adopted under chapter 26.33 RCW and registered under RCW 70.58A.400 to a qualified applicant consistent with subsection (4) of this section. The certification:

(a) Must not include reference to the adoption of the child; and

(b) For children born outside of the state, must be issued consistent with the certification standards of this section, unless the court orders otherwise.

(8) When providing a birth certification to a qualified applicant under this chapter, the state or local registrar shall include information prepared by the department setting forth the advisability of a security freeze under RCW 19.182.230 and the process for acquiring a security freeze.

(9) For a certification of death, the state or local registrar may release the certification only to:

(a) The decedent's spouse or domestic partner, child, parent, stepparent, stepchild, sibling, grandparent, great grandparent, grandchild, legal guardian immediately prior to death, legal representative, authorized representative, or next of kin as specified in RCW 11.28.120;

(b) A funeral director, the funeral establishment licensed pursuant to chapter 18.39 RCW, or the person having the right to control the disposition of the human remains under RCW 68.50.160 named on the death record, within twelve months of the date of death; or

(c) A government agency or court, if the certification will be used in the conduct of the agency's or court's official duties.

(10) The state or local registrar may issue a short form certification of death that does not display information relat-

ing to cause and manner of death to a qualified applicant. In addition to the qualified applicants listed in subsection (9) of this section, a qualified applicant for a short form certification of death includes:

(a) A title insurer or title insurance agent handling a transaction involving real property in which the decedent held some right, title, or interest; or

(b) A person that demonstrates that the certified copy is necessary for a determination related to the death or the protection of a personal or property right related to the death.

(11) For a certification of fetal death, the state or local registrar may release the certification only to:

(a) A parent, a parent's legal representative, an authorized representative, a sibling, or a grandparent;

(b) The funeral director or funeral establishment licensed pursuant to chapter 18.39 RCW and named on the fetal death record, within twelve months of the date of fetal death; or

(c) A government agency or court, if the certification will be used in the conduct of the agency's or court's official duties.

(12) The state or local registrar shall review the identity documentation and evidence of eligibility to determine if the person requesting the certification is a qualified applicant under this section. The state or local registrar may verify the identity documents and evidence of eligibility to determine the acceptability and authenticity of identity documentation and evidence of eligibility.

(13) The state or local registrar may not issue a certification of birth or fetal death that includes information from the confidential section of the birth or fetal death record, except as provided in subsection (14) of this section.

(14) The state registrar may release information contained in the confidential section of the birth record only to the following persons:

(a) The individual who is the subject of the birth record, upon confirmation of documentation and evidence of identity of the requestor in a manner approved by the state board of health and the department. The state registrar must limit the confidential information provided to the individual who is the subject of the birth record's information, and may not include the parent's confidential information; or

(b) A member of the public, upon order of a court of competent jurisdiction.

(15) A person requesting a certification of marriage, dissolution of marriage, or dissolution of domestic partnership currently held by the department must submit an application and the applicable fee established in RCW 70.58A.560 to the state registrar.

(16) The state registrar may mark deceased on a birth certification when that birth record is matched to a death record under RCW 70.58A.060.

(17) The state or local registrar must issue an informational copy from the central vital records system to anyone. Informational copies must contain only the information allowed by rule. Informational copies of death records must not display information related to cause and manner of death.

(18) A person requesting an informational copy must submit an application and the applicable fee established in RCW 70.58A.560 to the state or local registrar.

(19) If no record is identified as matching the information provided in the application, the state or local registrar shall issue a document indicating that a search of the vital records system was made and no matching record was identified.

(20) All government agencies or courts to whom certifications or informational copies are issued must pay the applicable fee for certifications established in RCW 70.58A.560.

(21) The state or local registrar must comply with the requirements of this chapter when issuing a certification or informational copy of a vital life event.

(22) The department may issue, through electronic means and processes determined by the department, verifications of information contained on birth or death records filed with the department when a verification is requested by a government agency, insurance company, hospital, or any other organization in the conduct of its official duties for fraud prevention and good governance purposes as determined by the department. The department shall charge a fee for a search under this subsection.

(23) For the purposes of this section, a "qualified applicant" means a person who is eligible to receive a certification of a vital record based on the standards established by this chapter and department rule. [2019 c 148 § 21.]

**70.58A.530 Issuance of certifications and informational copies of vital records.** ***(Effective October 1, 2022.)*** (1)(a) A certification issued in accordance with this section is considered for all purposes the same as the original vital record and is prima facie evidence of the facts stated therein.

(b) An informational copy is not considered the same as the original vital record and does not serve as prima facie evidence of the facts stated therein.

(2) The state and local registrar shall issue all certifications registered in the vital records system from the state's central vital records system database upon submission by a qualified applicant of all required information and documentation required either by this chapter or by rule, or both, and shall ensure that all certifications include:

(a) The date of registration; and

(b) Security features that deter altering, counterfeiting, or simulation without ready detection as required under this chapter.

(3) A person requesting a certification of birth, death, fetal death, or birth resulting in stillbirth must submit an application, identity documentation, evidence of eligibility, and the applicable fee established in RCW 70.58A.560 to the state or local registrar.

(4) For a certification of birth, the state or local registrar may release the certification only to:

(a) The subject of the record or the subject of the record's spouse or domestic partner, child, parent, stepparent, stepchild, sibling, grandparent, great grandparent, grandchild, legal guardian, legal representative, or authorized representative; or

(b) A government agency or court, if the certification will be used in the conduct of the agency's or court's official duties.

(5) The state registrar may issue an heirloom certification of birth to a qualified applicant consistent with subsection (4) of this section. The heirloom certification of birth must contain the state seal and be signed by the governor.

(6) The state registrar may issue a certification of a birth record registered as delayed under RCW 70.58A.120 or 70.58A.130 to a qualified applicant consistent with subsection (4) of this section. The certification must:

(a) Be marked as delayed; and

(b) Include a description of the evidence or court order number used to establish the delayed record.

(7) The state registrar may issue a certification of a birth record for a person adopted under chapter 26.33 RCW and registered under RCW 70.58A.400 to a qualified applicant consistent with subsection (4) of this section. The certification:

(a) Must not include reference to the adoption of the child; and

(b) For children born outside of the state, must be issued consistent with the certification standards of this section, unless the court orders otherwise.

(8) When providing a birth certification to a qualified applicant under this chapter, the state or local registrar shall include information prepared by the department setting forth the advisability of a security freeze under RCW 19.182.230 and the process for acquiring a security freeze.

(9) For a certification of death, the state or local registrar may release the certification only to:

(a) The decedent's spouse or domestic partner, child, parent, stepparent, stepchild, sibling, grandparent, great grandparent, grandchild, legal guardian immediately prior to death, legal representative, authorized representative, or next of kin as specified in RCW 11.28.120;

(b) A funeral director, the funeral establishment licensed pursuant to chapter 18.39 RCW, or the person having the right to control the disposition of the human remains under RCW 68.50.160 named on the death record, within twelve months of the date of death; or

(c) A government agency or court, if the certification will be used in the conduct of the agency's or court's official duties.

(10) The state or local registrar may issue a short form certification of death that does not display information relating to cause and manner of death to a qualified applicant. In addition to the qualified applicants listed in subsection (9) of this section, a qualified applicant for a short form certification of death includes:

(a) A title insurer or title insurance agent handling a transaction involving real property in which the decedent held some right, title, or interest; or

(b) A person that demonstrates that the certified copy is necessary for a determination related to the death or the protection of a personal or property right related to the death.

(11) The state or local registrar may issue reports of fetal death either as a certification of a fetal death or as a certification of birth resulting in a stillbirth, or both.

(12) When issuing a certification of fetal death, the state or local registrar may release the certification only to:

(a) A parent, a parent's legal representative, an authorized representative, a sibling, or a grandparent;

(b) The funeral director or funeral establishment licensed pursuant to chapter 18.39 RCW and named on the fetal death record, within twelve months of the date of fetal death; or

(c) A government agency or court, if the certification will be used in the conduct of the agency's or court's official duties.

(13) When issuing a certification of birth resulting in stillbirth, the state or local registrar may release the certification only to the individual who gave birth listed on the fetal death record.

(a) A certification of birth resulting in stillbirth must comply with the format requirements prescribed by the state registrar and be in a format similar to a certification of birth.

(b) The certification of birth resulting in stillbirth must contain a title at the top of the certification that reads: "This certificate of birth resulting in stillbirth is not proof of a live birth and is not an identity document."

(c) Nothing in this subsection (13):

(i) May be the basis for a civil cause of action seeking damages or criminal charges against any person or entity for bodily injury, personal injury, or wrongful death for a stillbirth;

(ii) Shall alter a woman's rights to reproductive freedom or equal protection under the law, or to alter or supersede any other provision of law; and

(iii) Except for the right to request a certification of birth resulting in stillbirth, may constitute the basis of any new right, privilege, or entitlement, or abrogate any existing right, privilege, or entitlement.

(14) The state or local registrar shall review the identity documentation and evidence of eligibility to determine if the person requesting the certification is a qualified applicant under this section. The state or local registrar may verify the identity documents and evidence of eligibility to determine the acceptability and authenticity of identity documentation and evidence of eligibility.

(15) The state or local registrar may not issue a certification of birth or fetal death, including a certification of birth resulting in stillbirth, that includes information from the confidential section of record, except as provided in subsection (16) of this section.

(16) The state registrar may release information contained in the confidential section of the birth record only to the following persons:

(a) The individual who is the subject of the birth record, upon confirmation of documentation and evidence of identity of the requestor in a manner approved by the state board of health and the department. The state registrar must limit the confidential information provided to the individual who is the subject of the birth record's information, and may not include the parent's confidential information; or

(b) A member of the public, upon order of a court of competent jurisdiction.

(17) A person requesting a certification of marriage, dissolution of marriage, or dissolution of domestic partnership currently held by the department must submit an application and the applicable fee established in RCW 70.58A.560 to the state registrar.

(18) The state registrar may mark deceased on a birth certification when that birth record is matched to a death record under RCW 70.58A.060.

(19) The state or local registrar must issue an informational copy from the central vital records system to anyone. Informational copies must contain only the information

allowed by rule. Informational copies of death records must not display information related to cause and manner of death.

(20) A person requesting an informational copy must submit an application and the applicable fee established in RCW 70.58A.560 to the state or local registrar.

(21) If no record is identified as matching the information provided in the application, the state or local registrar shall issue a document indicating that a search of the vital records system was made and no matching record was identified.

(22) All government agencies or courts to whom certifications or informational copies are issued must pay the applicable fee for certifications established in RCW 70.58A.560.

(23) The state or local registrar must comply with the requirements of this chapter when issuing a certification or informational copy of a vital life event.

(24) The department may issue, through electronic means and processes determined by the department, verifications of information contained on birth or death records filed with the department when a verification is requested by a government agency, insurance company, hospital, or any other organization in the conduct of its official duties for fraud prevention and good governance purposes as determined by the department. The department shall charge a fee for a search under this subsection.

(25) For the purposes of this section:

(a) "Qualified applicant" means a person who is eligible to receive a certification of a vital record based on the standards established by this chapter and department rule.

(b) "Stillbirth" means the same as fetal death as defined in RCW 70.58A.010. [2021 c 55 § 2; 2019 c 148 § 21.]

**Effective date—2021 c 55 § 2:** "Section 2 of this act takes effect October 1, 2022." [2021 c 55 § 3.]

**Intent—2021 c 55:** "(1) The legislature recognizes that a principal duty of governments is to promote and protect the health and safety of their residents. In addition to providing essential health and safety functions through fire and law enforcement agencies, local governments support public health and safety in the collection and maintenance of vital statistics through a single comprehensive vital records system that is operated and maintained by the department of health, and through the issuance of official certifications associated with births and deaths.

(2) The legislature further recognizes that the ability to obtain a certification of birth resulting in stillbirth may provide comfort to some who have experienced the trauma of a stillbirth.

(3) In recognition of the foregoing, the legislature intends to create a new process allowing any person who gives birth to a stillborn fetus to request and receive a certification of birth resulting in stillbirth from the applicable state or local registrar.

(4) The legislature furthermore recognizes that a woman's rights to reproductive freedom and equal protection under the law are rights protected through Washington's statutes, judicial decisions, and the state and federal Constitutions. Nothing in this legislation shall alter a woman's rights to reproductive freedom and equal protection under the law." [2021 c 55 § 1.]

**70.58A.540 Vital records not subject to public disclosure—Exceptions.** (1) All or part of any vital records, reports, supporting documentation, vital statistics, data, or information contained therein are not subject to public inspection and copying under chapter 42.56 RCW.

(2) With the exception of certifications and informational copies issued under RCW 70.58A.530, or unless otherwise authorized by this chapter, no person may permit the inspection of, disclose data or information contained in, or copy or issue a copy of all or part of any vital records, reports, supporting documentation, vital statistics, data, or information contained therein. [2019 c 148 § 22.]

**70.58A.550 Adjudicative proceedings.** (1) This section governs any case in which the state registrar takes one of the following adverse actions:

(a) Denies or revokes registration of a report or application for an amendment;

(b) Withholds or denies issuance of a certification under this chapter; or

(c) Denies a request for data under RCW 70.58A.520.

(2) This section does not govern denied applications for delayed birth registration under RCW 70.58A.120, or amendments due to legal name change, adoption, or parentage, which require court orders.

(3) RCW 43.70.115 does not govern adjudications under this chapter.

(4) The department shall give written notice to the applicant when it denies or revokes registration of a report or application for certification, or withholds issuance of a certification. The written notice must state the reasons for the action and be served on the applicant or person to whom the record pertains. "Service" means posting in the United States mail, delivery to a commercial parcel delivery company, or personal service. Service by mail is complete upon deposit of the notice in the United States mail. Service by a commercial parcel delivery company is complete upon delivery to the commercial parcel delivery company, properly addressed, with charges prepaid.

(5) Except as otherwise provided in this subsection and in subsection (7) of this section, only revocation is effective twenty-eight days after service of the notice. The department may make the date the action is effective sooner than twenty-eight days after service when necessary to protect public health, safety, or welfare, or when deemed necessary by the state registrar for the security of the vital record. When the department does so, it shall state the effective date and the reasons supporting the effective date in the notice.

(6) Except as otherwise provided in subsection (7) of this section, denial of the registration of a report or application for an amendment under subsection (1)(a) of this section, and actions under subsection (1)(b) and (c) of this section, are effective immediately upon service of the notice.

(7) An applicant has the right to an adjudicative proceeding. The proceeding is governed by the administrative procedure act, chapter 34.05 RCW. The request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of service of the adverse notice, and be served in a manner that shows proof of receipt.

(8) If the department gives an applicant twenty-eight days' notice of revocation and the applicant or person to whom the record pertains files an appeal before its effective date, the department shall not implement the adverse action until the final order has been entered. The presiding or reviewing officer may permit the department to implement part or all of the adverse action while the proceedings are pending if the appellant causes an unreasonable delay in the proceeding, if the circumstances change so that implementation is in the public interest, or for other good cause.

(9) If the department gives an applicant less than twenty-eight days' notice of revocation and the applicant or person to whom the record pertains timely files a sufficient appeal, the department may implement the adverse action on the effective date stated in the notice. The presiding or reviewing officer may order the department to stay implementation of part or all of the adverse action while the proceedings are pending if staying implementation is in the public interest or for other good cause.

(10) The department is authorized to adopt a brief adjudicative proceeding for proceedings under this chapter, in accordance with chapter 34.05 RCW. [2019 c 148 § 23.]

**70.58A.560 Fees for certifications or informational copies of vital records—Exceptions.** (1) The department and local registrars shall charge a fee of twenty-five dollars for a certification or informational copy of a vital record or for a search of the vital records system when no matching record was identified, except as provided in subsection (2) of this section.

(2) The department and local registrars may not charge a fee for issuing a certification of:

(a) A vital record for use in connection with a claim for compensation or pension pending before the veterans administration;

(b) The death of a sex offender, for use by a law enforcement agency in maintaining a registered sex offender database; or

(c) The death of any offender, requested by a county clerk or court in the state for purposes of extinguishing the offender's legal financial obligation.

(3) The department may not charge a fee for issuing a birth certification for homeless persons as defined in RCW 43.185C.010 living in state.

(4) The department and local registrars may charge an electronic payment fee, in addition to the twenty-five dollar fee for certification and informational copy of vital records or for a search of the vital records system, in cases where payment is made by credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication.

(5) Local registrars shall keep a true and correct account of all fees received under this section for the issuance of certifications and informational copies.

(6) A portion of the twenty-five dollar fee collected by the local registrars must be transmitted to the state treasurer on a monthly basis as follows:

(a) Thirteen dollars for each birth certification and birth informational copy issued;

(b) Thirteen dollars for each first copy of a death certification and death informational copy; and

(c) Twenty dollars for each additional death certification and death informational copy.

(7) For each fee turned over to the state treasurer by the local registrars, the state treasurer shall:

(a) Pay the department two dollars of each fee for birth certifications and birth informational copies and first copies of death certifications and death informational copies;

(b) Pay the department nine dollars of each fee for additional death certifications and death informational copies; and

(c) Hold eleven dollars of each fee in the death investigations account established under RCW 43.79.445, except for an heirloom birth certification issued under RCW 70.58A.530.

(8) Eleven dollars of the twenty-five dollar fee collected by the department for certifications and informational copies issued by the department must be transmitted to the state treasurer for the death investigations account established under RCW 43.79.445.

(9) The department of children, youth, and families shall set a fee for an heirloom birth certification established under RCW 70.58A.530 for the children's trust fund established under RCW 43.121.100. The department shall collect the fee established under this subsection when issuing an heirloom birth certification and transmit the fees collected to the state treasurer for credit to the children's trust fund. [2019 c 148 § 24.]

**70.58A.570 Duty of local registrar to submit monthly reports—Duty of state registrar to periodically test and audit fraud prevention procedures.** (1) The local registrar shall, on a monthly basis, submit the following to the state registrar:

(a) A summary of the number of certifications and informational copies issued by vital life event type in a format provided by the state registrar;

(b) A log of all numbered paper certifications issued and destroyed in a format provided by the state registrar; and

(c) A copy of the accounting of fees required by RCW 70.58A.560.

(2) The state registrar shall periodically test and audit local registrar fraud prevention procedures and products, and may share the results of such tests and audits with the local registrar. [2019 c 148 § 25.]

**70.58A.580 Enforcement—Duties of local registrars—Investigations.** (1) All requirements of this chapter must be uniformly complied with by all local registrars in state.

(2) Local registrars are charged with the strict and thorough enforcement of the provisions of this chapter in their health jurisdictions, under the supervision and direction of the state registrar, and:

(a) Shall immediately report observed or suspected violations of this chapter to the state registrar;

(b) Shall aid the state registrar, upon request, in investigations initiated under this section; and

(c) May not issue a certification for a record that is currently under investigation under this section, or subject to an action under RCW 70.58A.550, until such time as the state registrar allows for the issuance of such certification.

(3) The state registrar may investigate cases of irregularity or violation of this chapter. In cases where the state registrar finds reasonable cause to suspect fraud or misrepresentation, the state registrar shall:

(a) Retain the application and evidence; and

(b) Notify the appropriate authorities.

(4) The state registrar may only release the application and evidence under subsection (3)(a) of this section upon order of a court of competent jurisdiction.

(5) When the state registrar deems it necessary, the state registrar shall report cases of violation of any of the provisions of this chapter to the prosecuting attorney of the proper county with a statement of the facts and circumstances.

(6) Prosecuting attorneys, or officials acting in such capacity, shall initiate and promptly follow up the necessary court proceedings against the parties responsible for the alleged violations of law reported to them by the state registrar.

(7) The state registrar may, during the pendency of an investigation under subsection (3) of this section, or at the conclusion of an investigation under subsection (3) of this section, take any action permitted by this chapter with respect to the affected certification or record including, but not limited to, denial of issuance or revocation of the affected certification or record. [2019 c 148 § 26.]

**70.58A.590 Penalties.** (1) Every person who violates or willfully fails, neglects, or refuses to comply with any provisions of this chapter is guilty of a misdemeanor.

(2) Every person who willfully furnishes false information or who makes any false statement to establish a vital record or obtain a certification required by this chapter is guilty of a gross misdemeanor. [2019 c 148 § 27.]

MISCELLANEOUS PROVISIONS

**70.58A.900 Applicability—2019 c 148.** (1) This act applies to all causes of action commenced on or after January 1, 2021, regardless of when the cause of action arose.

(2) The requirements of this act apply to all records covered by this act that are held by the department or state registrar, regardless of the date the record was created or modified.

(3) In all other respects not specifically indicated in this section, this chapter applies prospectively. [2019 c 148 § 28.]

**70.58A.901 Effective date—2019 c 148.** Except for sections 3 and 43 of this act, this act takes effect January 1, 2021. [2019 c 148 § 42.]

**70.58A.902 Rule-making authority—2019 c 148.** The secretary and state board of health may adopt rules as authorized by this act to ensure that the sections in this act are implemented on their effective dates. [2019 c 148 § 43.]

## Chapter 70.62 RCW
## TRANSIENT ACCOMMODATIONS—LICENSING—INSPECTIONS

Sections



**Reviser's note:** Throughout this chapter, the terms "this 1971 amendatory act" or "this act" have been changed to "this chapter." "This 1971 amendatory act" and "this act" consist of this chapter, the amendment of RCW 43.22.050 and the repeal of RCW 70.62.010 through 70.62.130 and 43.22.060 through 43.22.110 by 1971 ex.s. c 239.

*Hotels: Chapter 19.48 RCW.*

*Lien of hotels, lodging and boarding houses: Chapter 60.64 RCW.*

**70.62.200 Purpose.** The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of transient accommodations through a licensing program to promote the protection of the health and safety of individuals using such accommodations in this state. [1994 c 250 § 1; 1971 ex.s. c 239 § 1.]

**70.62.210 Definitions.** The following terms whenever used or referred to in this chapter shall have the following respective meanings for the purposes of this chapter, except in those instances where the context clearly indicates otherwise:

(1) The term "transient accommodation" shall mean any facility such as a hotel, motel, condominium, resort, or any other facility or place offering three or more lodging units to travelers and transient guests.

(2) The term "person" shall mean any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(3) The term "secretary" shall mean the secretary of the Washington state department of health and any duly authorized representative thereof.

(4) The term "board" shall mean the Washington state board of health.

(5) The term "department" shall mean the Washington state department of health.

(6) The term "lodging unit" shall mean one self-contained unit designated by number, letter or some other method of identification. [1991 c 3 § 347; 1971 ex.s. c 239 § 2.]

**70.62.220 License required—Fee—Display.** The person operating a transient accommodation as defined in this chapter shall secure each year an annual operating license and shall pay a fee to cover the cost of licensure and enforcement activities as established by the department under RCW 43.70.110 and 43.70.250. The initial licensure period shall run for one year from the date of issuance, and the license shall be renewed annually on that date. The license fee shall be paid to the department. The license shall be conspicuously displayed in the lobby or office of the facility for which it is issued. [1994 c 250 § 2; 1987 c 75 § 9; 1982 c 201 § 10; 1971 ex.s. c 239 § 3.]

Additional notes found at www.leg.wa.gov

**70.62.240 Rules.** The board shall adopt such rules as may be necessary to assure that each transient accommodation will be operated and maintained in a manner consistent with the health and safety of the members of the public using such facilities. Such rules shall provide for adequate light, heat, ventilation, cleanliness, and sanitation and shall include provisions to assure adequate maintenance. All rules and amendments thereto shall be adopted in conformance with the provisions of chapter 34.05 RCW. [1994 c 250 § 3; 1971 ex.s. c 239 § 5.]

**70.62.250 Powers and duties of department.** The department is hereby granted and shall have and exercise, in addition to the powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this chapter, including but not limited to the power:

(1) To develop such rules and regulations for proposed adoption by the board as may be necessary to implement the purposes of this chapter;

(2) To enter and inspect at any reasonable time any transient accommodation and to make such investigations as are reasonably necessary to carry out the provisions of this chapter and any rules and regulations promulgated thereunder: PROVIDED, That no room or suite shall be entered for inspection unless said room or suite is not occupied by any patron or guest of the transient accommodation at the time of entry;

(3) To perform such other duties and employ such personnel as may be necessary to carry out the provisions of this chapter; and

(4) To administer and enforce the provisions of this chapter and the rules and regulations promulgated thereunder by the board. [1971 ex.s. c 239 § 6; (1994 c 250 § 4 expired June 30, 1997).]

Additional notes found at www.leg.wa.gov

**70.62.260 Licenses—Applications—Expiration—Renewal.** (1) No person shall operate a transient accommodation as defined in this chapter without having a valid license issued by the department. Applications for a transient accommodation license shall be filed with the department sixty days or more before initiating business as a transient accommodation. All licenses issued under the provisions of this chapter shall expire one year from the effective date.

(2) All applications for renewal of licenses shall be either: (a) Postmarked no later than midnight on the date the license expires; or (b) if personally presented to the department or sent by electronic means, received by the department by 5:00 p.m. on the date the license expires.

(3) A licensee that submits a license renewal application in accordance with this section and the rules and fee schedule adopted under this chapter shall be deemed to possess a valid license for the year following the expiration date of the expiring license, or until the department suspends or revokes the license pursuant to RCW 70.62.270.

(4) The license of a licensee that fails to submit a license renewal application in accordance with this section, and the rules and fee schedule adopted under this chapter, shall become invalid on the thirty-fifth day after the expiration date, unless the licensee shall have corrected any and all deficiencies in the renewal application and paid a penalty fee as established by rule by the department before the thirty-fifth day following the expiration date. An invalid license may be reinstated upon reapplication as an applicant for a new license under subsection (1) of this section.

(5) Each license shall be issued only for the premises and persons named in the application. [2004 c 162 § 1; 1994 c 250 § 6; 1971 ex.s. c 239 § 7.]

**70.62.270 Suspension or revocation of licenses—Civil fine.** (1) Licenses issued under this chapter may be suspended or revoked upon the failure or refusal of the person operating a transient accommodation to comply with the provisions of this chapter, or of any rules adopted under this chapter by the board. All such proceedings shall be governed by the provisions of chapter 34.05 RCW.

(2) In lieu of or in addition to license suspension or revocation, the department may assess a civil fine in accordance with RCW 43.70.095. [1994 c 250 § 7; 1971 ex.s. c 239 § 8.]

**70.62.280 Violations—Penalty.** Any violation of this chapter or the rules and regulations promulgated hereunder by any person operating a transient accommodation shall be a misdemeanor and shall be punished as such. Each day of operation of a transient accommodation in violation of this chapter shall constitute a separate offense. [1971 ex.s. c 239 § 10.]

**70.62.290 Adoption of fire and safety rules.** Rules establishing fire and life safety requirements, not inconsistent with the provisions of this chapter, shall continue to be adopted by the *director of community, trade, and economic development, through the director of fire protection. [1994 c 250 § 8; 1986 c 266 § 95; 1971 ex.s. c 239 § 11.]

***Reviser's note:** The "director of community, trade, and economic development" was changed to the "director of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

## Chapter 70.74 RCW
## WASHINGTON STATE EXPLOSIVES ACT

Sections

**70.74.010 Definitions.** As used in this chapter, unless a different meaning is plainly required by the context:

(1) The terms "authorized," "approved," or "approval" shall be held to mean authorized, approved, or approval by the department of labor and industries.

(2) The term "blasting agent" shall be held to mean and include any material or mixture consisting of a fuel and oxidizer, that is intended for blasting and not otherwise defined as an explosive; if the finished product, as mixed for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined. A number 8 test blasting cap is one containing two grams of a mixture of eighty percent mercury fulminate and twenty percent potassium chlorate, or a blasting cap of equivalent strength. An equivalent strength cap comprises 0.40-0.45 grams of PETN base charge pressed in an aluminum shell with bottom thickness not to exceed 0.03 of an inch, to a specific gravity of not less than 1.4 g/cc., and primed with standard weights of primer depending on the manufacturer.

(3) The term "dealer" shall be held to mean and include any person who purchases explosives or blasting agents for the sole purpose of resale, and not for use or consumption.

(4) The term "efficient artificial barricade" shall be held to mean an artificial mound or properly revetted wall of earth of a minimum thickness of not less than three feet or such other artificial barricade as approved by the department of labor and industries.

(5) The term "explosive" or "explosives" whenever used in this chapter, shall be held to mean and include any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing, that an ignition by fire, by friction, by concussion, by percussion, or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. In addition, the term "explosives" shall include all material which is classified as division 1.1, 1.2, 1.3, 1.4, 1.5, or 1.6 explosives by the United States department of transportation. For the purposes of this chapter, small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder not exceeding five pounds shall not be defined as explosives, unless possessed or used for a purpose inconsistent with small arms use or other lawful purpose.

(6) Classification of explosives shall include, but not be limited to, the following:

(a) DIVISION 1.1 and 1.2 EXPLOSIVES: Possess mass explosion or detonating hazard and include dynamite, nitroglycerin, picric acid, lead azide, fulminate of mercury, black powder exceeding five pounds, blasting caps in quantities of 1001 or more, and detonating primers.

(b) DIVISION 1.3 EXPLOSIVES: Possess a minor blast hazard, a minor projection hazard, or a flammable hazard and include propellant explosives, including smokeless powder exceeding fifty pounds.

(c) DIVISION 1.4, 1.5, and 1.6 EXPLOSIVES: Include certain types of manufactured articles which contain division 1.1, 1.2, or 1.3 explosives, or all, as components, but in restricted quantities, and also include blasting caps in quantities of 1000 or less.

(7) The term "explosive-actuated power devices" shall be held to mean any tool or special mechanized device which is actuated by explosives, but not to include propellant-actuated power devices.

(8) The term "explosives manufacturing building," shall be held to mean and include any building or other structure (excepting magazines) containing explosives, in which the manufacture of explosives, or any processing involving explosives, is carried on, and any building where explosives are used as a component part or ingredient in the manufacture of any article or device.

(9) The term "explosives manufacturing plant" shall be held to mean and include all lands, with the buildings situated thereon, used in connection with the manufacturing or processing of explosives or in which any process involving explosives is carried on, or the storage of explosives thereat, as well as any premises where explosives are used as a component part or ingredient in the manufacture of any article or device.

(10) The term "forbidden or not acceptable explosives" shall be held to mean and include explosives which are forbidden or not acceptable for transportation by common carriers by rail freight, rail express, highway, or water in accordance with the regulations of the federal department of transportation.

(11) The term "fuel" shall be held to mean and include a substance which may react with the oxygen in the air or with the oxygen yielded by an oxidizer to produce combustion.

(12) The term "handloader" shall be held to mean and include any person who engages in the noncommercial assembling of small arms ammunition for his or her own use, specifically the operation of installing new primers, powder, and projectiles into cartridge cases.

(13) The term "handloader components" means small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder as used in muzzle loading firearms not exceeding five pounds.

(14) The term "highway" shall be held to mean and include any public street, public alley, or public road, including a privately financed, constructed, or maintained road that is regularly and openly traveled by the general public.

(15) The term "improvised device" means a device which is fabricated with explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals and which is designed, or has the capacity, to disfigure, destroy, distract, or harass.

(16) The term "inhabited building," shall be held to mean and include only a building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other building where people are accustomed to assemble, other than any building or structure occupied in connection with the manufacture, transportation, storage, or use of explosives.

(17) The term "magazine," shall be held to mean and include any building or other structure, other than an explosives manufacturing building, used for the storage of explosives.

(18) The term "motor vehicle" shall be held to mean and include any self-propelled automobile, truck, tractor, semitrailer or full trailer, or other conveyance used for the transportation of freight.

(19) The term "natural barricade" shall be held to mean and include any natural hill, mound, wall, or barrier composed of earth or rock or other solid material of a minimum thickness of not less than three feet.

(20) The term "oxidizer" shall be held to mean a substance that yields oxygen readily to stimulate the combustion of organic matter or other fuel.

(21) The term "person" shall be held to mean and include any individual, firm, partnership, corporation, company, association, society, joint stock company, joint stock association, and including any trustee, receiver, assignee, or personal representative thereof.

(22) The term "propellant-actuated power device" shall be held to mean and include any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

(23) The term "public conveyance" shall be held to mean and include any railroad car, streetcar, ferry, cab, bus, airplane, or other vehicle which is carrying passengers for hire.

(24) The term "public utility transmission system" shall mean power transmission lines over 10 KV, telephone cables, or microwave transmission systems, or buried or exposed pipelines carrying water, natural gas, petroleum, or crude oil, or refined products and chemicals, whose services are regulated by the utilities and transportation commission, municipal, or other publicly owned systems.

(25) The term "purchaser" shall be held to mean any person who buys, accepts, or receives any explosives or blasting agents.

(26) The term "pyrotechnic" shall be held to mean and include any combustible or explosive compositions or manufactured articles designed and prepared for the purpose of producing audible or visible effects which are commonly referred to as fireworks as defined in chapter 70.77 RCW.

(27) The term "railroad" shall be held to mean and include any steam, electric, or other railroad which carries passengers for hire.

(28) The term "small arms ammunition" shall be held to mean and include any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns. Military-type ammunition containing explosive bursting charges, incendiary, tracer, spotting, or pyrotechnic projectiles is excluded from this definition.

(29) The term "small arms ammunition primers" shall be held to mean small percussion-sensitive explosive charges encased in a cup, used to ignite propellant powder and shall include percussion caps as used in muzzle loaders.

(30) The term "smokeless powder" shall be held to mean and include solid chemicals or solid chemical mixtures in excess of fifty pounds which function by rapid combustion.

(31) The term "user" shall be held to mean and include any natural person, manufacturer, or blaster who acquires, purchases, or uses explosives as an ultimate consumer or who supervises such use.

Words used in the singular number shall include the plural, and the plural the singular. [2012 c 117 § 390; 2002 c 370 § 1; 1993 c 293 § 1; 1972 ex.s. c 88 § 5; 1970 ex.s. c 72 § 1; 1969 ex.s. c 137 § 3; 1931 c 111 § 1; RRS § 5440-1.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

**70.74.013 Funds collected by department.** All funds collected by the department under RCW 70.74.137 through 70.74.146 and 70.74.360 shall be transferred to the state treasurer for deposit into the accident and medical aid funds under RCW 51.44.010 and 51.44.020. [2008 c 285 § 11.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.020 Restrictions on manufacture, sale, or storage—Users—Reports on storage—Waiver.** (1) No person shall manufacture, possess, store, sell, purchase, transport, or use explosives or blasting agents except in compliance with this chapter.

(2) The director of the department of labor and industries shall make and promulgate rules and regulations concerning qualifications of users of explosives and shall have the authority to issue licenses for users of explosives to effectuate the purpose of this chapter: PROVIDED, That where there is a finding by the director that the use or disposition of explosives in any class of industry presents no unusual hazard to the safety of life or limb of persons employed therewith, and where the users are supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a license for such use under this chapter, the director in his or her discretion may exclude said users in those classes of industry from individual licensing.

(3) The director of the department of labor and industries shall make and promulgate rules and regulations concerning the manufacture, sale, purchase, use, transportation, storage, and disposal of explosives, and shall have the authority to issue licenses for the manufacture, purchase, sale, use, transportation, and storage of explosives to effectuate the purpose of this chapter. The director of the department of labor and industries is hereby delegated the authority to grant written waiver of this chapter whenever it can be shown that the manufacturing, handling, or storing of explosives are in compliance with applicable national or federal explosive safety standards: PROVIDED, That any resident of this state who is

qualified to purchase explosives in this state and who has complied with the provisions of this chapter applicable to him or her may purchase explosives from an authorized dealer of a bordering state and may transport said explosives into this state for use herein: PROVIDED FURTHER, That residents of this state shall, within ten days of the date of purchase, present to the department of labor and industries a report signed by both vendor and vendee of every purchase from an out of state dealer, said report indicating the date of purchase, name of vendor, vendor's license number, vendor's business address, amount and kind of explosives purchased, the name of the purchaser, the purchaser's license number, and the name of receiver if different than purchaser.

(4) It shall be unlawful to sell, give away, or otherwise dispose of, or deliver to any person under twenty-one years of age any explosives including black powder, and blasting caps or other explosive igniters, whether said person is acting for himself or herself or for any other person: PROVIDED, That small arms ammunition and handloader components shall not be considered explosives for the purposes of this section: PROVIDED FURTHER, That if there is a finding by the director that said use or disposition of explosives poses no unusual hazard to the safety of life or limb in any class of industry, where persons eighteen years of age or older are employed as users, and where said persons are adequately trained and adequately supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a valid license for such use under this chapter, the director in his or her discretion may exclude said persons in that class of industry from said minimum age requirement.

(5) All persons engaged in keeping, using, or storing any compound, mixture, or material, in wet condition, or otherwise, which upon drying out or undergoing other physical changes, may become an explosive within the definition of RCW 70.74.010, shall report in writing subscribed to by such person or his or her agent, to the department of labor and industries, report blanks to be furnished by such department, and such reports to require:

(a) The kind of compound, mixture, or material kept or stored, and maximum quantity thereof;

(b) Condition or state of compound, mixture, or material;

(c) Place where kept or stored.

The department of labor and industries may at any time cause an inspection to be made to determine whether the condition of the compound, mixture, or material is as reported. [2012 c 117 § 391; 1982 c 111 § 1; 1972 ex.s. c 88 § 6; 1969 ex.s. c 137 § 4; 1967 c 99 § 1; 1931 c 111 § 2; RRS § 5440-2.]

**70.74.022 License required to manufacture, purchase, sell, use, possess, transport, or store explosives—Penalty—Surrender of explosives by unlicensed person—Other relief.** (1) It is unlawful for any person to manufacture, purchase, sell, offer for sale, use, possess, transport, or store any explosive, improvised device, or components that are intended to be assembled into an explosive or improvised device without having a validly issued license from the department of labor and industries, which license has not been revoked or suspended. Violation of this section is a class C felony.

(2) Upon notice from the department of labor and industries or any law enforcement agency having jurisdiction, a person manufacturing, purchasing, selling, offering for sale, using, possessing, transporting, or storing any explosive, improvised device, or components of explosives or improvised devices without a license shall immediately surrender those explosives, improvised devices, or components to the department or to the respective law enforcement agency.

(3) At any time that the director of labor and industries requests the surrender of explosives, improvised devices, or components of explosives or improvised devices, from any person pursuant to subsection (2) of this section, the director may in addition request the attorney general to make application to the superior court of the county in which the unlawful practice exists for a temporary restraining order or such other relief as appears to be appropriate under the circumstances. [1993 c 293 § 2; 1988 c 198 § 10.]

Additional notes found at www.leg.wa.gov

**70.74.025 Magazines—Classification, location and construction—Standards—Use.** The director of the department of labor and industries shall establish by rule or regulation requirements for classification, location and construction of magazines for storage of explosives in compliance with accepted applicable explosive safety standards. All explosives shall be kept in magazines which meet the requirements of this chapter. [1969 ex.s. c 137 § 9.]

**70.74.030 Quantity and distance tables for storage—Adoption by rule.** All explosive manufacturing buildings and magazines in which explosives or blasting agents except small arms ammunition and smokeless powder are had, kept, or stored, must be located at distances from inhabited buildings, railroads, highways, and public utility transmission systems in conformity with the quantity and distance tables adopted by the department of labor and industries by rule. The department of labor and industries shall adopt the quantity and distance tables promulgated by the federal bureau of alcohol, tobacco, and firearms unless the department determines the tables to be inappropriate. The tables shall be the basis on which applications for storage license[s] are made and storage licenses issued as provided in RCW 70.74.110 and 70.74.120. [1988 c 198 § 1; 1972 ex.s. c 88 § 7; 1969 ex.s. c 137 § 10; 1931 c 111 § 5; RRS § 5440-5.]

**70.74.040 Limit on storage quantity.** No quantity in excess of three hundred thousand pounds, or the equivalent in blasting caps shall be had, kept or stored in any factory building or magazine in this state. [1970 ex.s. c 72 § 2; 1931 c 111 § 4; RRS § 5440-4.]

**70.74.050 Quantity and distance table for explosives manufacturing buildings.** All explosives manufacturing buildings shall be located one from the other and from other buildings on explosives manufacturing plants in which persons are regularly employed, and all magazines shall be located from factory buildings and buildings on explosives plants in which persons are regularly employed, in conformity with the intraexplosives plant quantity and distance table below set forth:

| EXPLOSIVES | | |
|---|---|---|
| Pounds Over | Pounds Not Over | Distance Feet |
| | | Separate Building or Within Substantial Dividing Walls |
| . . . . | 10 | |
| 10 | 25 | 40 |
| 25 | 50 | 60 |
| 50 | 100 | 80 |
| 100 | 200 | 100 |
| 200 | 300 | 120 |
| 300 | 400 | 130 |
| 400 | 500 | 140 |
| 500 | 750 | 160 |
| 750 | 1,000 | 180 |
| 1,000 | 1,500 | 210 |
| 1,500 | 2,000 | 230 |
| 2,000 | 3,000 | 260 |
| 3,000 | 4,000 | 280 |
| 4,000 | 5,000 | 300 |
| 5,000 | 6,000 | 320 |
| 6,000 | 7,000 | 340 |
| 7,000 | 8,000 | 360 |
| 8,000 | 9,000 | 380 |
| 9,000 | 10,000 | 400 |
| 10,000 | 12,500 | 420 |
| 12,500 | 15,000 | 450 |
| 15,000 | 17,500 | 470 |
| 17,500 | 20,000 | 490 |
| 20,000 | 25,000 | 530 |
| 25,000 | 30,000 | 560 |
| 30,000 | 35,000 | 590 |
| 35,000 | 40,000 | 620 |
| 40,000 | 45,000 | 640 |
| 45,000 | 50,000 | 660 |
| 50,000 | 55,000 | 680 |
| 55,000 | 60,000 | 700 |
| 60,000 | 65,000 | 720 |
| 65,000 | 70,000 | 740 |
| 70,000 | 75,000 | 770 |
| 75,000 | 80,000 | 780 |
| 80,000 | 85,000 | 790 |
| 85,000 | 90,000 | 800 |
| 90,000 | 95,000 | 820 |
| 95,000 | 100,000 | 830 |
| 100,000 | 125,000 | 900 |
| 125,000 | 150,000 | 950 |
| 150,000 | 175,000 | 1,000 |
| 175,000 | 200,000 | 1,050 |
| 200,000 | 225,000 | 1,100 |
| 225,000 | 250,000 | 1,150 |

[1972 ex.s. c 88 § 8; 1931 c 111 § 5; RRS § 5440-5.]

**70.74.061 Quantity and distance tables for separation between magazines—Adoption by rule.** Magazines containing blasting caps and electric blasting caps shall be separated from other magazines containing like contents, or from magazines containing explosives by distances set in the quantity and distance tables adopted by the department of labor and industries by rule. The department of labor and industries shall adopt the quantity and distance tables promulgated by the federal bureau of alcohol, tobacco, and firearms unless the department determines the tables to be inappropriate. The tables shall be the basis on which applications for storage license[s] are made and storage licenses issued as provided in RCW 70.74.110 and 70.74.120. [1988 c 198 § 2; 1969 ex.s. c 137 § 11.]

**70.74.100 Storage of caps with explosives prohibited.** No blasting caps, or other detonating or fulminating caps, or detonators, or flame-producing devices shall be kept or stored in any magazine in which other explosives are kept or stored. [1969 ex.s. c 137 § 12; 1931 c 111 § 10; RRS § 5440-10.]

**70.74.110 Manufacturer's report—Inspection—License.** All persons engaged in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device, on August 11, 1969, shall within sixty days thereafter, and all persons engaging in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device after August 11, 1969, shall, before so engaging, make an application in writing, subscribed to by such person or his or her agent, to the department of labor and industries, the application stating:

(1) Location of place of manufacture or processing;

(2) Kind of explosives manufactured, processed, or used;

(3) The distance that such explosives manufacturing building is located or intended to be located from the other factory buildings, magazines, inhabited buildings, railroads and highways, and public utility transmission systems;

(4) The name and address of the applicant;

(5) The reason for desiring to manufacture explosives;

(6) The applicant's citizenship, if the applicant is an individual;

(7) If the applicant is a partnership, the names and addresses of the partners, and their citizenship;

(8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof, and their citizenship; and

(9) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

There shall be kept in the main office on the premises of each explosives manufacturing plant a plan of said plant showing the location of all explosives manufacturing buildings and the distance they are located from other factory buildings where persons are employed and from magazines, and these plans shall at all times be open to inspection by duly authorized inspectors of the department of labor and industries. The superintendent of each plant shall upon demand of said inspector furnish the following information:

(a) The maximum amount and kind of explosive material which is or will be present in each building at one time.

(b) The nature and kind of work carried on in each building and whether or not said buildings are surrounded by natural or artificial barricades.

Except as provided in RCW 70.74.370, the department of labor and industries shall as soon as possible after receiving such application cause an inspection to be made of the explosives manufacturing plant, and if found to be in accordance with RCW 70.74.030 and 70.74.050 and 70.74.061, such department shall issue a license to the person applying therefor showing compliance with the provisions of this chapter if the applicant demonstrates that either the applicant or the officers, agents, or employees of the applicant are sufficiently experienced in the manufacture of explosives and the applicant meets the qualifications for a license under RCW 70.74.360. Such license shall continue in full force and effect until expired, suspended, or revoked by the department pursuant to this chapter. [2012 c 117 § 392; 1997 c 58 § 870; 1988 c 198 § 5; 1969 ex.s. c 137 § 13; 1941 c 101 § 1; 1931 c 111 § 11; Rem. Supp. 1941 § 5440-1.]

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

**70.74.120 Storage report—Inspection—License—Cancellation.** All persons engaged in keeping or storing and all persons having in their possession explosives on August 11, 1969, shall within sixty days thereafter, and all persons engaging in keeping or storing explosives or coming into possession thereof after August 11, 1969, shall before engaging in the keeping or storing of explosives or taking possession thereof, make an application in writing subscribed to by such person or his or her agent, to the department of labor and industries stating:

(1) The location of the magazine, if any, if then existing, or in case of a new magazine, the proposed location of such magazine;

(2) The kind of explosives that are kept or stored or possessed or intended to be kept or stored or possessed and the maximum quantity that is intended to be kept or stored or possessed thereat;

(3) The distance that such magazine is located or intended to be located from other magazines, inhabited buildings, explosives manufacturing buildings, railroads, highways, and public utility transmission systems;

(4) The name and address of the applicant;

(5) The reason for desiring to store or possess explosives;

(6) The citizenship of the applicant if the applicant is an individual;

(7) If the applicant is a partnership, the names and addresses of the partners and their citizenship;

(8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship;

(9) And such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall, as soon as may be after receiving such application, cause an inspection to be made of the magazine, if then constructed, and, in the case of a new magazine, as soon as may be after same is found to be constructed in accordance with the specification provided in RCW 70.74.025, such department shall determine the amount of explosives that may be kept and stored in such magazine by reference to the quantity and distance tables specified in or adopted under this chapter and shall issue a license to the person applying therefor if the applicant demonstrates that either the applicant or the officers, agents, or employees of the applicant are sufficiently experienced in the handling of explosives and possess suitable storage facilities therefor, and that the applicant meets the qualifications for a license under RCW 70.74.360. Said license shall set forth the maximum quantity of explosives that may be had, kept, or stored by said person. Such license shall be valid until canceled for one or more of the causes hereinafter provided. Whenever by reason of change in the physical conditions surrounding said magazine at the time of the issuance of the license therefor, such as:

(a) The erection of buildings nearer said magazine;

(b) The construction of railroads nearer said magazine;

(c) The opening for public travel of highways nearer said magazine; or

(d) The construction of public utilities transmission systems near said magazine; then the amounts of explosives which may be lawfully had, kept, or stored in said magazine must be reduced to conform to such changed conditions in accordance with the quantity and distance table notwithstanding the license, and the department of labor and industries shall modify or cancel such license in accordance with the changed conditions. Whenever any person to whom a license has been issued, keeps or stores in the magazine or has in his or her possession, any quantity of explosives in excess of the maximum amount set forth in said license, or whenever any person fails for thirty days to pay the annual license fee hereinafter provided after the same becomes due, the department is authorized to cancel such license. Whenever a license is canceled by the department for any cause herein specified, the department shall notify the person to whom such license is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within ten days from the giving of said notice, or, if the

cause of cancellation be the failure to pay the annual license fee, or the fact that explosives are kept for an unlawful purpose, the department of labor and industries shall order such person to dispossess himself or herself of said explosives within ten days from the giving of said notice. Failure to remove the explosives stored in said magazine or to dispossess oneself of the explosives as herein provided within the time specified in said notice shall constitute a violation of this chapter. [2012 c 117 § 393; 1988 c 198 § 6; 1969 ex.s. c 137 § 14; 1941 c 101 § 2; 1931 c 111 § 12; Rem. Supp. 1941 § 5440-12.]

**70.74.130 Dealer in explosives—Application—License.** Every person desiring to engage in the business of dealing in explosives shall apply to the department of labor and industries for a license therefor. Said application shall state, among other things:

(1) The name and address of applicant;

(2) The reason for desiring to engage in the business of dealing in explosives;

(3) Citizenship, if an individual applicant;

(4) If a partnership, the names and addresses of the partners and their citizenship;

(5) If an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and

(6) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

Except as provided in RCW 70.74.370, the department of labor and industries shall issue the license if the applicant demonstrates that either the applicant or the principal officers, agents, or employees of the applicant are experienced in the business of dealing in explosives, possess suitable facilities therefor, have not been convicted of any crime that would warrant revocation or nonrenewal of a license under this chapter, and have never had an explosives-related license revoked under this chapter or under similar provisions of any other state. [1997 c 58 § 871; 1988 c 198 § 7; 1969 ex.s. c 137 § 16; 1941 c 101 § 3; Rem. Supp. 1941 § 5440-12a.]

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

**70.74.135 Purchaser of explosives—Application—License.** All persons desiring to purchase explosives except handloader components shall apply to the department of labor and industries for a license. Said application shall state, among other things:

(1) The location where explosives are to be used;

(2) The kind and amount of explosives to be used;

(3) The name and address of the applicant;

(4) The reason for desiring to use explosives;

(5) The citizenship of the applicant if the applicant is an individual;

(6) If the applicant is a partnership, the names and addresses of the partners and their citizenship;

(7) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and

(8) Such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall issue the license if the applicant demonstrates that either the applicant or the officers, agents or employees of the applicant are sufficiently experienced in the use of explosives to authorize a purchase license. However, no purchaser's license may be issued to any person who cannot document proof of possession or right to use approved and licensed storage facilities unless the person signs a statement certifying that explosives will not be stored. [1988 c 198 § 8; 1971 ex.s. c 302 § 7; 1970 ex.s. c 72 § 3; 1969 ex.s. c 137 § 18.]

Additional notes found at www.leg.wa.gov

**70.74.137 Purchaser's license fee.** Every person applying for a purchaser's license, or renewal thereof, shall pay an annual license fee of twenty-five dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed one hundred dollars.

Said license fee shall accompany the application and shall be transmitted by the department to the state treasurer: PROVIDED, That if the applicant is denied a purchaser's license the license fee shall be returned to said applicant by registered mail. [2008 c 285 § 5; 1988 c 198 § 12; 1972 ex.s. c 88 § 2.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.140 Storage license fee.** Every person engaging in the business of keeping or storing of explosives shall pay an annual license fee for each magazine maintained, to be graduated by the department of labor and industries according to the quantity kept or stored therein, of fifty dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed four hundred dollars.

Said license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [2008 c 285 § 6; 1988 c 198 § 13; 1969 ex.s. c 137 § 15; 1931 c 111 § 13; RRS § 5440-13.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.142 User's license or renewal—Fee.** Every person applying for a user's license, or renewal thereof, under this chapter shall pay an annual license fee of fifty dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed two hundred dollars.

Said license fee shall accompany the application, and be transmitted by the department to the state treasurer: PROVIDED, That if the applicant is denied a user's license the license fee shall be returned to said applicant by registered mail. [2008 c 285 § 7; 1988 c 198 § 14; 1972 ex.s. c 88 § 1.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.144 Manufacturer's license fee—Manufacturers to comply with dealer requirements when selling.**

Every person engaged in the business of manufacturing explosives shall pay an annual license fee of fifty dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed two hundred dollars.

Businesses licensed to manufacture explosives are not required to have a dealer's license, but must comply with all of the dealer requirements of this chapter when they sell explosives.

The license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [2008 c 285 § 8; 1988 c 198 § 15.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.146 Seller's license fee—Sellers to comply with dealer requirements.** Every person engaged in the business of selling explosives shall pay an annual license fee of fifty dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed two hundred dollars.

Businesses licensed to sell explosives must comply with all of the dealer requirements of this chapter.

The license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [2008 c 285 § 9; 1988 c 198 § 16.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.150 Annual inspection.** The department of labor and industries shall make, or cause to be made, at least one inspection during every year, of each licensed explosives plant or magazine. [1931 c 111 § 14; RRS § 5440-14.]

**70.74.160 Unlawful access to explosives.** No person, except the director of labor and industries or the director's authorized agent, the owner, the owner's agent, or a person authorized to enter by the owner or owner's agent, or a law enforcement officer acting within his or her official capacity, may enter any explosives manufacturing building, magazine or car, vehicle or other common carrier containing explosives in this state. Violation of this section is a gross misdemeanor punishable under chapter 9A.20 RCW. [1993 c 293 § 3; 1969 ex.s. c 137 § 19; 1931 c 111 § 15; RRS § 5440-15.]

Additional notes found at www.leg.wa.gov

**70.74.170 Discharge of firearms or igniting flame near explosives.** No person shall discharge any firearms at or against any magazine or explosives manufacturing buildings or ignite any flame or flame-producing device nearer than two hundred feet from said magazine or explosives manufacturing building. [1969 ex.s. c 137 § 20; 1931 c 111 § 16; RRS § 5440-16.]

**70.74.180 Explosive devices prohibited—Penalty.** Any person who has in his or her possession or control any shell, bomb, or similar device, charged or filled with one or more explosives, intending to use it or cause it to be used for an unlawful purpose, is guilty of a class A felony, and upon conviction shall be punished by imprisonment in a state prison for a term of not more than twenty years. [2003 c 53 § 354; 1984 c 55 § 1; 1969 ex.s. c 137 § 21; 1931 c 111 § 18; RRS § 5440-18.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.74.191 Exemptions.** The laws contained in this chapter and regulations prescribed by the department of labor and industries pursuant to this chapter shall not apply to:

(1) Explosives or blasting agents in the course of transportation by way of railroad, water, highway, or air under the jurisdiction of, and in conformity with, regulations adopted by the federal department of transportation, the Washington state utilities and transportation commission, and the Washington state patrol;

(2) The laboratories of schools, colleges, and similar institutions if confined to the purpose of instruction or research and if not exceeding the quantity of one pound;

(3) Explosives in the forms prescribed by the official United States Pharmacopoeia;

(4) The transportation, storage, and use of explosives or blasting agents in the normal and emergency operations of United States agencies and departments including the regular United States military departments on military reservations; arsenals, navy yards, depots, or other establishments owned by, operated by, or on behalf of, the United States; or the duly authorized militia of any state; or to emergency operations of any state department or agency, any police, or any municipality or county;

(5) A hazardous devices technician when carrying out normal and emergency operations, handling evidence, and operating and maintaining a specially designed emergency response vehicle that carries no more than ten pounds of explosive material or when conducting training and whose employer possesses the minimum safety equipment prescribed by the federal bureau of investigation for hazardous devices work. For purposes of this section, a hazardous devices technician is a person who is a graduate of the federal bureau of investigation hazardous devices school and who is employed by a state, county, or municipality;

(6) The importation, sale, possession, and use of fireworks as defined in chapter 70.77 RCW, signaling devices, flares, fuses, and torpedoes;

(7) The transportation, storage, and use of explosives or blasting agents in the normal and emergency avalanche control procedures as conducted by trained and licensed ski area operator personnel. However, the storage, transportation, and use of explosives and blasting agents for such use shall meet the requirements of regulations adopted by the director of labor and industries;

(8) The storage of consumer fireworks as defined in chapter 70.77 RCW pursuant to a forfeiture or seizure under chapter 70.77 RCW by the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority;

(9) The transportation and storage of explosive actuated tactical devices, including noise and flash diversionary devices, by local law enforcement tactical response teams and officers in law enforcement department-issued vehicles designated for use by tactical response teams and officers, provided the explosive devices are stored and secured in

compliance with regulations and rulings adopted by the federal bureau of alcohol, tobacco, firearms and explosives; and

(10) Any violation under this chapter if any existing ordinance of any city, municipality, or county is more stringent than this chapter. [2013 c 140 § 1; 2002 c 370 § 2; 1998 c 40 § 1; 1993 c 293 § 5; 1985 c 191 § 2; 1969 ex.s. c 137 § 5.]

**Purpose—1985 c 191:** "It is the purpose of this 1985 act to protect the public by enabling ski area operators to exercise appropriate avalanche control measures. The legislature finds that avalanche control is of vital importance to safety in ski areas and that the provisions of the Washington state explosives act contain restrictions which do not reflect special needs for the use of explosives as a means of clearing an area of serious avalanche risks. This 1985 act recognizes these needs while providing for a system of regulations designed to ensure that the use of explosives for avalanche control conforms to fundamental safety requirements." [1985 c 191 § 1.]

Additional notes found at www.leg.wa.gov

**70.74.201 Municipal or county ordinances unaffected—State preemption.** This chapter shall not affect, modify or limit the power of a city, municipality or county in this state to make an ordinance that is more stringent than this chapter which is applicable within their respective corporate limits or boundaries: PROVIDED, That the state shall be deemed to have preempted the field of regulation of small arms ammunition and handloader components. [1970 ex.s. c 72 § 5; 1969 ex.s. c 137 § 6.]

**70.74.210 Coal mining code unaffected.** All acts and parts of acts inconsistent with this act are hereby repealed: PROVIDED, HOWEVER, That nothing in this act shall be construed as amending, limiting, or repealing any provision of chapter 36, session laws of 1917, known as the coal mining code. [1931 c 111 § 22; RRS § 5440-22.]

**70.74.230 Shipments out of state—Dealer's records.** If any manufacturer of explosives or dealer therein shall have shipped any explosives into another state, and the laws of such other state shall designate an officer or agency to regulate the possession, receipt or storage of explosives, and such officer or agency shall so require, such manufacturer shall, at least once each calendar month, file with such officer or agency of such other state a report giving the names of all purchasers and the amount and description of all explosives sold or delivered in such other state. Dealers in explosives shall keep a record of all explosives purchased or sold by them, which record shall include the name and address of each vendor and vendee, the date of each sale or purchase, and the amount and kind of explosives sold or purchased. Such records shall be open for inspection by the duly authorized agents of the department of labor and industries and by all federal, state and local law enforcement officers at all times, and a copy of such record shall be furnished once each calendar month to the department of labor and industries in such form as said department shall prescribe. [1941 c 101 § 4; Rem. Supp. 1941 § 5440-23.]

**70.74.240 Sale to unlicensed person prohibited.** No dealer shall sell, barter, give or dispose of explosives to any person who does not hold a license to purchase explosives issued under the provisions of this chapter. [1970 ex.s. c 72 § 4; 1969 ex.s. c 137 § 17; 1941 c 101 § 5; Rem. Supp. 1941 § 5440-24.]

**70.74.250 Blasting near fur farms and hatcheries.** Between the dates of January 15th and June 15th of each year it shall be unlawful for any person to do, or cause to be done, any blasting within fifteen hundred feet from any fur farm or commercial hatchery except in case of emergency without first giving to the person in charge of such farm or hatchery twenty-four hours notice: PROVIDED, HOWEVER, That in the case of an established quarry and sand and gravel operations, and where it is necessary for blasting to be done continually, the notice required in this section may be made at the beginning of the period each year when blasting is to be done. [1941 c 107 § 1; Rem. Supp. 1941 § 5440-25.]

**70.74.270 Malicious placement of an explosive—Penalties.** A person who maliciously places any explosive or improvised device in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, in such manner or under such circumstances as to destroy or injure it if exploded is guilty of:

(1) Malicious placement of an explosive in the first degree if the offense is committed with intent to commit a terrorist act. Malicious placement of an explosive in the first degree is a class A felony;

(2) Malicious placement of an explosive in the second degree if the offense is committed under circumstances not amounting to malicious placement of an explosive in the first degree and if the circumstances and surroundings are such that the safety of any person might be endangered by the explosion. Malicious placement of an explosive in the second degree is a class B felony;

(3) Malicious placement of an explosive in the third degree if the offense is committed under circumstances not amounting to malicious placement of an explosive in the first or second degree. Malicious placement of an explosive in the third degree is a class B felony. [1997 c 120 § 1; 1993 c 293 § 6; 1992 c 7 § 49; 1984 c 55 § 2; 1971 ex.s. c 302 § 8; 1969 ex.s. c 137 § 23; 1909 c 249 § 400; RRS § 2652.]

Additional notes found at www.leg.wa.gov

**70.74.272 Malicious placement of an imitation device—Penalties.** (1) A person who maliciously places any imitation device in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, with the intent to give the appearance or impression that the imitation device is an explosive or improvised device, is guilty of:

(a) Malicious placement of an imitation device in the first degree if the offense is committed with intent to commit a terrorist act. Malicious placement of an imitation device in the first degree is a class B felony;

(b) Malicious placement of an imitation device in the second degree if the offense is committed under circumstances not amounting to malicious placement of an imitation device in the first degree. Malicious placement of an imitation device in the second degree is a class C felony.

(2) For purposes of this section, "imitation device" means a device or substance that is not an explosive or improvised device, but which by appearance or representation would lead a reasonable person to believe that the device or

substance is an explosive or improvised device. [1997 c 120 § 2.]

**70.74.275 Intimidation or harassment with an explosive—Class C felony.** Unless otherwise allowed to do so under this chapter, a person who exhibits a device designed, assembled, fabricated, or manufactured, to convey the appearance of an explosive or improvised device, and who intends to, and does, intimidate or harass a person, is guilty of a class C felony. [1993 c 293 § 4.]

Additional notes found at www.leg.wa.gov

**70.74.280 Malicious explosion of a substance—Penalties.** A person who maliciously, by the explosion of gunpowder or any other explosive substance or material, destroy or damage any building, car, airplane, vessel, common carrier, railroad track, or public utility transmission system or structure is guilty of:

(1) Malicious explosion of a substance in the first degree if the offense is committed with intent to commit a terrorist act. Malicious explosion of a substance in the first degree is a class A felony;

(2) Malicious explosion of a substance in the second degree if the offense is committed under circumstances not amounting to malicious explosion of a substance in the first degree and if thereby the life or safety of a human being is endangered. Malicious explosion of a substance in the second degree is a class A felony;

(3) Malicious explosion of a substance in the third degree if the offense is committed under circumstances not amounting to malicious explosion of a substance in the first or second degree. Malicious explosion of a substance in the third degree is a class B felony. [1997 c 120 § 3; 1992 c 7 § 50; 1971 ex.s. c 302 § 9; 1969 ex.s. c 137 § 24; 1909 c 249 § 401; RRS § 2653.]

Additional notes found at www.leg.wa.gov

**70.74.285 "Terrorist act" defined.** For the purposes of RCW 70.74.270, 70.74.272, and 70.74.280 "terrorist act" means an act that is intended to: (1) Intimidate or coerce a civilian population; (2) influence the policy of a branch or level of government by intimidation or coercion; (3) affect the conduct of a branch or level of government by intimidation or coercion; or (4) retaliate against a branch or level of government for a policy or conduct of the government. [1997 c 120 § 4.]

**70.74.295 Abandonment of explosives.** It shall be unlawful for any person to abandon explosives or improvised devices. Violation of this section is a gross misdemeanor punishable under chapter 9A.20 RCW. [1993 c 293 § 7; 1972 ex.s. c 88 § 3.]

Additional notes found at www.leg.wa.gov

**70.74.297 Separate storage of components capable of detonation when mixed.** Any two components which, when mixed, become capable of detonation by a No. 6 cap must be stored in separate locked containers or in a licensed, approved magazine. [1972 ex.s. c 88 § 4.]

**70.74.300 Explosive containers to be marked—Penalty.** Every person who shall put up for sale, or who shall deliver to any warehouse operator, dock, depot, or common carrier any package, cask, or can containing any explosive, nitroglycerin, dynamite, or powder, without having been properly labeled thereon to indicate its explosive classification, shall be guilty of a gross misdemeanor. [2011 c 336 § 840; 1969 ex.s. c 137 § 26; 1909 c 249 § 254; RRS § 2506.]

**70.74.310 Gas bombs, explosives, stink bombs, etc.** Any person other than a lawfully constituted peace officer of this state who shall deposit, leave, place, spray, scatter, spread, or throw in any building, or any place, or who shall counsel, aid, assist, encourage, incite, or direct any other person or persons to deposit, leave, place, spray, scatter, spread, or throw, in any building or place, or who shall have in his or her possession for the purpose of, and with the intent of depositing, leaving, placing, spraying, scattering, spreading, or throwing, in any building or place, or of counseling, aiding, assisting, encouraging, inciting, or directing any other person or persons to deposit, leave, place, spray, scatter, spread, or throw, any stink bomb, stink paint, tear bomb, tear shell, explosive, or flame-producing device, or any other device, material, chemical, or substance, which, when exploded or opened, or without such exploding or opening, by reason of its offensive and pungent odor, does or will annoy, injure, endanger, or inconvenience any person or persons, shall be guilty of a gross misdemeanor: PROVIDED, That this section shall not apply to persons in the military service, actually engaged in the performance of military duties, pursuant to orders from competent authority nor to any property owner or person acting under his or her authority in providing protection against the commission of a felony. [2012 c 117 § 394; 1969 ex.s. c 137 § 27; 1927 c 245 § 1; RRS § 2504-1.]

**70.74.320 Small arms ammunition, primers and propellants—Transportation regulations.** The federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants are hereby adopted in this chapter by reference.

The director of the department of labor and industries has the authority to issue future regulations in accordance with amendments and additions to the federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants. [1969 ex.s. c 137 § 28.]

**70.74.330 Small arms ammunition, primers and propellants—Separation from flammable materials.** Small arms ammunition shall be separated from flammable liquids, flammable solids and oxidizing materials by a fire-resistant wall of one-hour rating or by a distance of twenty-five feet. [1969 ex.s. c 137 § 29.]

**70.74.340 Small arms ammunition, primers and propellants—Transportation, storage and display requirements.** Quantities of small arms smokeless propellant (class B) in shipping containers approved by the federal department

of transportation not in excess of fifty pounds may be transported in a private vehicle.

Quantities in excess of twenty-five pounds but not to exceed fifty pounds in a private passenger vehicle shall be transported in an approved magazine as specified by the department of labor and industries rules and regulations.

Transportation of quantities in excess of fifty pounds is prohibited in passenger vehicles: PROVIDED, That this requirement shall not apply to duly licensed dealers.

Transportation of quantities in excess of fifty pounds shall be in accordance with federal department of transportation regulations.

Small arms smokeless propellant intended for personal use in quantities not to exceed twenty-five pounds may be stored without restriction in residences; quantities over twenty-five pounds but not to exceed fifty pounds shall be stored in a strong box or cabinet constructed with three-fourths inch plywood (minimum), or equivalent, on all sides, top, and bottom.

Black powder as used in muzzle loading firearms may be transported in a private vehicle or stored without restriction in private residences in quantities not to exceed five pounds.

Not more than seventy-five pounds of small arms smokeless propellant, in containers of one pound maximum capacity may be displayed in commercial establishments.

Not more than twenty-five pounds of black powder as used in muzzle loading firearms may be stored in commercial establishments of which not more than four pounds in containers of one pound maximum capacity may be displayed.

Quantities in excess of one hundred fifty pounds of smokeless propellant or twenty-five pounds of black powder as used in muzzle loading firearms shall be stored in magazines constructed as specified in the rules and regulations for construction of magazines, and located in compliance with this chapter.

All small arms smokeless propellant when stored shall be packed in federal department of transportation approved containers. [1970 ex.s. c 72 § 6; 1969 ex.s. c 137 § 30.]

**70.74.350 Small arms ammunition, primers and propellants—Primers, transportation and storage requirements.** Small arms ammunition primers shall not be transported or stored except in the original shipping container approved by the federal department of transportation.

Truck or rail transportation of small arms ammunition primers shall be in accordance with the federal regulation of the United States department of transportation.

No more than twenty-five thousand small arms ammunition primers shall be transported in a private passenger vehicle: PROVIDED, That this requirement shall not apply to duly licensed dealers.

Quantities not to exceed ten thousand small arms ammunition primers may be stored in a residence.

Small arms ammunition primers shall be separate from flammable liquids, flammable solids, and oxidizing materials by a fire-resistant wall of one-hour rating or by a distance of twenty-five feet.

Not more than seven hundred fifty thousand small arms ammunition primers shall be stored in any one building except as next provided; no more than one hundred thousand shall be stored in any one pile, and piles shall be separated by at least fifteen feet.

Quantities of small arms ammunition primers in excess of seven hundred fifty thousand shall be stored in magazines in accordance with RCW 70.74.025. [1969 ex.s. c 137 § 31.]

**70.74.360 Licenses—Fingerprint and criminal record checks—Fee—Licenses prohibited for certain persons—License fees.** (1) The director of labor and industries shall require, as a condition precedent to the original issuance and upon renewal every three years thereafter of any explosive license, fingerprinting and criminal history record information checks of every applicant. In the case of a corporation, fingerprinting and criminal history record information checks shall be required for the management officials directly responsible for the operations where explosives are used if such persons have not previously had their fingerprints recorded with the department of labor and industries. In the case of a partnership, fingerprinting and criminal history record information checks shall be required of all general partners. Such fingerprints as are required by the department of labor and industries shall be submitted on forms provided by the department to the identification section of the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior convictions of the individuals fingerprinted. The Washington state patrol shall provide to the director of labor and industries such criminal record information as the director may request. The applicant shall give full cooperation to the department of labor and industries and shall assist the department of labor and industries in all aspects of the fingerprinting and criminal history record information check. The applicant shall be required to pay the current federal and state fee for fingerprint-based criminal history background checks.

(2) The director of labor and industries shall not issue a license to manufacture, purchase, store, use, or deal with explosives to:

(a) Any person under twenty-one years of age;

(b) Any person whose license is suspended or whose license has been revoked, except as provided in RCW 70.74.370;

(c) Any person who has been convicted in this state or elsewhere of a violent offense as defined in RCW 9.94A.030, perjury, false swearing, or bomb threats or a crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the director of labor and industries may issue a license if the person suffering a drug or alcohol related dependency is participating in or has completed an alcohol or drug recovery program acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The director of labor and industries shall require the applicant to provide proof of such participation and control; or

(d) Any person who has previously been adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease and who has not at the time of application been restored to competency.

(3) The director of labor and industries may establish reasonable licensing fees for the manufacture, dealing, purchase, use, and storage of explosives. [2009 c 39 § 1; 2008 c 285 § 10; 1988 c 198 § 3.]

**Intent—Captions not law—Effective date—2008 c 285:** See notes following RCW 43.22.434.

**70.74.370 License revocation, nonrenewal, or suspension.** (1) The department of labor and industries shall revoke and not renew the license of any person holding a manufacturer, dealer, purchaser, user, or storage license upon conviction of any of the following offenses, which conviction has become final:

(a) A violent offense as defined in RCW 9.94A.030;

(b) A crime involving perjury or false swearing, including the making of a false affidavit or statement under oath to the department of labor and industries in an application or report made pursuant to this title;

(c) A crime involving bomb threats;

(d) A crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the department of labor and industries may condition renewal of the license to any convicted person suffering a drug or alcohol dependency who is participating in an alcoholism or drug recovery program acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The department of labor and industries shall require the licensee to provide proof of such participation and control;

(e) A crime relating to possession, use, transfer, or sale of explosives under this chapter or any other chapter of the Revised Code of Washington.

(2) The department of labor and industries shall revoke the license of any person adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease. The director shall not renew the license until the person has been restored to competency.

(3) The department of labor and industries is authorized to suspend, for a period of time not to exceed six months, the license of any person who has violated this chapter or the rules promulgated pursuant to this chapter.

(4) The department of labor and industries may revoke the license of any person who has repeatedly violated this chapter or the rules promulgated pursuant to this chapter, or who has twice had his or her license suspended under this chapter.

(5) The department of labor and industries shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department of labor and industries' receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(6) Upon receipt of notification by the department of labor and industries of revocation or suspension, a licensee must surrender immediately to the department any or all such licenses revoked or suspended. [1997 c 58 § 872; 1988 c 198 § 4.]

***Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

**70.74.380 Licenses—Expiration—Extension of storage licenses.** With the exception of storage licenses for permanent facilities, every license issued under the authority of this chapter shall expire after one year from the date issued unless suspended or revoked. The director of labor and industries may extend the duration of storage licenses for permanent facilities to two years provided the location, distances, and use of the facilities remain unchanged. The fee for the two-year storage license shall be twice the annual fee. [1988 c 198 § 9.]

**70.74.390 Implementation of chapter and rules pursuant to chapter 49.17 RCW.** Unless specifically provided otherwise by statute, this chapter and the rules adopted thereunder shall be implemented and enforced, including penalties, violations, citations, appeals, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW. [1988 c 198 § 11.]

**70.74.400 Seizure and forfeiture.** (1) Explosives, improvised devices, and components of explosives and improvised devices that are possessed, manufactured, delivered, imported, exported, stored, sold, purchased, transported, abandoned, detonated, or used, or intended to be used, in violation of a provision of this chapter are subject to seizure and forfeiture by a law enforcement agency and no property right exists in them.

(2) The law enforcement agency making the seizure shall notify the Washington state department of labor and industries of the seizure.

(3) Seizure of explosives, improvised devices, and components of explosives and improvised devices under subsection (1) of this section may be made if:

(a) The seizure is incident to arrest or a search under a search warrant;

(b) The explosives, improvised devices, or components have been the subject of a prior judgment in favor of the state in an injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the explosives, improvised devices, or components are directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the explosives, improvised devices, or components were used or were intended to be used in violation of this chapter.

(4) A law enforcement agency shall destroy explosives seized under this chapter when it is necessary to protect the public safety and welfare. When destruction is not necessary

to protect the public safety and welfare, and the explosives are not being held for evidence, a seizure pursuant to this section commences proceedings for forfeiture.

(5) The law enforcement agency under whose authority the seizure was made shall issue a written notice of the seizure and commencement of the forfeiture proceedings to the person from whom the explosives were seized, to any known owner of the explosives, and to any person who has a known interest in the explosives. The notice shall be issued within fifteen days of the seizure. The notice of seizure and commencement of the forfeiture proceedings shall be served in the same manner as provided in RCW 4.28.080 for service of a summons. The law enforcement agency shall provide a form by which the person or persons may request a hearing before the law enforcement agency to contest the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the explosives, improvised devices, or components within thirty days of the date the notice was issued, the seized explosives, devices, or components shall be deemed forfeited.

(7) If, within thirty days of the issuance of the notice, any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items seized, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement or the officer's designee of the seizing agency, except that the person asserting the claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the items seized is more than five hundred dollars. The hearing and any appeal shall be conducted according to chapter 34.05 RCW. The seizing law enforcement agency shall bear the burden of proving that the person (a) has no lawful right of ownership or possession and (b) that the items seized were possessed, manufactured, stored, sold, purchased, transported, abandoned, detonated, or used in violation of a provision of this chapter with the person's knowledge or consent.

(8) The seizing law enforcement agency shall promptly return the items seized to the claimant upon a determination that the claimant is entitled to possession of the items seized.

(9) If the items seized are forfeited under this statute, the seizing agency shall dispose of the explosives by summary destruction. However, when explosives are destroyed either to protect public safety or because the explosives were forfeited, the person from whom the explosives were seized loses all rights of action against the law enforcement agency or its employees acting within the scope of their employment, or other governmental entity or employee involved with the seizure and destruction of explosives.

(10) This section is not intended to change the seizure and forfeiture powers, enforcement, and penalties available to the department of labor and industries pursuant to chapter 49.17 RCW as provided in RCW 70.74.390. [2002 c 370 § 3; 1993 c 293 § 8.]

Additional notes found at www.leg.wa.gov

**70.74.410 Reporting theft or loss of explosives.** A person who knows of a theft or loss of explosives for which that person is responsible under this chapter shall report the theft or loss to the local law enforcement agency within twenty-four hours of discovery of the theft or loss. The local law enforcement agency shall immediately report the theft or loss to the department of labor and industries. [1993 c 293 § 9.]

Additional notes found at www.leg.wa.gov

## Chapter 70.75 RCW
## FIREFIGHTING EQUIPMENT—STANDARDIZATION

Sections



**70.75.010 Standard thread specified—Exceptions.** All equipment for fire protection purposes, other than for forest firefighting, purchased by state and municipal authorities, or any other authorities having charge of public property, shall be equipped with the standard threads designated as the national standard thread as adopted by the American Insurance Association and defined in its pamphlet No. 194, dated 1963: PROVIDED, That this section shall not apply to steamer connections on fire hydrants. [1967 c 152 § 1.]

**70.75.020 Duties of chief of the Washington state patrol.** The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the chief of the Washington state patrol, through the director of fire protection. He or she shall provide the appliances necessary for carrying on this work, shall proceed with such standardization as rapidly as possible, and shall require the completion of such work within a period of five years from June 8, 1967: PROVIDED, That the chief of the Washington state patrol, through the director of fire protection, may exempt special purpose fire equipment and existing fire protection equipment from standardization when it is established that such equipment is not essential to the coordination of public fire protection operations. [1995 c 369 § 41; 1986 c 266 § 96; 1967 c 152 § 2.]

*State fire protection: Chapter 43.44 RCW.*

Additional notes found at www.leg.wa.gov

**70.75.030 Duties of chief of the Washington state patrol—Notification of industrial establishments and property owners having equipment.** The chief of the Washington state patrol, through the director of fire protection, shall notify industrial establishments and property owners having equipment, which may be necessary for fire department use in protecting the property or putting out fire, of any changes necessary to bring their equipment up to the requirements of the standard established by RCW 70.75.020, and shall render such assistance as may be available for converting substandard equipment to meet standard specifications and requirements. [1995 c 369 § 42; 1986 c 266 § 97; 1967 c 152 § 3.]

Additional notes found at www.leg.wa.gov

**70.75.040 Sale of nonstandard equipment as misdemeanor—Exceptions.** Any person who, without approval of

the chief of the Washington state patrol, through the director of fire protection, sells or offers for sale in Washington any fire hose, fire engine or other equipment for fire protection purposes which is fitted or equipped with other than the standard thread is guilty of a misdemeanor: PROVIDED, That fire equipment for special purposes, research, programs, forest firefighting, or special features of fire protection equipment found appropriate for uniformity within a particular protection area may be specifically exempted from this requirement by order of the chief of the Washington state patrol, through the director of fire protection. [1995 c 369 § 43; 1986 c 266 § 98; 1967 c 152 § 4.]

Additional notes found at www.leg.wa.gov

## Chapter 70.77 RCW
## STATE FIREWORKS LAW

Sections



*State building code: Chapter 19.27 RCW.*

**70.77.111 Intent.** The legislature declares that fireworks, when purchased and used in compliance with the laws of the state of Washington, are legal. The legislature intends that this chapter is regulatory only, and not prohibitory. [1995 c 61 § 1.]

Additional notes found at www.leg.wa.gov

**70.77.120 Definitions—To govern chapter.** The definitions set forth in this chapter shall govern the construction of this chapter, unless the context otherwise requires. [1961 c 228 § 1.]

**70.77.124 Definitions—"City."** "City" means any incorporated city or town. [1995 c 61 § 2; 1994 c 133 § 2.]

Additional notes found at www.leg.wa.gov

**70.77.126 Definitions—"Fireworks."** "Fireworks" means any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and which meets the definition of articles pyrotechnic or consumer fireworks or display fireworks. [2002 c 370 § 4; 1995 c 61 § 3; 1984 c 249 § 1; 1982 c 230 § 1.]

Additional notes found at www.leg.wa.gov

**70.77.131 Definitions—"Display fireworks."** "Display fireworks" means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as "consumer fireworks" and are classified as fireworks UN0333, UN0334, or UN0335 by the United States department of transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002, and including fused setpieces containing components which exceed 50 mg of salute powder. [2002 c 370 § 5; 1995 c 61 § 4; 1984 c 249 § 2; 1982 c 230 § 2.]

Additional notes found at www.leg.wa.gov

**70.77.136 Definitions—"Consumer fireworks."** "Consumer fireworks" means any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the United States consumer product safety commission, as set forth in 16 C.F.R. Parts 1500 and 1507 and including some small devices designed to produce audible effects, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials and classified as fireworks UN0336 by the United States department of transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002, and not including fused setpieces containing components which together exceed 50 mg of salute powder. [2002 c 370 § 6; 1995 c 61 § 5; 1984 c 249 § 3; 1982 c 230 § 3.]

Additional notes found at www.leg.wa.gov

**70.77.138 Definitions—"Articles pyrotechnic."** "Articles pyrotechnic" means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use which meet the weight limits for consumer fireworks but which are not labeled as such and which are classified as UN0431 or UN0432 by the United States department of transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002. [2002 c 370 § 7.]

Additional notes found at www.leg.wa.gov

**70.77.141 Definitions—"Agricultural and wildlife fireworks."** "Agricultural and wildlife fireworks" includes fireworks devices distributed to farmers, ranchers, and growers through a wildlife management program administered by the United States department of the interior or an equivalent state or local governmental agency. [2002 c 370 § 8; 1982 c 230 § 4.]

Additional notes found at www.leg.wa.gov

**70.77.146 Definitions—"Special effects."** "Special effects" means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production, or live entertainment. [1995 c 61 § 8; 1994 c 133 § 1; 1984 c 249 § 4; 1982 c 230 § 5.]

Additional notes found at www.leg.wa.gov

**70.77.160 Definitions—"Public display of fireworks."** "Public display of fireworks" means an entertainment feature where the public is or could be admitted or allowed to view the display or discharge of display fireworks. [2002 c 370 § 9; 1997 c 182 § 1; 1982 c 230 § 6; 1961 c 228 § 9.]

Additional notes found at www.leg.wa.gov

**70.77.165 Definitions—"Fire nuisance."** "Fire nuisance" means anything or any act which increases, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire; or which may obstruct, delay, or hinder, or may become the cause of any obstruction, delay, or a hindrance to the prevention or extinguishment of fire. [1961 c 228 § 10.]

**70.77.170 Definitions—"License."** "License" means a nontransferable formal authorization which the chief of the Washington state patrol, through the director of fire protection, is authorized to issue under this chapter to allow a person to engage in the act specifically designated therein. [2002 c 370 § 10; 1995 c 369 § 44; 1986 c 266 § 99; 1982 c 230 § 7; 1961 c 228 § 11.]

Additional notes found at www.leg.wa.gov

**70.77.175 Definitions—"Licensee."** "Licensee" means any person issued a fireworks license in conformance with this chapter. [2002 c 370 § 11; 1961 c 228 § 12.]

Additional notes found at www.leg.wa.gov

**70.77.177 Definitions—"Local fire official."** "Local fire official" means the chief of a local fire department or a chief fire protection officer or such other person as may be designated by the governing body of a city or county to act as a local fire official under this chapter. [1994 c 133 § 3; 1984 c 249 § 6.]

Additional notes found at www.leg.wa.gov

**70.77.180 Definitions—"Permit."** "Permit" means the official authorization granted by a city or county for the purpose of establishing and maintaining a place within the jurisdiction of the city or county where fireworks are manufactured, constructed, produced, packaged, stored, sold, or exchanged and the official authorization granted by a city or county for a public display of fireworks. [2002 c 370 § 12; 1995 c 61 § 9; 1984 c 249 § 5; 1982 c 230 § 8; 1961 c 228 § 13.]

Additional notes found at www.leg.wa.gov

**70.77.182 Definitions—"Permittee."** "Permittee" means any person issued a fireworks permit in conformance with this chapter. [2002 c 370 § 13.]

Additional notes found at www.leg.wa.gov

**70.77.190 Definitions—"Person."** "Person" includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit. [1961 c 228 § 15.]

**70.77.200 Definitions—"Importer."** "Importer" includes any person who for any purpose other than personal use:

(1) Brings fireworks into this state or causes fireworks to be brought into this state;

(2) Procures the delivery or receives shipments of any fireworks into this state; or

(3) Buys or contracts to buy fireworks for shipment into this state. [1995 c 61 § 10; 1961 c 228 § 17.]

Additional notes found at www.leg.wa.gov

**70.77.205 Definitions—"Manufacturer."** "Manufacturer" includes any person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks or persons who assemble consumer fireworks items or sets or packages containing consumer fireworks items. [2002 c 370 § 14; 1995 c 61 § 11; 1961 c 228 § 18.]

Additional notes found at www.leg.wa.gov

**70.77.210 Definitions—"Wholesaler."** "Wholesaler" includes any person who sells fireworks to a retailer or any other person for resale and any person who sells display fireworks to public display licensees. [2002 c 370 § 15; 1982 c 230 § 9; 1961 c 228 § 19.]

Additional notes found at www.leg.wa.gov

**70.77.215 Definitions—"Retailer."** "Retailer" includes any person who, at a fixed location or place of business, offers for sale, sells, or exchanges for consideration consumer fireworks to a consumer or user. [2002 c 370 § 16; 1982 c 230 § 10; 1961 c 228 § 20.]

Additional notes found at www.leg.wa.gov

**70.77.230 Definitions—"Pyrotechnic operator."** "Pyrotechnic operator" includes any individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging display fireworks. [2002 c 370 § 17; 1982 c 230 § 11; 1961 c 228 § 23.]

Additional notes found at www.leg.wa.gov

**70.77.236 Definitions—"New fireworks item."** (1) "New fireworks item" means any fireworks initially classified or reclassified as articles pyrotechnic, display fireworks, or consumer fireworks by the United States department of transportation after June 13, 2002, and which comply with the construction, chemical composition, and labeling regulations of the United States consumer products safety commission, 16 C.F.R., Parts 1500 and 1507.

(2) The chief of the Washington state patrol, through the director of fire protection, shall classify any new fireworks item in the same manner as the item is classified by the United States department of transportation and the United States consumer product safety commission. The chief of the Washington state patrol, through the director of fire protection, may determine, stating reasonable grounds, that the item should not be so classified. [2002 c 370 § 18; 1997 c 182 § 4; 1995 c 61 § 6.]

Additional notes found at www.leg.wa.gov

**70.77.241 Definitions—"Permanent storage"—"Temporary storage."** (1) "Permanent storage" means storage of display fireworks at any time and/or storage of consumer fireworks at any time other than the periods allowed under RCW 70.77.420(2) and 70.77.425 and which shall be in compliance with the requirements of chapter 70.74 RCW.

(2) "Temporary storage" means the storage of consumer fireworks during the periods allowed under RCW 70.77.420(2) and 70.77.425. [2002 c 370 § 34.]

Additional notes found at www.leg.wa.gov

**70.77.250 Chief of the Washington state patrol to enforce and administer—Powers and duties.** (1) The chief of the Washington state patrol, through the director of fire protection, shall enforce and administer this chapter.

(2) The chief of the Washington state patrol, through the director of fire protection, shall appoint such deputies and employees as may be necessary and required to carry out the provisions of this chapter.

(3) The chief of the Washington state patrol, through the director of fire protection, shall adopt those rules relating to fireworks as are necessary for the implementation of this chapter.

(4) The chief of the Washington state patrol, through the director of fire protection, shall adopt those rules as are necessary to ensure statewide minimum standards for the enforcement of this chapter. Counties and cities shall comply with these state rules. Any ordinances adopted by a county or city that are more restrictive than state law shall have an effective date no sooner than one year after their adoption.

(5) The chief of the Washington state patrol, through the director of fire protection, may exercise the necessary police powers to enforce the criminal provisions of this chapter. This grant of police powers does not prevent any other state agency and city, county, or local government agency having general law enforcement powers from enforcing this chapter within the jurisdiction of the agency and city, county, or local government.

(6) The chief of the Washington state patrol, through the director of fire protection, shall adopt rules necessary to enforce the civil penalty provisions for the violations of this chapter. A civil penalty under this subsection may not exceed one thousand dollars per day for each violation and is subject to the procedural requirements under RCW 70.77.252.

(7) The chief of the Washington state patrol, through the director of fire protection, may investigate or cause to be investigated all fires resulting, or suspected of resulting, from the use of fireworks. [2002 c 370 § 19; 1997 c 182 § 5. Prior: 1995 c 369 § 45; 1995 c 61 § 12; 1986 c 266 § 100; 1984 c 249 § 7; 1982 c 230 § 12; 1961 c 228 § 27.]

Additional notes found at www.leg.wa.gov

**70.77.252 Civil penalty—Notice—Remission, mitigation, review.** (1) The penalty provided for in RCW 70.77.250(6) shall be imposed by a notice in writing to the

person against whom the civil fine is assessed and shall describe the violation with reasonable particularity. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner which shows proof of receipt. Any penalty imposed by RCW 70.77.250(6) shall become due and payable twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (2) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (3) of this section.

(2) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the chief of the Washington state patrol, through the director of fire protection, for the remission or mitigation of the penalty. Upon receipt of the application, the chief of the Washington state patrol, through the director of fire protection, may remit or mitigate the penalty upon whatever terms the chief of the Washington state patrol, through the director of fire protection, deems proper, giving consideration to the degree of hazard associated with the violation. The chief of the Washington state patrol, through the director of fire protection, may only grant a remission or mitigation that it deems to be in the best interests of carrying out the purposes of this chapter. The chief of the Washington state patrol, through the director of fire protection, may ascertain the facts regarding all such applications in a manner it deems proper. When an application for remission or mitigation is made, any penalty incurred under RCW 70.77.250(6) becomes due and payable twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (3) of this section.

(3) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the chief of the Washington state patrol, through the director of fire protection.

(4) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(5) The attorney general may bring an action in the name of the chief of the Washington state patrol, through the director of fire protection, in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter.

(6) All penalties imposed under this section shall be paid to the state treasury and credited to the fire services trust fund and used as follows: At least fifty percent is for a statewide public education campaign developed by the chief of the Washington state patrol, through the director of fire protection, and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks; and the remainder is for statewide efforts to enforce this chapter. [2002 c 370 § 20.]

Additional notes found at www.leg.wa.gov

**70.77.255 Acts prohibited without appropriate licenses and permits—Minimum age for license or permit—Activities permitted without license or permit.** (1) Except as otherwise provided in this chapter, no person, without appropriate state licenses and city or county permits as required by this chapter may:

(a) Manufacture, import, possess, or sell any fireworks at wholesale or retail for any use;

(b) Make a public display of fireworks;

(c) Transport fireworks, except as a licensee or as a public carrier delivering to a licensee; or

(d) Knowingly manufacture, import, transport, store, sell, or possess with intent to sell, as fireworks, explosives, as defined under RCW 70.74.010, that are not fireworks, as defined under this chapter.

(2) Except as authorized by a license and permit under subsection (1)(b) of this section or as provided in RCW 70.77.311, no person may discharge display fireworks at any place.

(3) No person less than eighteen years of age may apply for or receive a license or permit under this chapter.

(4) No license or permit is required for the possession or use of consumer fireworks lawfully purchased at retail. [2002 c 370 § 21; 1997 c 182 § 6; 1995 c 61 § 13; 1994 c 133 § 4; 1984 c 249 § 10; 1982 c 230 § 14; 1961 c 228 § 28.]

Additional notes found at www.leg.wa.gov

**70.77.260 Application for permit.** (1) Any person desiring to do any act mentioned in RCW 70.77.255(1) (a) or (c) shall apply in writing to a local fire official for a permit.

(2) Any person desiring to put on a public display of fireworks under RCW 70.77.255(1)(b) shall apply in writing to a local fire official for a permit. Application shall be made at least ten days in advance of the proposed display. [1984 c 249 § 11; 1982 c 230 § 15; 1961 c 228 § 29.]

*General license holders to file license certificate with application for permit for public display of fireworks: RCW 70.77.355.*

**70.77.265 Investigation, report on permit application.** The local fire official receiving an application for a permit under RCW 70.77.260(1) shall investigate the application and submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city or county. [1994 c 133 § 5; 1984 c 249 § 12; 1961 c 228 § 30.]

Additional notes found at www.leg.wa.gov

**70.77.270 Governing body to grant permits—Statewide standards—Liability insurance.** (1) The governing body of a city or county, or a designee, shall grant an application for a permit under RCW 70.77.260(1) if the application meets the standards under this chapter, and the applicable ordinances of the city or county. The permit shall be granted by June 10, or no less than thirty days after receipt of an application whichever date occurs first, for sales commencing on June 28 and on December 27; or by December 10, or no less than thirty days after receipt of an application whichever date occurs first, for sales commencing only on December 27.

(2) The chief of the Washington state patrol, through the director of fire protection, shall prescribe uniform, statewide standards for retail fireworks stands including, but not limited to, the location of the stands, setback requirements and siting of the stands, types of buildings and construction material that may be used for the stands, use of the stands and areas

around the stands, cleanup of the area around the stands, transportation of fireworks to and from the stands, and temporary storage of fireworks associated with the retail fireworks stands. All cities and counties which allow retail fireworks sales shall comply with these standards.

(3) No retail fireworks permit may be issued to any applicant unless the retail fireworks stand is covered by a liability insurance policy with coverage of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence, respectively, and not less than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not readily available from at least three approved insurance companies. If insurance in this amount is not offered, each fireworks permit shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

No wholesaler may knowingly sell or supply fireworks to any retail fireworks licensee unless the wholesaler determines that the retail fireworks licensee is covered by liability insurance in the same, or greater, amount as provided in this subsection. [2002 c 370 § 22; 1997 c 182 § 8; 1995 c 61 § 14; 1994 c 133 § 6; 1984 c 249 § 13; 1961 c 228 § 31.]

Additional notes found at www.leg.wa.gov

**70.77.280 Public display permit—Investigation—Governing body to grant—Conditions.** The local fire official receiving an application for a permit under RCW 70.77.260(2) for a public display of fireworks shall investigate whether the character and location of the display as proposed would be hazardous to property or dangerous to any person. Based on the investigation, the official shall submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city or county. The governing body shall grant the application if it meets the requirements of this chapter and the ordinance of the city or county. [1995 c 61 § 15; 1994 c 133 § 7; 1984 c 249 § 14; 1961 c 228 § 33.]

Additional notes found at www.leg.wa.gov

**70.77.285 Public display permit—Bond or insurance for liability.** Except as provided in RCW 70.77.355, the applicant for a permit under RCW 70.77.260(2) for a public display of fireworks shall include with the application evidence of a bond issued by an authorized surety company. The bond shall be in the amount required by RCW 70.77.295 and shall be conditioned upon the applicant's payment of all damages to persons or property resulting from or caused by such public display of fireworks, or any negligence on the part of the applicant or its agents, servants, employees, or subcontractors in the presentation of the display. Instead of a bond, the applicant may include a certificate of insurance evidencing the carrying of appropriate liability insurance in the amount required by RCW 70.77.295 for the benefit of the person named therein as assured, as evidence of ability to respond in damages. The local fire official receiving the application shall approve the bond or insurance if it meets the requirements of this section. [1995 c 61 § 16; 1984 c 249 § 15; 1982 c 230 § 16; 1961 c 228 § 34.]

Additional notes found at www.leg.wa.gov

**70.77.290 Public display permit—Granted for exclusive purpose.** If a permit under RCW 70.77.260(2) for the public display of fireworks is granted, the sale, possession and use of fireworks for the public display is lawful for that purpose only. [1997 c 182 § 9; 1984 c 249 § 16; 1961 c 228 § 35.]

Additional notes found at www.leg.wa.gov

**70.77.295 Public display permit—Amount of bond or insurance.** In the case of an application for a permit under RCW 70.77.260(2) for the public display of fireworks, the amount of the surety bond or certificate of insurance required under RCW 70.77.285 shall be not less than fifty thousand dollars and one million dollars for bodily injury liability for each person and event, respectively, and not less than twenty-five thousand dollars for property damage liability for each event. [1984 c 249 § 17; 1982 c 230 § 17; 1961 c 228 § 36.]

**70.77.305 Chief of the Washington state patrol to issue licenses—Registration of in-state agents.** The chief of the Washington state patrol, through the director of fire protection, has the power to issue licenses for the manufacture, importation, sale, and use of all fireworks in this state, except as provided in RCW 70.77.311 and 70.77.395. A person may be licensed as a manufacturer, importer, or wholesaler under this chapter only if the person has a designated agent in this state who is registered with the chief of the Washington state patrol, through the director of fire protection. [2002 c 370 § 23; 1995 c 369 § 46; 1986 c 266 § 101; 1984 c 249 § 18; 1982 c 230 § 18; 1961 c 228 § 38.]

Additional notes found at www.leg.wa.gov

**70.77.311 Exemptions from licensing—Purchase of certain agricultural and wildlife fireworks by government agencies—Purchase of consumer fireworks by religious or private organizations.** (1) No license is required for the purchase of agricultural and wildlife fireworks by government agencies if:

(a) The agricultural and wildlife fireworks are used for wildlife control or are distributed to farmers, ranchers, or growers through a wildlife management program administered by the United States department of the interior or an equivalent state or local governmental agency;

(b) The distribution is in response to a written application describing the wildlife management problem that requires use of the devices;

(c) It is of no greater quantity than necessary to control the described problem; and

(d) It is limited to situations where other means of control are unavailable or inadequate.

(2) No license is required for religious organizations or private organizations or persons to purchase or use consumer fireworks and such audible ground devices as firecrackers, salutes, and chasers if:

(a) Purchased from a licensed manufacturer, importer, or wholesaler;

(b) For use on prescribed dates and locations;

(c) For religious or specific purposes; and

(d) A permit is obtained from the local fire official. No fee may be charged for this permit. [2002 c 370 § 24; 1995 c 61 § 17; 1984 c 249 § 19; 1982 c 230 § 19.]

Additional notes found at www.leg.wa.gov

**70.77.315 Application for license.** Any person who desires to engage in the manufacture, importation, sale, or use of fireworks, except use as provided in RCW 70.77.255(4), 70.77.311, and 70.77.395, shall make a written application to the chief of the Washington state patrol, through the director of fire protection, on forms provided by him or her. Such application shall be accompanied by the annual license fee as prescribed in this chapter. [2002 c 370 § 25; 1997 c 182 § 10. Prior: 1995 c 369 § 47; 1995 c 61 § 18; 1986 c 266 § 102; 1982 c 230 § 20; 1961 c 228 § 40.]

Additional notes found at www.leg.wa.gov

**70.77.320 Application for license to be signed.** The application for a license shall be signed by the applicant. If application is made by a partnership, it shall be signed by each partner of the partnership, and if application is made by a corporation, it shall be signed by an officer of the corporation and bear the seal of the corporation. [1961 c 228 § 41.]

**70.77.325 Annual application for a license—Dates.** (1) An application for a license shall be made annually by every person holding an existing license who wishes to continue the activity requiring the license during an additional year. The application shall be accompanied by the annual license fees as prescribed in RCW 70.77.343 and 70.77.340.

(2) A person applying for an annual license as a retailer under this chapter shall file an application no later than May 1 for annual sales commencing on June 28 and on December 27, or no later than November 1 for sales commencing only on December 27. The chief of the Washington state patrol, through the director of fire protection, shall grant or deny the license within fifteen days of receipt of the application.

(3) A person applying for an annual license as a manufacturer, importer, or wholesaler under this chapter shall file an application by January 31 of the current year. The chief of the Washington state patrol, through the director of fire protection, shall grant or deny the license within ninety days of receipt of the application. [1997 c 182 § 11; 1994 c 133 § 8; 1991 c 135 § 4; 1986 c 266 § 103; 1984 c 249 § 20; 1982 c 230 § 21; 1961 c 228 § 42.]

**Intent—Effective date—Severability—1991 c 135:** See notes following RCW 43.43.946.

Additional notes found at www.leg.wa.gov

**70.77.330 License to engage in particular act to be issued if not contrary to public safety or welfare—Transportation of fireworks authorized.** If the chief of the Washington state patrol, through the director of fire protection, finds that the granting of such license is not contrary to public safety or welfare, he or she shall issue a license authorizing the applicant to engage in the particular act or acts upon the payment of the license fee specified in this chapter. Licensees may transport the class of fireworks for which they hold a valid license. [2002 c 370 § 26; 1995 c 369 § 48; 1986 c 266 § 104; 1982 c 230 § 22; 1961 c 228 § 43.]

Additional notes found at www.leg.wa.gov

**70.77.335 License authorizes activities of sellers, authorized representatives, employees.** The authorization to engage in the particular act or acts conferred by a license to a person shall extend to sellers, authorized representatives, and other employees of such person. [2002 c 370 § 27; 1982 c 230 § 23; 1961 c 228 § 44.]

Additional notes found at www.leg.wa.gov

**70.77.340 Annual license fees.** The original and annual license fee shall be as follows:

| | |
|---|---|
| Manufacturer . . . . . $ | 500.00 |
| Importer . . . . . | 100.00 |
| Wholesaler . . . . . | 1,000.00 |
| Retailer (for each separate retail outlet) . . . . . | 10.00 |
| Public display for display fireworks . . . | 10.00 |
| Pyrotechnic operator for display fireworks . . . . . | 5.00 |

[2002 c 370 § 28; 1982 c 230 § 24; 1961 c 228 § 45.]

Additional notes found at www.leg.wa.gov

**70.77.343 License fees—Additional.** (1) License fees, in addition to the fees in RCW 70.77.340, shall be charged as follows:

| | |
|---|---|
| Manufacturer . . . . . $ | 1,500.00 |
| Importer . . . . . | 900.00 |
| Wholesaler . . . . . | 1,000.00 |
| Retailer (for each separate outlet) . . . . . | 30.00 |
| Public display for display fireworks . . . | 40.00 |
| Pyrotechnic operator for display fireworks . . . . . | 5.00 |

(2) All receipts from the license fees in this section shall be placed in the fire services trust fund and at least seventy-five percent of these receipts shall be used to fund a statewide public education campaign developed by the chief of the Washington state patrol and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks and the remaining receipts shall be used to fund statewide enforcement efforts against the sale and use of fireworks that are illegal under this chapter. [2002 c 370 § 29; 1997 c 182 § 12; 1995 c 61 § 19; 1991 c 135 § 6.]

**Intent—Effective date—Severability—1991 c 135:** See notes following RCW 43.43.946.

Additional notes found at www.leg.wa.gov

**70.77.345 Duration of licenses and retail fireworks sales permits.** Every license and every retail fireworks sales permit issued shall be for the period from January 1st of the year for which the application is made through January 31st of the subsequent year, or the remaining portion thereof. [1997 c 182 § 13; 1995 c 61 § 20; 1991 c 135 § 5; 1982 c 230 § 25; 1961 c 228 § 46.]

**Intent—Effective date—Severability—1991 c 135:** See notes following RCW 43.43.946.

Additional notes found at www.leg.wa.gov

**70.77.355 General license for public display—Surety bond or insurance—Filing of license certificate with local permit application.** (1) Any adult person may secure a general license from the chief of the Washington state patrol, through the director of fire protection, for the public display of fireworks within the state of Washington. A general license is subject to the provisions of this chapter relative to the securing of local permits for the public display of fireworks in any city or county, except that in lieu of filing the bond or certificate of public liability insurance with the appropriate local official under RCW 70.77.260 as required in RCW 70.77.285, the same bond or certificate shall be filed with the chief of the Washington state patrol, through the director of fire protection. The bond or certificate of insurance for a general license in addition shall provide that: (a) The insurer will not cancel the insured's coverage without fifteen days prior written notice to the chief of the Washington state patrol, through the director of fire protection; (b) the duly licensed pyrotechnic operator required by law to supervise and discharge the public display, acting either as an employee of the insured or as an independent contractor and the state of Washington, its officers, agents, employees, and servants are included as additional insureds, but only insofar as any operations under contract are concerned; and (c) the state is not responsible for any premium or assessments on the policy.

(2) The chief of the Washington state patrol, through the director of fire protection, may issue such general licenses. The holder of a general license shall file a certificate from the chief of the Washington state patrol, through the director of fire protection, evidencing the license with any application for a local permit for the public display of fireworks under RCW 70.77.260. [1997 c 182 § 14; 1994 c 133 § 9; 1986 c 266 § 105; 1984 c 249 § 21; 1982 c 230 § 26; 1961 c 228 § 48.]

Additional notes found at www.leg.wa.gov

**70.77.360 Denial of license for material misrepresentation or if contrary to public safety or welfare.** If the chief of the Washington state patrol, through the director of fire protection, finds that an application for any license under this chapter contains a material misrepresentation or that the granting of any license would be contrary to the public safety or welfare, the chief of the Washington state patrol, through the director of fire protection, may deny the application for the license. [1995 c 369 § 49; 1986 c 266 § 106; 1984 c 249 § 22; 1982 c 230 § 27; 1961 c 228 § 49.]

Additional notes found at www.leg.wa.gov

**70.77.365 Denial of license for failure to meet qualifications or conditions.** A written report by the chief of the Washington state patrol, through the director of fire protection, or a local fire official, or any of their authorized representatives, disclosing that the applicant for a license, or the premises for which a license is to apply, do not meet the qualifications or conditions for a license constitutes grounds for the denial by the chief of the Washington state patrol, through the director of fire protection, of any application for a license. [1995 c 369 § 50; 1986 c 266 § 107; 1984 c 249 § 23; 1982 c 230 § 28; 1961 c 228 § 50.]

Additional notes found at www.leg.wa.gov

**70.77.370 Hearing on denial of license.** Any applicant who has been denied a license for reasons other than making application after the date set forth in RCW 70.77.325 is entitled to a hearing in accordance with the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [1994 c 133 § 10; 1989 c 175 § 129; 1982 c 230 § 29; 1961 c 228 § 51.]

Additional notes found at www.leg.wa.gov

**70.77.375 Revocation of license.** The chief of the Washington state patrol, through the director of fire protection, upon reasonable opportunity to be heard, may revoke any license issued pursuant to this chapter, if he or she finds that:

(1) The licensee has violated any provisions of this chapter or any rule made by the chief of the Washington state patrol, through the director of fire protection, under and with the authority of this chapter;

(2) The licensee has created or caused a fire nuisance;

(3) Any licensee has failed or refused to file any required reports; or

(4) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the chief of the Washington state patrol, through the director of fire protection, in refusing originally to issue such license. [1997 c 182 § 16; 1995 c 369 § 51; 1995 c 61 § 21; 1986 c 266 § 108; 1982 c 230 § 30; 1961 c 228 § 52.]

**Reviser's note:** RCW 70.77.375 was amended twice during the 1995 legislative session, each without reference to the other. This section was subsequently amended by 1997 c 182 § 16, combining the text of the 1995 amendments, but not reenacting those sections. Any subsequent amendments to this section should include the 1997 and both 1995 histories in a reenactment.

Additional notes found at www.leg.wa.gov

**70.77.381 Wholesalers and retailers—Liability insurance requirements.** (1) Every wholesaler shall carry liability insurance for each wholesale and retail fireworks outlet it operates in the amount of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence, respectively, and not less than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not available from at least three approved insurance companies. If insurance in this amount is not offered, each wholesale and retail outlet shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

(2) No wholesaler may knowingly sell or supply fireworks to any retail licensee unless the wholesaler determines that the retail licensee carries liability insurance in the same, or greater, amount as provided in subsection (1) of this section. [2002 c 370 § 30; 1995 c 61 § 27.]

Additional notes found at www.leg.wa.gov

**70.77.386 Retailers—Purchase from licensed wholesalers.** Retail fireworks licensees shall purchase all fireworks from wholesalers possessing a valid wholesale license issued by the state of Washington. [1995 c 61 § 28.]

Additional notes found at www.leg.wa.gov

**70.77.395 Dates and times consumer fireworks may be sold or discharged—Local governments may limit, prohibit sale or discharge of fireworks.** (1) It is legal to sell and purchase consumer fireworks within this state from twelve o'clock noon to eleven o'clock p.m. on the twenty-eighth of June, from nine o'clock a.m. to eleven o'clock p.m. on each day from the twenty-ninth of June through the fourth of July, from nine o'clock a.m. to nine o'clock p.m. on the fifth of July, from twelve o'clock noon to eleven o'clock p.m. on each day from the twenty-seventh of December through the thirty-first of December of each year, and as provided in RCW 70.77.311.

(2) Consumer fireworks may be used or discharged each day between the hours of twelve o'clock noon and eleven o'clock p.m. on the twenty-eighth of June and between the hours of nine o'clock a.m. and eleven o'clock p.m. on the twenty-ninth of June to the third of July, and on July 4th between the hours of nine o'clock a.m. and twelve o'clock midnight, and between the hours of nine o'clock a.m. and eleven o'clock p.m. on July 5th, and from six o'clock p.m. on December 31st until one o'clock a.m. on January 1st of the subsequent year, and as provided in RCW 70.77.311.

(3) A city or county may enact an ordinance within sixty days of June 13, 2002, to limit or prohibit the sale, purchase, possession, or use of consumer fireworks on December 27, 2002, through December 31, 2002, and thereafter as provided in RCW 70.77.250(4). [2002 c 370 § 31; 1995 c 61 § 22; 1984 c 249 § 24; 1982 c 230 § 31; 1961 c 228 § 56.]

Additional notes found at www.leg.wa.gov

**70.77.401 Sale of certain fireworks prohibited.** No fireworks may be sold or offered for sale to the public as consumer fireworks which are classified as sky rockets, or missile-type rockets, firecrackers, salutes, or chasers as defined by the United States department of transportation and the federal consumer products safety commission except as provided in RCW 70.77.311. [2002 c 370 § 32; 1995 c 61 § 7.]

Additional notes found at www.leg.wa.gov

**70.77.405 Authorized sales of toy caps, tricks, and novelties.** Toy paper caps containing not more than twenty-five hundredths grain of explosive compound for each cap and trick or novelty devices not classified as consumer fireworks may be sold at all times unless prohibited by local ordinance. [2002 c 370 § 33; 1982 c 230 § 32; 1961 c 228 § 58.]

Additional notes found at www.leg.wa.gov

**70.77.410 Public displays not to be hazardous.** All public displays of fireworks shall be of such a character and so located, discharged, or fired as not to be hazardous or dangerous to persons or property. [1961 c 228 § 59.]

**70.77.415 Supervision of public displays.** Every public display of fireworks shall be handled or supervised by a pyrotechnic operator licensed by the chief of the Washington state patrol, through the director of fire protection, under RCW 70.77.255. [1995 c 369 § 52; 1986 c 266 § 109; 1984 c 249 § 25; 1982 c 230 § 33; 1961 c 228 § 60.]

Additional notes found at www.leg.wa.gov

**70.77.420 Permanent storage permit required—Application—Investigation—Grant or denial—Conditions.** (1) It is unlawful for any person to store permanently fireworks of any class without a permit for such permanent storage from the city or county in which the storage is to be made. A person proposing to store permanently fireworks shall apply in writing to a city or county at least ten days prior to the date of the proposed permanent storage. The city or county receiving the application for a permanent storage permit shall investigate whether the character and location of the permanent storage as proposed meets the requirements of the zoning, building, and fire codes or constitutes a hazard to property or is dangerous to any person. Based on the investigation, the city or county may grant or deny the application. The city or county may place reasonable conditions on any permit granted.

(2) For the purposes of this section the temporary storing or keeping of consumer fireworks when in conjunction with a valid retail sales license and permit shall comply with RCW 70.77.425 and the standards adopted under RCW 70.77.270(2) and not this section. [2002 c 370 § 35; 1997 c 182 § 18; 1984 c 249 § 26; 1982 c 230 § 34; 1961 c 228 § 61.]

Additional notes found at www.leg.wa.gov

**70.77.425 Approved permanent storage facilities required.** It is unlawful for any person to store permanently stocks of fireworks remaining unsold after the lawful period of sale as provided in the person's permit except in such places of permanent storage as the city or county issuing the permit approves. Unsold stocks of consumer fireworks remaining after the authorized retail sales period from nine o'clock a.m. on June 28th to twelve o'clock noon on July 5th shall be returned on or before July 31st of the same year, or remaining after the authorized retail sales period from twelve o'clock noon on December 27th to eleven o'clock p.m. on December 31st shall be returned on or before January 10th of the subsequent year, to the approved permanent storage facilities of a licensed fireworks wholesaler or to a magazine or permanent storage place approved by a local fire official. [2002 c 370 § 36; 1984 c 249 § 27; 1982 c 230 § 35; 1961 c 228 § 62.]

Additional notes found at www.leg.wa.gov

**70.77.430 Sale of stock after revocation or expiration of license.** Notwithstanding RCW 70.77.255, following the revocation or expiration of a license, a licensee in lawful possession of a lawfully acquired stock of fireworks may sell such fireworks, but only under supervision of the chief of the Washington state patrol, through the director of fire protection. Any sale under this section shall be solely to persons who are authorized to buy, possess, sell, or use such fireworks. [1995 c 369 § 53; 1986 c 266 § 110; 1984 c 249 § 28; 1982 c 230 § 36; 1961 c 228 § 63.]

Additional notes found at www.leg.wa.gov

**70.77.435 Seizure of fireworks.** Any fireworks which are illegally sold, offered for sale, used, discharged, possessed, or transported in violation of the provisions of this chapter or the rules or regulations of the chief of the Washington state patrol, through the director of fire protection, are subject to seizure by the chief of the Washington state patrol,

through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority. [2002 c 370 § 37; 1997 c 182 § 20; 1995 c 61 § 23; 1994 c 133 § 11; 1986 c 266 § 111; 1982 c 230 § 37; 1961 c 228 § 64.]

Additional notes found at www.leg.wa.gov

**70.77.440 Seizure of fireworks—Proceedings for forfeiture—Disposal of confiscated fireworks.** (1) In the event of seizure under RCW 70.77.435, proceedings for forfeiture shall be deemed commenced by the seizure. The chief of the Washington state patrol or a designee, through the director of fire protection or the agency conducting the seizure, under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the fireworks seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure.

(2) If no person notifies the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or right to lawful possession of seized fireworks within thirty days of the seizure, the seized fireworks shall be deemed forfeited.

(3) If any person notifies the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or possession of the fireworks within thirty days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the seized fireworks is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to have the lawful right to possession of the seized fireworks. The chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, shall promptly return the fireworks to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession of the fireworks.

(4) When fireworks are forfeited under this chapter the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, may:

(a) Dispose of the fireworks by summary destruction at any time subsequent to thirty days from such seizure or ten days from the final termination of proceedings under this section, whichever is later; or

(b) Sell the forfeited fireworks and chemicals used to make fireworks, that are legal for use and possession under this chapter, to wholesalers or manufacturers, authorized to possess and use such fireworks or chemicals under a license issued by the chief of the Washington state patrol, through the director of fire protection. Sale shall be by public auction after publishing a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the auction is to be held, at least three days before the date of the auction. The proceeds of the sale of the seized fireworks under this section may be retained by the agency conducting the seizure and used to offset the costs of seizure and/or storage costs of the seized fireworks. The remaining proceeds, if any, shall be deposited in the fire services trust fund and shall be used as follows: At least fifty percent is for a statewide public education campaign developed by the chief of the Washington state patrol, through the director of fire protection, and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks; and the remainder is for statewide efforts to enforce this chapter. [2002 c 370 § 38; 1997 c 182 § 21; 1995 c 61 § 24; 1994 c 133 § 12; 1986 c 266 § 112; 1984 c 249 § 29; 1961 c 228 § 65.]

Additional notes found at www.leg.wa.gov

**70.77.450 Examination, inspection of books and premises.** The chief of the Washington state patrol, through the director of fire protection, may make an examination of the books and records of any licensee, or other person relative to fireworks, and may visit and inspect the premises of any licensee he or she may deem at any time necessary for the purpose of enforcing the provisions of this chapter. The licensee, owner, lessee, manager, or operator of any such building or premises shall permit the chief of the Washington state patrol, through the director of fire protection, his or her deputies or salaried assistants, the local fire official, and their authorized representatives to enter and inspect the premises at the time and for the purpose stated in this section. [2012 c 117 § 395; 1997 c 182 § 22; 1994 c 133 § 13; 1986 c 266 § 113; 1961 c 228 § 67.]

Additional notes found at www.leg.wa.gov

**70.77.455 Licensees to maintain and make available complete records—Exemption from public records act.** (1) All licensees shall maintain and make available to the chief of the Washington state patrol, through the director of fire protection, full and complete records showing all production, imports, exports, purchases, and sales of fireworks items by class.

(2) All records obtained and all reports produced, as required by this chapter, are not subject to disclosure through the public records act under chapter 42.56 RCW. [2005 c 274 § 337; 1997 c 182 § 23. Prior: 1995 c 369 § 54; 1995 c 61 § 25; 1986 c 266 § 114; 1982 c 230 § 38; 1961 c 228 § 68.]

Additional notes found at www.leg.wa.gov

**70.77.460 Reports, payments deemed made when filed or paid or date mailed.** When reports on fireworks transactions or the payments of license fees or penalties are required to be made on or by specified dates, they shall be deemed to have been made at the time they are filed with or paid to the chief of the Washington state patrol, through the director of fire protection, or, if sent by mail, on the date shown by the United States postmark on the envelope con-

taining the report or payment. [1995 c 369 § 55; 1986 c 266 § 115; 1961 c 228 § 69.]

Additional notes found at www.leg.wa.gov

**70.77.480 Prohibited transfers of fireworks.** The transfer of fireworks ownership whether by sale at wholesale or retail, by gift or other means of conveyance of title, or by delivery of any fireworks to any person in the state who does not possess and present to the carrier for inspection at the time of delivery a valid license, where such license is required to purchase, possess, transport, or use fireworks, is prohibited. [1982 c 230 § 39; 1961 c 228 § 73.]

**70.77.485 Unlawful possession of fireworks—Penalties.** It is unlawful to possess any class or kind of fireworks in violation of this chapter. A violation of this section is:

(1) A misdemeanor if involving less than one pound of fireworks, exclusive of external packaging; or

(2) A gross misdemeanor if involving one pound or more of fireworks, exclusive of external packaging.

For the purposes of this section, "external packaging" means any materials that are not an integral part of the operative unit of fireworks. [1984 c 249 § 30; 1961 c 228 § 74.]

**70.77.488 Unlawful discharge or use of fireworks—Penalty.** It is unlawful for any person to discharge or use fireworks in a reckless manner which creates a substantial risk of death or serious physical injury to another person or damage to the property of another. A violation of this section is a gross misdemeanor. [1984 c 249 § 37.]

**70.77.495 Forestry permit to set off fireworks in forest, brush, fallow, etc.** It is unlawful for any person to set off fireworks of any kind in forest, fallows, grass, or brush covered land, either on his or her own land or the property of another, between April 15th and December 1st of any year, unless it is done under a written permit from the Washington state department of natural resources or its duly authorized agent, and in strict accordance with the terms of the permit and any other applicable law. [2012 c 117 § 396; 2002 c 370 § 39; 1988 c 128 § 11; 1961 c 228 § 76.]

Additional notes found at www.leg.wa.gov

**70.77.510 Unlawful sales or transfers of display fireworks—Penalty.** It is unlawful for any person knowingly to sell, transfer, or agree to sell or transfer any display fireworks to any person who is not a fireworks licensee as provided for by this chapter. A violation of this section is a gross misdemeanor. [2002 c 370 § 40; 1984 c 249 § 31; 1982 c 230 § 40; 1961 c 228 § 79.]

Additional notes found at www.leg.wa.gov

**70.77.515 Unlawful sales or transfers of consumer fireworks—Penalty.** (1) It is unlawful for any person to offer for sale, sell, or exchange for consideration, any consumer fireworks to a consumer or user other than at a fixed place of business of a retailer for which a license and permit have been issued.

(2) No licensee may sell any fireworks to any person under the age of sixteen.

(3) A violation of this section is a gross misdemeanor. [2002 c 370 § 41; 1984 c 249 § 32; 1982 c 230 § 41; 1961 c 228 § 80.]

Additional notes found at www.leg.wa.gov

**70.77.517 Unlawful transportation of fireworks—Penalty.** It is unlawful for any person, except in the course of continuous interstate transportation through any state, to transport fireworks from this state into any other state, or deliver them for transportation into any other state, or attempt so to do, knowing that such fireworks are to be delivered, possessed, stored, transshipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such other state specifically prohibiting or regulating the use of fireworks. A violation of this section is a gross misdemeanor.

This section does not apply to a common or contract carrier or to international or domestic water carriers engaged in interstate commerce or to the transportation of fireworks into a state for the use of United States agencies in the carrying out or the furtherance of their operations.

In the enforcement of this section, the definitions of fireworks contained in the laws of the respective states shall be applied.

As used in this section, the term "state" includes the several states, territories, and possessions of the United States, and the District of Columbia. [2002 c 370 § 42; 1984 c 249 § 34.]

Additional notes found at www.leg.wa.gov

**70.77.520 Unlawful to permit fire nuisance where fireworks kept—Penalty.** It is unlawful for any person to allow any combustibles to accumulate in any premises in which fireworks are stored or sold or to permit a fire nuisance to exist in such a premises. A violation of this section is a misdemeanor. [2002 c 370 § 43; 1984 c 249 § 33; 1961 c 228 § 81.]

Additional notes found at www.leg.wa.gov

**70.77.525 Manufacture or sale of fireworks for out-of-state shipment.** This chapter does not prohibit any manufacturer, wholesaler, dealer, or jobber, having a license and a permit secured under the provisions of this chapter, from manufacturing or selling any kind of fireworks for direct shipment out of this state. [1982 c 230 § 42; 1961 c 228 § 82.]

**70.77.530 Nonprohibited acts—Signal purposes, forest protection.** This chapter does not prohibit the use of torpedoes, flares, or fusees by motor vehicles, railroads, or other transportation agencies for signal purposes or illumination or for use in forest protection activities. [1961 c 228 § 83.]

**70.77.535 Articles pyrotechnic, special effects for entertainment media.** The assembling, compounding, use, and display of articles pyrotechnic or special effects in the production of motion pictures, radio or television productions, or live entertainment shall be under the direction and control of a pyrotechnic operator licensed by the state of Washington and who possesses a valid permit from the city

or county. [2002 c 370 § 44; 1994 c 133 § 14; 1984 c 249 § 35; 1982 c 230 § 43; 1961 c 228 § 84.]

Additional notes found at www.leg.wa.gov

**70.77.540 Penalty.** Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter or any rules issued thereunder is guilty of a misdemeanor. [1984 c 249 § 36; 1961 c 228 § 85.]

**70.77.545 Violation a separate, continuing offense.** A person is guilty of a separate offense for each day during which he or she commits, continues, or permits a violation of any provision of, or any order, rule, or regulation made pursuant to this chapter. [2012 c 117 § 397; 1961 c 228 § 86.]

**70.77.547 Civil enforcement not precluded.** The inclusion in this chapter of criminal penalties does not preclude enforcement of this chapter through civil means. [1994 c 133 § 15.]

Additional notes found at www.leg.wa.gov

**70.77.548 Attorney general may institute civil proceedings—Venue.** Civil proceedings to enforce this chapter may be brought in the superior court of Thurston county or the county in which the violation occurred by the attorney general or the attorney of the city or county in which the violation occurred on his or her own motion or at the request of the chief of the Washington state patrol, through the director of fire protection. [2002 c 370 § 48.]

Additional notes found at www.leg.wa.gov

**70.77.549 Civil penalty—Costs.** In addition to criminal penalties, a person who violates this chapter is also liable for a civil penalty and for the costs incurred with enforcing this chapter and bringing the civil action, including court costs and reasonable investigative and attorneys' fees. [2002 c 370 § 49.]

Additional notes found at www.leg.wa.gov

**70.77.550 Short title.** This chapter shall be known and may be cited as the state fireworks law. [1961 c 228 § 87.]

**70.77.555 Local permit and license fees—Limits.** (1) A city or county may provide by ordinance for a fee in an amount sufficient to cover all legitimate costs for all needed permits, licenses, and authorizations from application to and through processing, issuance, and inspection, but in no case to exceed a total of one hundred dollars for any one retail sales permit for any one selling season in a year, whether June 28th through July 5th or December 27th through December 31st, or a total of two hundred dollars for both selling seasons.

(2) A city or county may provide by ordinance for a fee in an amount sufficient to cover all legitimate costs for all display permits, licenses, and authorizations from application to and through processing, issuance, and inspection, not to exceed actual costs and in no case more than a total of five thousand dollars for any one display permit. [2002 c 370 § 45; 1995 c 61 § 26; 1982 c 230 § 44; 1961 c 228 § 88.]

Additional notes found at www.leg.wa.gov

**70.77.575 Chief of the Washington state patrol to provide list of consumer fireworks that may be sold to the public.** (1) The chief of the Washington state patrol, through the director of fire protection, shall adopt by rule a list of the consumer fireworks that may be sold to the public in this state pursuant to this chapter. The chief of the Washington state patrol, through the director of fire protection, shall file the list by October 1st of each year with the code reviser for publication, unless the previously published list has remained current.

(2) The chief of the Washington state patrol, through the director of fire protection, shall provide the list adopted under subsection (1) of this section by November 1st of each year to all manufacturers, wholesalers, and importers licensed under this chapter, unless the previously distributed list has remained current. [2002 c 370 § 46; 1995 c 369 § 57; 1986 c 266 § 117; 1984 c 249 § 8.]

Additional notes found at www.leg.wa.gov

**70.77.580 Retailers to post list of consumer fireworks.** Retailers required to be licensed under this chapter shall post prominently at each retail location a list of the consumer fireworks that may be sold to the public in this state pursuant to this chapter. The posted list shall be in a form approved by the chief of the Washington state patrol, through the director of fire protection. The chief of the Washington state patrol, through the director of fire protection, shall make the list available. [2002 c 370 § 47; 1995 c 369 § 58; 1986 c 266 § 118; 1984 c 249 § 9.]

Additional notes found at www.leg.wa.gov

**70.77.900 Effective date—1961 c 228.** This act shall take effect on January 1, 1962. [1961 c 228 § 90.]

## Chapter 70.79 RCW
## BOILERS AND UNFIRED PRESSURE VESSELS

Sections

*Excessive steam in boilers, penalty: RCW 70.54.080.*

*State building code: Chapter 19.27 RCW.*

**70.79.010 Board of boiler rules—Members—Terms—Meetings.** There is hereby created within this state a board of boiler rules, which shall hereafter be referred to as the board, consisting of five members who shall be appointed to the board by the governor, one for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. At the expiration of their respective terms of office, they, or their successors identifiable with the same interests respectively as hereinafter provided, shall be appointed for terms of four years each. The governor may at any time remove any member of the board for inefficiency or neglect of duty in office. Upon the death or incapacity of any member the governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his or her predecessor was identified. Of these five appointed members, one shall be representative of owners and users of boilers and unfired pressure vessels within the state, one shall be representative of the boiler or unfired pressure vessel manufacturers within the state, one shall be a representative of a boiler insurance company licensed to do business within the state, one shall be a mechanical engineer on the faculty of a recognized engineering college or a graduate mechanical engineer having equivalent experience, and one shall be representative of the boilermakers, stationary operating engineers, or pressure vessel operators. The board shall elect one of its members to serve as chair and, at the call of the chair, the board shall meet at least four times each year at the state capitol or other place designated by the board. [1999 c 183 § 1; 1951 c 32 § 1.]

**70.79.020 Compensation and travel expenses.** The members of the board shall be compensated in accordance with RCW 43.03.240 and shall receive travel expenses incurred while in the performance of their duties as members of the board, in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 105; 1975-'76 2nd ex.s. c 34 § 159; 1951 c 32 § 2.]

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

**70.79.030 Duties of board.** The board shall formulate definitions and rules for the safe and proper construction, installation, repair, use, and operation of boilers and for the safe and proper construction, installation, and repair of unfired pressure vessels in this state. The definitions and rules so formulated shall be based upon, and, at all times, follow the nationally or internationally accepted engineering standards, formulae, and practices established and pertaining to boiler and unfired pressure vessel construction and safety, and the board may by resolution adopt existing published codifications thereof, and when so adopted the same shall be deemed incorporated into, and to constitute a part or the whole of the definitions and rules of the board. Amendments and interpretations to the code shall be enforceable immediately upon being adopted, to the end that the definitions and rules shall at all times follow nationally or internationally accepted engineering standards. However, all rules adopted by the board shall be adopted in compliance with the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended. [1999 c 183 § 2; 1972 ex.s. c 86 § 1; 1951 c 32 § 3.]

**70.79.040 Rules and regulations—Scope.** The board shall promulgate rules and regulations for the safe and proper installation, repair, use and operation of boilers, and for the safe and proper installation and repair of unfired pressure vessels which were in use or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter. [1951 c 32 § 4.]

**70.79.050 Rules and regulations—Effect.** (1) The rules and regulations formulated by the board shall have the force and effect of law, except that the rules applying to the construction of new boilers and unfired pressure vessels shall not be construed to prevent the installation thereof until twelve months after their approval by the director of the department of labor and industries.

(2) Subsequent amendments to the rules and regulations adopted by the board shall be permissive immediately and shall become mandatory twelve months after such approval. [1951 c 32 § 5.]

**70.79.060 Construction, installation must conform to rules—Inspection certificate.** (1) Except as provided in subsection (2) of this section, no power boiler, low pressure boiler, or unfired pressure vessel which does not conform to the rules and regulations formulated by the board governing new construction and installation shall be installed and operated in this state after twelve months from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective, unless the boiler or unfired pressure vessel is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case an inspection certificate may at its discretion be granted by the board.

(2) An inspection certificate may also be granted for boilers and pressure vessels manufactured before 1951 which do not comply with the code requirements of the American Society of Mechanical Engineers adopted under this chapter, if the boiler or pressure vessel is operated exclusively for the purposes of public exhibition, and the board finds, upon inspection, that operation of the boiler or pressure vessel for such purposes is not unsafe. [2009 c 90 § 1; 1984 c 93 § 1; 1951 c 32 § 6.]

**70.79.070 Existing installations—Conformance required.** (1) All boilers and unfired pressure vessels which

were in use, or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter, shall be made to conform to the rules and regulations of the board governing existing installations, and the formulae prescribed therein shall be used in determining the maximum allowable working pressure for such boilers and unfired pressure vessels.

(2) This chapter shall not be construed as in any way preventing the use or sale of boilers or unfired vessels as referred to in subsection (1) of this section, provided they have been made to conform to the rules and regulations of the board governing existing installations, and provided, further, they have not been found upon inspection to be in an unsafe condition. [2018 c 259 § 1; 2009 c 90 § 2; 1995 c 41 § 1; 1993 c 193 § 1; 1951 c 32 § 7.]

**70.79.080 Exemptions from chapter.** This chapter shall not apply to the following boilers, unfired pressure vessels and domestic hot water tanks:

(1) Boilers and unfired pressure vessels under federal regulation or operated by any railroad subject to the provisions of the interstate commerce act;

(2) Unfired pressure vessels meeting the requirements of the interstate commerce commission for shipment of liquids or gases under pressure;

(3) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers, or freight;

(4) Air tanks installed on the right-of-way of railroads and used directly in the operation of trains;

(5) Unfired pressure vessels having a volume of five cubic feet or less when not located in places of public assembly;

(6) Unfired pressure vessels designed for a pressure not exceeding fifteen pounds per square inch gauge;

(7) Tanks used in connection with heating water for domestic and/or residential purposes;

(8) Boilers and unfired pressure vessels in cities having ordinances which are enforced and which have requirements equal to or higher than those provided for under this chapter, covering the installation, operation, maintenance and inspection of boilers and unfired pressure vessels;

(9) Tanks containing water with no air cushion and no direct source of energy that operate at ambient temperature;

(10) Electric boilers:

(a) Having a tank volume of not more than one and one-half cubic feet;

(b) Having a maximum allowable working pressure of one hundred pounds per square inch or less, with a pressure relief system to prevent excess pressure; and

(c) If constructed after June 10, 1994, constructed to American society of mechanical engineers code, or approved or otherwise certified by a nationally recognized or recognized foreign testing laboratory or construction code, including but not limited to Underwriters Laboratories, Edison Testing Laboratory, or Instituto Superiore Per La Prevenzione E La Sicurezza Del Lavoro;

(11) Electrical switchgear and control apparatus that have no external source of energy to maintain pressure and are located in restricted access areas under the control of an electric utility;

(12) Regardless of location, unfired pressure vessels less than one and one-half cubic feet (11.25 gallons) in volume or less than six inches in diameter with no limitation on the length of the vessel or pressure;

(13) Domestic hot water heaters less than one and one-half cubic feet (11.25 gallons) in volume with a safety valve setting of one hundred fifty pounds per square inch gauge or less;

(14)(a)(i) Miniature hobby boilers that have been certified by an inspector as of June 7, 2018; or

(ii) Miniature hobby boilers that have not been certified by an inspector as of June 7, 2018, but that receive certification from the chief inspector prior to being placed in service.

(b) For the purposes of this subsection, "miniature hobby boilers" means those that do not comply with the code requirements of the American society of mechanical engineers adopted under this chapter and do not exceed any of the following limits:

(i) Sixteen inches inside diameter of the shell;

(ii) Twenty square feet of total heating surface;

(iii) Five cubic feet of gross volume of vessel;

(iv) One hundred fifty p.s.i.g. maximum allowable working pressure; and

(v) The boiler is to be operated exclusively not for commercial or industrial use. [2018 c 259 § 2; 2009 c 90 § 3; 2005 c 22 § 1; 1999 c 183 § 3; 1996 c 72 § 1; 1994 c 64 § 2; 1986 c 97 § 1; 1951 c 32 § 8.]

**Finding—Intent—1994 c 64:** See note following RCW 70.79.095.

**70.79.090 Exemptions from certain provisions.** The following boilers and unfired pressure vessels shall be exempt from the requirements of RCW 70.79.220 and 70.79.240 through 70.79.330:

(1) Boilers or unfired pressure vessels located on farms and used solely for agricultural purposes;

(2) Unfired pressure vessels that are part of fertilizer applicator rigs designed and used exclusively for fertilization in the conduct of agricultural operations;

(3) Steam boilers used exclusively for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and which are located in private residences or in apartment houses of less than six families;

(4) Hot water heating boilers carrying a pressure of not more than thirty pounds per square inch and which are located in private residences or in apartment houses of less than six families;

(5) Approved pressure vessels (hot water heaters, hot water storage tanks, hot water supply boilers, and hot water heating boilers listed by a nationally recognized testing agency), with approved safety devices including a pressure relief valve, with a nominal water containing capacity of one hundred twenty gallons or less having a heat input of two hundred thousand b.t.u.'s per hour or less, at pressure of one hundred sixty pounds per square inch or less, and at temperatures of two hundred ten degrees Fahrenheit or less: PROVIDED, HOWEVER, That such pressure vessels are not installed in schools, child care centers, public and private hospitals, nursing homes, assisted living facilities, churches,

public buildings owned or leased and maintained by the state or any political subdivision thereof, and assembly halls;

(6) Unfired pressure vessels containing only water under pressure for domestic supply purposes, including those containing air, the compression of which serves only as a cushion or airlift pumping systems, when located in private residences or in apartment houses of less than six families, or in public water systems as defined in RCW 70A.120.020;

(7) Unfired pressure vessels containing liquefied petroleum gases. [2021 c 65 § 67; 2012 c 10 § 49; 2009 c 90 § 4; 2005 c 22 § 2; 1999 c 183 § 4; 1988 c 254 § 20; 1983 c 3 § 174; 1972 ex.s. c 86 § 2; 1951 c 32 § 9.]

**Explanatory statement—2021 c 65:** See note following RCW 53.54.030.

**Application—2012 c 10:** See note following RCW 18.20.010.

**70.79.095 Espresso machines—Local regulation prohibited.** A county, city, or other political subdivision of the state may not enforce any law specifically regulating the manufacture, installation, operation, maintenance, or inspection of any electric boiler exempt from this chapter by RCW 70.79.080(10). [1994 c 64 § 3.]

**Finding—Intent—1994 c 64:** "The legislature finds that small low-pressure boilers are found in devices such as espresso coffee machines and cleaning equipment common throughout Washington state. Such systems present little threat to public health and safety. Government regulation of such systems could impose a substantial burden on many small businesses and provide minimal public benefit. It is therefore the intent of the legislature to exempt these boilers from regulation under chapter 70.79 RCW and similar laws adopted by local governments." [1994 c 64 § 1.]

**70.79.100 Chief inspector—Qualifications—Appointment, removal.** (1) Within sixty days after the effective date of this chapter, and at any time thereafter that the office of the chief inspector may become vacant, the director of the department of labor and industries shall appoint a chief inspector who shall have had at the time of such appointment not less than ten years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels, as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the same kind of examination as that prescribed for deputy or special inspectors in RCW 70.79.170 to be chief inspector until his or her successor shall have been appointed and qualified. Such chief inspector may be removed for cause after due investigation by the board and its recommendation to the director of the department of labor and industries. [2012 c 117 § 398; 1951 c 32 § 10.]

**70.79.110 Chief inspector—Duties in general.** The chief inspector, if authorized by the director of the department of labor and industries is hereby charged, directed and empowered:

(1) To cause the prosecution of all violators of the provisions of this chapter;

(2) To issue, or to suspend, or revoke for cause, inspection certificates as provided for in RCW 70.79.290;

(3) To take action necessary for the enforcement of the laws of the state governing the use of boilers and unfired pressure vessels and of the rules and regulations of the board;

(4) To keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last recorded internal inspection of all boilers and unfired pressure vessels to which this chapter applies;

(5) To publish and distribute, among manufacturers and others requesting them, copies of the rules and regulations adopted by the board. [1951 c 32 § 11.]

**70.79.120 Deputy inspectors—Qualifications—Employment.** The director shall employ deputy inspectors who shall have had at time of appointment not less than five years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the examination provided for in RCW 70.79.170. [1994 c 164 § 27; 1951 c 32 § 12.]

**70.79.130 Special inspectors—Qualifications—Commission.** In addition to the deputy boiler inspectors authorized by RCW 70.79.120, the chief inspector shall, upon the request of any company authorized to insure against loss from explosion of boilers and unfired pressure vessels in this state, or upon the request of any company operating boilers or unfired pressure vessels in this state, issue to any inspectors of said company commissions as special inspectors, provided that each such inspector before receiving his or her commission shall satisfactorily pass the examination provided for in RCW 70.79.170, or, in lieu of such examination, shall hold a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state or a certificate as an inspector of boilers and unfired pressure vessels from the national board of boiler and pressure vessel inspectors. A commission as a special inspector for a company operating boilers or unfired pressure vessels in this state shall be issued only if, in addition to meeting the requirements stated herein, the inspector is continuously employed by the company for the purpose of making inspections of boilers or unfired pressure vessels used, or to be used, by such company. [1999 c 183 § 5; 1951 c 32 § 13.]

**70.79.140 Special inspectors—Compensation—Continuance of commission.** Special inspectors shall receive no salary from, nor shall any of their expenses be paid by the state, and the continuance of a special inspector's commission shall be conditioned upon his or her continuing in the employ of a boiler insurance company duly authorized as aforesaid or upon continuing in the employ of a company operating boilers or unfired pressure vessels in this state and upon his or her maintenance of the standards imposed by this chapter. [1999 c 183 § 6; 1951 c 32 § 14.]

**70.79.150 Special inspectors—Inspections—Exempts from inspection fees.** Special inspectors shall inspect all boilers and unfired pressure vessels insured or operated by their respective companies and, when so inspected, the owners and users of such insured boilers and unfired pressure vessels shall be exempt from the payment to the state of the inspection fees as provided for in RCW 70.79.330. [1999 c 183 § 7; 1951 c 32 § 15.]

**70.79.160 Report of inspection by special inspector—Filing.** Each company employing special inspectors shall, within thirty days following each internal or external boiler or unfired pressure vessel inspection made by such inspectors, file a report of such inspection with the chief inspector upon appropriate forms. [2005 c 22 § 3; 1999 c 183 § 8; 1951 c 32 § 16.]

**70.79.170 Examinations for inspector's appointment or commission—Reexamination.** Examinations for deputy or special inspectors shall be in writing and shall be held by the chief and a member of the board, or by at least two national board commissioned inspectors. Such examinations shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service. In case an applicant for an inspector's appointment or commission fails to pass the examination, he or she may appeal to the board for another examination which shall be given by the chief within ninety days. The record of an applicant's examination shall be accessible to said applicant and his or her employer. [2012 c 117 § 399; 2005 c 22 § 7; 1951 c 32 § 18.]

**70.79.180 Suspension, revocation of inspector's commission—Grounds—Reinstatement.** A commission may be suspended or revoked after due investigation and recommendation by the board to the director of the department of labor and industries for the incompetence or untrustworthiness of the holder thereof, or for willful falsification of any matter or statement contained in his or her application or in a report of any inspection. A person whose commission has been suspended or revoked, except for untrustworthiness, shall be entitled to apply to the board for reinstatement or, in the case of a revocation, for a new examination and commission after ninety days from such revocation. [2012 c 117 § 400; 1951 c 32 § 19.]

**70.79.190 Suspension, revocation of commission—Appeal.** A person whose commission has been suspended or revoked shall be entitled to an appeal as provided in RCW 70.79.361 and to be present in person and/or represented by counsel on the hearing of the appeal. [2005 c 22 § 5; 1951 c 32 § 20.]

**70.79.200 Lost or destroyed certificate or commission.** If a certificate or commission is lost or destroyed, a new certificate or commission shall be issued in its place without another examination. [1951 c 32 § 21.]

**70.79.220 Inspections—Who shall make.** The inspections herein required shall be made by the chief inspector, by a deputy inspector, or by a special inspector provided for in this chapter. [1951 c 32 § 25.]

**70.79.230 Access to premises by inspectors.** The chief inspector, or any deputy or special inspector, shall have free access, during reasonable hours, to any premises in the state where a boiler or unfired pressure vessel is being constructed, or is being installed or operated, for the purpose of ascertaining whether such boiler or unfired pressure vessel is constructed, installed and operated in accordance with the provisions of this chapter. [1951 c 32 § 17.]

**70.79.240 Inspection of boilers, unfired pressure vessels—Scope—Frequency.** Each boiler and unfired pressure vessel used or proposed to be used within this state, except boilers or unfired pressure vessels exempt in RCW 70.79.080 and 70.79.090, shall be thoroughly inspected as to their construction, installation, condition and operation, as follows:

(1) Power boilers shall be inspected annually both internally and externally while not under pressure, except that the board may provide for longer periods between inspections where the contents, history, or operation of the power boiler or the material of which it is constructed warrant special consideration. Power boilers shall also be inspected annually externally while under pressure if possible;

(2) Low pressure heating boilers shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between internal inspections;

(3) Unfired pressure vessels subject to internal corrosion shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between internal inspections;

(4) Unfired pressure vessels not subject to internal corrosion shall be inspected externally at intervals set by the board, but internal inspections shall not be required of unfired pressure vessels, the contents of which are known to be noncorrosive to the material of which the shell, head, or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the board or in accordance with standards substantially equivalent to the rules and regulations of the board, in effect at the time of manufacture. [2009 c 90 § 5; 1993 c 391 § 1; 1951 c 32 § 22.]

**70.79.250 Inspection—Frequency—Grace period.** In the case of power boilers a grace period of not more than two months longer than the period established by the board under RCW 70.79.240(1) may elapse between internal inspections of a boiler while not under pressure or between external inspections of a boiler while under pressure; in the case of low pressure heating boilers not more than twenty-six months shall elapse between inspections, and in the case of unfired pressure vessels not more than two months longer than the period between inspections prescribed by the board shall elapse between internal inspections. [1993 c 391 § 2; 1951 c 32 § 23.]

**70.79.260 Inspection—Frequency—Modification by rules.** The rules and regulations formulated by the board applying to the inspection of unfired pressure vessels may be modified by the board to reduce or extend the interval between required inspections where the contents of the vessel or the material of which it is constructed warrant special consideration. [1951 c 32 § 24.]

**70.79.270 Hydrostatic test.** If at any time a hydrostatic test shall be deemed necessary to determine the safety of a boiler or unfired pressure vessel, [the] same shall be made, at the discretion of the inspector, by the owner or user thereof. [1951 c 32 § 26.]

**70.79.280 Inspection during construction.** All boilers and all unfired pressure vessels to be installed in this state after the twelve-month period from the date upon which the rules of the board shall become effective shall be inspected during construction as required by the applicable rules of the board by an inspector authorized to inspect boilers and unfired pressure vessels in this state, or, if constructed outside of the state, by an inspector holding a certificate from the national board of boiler and pressure vessel inspectors, or a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state as provided in RCW 70.79.170. [1999 c 183 § 9; 1951 c 32 § 27.]

**70.79.290 Inspection certificate—Contents—Posting—Fee.** If, upon inspection, a boiler or pressure vessel is found to comply with the rules and regulations of the board, and upon the appropriate fee payment made directly to the chief inspector, as required by RCW 70.79.160 or 70.79.330, the chief inspector shall issue to the owner or user of such a boiler or pressure vessel an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler or pressure vessel may be operated. Such inspection certificate shall be valid for not more than fourteen months from its date in the case of power boilers and twenty-six months in the case of low pressure heating boilers, and for not more than two months longer than the authorized inspection period in the case of pressure vessels. Certificates shall be posted under glass in the room containing the boiler or pressure vessel inspected. If the boiler or pressure vessel is not located within a building, the certificate shall be posted in a location convenient to the boiler or pressure vessel inspected or, in the case of a portable boiler or pressure vessel, the certificate shall be kept in a protective container to be fastened to the boiler or pressure vessel or in a tool box accompanying the boiler or pressure vessel. [1977 ex.s. c 175 § 1; 1970 ex.s. c 21 § 1; 1951 c 32 § 28.]

**70.79.300 Inspection certificate invalid on termination of insurance.** No inspection certificate issued for an insured boiler or unfired pressure vessel inspected by a special inspector shall be valid after the boiler or unfired pressure vessel, for which it was issued, shall cease to be insured by a company duly authorized by this state to carry such insurance. [1951 c 32 § 29.]

**70.79.310 Inspection certificate—Suspension—Reinstatement.** The chief inspector, or his or her authorized representative, may at any time suspend an inspection certificate when, in his or her opinion, the boiler or unfired pressure vessel for which it was issued cannot be operated without menace to the public safety, or when the boiler or unfired pressure vessel is found not to comply with the rules herein provided. A special inspector shall have corresponding powers with respect to inspection certificates for boilers or unfired pressure vessels insured or operated by the company employing him or her. Such suspension of an inspection certificate shall continue in effect until such boiler or unfired pressure vessel shall have been made to conform to the rules of the board, and until said inspection certificate shall have been reinstated. [1999 c 183 § 10; 1951 c 32 § 30.]

**70.79.320 Operating without inspection certificate prohibited—Penalty.** (1) It shall be unlawful for any person, firm, partnership, or corporation to operate under pressure in this state a boiler or unfired pressure vessel, to which this chapter applies, without a valid inspection certificate as provided for in this chapter.

(2) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(3) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(4) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice using a method by which the mailing can be tracked or the delivery can be confirmed to the violator that a hearing may be requested under RCW 70.79.361. The hearing shall not stay the effect of the penalty. [2011 c 301 § 21; 2005 c 22 § 6; 1986 c 97 § 2; 1951 c 32 § 31.]

**70.79.330 Inspection fees—Expenses—Schedules—Waiver of provisions during state of emergency.** The owner or user of a boiler or pressure vessel required by this chapter to be inspected by the chief inspector, or his or her deputy inspector, shall pay directly to the chief inspector, upon completion of inspection, fees and expenses in accordance with a schedule adopted by the board and approved by the director of the department of labor and industries in accordance with the requirements of the administrative procedure act, chapter 34.05 RCW.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the collection of fees under this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2012 c 117 § 401; 2008 c 181 § 205; 1977 ex.s. c 175 § 2; 1970 ex.s. c 21 § 2; 1963 c 217 § 1; 1951 c 32 § 32.]

Additional notes found at www.leg.wa.gov

**70.79.350 Inspection fees—Receipts for—Pressure systems safety fund.** The chief inspector shall give an official receipt for all fees required by chapter 70.79 RCW and shall transfer all sums so received to the treasurer of the state of Washington as ex officio custodian thereof and the treasurer shall place all sums in a special fund hereby created and designated as the "pressure systems safety fund". Funds shall be paid out upon vouchers duly and regularly issued therefor and approved by the director of the department of labor and industries. The treasurer, as ex officio custodian of the fund, shall keep an accurate record of any payments into the fund, and of all disbursements therefrom. The fund shall be used

exclusively to defray only the expenses of administering chapter 70.79 RCW by the chief inspector as authorized by law and the expenses incident to the maintenance of the office. The fund shall be charged with its pro rata share of the cost of administering the fund which is to be determined by the director of financial management and by the director of the department of labor and industries.

During the 2003-2005 fiscal biennium, the legislature may transfer from the pressure systems safety fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2003 1st sp.s. c 25 § 931; 1979 c 151 § 171; 1977 ex.s. c 175 § 3; 1951 c 32 § 34.]

Additional notes found at www.leg.wa.gov

**70.79.361 Board determinations—Appeals.** (1) No person, firm, partnership, corporation, or other entity may install or maintain any standards that violate this chapter. In cases where the interpretation and application of the installation or maintenance standards prescribed in this chapter is in dispute, the board shall determine the methods of installation or maintenance to be used in the particular case submitted for its decision. To appeal the board's decision, a person, firm, partnership, corporation, or other entity shall, in writing, notify the chief boiler inspector. The notice shall specify the ruling or interpretation desired and the contention of the person, firm, partnership, corporation, or other entity as to the proper interpretation or application on the question on which a decision is desired.

(2) Any person, firm, partnership, corporation, or other entity wishing to appeal a penalty issued under this chapter may appeal to the board. The appeal shall be filed within twenty days after service of the notice of the penalty to the assessed party by filing a written notice of appeal with the chief boiler inspector. The hearing and review procedures shall be conducted by the board in accordance with chapter 34.05 RCW. [2005 c 22 § 4.]

## Chapter 70.82 RCW
## CEREBRAL PALSY PROGRAM

Sections



**70.82.010 Purpose and aim of program.** It is hereby declared to be of vital concern to the state of Washington that all persons who are bona fide residents of the state of Washington and who are afflicted with cerebral palsy in any degree be provided with facilities and a program of service for medical care, education, treatment and training to enable them to become normal individuals. In order to effectively accomplish such purpose the department of social and health services, hereinafter called the department, is authorized and instructed and it shall be its duty to establish and administer facilities and a program of service for the discovery, care, education, hospitalization, treatment and training of educable persons afflicted with cerebral palsy, and to provide in connection therewith nursing, medical, surgical and corrective care, together with academic, occupational and related training. Such program shall extend to developing, extending and improving service for the discovery of such persons and for diagnostication and hospitalization and shall include cooperation with other agencies of the state charged with the administration of laws providing for any type of service or aid to persons with disabilities, and with the United States government through any appropriate agency or instrumentality in developing, extending and improving such service, program and facilities. Such facilities shall include field clinics, diagnosis and observation centers, boarding schools, special classes in day schools, research facilities and such other facilities as shall be required to render appropriate aid to such persons. Existing facilities, buildings, hospitals and equipment belonging to or operated by the state of Washington shall be made available for these purposes when use therefor does not conflict with the primary use of such existing facilities. Existing buildings, facilities and equipment belonging to private persons, firms or corporations or to the United States government may be acquired or leased. [2020 c 274 § 46; 1974 ex.s. c 91 § 2; 1947 c 240 § 1; Rem. Supp. 1947 § 5547-1.]

Additional notes found at www.leg.wa.gov

**70.82.021 Cerebral palsy fund—Moneys transferred to general fund.** All moneys in the state treasury to the credit of the state cerebral palsy fund on the first day of May, 1955, and all moneys thereafter paid into the state treasury for or to the credit of the state cerebral palsy fund, shall be and are hereby transferred to and placed in the general fund. [1955 c 326 § 1.]

**70.82.022 Cerebral palsy fund—Appropriations to be paid from general fund.** From and after the first day of April, 1955, all appropriations made by the thirty-fourth legislature from the state cerebral palsy fund shall be paid out of moneys in the general fund. [1955 c 326 § 2.]

**70.82.023 Cerebral palsy fund—Abolished.** From and after the first day of May, 1955, the state cerebral palsy fund is abolished. [1955 c 326 § 3.]

**70.82.024 Cerebral palsy fund—Warrants to be paid from general fund.** From and after the first day of May, 1955, all warrants drawn on the state cerebral palsy fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he or she is hereby directed to pay such warrants when presented from the general fund. [2012 c 117 § 402; 1955 c 326 § 4.]

**70.82.030 Eligibility.** Any resident of this state who is educable but, as the result of cerebral palsy, is unable to take advantage of the regular system of free education of this state may be admitted to or be eligible for any service and facilities provided hereunder, provided such resident has lived in this state continuously for more than one year before his or her application for such admission or eligibility. [2020 c 274 § 47; 2012 c 117 § 403; 1947 c 240 § 3; Rem. Supp. 1947 § 5547-2.]

**70.82.040 Diagnosis.** Persons shall be admitted to or be eligible for the services and facilities provided herein only after diagnosis according to procedures and regulations established and approved for this purpose by the department of social and health services. [1974 ex.s. c 91 § 3; 1947 c 240 § 4; Rem. Supp. 1947 § 5547-3.]

Additional notes found at www.leg.wa.gov

**70.82.050 Powers, duties, functions, unallocated funds, transferred.** All powers, duties and functions of the superintendent of public instruction or the state board of education relating to the Cerebral Palsy Center as referred to in chapter 39, Laws of 1973 2nd ex. sess. shall be transferred to the department of social and health services as created in chapter 43.20A RCW, and all unallocated funds within any account to the credit of the superintendent of public instruction or the state board of education for purposes of such Cerebral Palsy Center shall be transferred effective July 1, 1974 to the credit of the department of social and health services, which department shall hereafter expend such funds for such Cerebral Palsy Center purposes as contemplated in the appropriations therefor. All employees of the Cerebral Palsy Center on July 1, 1974 who are classified employees under chapter 41.06 RCW, the state civil service law, shall be assigned and transferred to the department of social and health services to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law. [1974 ex.s. c 91 § 4.]

Additional notes found at www.leg.wa.gov

## Chapter 70.83 RCW
## PHENYLKETONURIA AND OTHER PREVENTABLE HERITABLE DISORDERS

Sections



**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

**70.83.010 Declaration of policy and purpose.** It is hereby declared to be the policy of the state of Washington to make every effort to detect as early as feasible and to prevent where possible phenylketonuria and other preventable heritable disorders leading to developmental disabilities or physical defects. [1977 ex.s. c 80 § 40; 1967 c 82 § 1.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**70.83.020 Screening tests of newborn infants.** (1) It shall be the duty of the department of health to require screening tests of all newborn infants born in any setting. Each hospital or health care provider attending a birth outside of a hospital shall collect and submit a sample blood specimen for all newborns no more than forty-eight hours following birth. The department of health shall conduct screening tests of samples for the detection of phenylketonuria and other heritable or metabolic disorders leading to intellectual disabilities or physical defects as defined by the state board of health: PROVIDED, That no such tests shall be given to any newborn infant whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets and practices.

(2) The sample required in subsection (1) of this section must be received by the department [of health] within seventy-two hours of the collection of the sample, excluding any day that the Washington state public health laboratory is closed. [2014 c 18 § 1; 2010 c 94 § 18; 1991 c 3 § 348; 1975-'76 2nd ex.s. c 27 § 1; 1967 c 82 § 2.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**70.83.023 Specialty clinics—Defined disorders—Fee for infant screening and sickle cell disease.** The department has the authority to collect a fee of eight dollars and forty cents from the parents or other responsible party of each infant screened for congenital disorders as defined by the state board of health under RCW 70.83.020 to fund specialty clinics that provide treatment services for those with the defined disorders. The fee may also be used to support organizations conducting community outreach, education, and adult support related to sickle cell disease. The fee may be collected through the facility where a screening specimen is obtained. [2010 1st sp.s. c 17 § 1; 2007 c 259 § 8.]

Additional notes found at www.leg.wa.gov

**70.83.030 Report of positive test to department of health.** Laboratories, attending physicians, hospital administrators, or other persons performing or requesting the performance of tests for phenylketonuria shall report to the department of health all positive tests. The state board of health by rule shall, when it deems appropriate, require that positive tests for other heritable and metabolic disorders covered by this chapter be reported to the state department of health by such persons or agencies requesting or performing such tests. [1991 c 3 § 349; 1979 c 141 § 113; 1967 c 82 § 3.]

**70.83.040 Services and facilities of state agencies made available to families and physicians.** When notified of positive screening tests, the state department of health shall offer the use of its services and facilities, designed to prevent intellectual disabilities or physical defects in such children, to the attending physician, or the parents of the newborn child if no attending physician can be identified.

The services and facilities of the department, and other state and local agencies cooperating with the department in carrying out programs of detection and prevention of intellectual disabilities and physical defects shall be made available to the family and physician to the extent required in order to carry out the intent of this chapter and within the availability of funds. [2010 c 94 § 19; 2007 c 259 § 7; 2005 c 518 § 938; 1999 c 76 § 1; 1991 c 3 § 350; 1979 c 141 § 114; 1967 c 82 § 4.]

**Purpose—2010 c 94:** See note following RCW 44.04.280.

Additional notes found at www.leg.wa.gov

**70.83.050 Rules and regulations to be adopted by state board of health.** The state board of health shall adopt rules and regulations necessary to carry out the intent of this chapter. [1967 c 82 § 5.]

**70.83.090 Critical congenital heart disease screening.** (1) Prior to discharge of an infant born in a hospital, the hospital shall:

(a) Perform critical congenital heart disease screening using pulse oximetry according to recommended American academy of pediatrics guidelines;

(b) Record the results of the critical congenital heart disease screening test in the newborn's medical record; and

(c) If the screening test indicates a suspicion of abnormality, refer the newborn for appropriate care and report the test results to the newborn's attending physician and parent, parents, or guardian.

(2)(a) Except as provided in (b) of this subsection, a health care provider attending a birth outside of a hospital shall, no sooner than twenty-four hours after the birth of an infant born outside of a hospital, but no later than forty-eight hours after the birth:

(i) Perform critical congenital heart disease screening using pulse oximetry according to recommended American academy of pediatrics guidelines;

(ii) Record the results of the critical congenital heart disease screening test in the newborn's medical record; and

(iii) If the screening test indicates a suspicion of abnormality, refer the newborn for appropriate care and report the test results to the newborn's attending physician and parent, parents, or guardian.

(b) If the health care provider does not perform the test required in (a) of this subsection because he or she does not possess the proper equipment, the health care provider shall notify the parent, parents, or guardian in writing that the health care provider was unable to perform the test and that the infant should be tested by another health care provider no sooner than twenty-four hours after the birth, but no later than forty-eight hours after the birth.

(3) No test may be given to a newborn infant under this section whose parent, parents, or guardian object thereto on the grounds that such tests conflict with their religious tenets and practices.

(4) The state board of health may adopt rules to implement the requirements of this section.

(5) For purposes of this section, the following terms have the following meanings unless the context clearly requires otherwise:

(a) "Critical congenital heart disease" means an abnormality in the structure or function of the heart that exists at birth, causes severe, life-threatening symptoms, and requires medical intervention within the first year of life.

(b) "Newborn" means an infant born in any setting in the state of Washington. [2015 c 37 § 2.]

**Findings—2015 c 37:** "The legislature finds the following:

(1) Critical congenital heart disease is an abnormality in the structure or function of the heart that exists at birth, may cause life-threatening symptoms, and requires early medical intervention. Congenital heart disease is the most common cause of death in the first year of life. Outwardly healthy babies may be discharged from hospitals before signs of disease are detected.

(2) Pulse oximetry is a low-cost, noninvasive test that is effective at detecting congenital heart defects that otherwise would go undetected.

(3) Critical congenital heart disease was added to the national recommended uniform screening panel in 2011, and the majority of states have established a statewide screening for the disease.

(4) Requiring all hospitals and health care providers attending births to screen newborns for critical congenital heart disease has the potential to save newborn lives with early detection and treatment." [2015 c 37 § 1.]

## Chapter 70.83C RCW

## ALCOHOL AND DRUG USE TREATMENT ASSOCIATED WITH PREGNANCY—FETAL ALCOHOL SYNDROME

Sections



**70.83C.005 Intent.** The legislature recognizes that the use of alcohol and other drugs during pregnancy can cause medical, psychological, and social problems for women and infants. The legislature further recognizes that communities are increasingly concerned about this problem and the associated costs to the mothers, infants, and society as a whole. The legislature recognizes that the department of health and other agencies are focusing on primary prevention activities to reduce the use of alcohol or drugs during pregnancy but few efforts have focused on secondary prevention efforts aimed at intervening in the lives of women already involved in the use of alcohol or other drugs during pregnancy. The legislature recognizes that the best way to prevent problems for chemically dependent pregnant women and their resulting children is to engage the women in alcohol or drug treatment. The legislature acknowledges that treatment professionals find pretreatment services to clients to be important in engaging women in alcohol or drug treatment. The legislature further recognizes that pretreatment services should be provided at locations where chemically dependent women are likely to be found, including public health clinics and domestic violence or homeless shelters. Therefore the legislature intends to prevent the detrimental effects of alcohol or other drug use to women and their resulting infants by promoting the establishment of local programs to help facilitate a woman's entry into alcohol or other drug treatment. These programs shall provide secondary prevention services and provision of opportunities for immediate treatment so that women who seek help are welcomed rather than ostracized. [1993 c 422 § 3.]

**Finding—1993 c 422:** See note following RCW 70.83C.010.

**70.83C.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

(2) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(3) "Assessment" means an interview with an individual to determine if he or she is chemically dependent and in need of referral to an approved treatment program.

(4) "Chemically dependent individual" means someone suffering from alcoholism or drug addiction, or dependence on alcohol or one or more other psychoactive chemicals.

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

(6) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020.

(7) "Domestic violence program" means a shelter or other program which provides services to victims of domestic violence.

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

(9) "Pretreatment" means the period of time prior to an individual's enrollment in alcohol or drug treatment.

(10) "Pretreatment services" means activities taking place prior to treatment that include identification of individuals using alcohol or drugs, education, assessment of their use, evaluation of need for treatment, referral to an approved treatment program, and advocacy on a client's behalf with social service agencies or others to ensure and coordinate a client's entry into treatment.

(11) "Primary prevention" means providing information about the effects of alcohol or drug use to individuals so they will avoid using these substances.

(12) "Secondary prevention" means identifying and obtaining an assessment on individuals using alcohol or other drugs for referral to treatment when indicated.

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

(14) "Treatment" means the broad range of emergency detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, that may be extended to chemically dependent individuals and their families.

(15) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of chemically dependent individuals. [2020 c 29 § 16; 1993 c 422 § 4.]

**Effective date—2020 c 29:** See note following RCW 7.77.060.

**Finding—1993 c 422:** "The United States surgeon general warns that women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. The legislature finds that these defects include fetal alcohol syndrome, a birth defect that causes permanent antisocial behavior in the sufferer, disrupts the functions of his or her family, and, at an alarmingly increasing rate, extracts a safety and fiscal toll on society." [1993 c 422 § 1.]

**70.83C.020 Prevention strategies.** The secretary shall develop and promote statewide secondary prevention strategies designed to increase the use of alcohol and drug treatment services by women of childbearing age, before, during, and immediately after pregnancy. These efforts are conducted through the division of alcohol and substance abuse. The secretary shall:

(1) Promote development of three pilot demonstration projects in the state to be called pretreatment projects for women of childbearing age.

(2) Ensure that two of the projects are located in public health department clinics that provide maternity services and one is located with a domestic violence program.

(3) Hire three certified chemical dependency counselors to work as substance abuse educators in each of the three demonstration projects. The counselors may rotate between more than one clinic or domestic violence program. The chemical dependency counselor for the domestic violence program shall also be trained in domestic violence issues.

(4) Ensure that the duties and activities of the certified chemical dependency counselors include, at a minimum, the following:

(a) Identifying substance-using pregnant women in the health clinics and domestic violence programs;

(b) Educating the women and agency staff on the effects of alcohol or drugs on health, pregnancy, and unborn children;

(c) Determining the extent of the women's substance use;

(d) Evaluating the women's need for treatment;

(e) Making referrals for chemical dependency treatment if indicated;

(f) Facilitating the women's entry into treatment; and

(g) Advocating on the client's behalf with other social service agencies or others to ensure and coordinate clients into treatment.

(5) Ensure that administrative costs of the department are limited to ten percent of the funds appropriated for the project. [1993 c 422 § 5.]

**Finding—1993 c 422:** See note following RCW 70.83C.010.

## Chapter 70.83E RCW
## PRENATAL NEWBORN SCREENING FOR EXPOSURE TO HARMFUL DRUGS

Sections



**70.83E.010 Declaration—Policy.** The policy of the state of Washington is to make every effort to detect as early as feasible and to prevent where possible preventable disorders resulting from parental use of alcohol and drugs. [1998 c 93 § 1.]

**70.83E.020 Screening criteria, training protocols—Development of.** The department of health, in consultation with appropriate medical professionals, shall develop screening criteria for use in identifying pregnant or lactating women addicted to drugs or alcohol who are at risk of producing a drug-affected baby. The department shall also develop training protocols for medical professionals related to the identification and screening of women at risk of producing a drug-affected baby. [1998 c 93 § 2.]

**70.83E.030 Department of health—Duties.** The department of health shall investigate the feasibility of medical protocols for laboratory testing or other screening of new-

born infants for exposure to alcohol or drugs. The department of health shall consider how to improve the current system with respect to testing, considering such variables as whether such testing is available, its cost, which entity is currently responsible for ordering testing, and whether testing should be mandatory or targeted. [1998 c 93 § 3.]

## Chapter 70.84 RCW
## BLIND, HANDICAPPED, AND DISABLED PERSONS—"WHITE CANE LAW"

Sections



*Dog guide or service animal, interfering with: RCW 9.91.170.*

**70.84.010 Declaration—Policy.** The legislature declares:

(1) It is the policy of this state to encourage and enable the blind, persons with [visual] disabilities, the hearing impaired, and other persons with disabilities to participate fully in the social and economic life of the state, and to engage in remunerative employment.

(2) As citizens, the blind, persons with visual disabilities, the hearing impaired, and other persons with disabilities have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities, and other public places.

(3) The blind, persons with visual disabilities, the hearing impaired, and other persons with disabilities are entitled to full and equal accommodations, advantages, facilities, and privileges on common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, and all other public conveyances, as well as in hotels, lodging places, places of public resort, accommodation, assemblage or amusement, and all other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. [2020 c 274 § 48; 1980 c 109 § 1; 1969 c 141 § 1.]

**70.84.020 "Dog guide" defined.** For the purpose of this chapter, the term "dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons. [1997 c 271 § 18; 1980 c 109 § 2; 1969 c 141 § 2.]

**70.84.021 "Service animal" defined.** For the purpose of this chapter, "service animal" means an animal that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability. [1997 c 271 § 19; 1985 c 90 § 1.]

**70.84.040 Precautions for drivers of motor vehicles approaching a wheelchair user or pedestrian who is using a white cane, dog guide, or service animal.** The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white in color (with or without a red tip), a totally or partially blind or hearing impaired pedestrian using a dog guide, a person with physical disabilities using a service animal, or a person with a disability using a wheelchair or a power wheelchair as defined in RCW 46.04.415 shall take all necessary precautions to avoid injury to such pedestrian or wheelchair user. Any driver who fails to take such precaution shall be liable in damages for any injury caused such pedestrian or wheelchair user. It shall be unlawful for the operator of any vehicle to drive into or upon any crosswalk while there is on such crosswalk such pedestrian or wheelchair user crossing or attempting to cross the roadway, if such pedestrian or wheelchair user is using a white cane, using a dog guide, using a service animal, or using a wheelchair or a power wheelchair as defined in RCW 46.04.415. The failure of any such pedestrian or wheelchair user so to signal shall not deprive him or her of the right-of-way accorded him or her by other laws. [2010 c 184 § 1; 1997 c 271 § 20; 1985 c 90 § 3; 1980 c 109 § 4; 1971 ex.s. c 77 § 1; 1969 c 141 § 4.]

Additional notes found at www.leg.wa.gov

**70.84.050 Handicapped pedestrians not carrying white cane or using dog guide—Rights and privileges.** A totally or partially blind pedestrian not carrying a white cane or a totally or partially blind or hearing impaired pedestrian not using a dog guide in any of the places, accommodations, or conveyances listed in RCW 70.84.010, shall have all of the rights and privileges conferred by law on other persons. [1997 c 271 § 21; 1980 c 109 § 5; 1969 c 141 § 5.]

**70.84.060 Unauthorized use of white cane, dog guide, or service animal.** It shall be unlawful for any pedestrian who is not totally or partially blind to use a white cane or any pedestrian who is not totally or partially blind or is not hearing impaired to use a dog guide or any pedestrian who is not otherwise physically disabled to use a service animal in any of the places, accommodations, or conveyances listed in RCW 70.84.010 for the purpose of securing the rights and privileges accorded by the chapter to totally or partially blind, hearing impaired, or otherwise physically disabled people. [1997 c 271 § 22; 1985 c 90 § 4; 1980 c 109 § 6; 1969 c 141 § 6.]

**70.84.070 Penalty for violations.** Any person or persons, firm or corporation, or the agent of any person or persons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities enumerated in RCW 70.84.010, or otherwise interferes with the rights of a totally or partially blind, hearing impaired, or otherwise physically disabled person as set forth in RCW 70.84.010 shall be guilty of a misdemeanor. [1985 c 90 § 5; 1980 c 109 § 7; 1969 c 141 § 7.]

**70.84.080 Employment of persons with disabilities in public service.** In accordance with the policy set forth in RCW 70.84.010, the blind, persons with visual disabilities, the hearing impaired, and other persons with disabilities shall be employed in the state service, in the service of the political

subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved. [2020 c 274 § 49; 1980 c 109 § 8; 1969 c 141 § 9.]

**70.84.900 Short title.** This chapter shall be known and may be cited as the "White Cane Law." [1969 c 141 § 11.]

## Chapter 70.85 RCW
## EMERGENCY PARTY LINE TELEPHONE CALLS—LIMITING TELEPHONE COMMUNICATION IN HOSTAGE SITUATIONS

Sections



*Call to operator without charge or coin insertion be provided: RCW 80.36.225.*

*Fraud in operating coin-box telephone: RCW 9.26A.120.*

*Telecommunications companies: Chapter 80.36 RCW.*

**70.85.010 Definitions.** "Party line" means a subscribers' line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

"Emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential. [1953 c 25 § 1.]

**70.85.020 Refusal to yield line—Penalty.** Any person who shall wilfully refuse to yield or surrender the use of a party line to another person for the purpose of permitting such other person to report a fire or summon police, medical or other aid in case of emergency, shall be deemed guilty of a misdemeanor. [1953 c 25 § 2.]

**70.85.030 Request for line on pretext of emergency—Penalty.** Any person who shall ask for or request the use of a party line on pretext that an emergency exists, knowing that no emergency in fact exists, shall be deemed guilty of a misdemeanor. [1953 c 25 § 3.]

**70.85.040 Telephone directories—Notice.** After September 9, 1953, every telephone directory thereafter distributed to the members of the general public shall contain a notice which explains this chapter, such notice to be printed in type which is no smaller than any other type on the same page and to be preceded by the word "warning": PROVIDED, That the provisions of this section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories. [1953 c 25 § 4.]

**70.85.100 Authority to isolate telephones in barricade or hostage situation—Definitions.** (1) The supervising law enforcement official having jurisdiction in a geographical area who reasonably believes that a person is barricaded, or one or more persons are holding another person or persons hostage within that area may order a telephone company employee designated pursuant to RCW 70.85.110 to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communications between the barricaded person or hostage holder and any person other than a peace officer or a person authorized by the peace officer.

(2) As used in this section:

(a) A "hostage holder" is one who commits or attempts to commit any of the offenses described in RCW 9A.40.020, 9A.40.030, or 9A.40.040; and

(b) A "barricaded person" is one who establishes a perimeter around an area from which others are excluded and either:

(i) Is committing or is immediately fleeing from the commission of a violent felony; or

(ii) Is threatening or has immediately prior threatened a violent felony or suicide; or

(iii) Is creating or has created the likelihood of serious harm within the meaning of chapter 71.05 RCW relating to mental illness. [1985 c 260 § 1; 1979 c 28 § 1.]

**70.85.110 Telephone companies to provide contacting information.** The telephone company providing service within the geographical jurisdiction of a law enforcement unit shall inform law enforcement agencies of the address and telephone number of its security office or other designated office to provide all required assistance to law enforcement officials to carry out the purpose of RCW 70.85.100 through 70.85.130. The designation shall be in writing and shall provide the telephone number or numbers through which the security representative or other telephone company official can be reached at any time. This information shall be served upon all law enforcement units having jurisdiction in a geographical area. Any change in address or telephone number or identity of the telephone company office to be contacted to provide required assistance shall be served upon all law enforcement units in the affected geographical area. [1979 c 28 § 2.]

**70.85.120 Liability of telephone company.** Good faith reliance on an order given under RCW 70.85.100 through 70.85.130 by a supervising law enforcement official shall constitute a complete defense to any civil or criminal action arising out of such ordered cutting, rerouting or diverting of telephone lines. [1979 c 28 § 3.]

**70.85.130 Applicability.** RCW 70.85.100 through 70.85.120 will govern notwithstanding the provisions of any other section of this chapter and notwithstanding the provisions of chapter 9.73 RCW. [1979 c 28 § 4.]

## Chapter 70.86 RCW
## EARTHQUAKE STANDARDS FOR CONSTRUCTION

Sections



**70.86.010 Definitions.** The word "person" includes any individual, corporation, or group of two or more individuals acting together for a common purpose, whether acting in an individual, representative, or official capacity. [1955 c 278 § 1.]

**70.86.020 Buildings to resist earthquake intensities.** Hospitals, schools, except one story, portable, frame school buildings, buildings designed or constructed as places of assembly accommodating more than three hundred persons; and all structures owned by the state, county, special districts, or any municipal corporation within the state of Washington shall hereafter be designed and constructed to resist probable earthquake intensities at the location thereof in accordance with RCW 70.86.030, unless other standards of design and construction for earthquake resistance are prescribed by enactments of the legislative authority of counties, special districts, and/or municipal corporations in which the structure is constructed. [1955 c 278 § 2.]

**70.86.030 Standards for design and construction.** Structural frames, exterior walls, and all appendages of the buildings described in RCW 70.86.020, whose collapse will endanger life and property shall be designed and constructed to withstand horizontal forces from any direction of not less than the following fractions of the weight of the structure and its parts acting at the centers of gravity:

Western Washington 0.05. [1955 c 278 § 3.]

**70.86.040 Penalty.** Any person violating any provision of this chapter shall be guilty of a misdemeanor: PROVIDED, That any person causing such a building to be built shall be entitled to rely on the certificate of a licensed professional engineer and/or registered architect that the standards of design set forth above have been met. [1955 c 278 § 4.]

## Chapter 70.87 RCW
## ELEVATORS, LIFTING DEVICES, AND MOVING WALKS

Sections



*State building code: Chapter 19.27 RCW.*

**70.87.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory committee" means the elevator advisory committee as described in this chapter.

(2) "Alteration" means any change to equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement.

(3) "Automobile parking elevator" means an elevator: (a) Located in either a stationary or horizontally moving hoistway; (b) used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power-driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator; and (c) in which persons are not normally stationed on any level except the receiving level.

(4) "Belt manlift" means a power driven endless belt provided with steps or platforms and a hand hold for the transportation of personnel from floor to floor.

(5) "Casket lift" means a lift that (a) is installed at a mortuary, (b) is designed exclusively for carrying of caskets, (c) moves in guides in a basically vertical direction, and (d) serves two or more floors or landings.

(6) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator, moving walk, and other elevating devices, as defined in this section.

(7) "Conveyance work" means the alteration, construction, dismantling, erection, installation, maintenance, relocation, and wiring of a conveyance.

(8) "Department" means the department of labor and industries.

(9) "Director" means the director of the department or his or her representative.

(10) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car (a) that moves in guides in a substantially vertical direction, (b) the floor area of which does not exceed nine square feet, (c) the inside height of which does not exceed four feet, (d) the capacity of which does not exceed five hundred pounds, and (e) that is used exclusively for carrying materials.

(11) "Elevator" means a hoisting or lowering machine equipped with a car or platform that moves in guides and serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator (i) on which passengers are permitted to ride and (ii) that may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator (i) used primarily for carrying freight and (ii) on which only the operator, the persons necessary for loading and unloading, and other employees approved by the department are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator that: (i) Operates between a sidewalk or other area outside the building and floor levels inside the building below the outside area, (ii) does not have a landing opening into the building at its upper limit of travel, and (iii) is not used to carry automobiles;

(d) "Hand elevator" means an elevator utilizing manual energy to move the car;

(e) "Inclined elevator" means an elevator that travels at an angle of inclination of seventy degrees or less from the horizontal;

(f) "Multideck elevator" means an elevator having two or more compartments located one immediately above the other;

(g) "Observation elevator" means an elevator designed to permit exterior viewing by passengers while the car is traveling;

(h) "Power elevator" means an elevator utilizing energy other than gravitational or manual to move the car;

(i) "Electric elevator" means an elevator where the energy is applied by means of an electric driving machine;

(j) "Hydraulic elevator" means an elevator where the energy is applied by means of a liquid under pressure in a cylinder equipped with a plunger or piston;

(k) "Direct-plunger hydraulic elevator" means a hydraulic elevator having a plunger or cylinder directly attached to the car frame or platform;

(l) "Electro-hydraulic elevator" means a direct-plunger elevator where liquid is pumped under pressure directly into the cylinder by a pump driven by an electric motor;

(m) "Maintained-pressure hydraulic elevator" means a direct-plunger elevator where liquid under pressure is available at all times for transfer into the cylinder;

(n) "Roped hydraulic elevator" means a hydraulic elevator having its plunger or piston connected to the car with wire ropes or indirectly coupled to the car by means of wire ropes and sheaves;

(o) "Rack and pinion elevator" means a power elevator, with or without a counterweight, that is supported, raised, and lowered by a motor or motors that drive a pinion or pinions on a stationary rack mounted in the hoistway;

(p) "Screw column elevator" means a power elevator having an uncounterweighted car that is supported, raised, and lowered by means of a screw thread;

(q) "Rooftop elevator" means a power passenger or freight elevator that operates between a landing at roof level and one landing below and opens onto the exterior roof level of a building through a horizontal opening;

(r) "Special purpose personnel elevator" means an elevator that is limited in size, capacity, and speed, and permanently installed in structures such as grain elevators, radio antenna, bridge towers, underground facilities, dams, power plants, and similar structures to provide vertical transportation of authorized personnel and their tools and equipment only;

(s) "Workmen's construction elevator" means an elevator that is not part of the permanent structure of a building and is used to raise and lower workers and other persons connected with, or related to, the building project;

(t) "Boat launching elevator" means a conveyance that serves a boat launching structure and a beach or water surface and is used for the carrying or handling of boats in which people ride;

(u) "Limited-use/limited-application elevator" means a power passenger elevator where the use and application is limited by size, capacity, speed, and rise, intended principally to provide vertical transportation for people with physical disabilities.

(12) "Elevator contractor" means any person, firm, or company that possesses an elevator contractor license in accordance with this chapter and who is engaged in the business of performing conveyance work covered by this chapter.

(13) "Elevator contractor license" means a license that is issued to an elevator contractor who has met the qualification requirements established in RCW 70.87.240.

(14) "Elevator helper/apprentice" means a person who works under the general direction of a licensed elevator mechanic. A license is not required to be an elevator helper/apprentice.

(15) "Elevator mechanic" means any person who possesses an elevator mechanic license in accordance with this chapter and who is engaged in performing conveyance work covered by this chapter.

(16) "Elevator mechanic license" means a license that is issued to a person who has met the qualification requirements established in RCW 70.87.240.

(17) "Employee" means any person employed by an elevator contractor.

(18) "Escalator" means a power-driven, inclined, continuous stairway used for raising and lowering passengers.

(19) "Existing installations" means an installation defined as an "installation, existing" in this chapter or in rules adopted under this chapter.

(20) "Inspector" means an elevator inspector of the department or an elevator inspector of a municipality having in effect an elevator ordinance pursuant to RCW 70.87.200.

(21) "License" means a written license, duly issued by the department, authorizing a person, firm, or company to carry on the business of performing conveyance work or to perform conveyance work covered by this chapter.

(22) "Licensee" means the elevator mechanic or elevator contractor.

(23) "Maintenance" means a process of routine examination, lubrication, cleaning, servicing, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with this chapter. "Maintenance" includes repair and replacement, but not alteration.

(24) "Material hoist" means a hoist that is not a part of a permanent structure used to raise or lower materials during construction, alteration, or demolition. It is not applicable to the temporary use of permanently installed personnel elevators as material hoists.

(25) "Material lift" means a lift that (a) is permanently installed, (b) is comprised of a car or platform that moves in guides, (c) serves two or more floors or landings, (d) travels in a vertical or inclined position, (e) is an isolated, self-contained lift, (f) is not part of a conveying system, and (g) is installed in a commercial or industrial area not accessible to the general public or intended to be operated by the general public.

(26) "Moving walk" means a passenger-carrying device (a) on which passengers stand or walk and (b) on which the passenger-carrying surface remains parallel to its direction of motion.

(27) "One-man capacity manlift" means a single passenger, hand-powered counterweighted device, or electric-powered device, that travels vertically in guides and serves two or more landings.

(28) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee, or otherwise.

(29) "Permit" means a permit issued by the department: (a) To perform conveyance work, other than maintenance; or (b) to operate a conveyance.

(30) "Person" means this state, a political subdivision, any public or private corporation, any firm, or any other entity as well as an individual.

(31) "Personnel hoist" means a hoist that is not a part of a permanent structure, is installed inside or outside buildings during construction, alteration, or demolition, and used to raise or lower workers and other persons connected with, or related to, the building project. The hoist may also be used for transportation of materials.

(32) "Platform" means a rigid surface that is maintained in a horizontal position at all times when in use, and upon which passengers stand or a load is carried.

(33) "Private residence conveyance" means a conveyance installed in or on the premises of a single-family dwelling and operated for transporting persons or property from one elevation to another.

(34) "Public agency" means a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision, or other public agency and includes any department, bureau, office, board, commission or institution of such public entities.

(35) "Repair" means the reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with this chapter.

(36) "Replacement" means the substitution of a device, component, and/or subsystem in its entirety with a unit that is basically the same as the original for the purpose of ensuring performance in accordance with this chapter.

(37) "Single-occupancy farm conveyance" means a hand-powered counterweighted single-occupancy conveyance that travels vertically in a grain elevator and is located on a farm that does not accept commercial grain.

(38) "Stairway chair lift" means a lift that travels in a basically inclined direction and is designed for use by individuals with disabilities.

(39) "Wheelchair lift" means a lift that travels in a vertical or inclined direction and is designed for use by individuals with disabilities.

(40) "Whistleblower" means any employee who in good faith reports practices or opposes practices that may violate the provisions of this chapter or the rules promulgated hereunder, or of the safety, installation, repair, or maintenance policies of his or her employer. The term also means (a) an employee who is believed to have reported such practices but who, in fact, has not reported such practices or (b) an employee who has assisted in the reporting of practices or has provided testimony or information in connection with the reporting of practices.

(41) "Workplace reprisal or retaliatory action" includes actions such as discharge or in any manner discrimination against any employee who has reported or filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or herself or others of any right or responsibility afforded by this chapter. [2012 c 54 § 2. Prior: 2009 c 128 § 1; 2003 c 143 § 9; 2002 c 98 § 1; 1998 c 137 § 1; 1997 c 216 § 1; 1983 c 123 § 1; 1973 1st ex.s. c 52 § 9; 1969 ex.s. c 108 § 1; 1963 c 26 § 1.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

**70.87.020 Conveyances to be safe and in conformity with law.** (1) The purpose of this chapter is to provide for safety of life and limb, to promote safety awareness, and to ensure the safe design, mechanical and electrical operation, and inspection of conveyances, and performance of conveyance work, and all such operation, inspection, and conveyance work subject to the provisions of this chapter shall be reasonably safe to persons and property and in conformity with the provisions of this chapter and the applicable statutes of the state of Washington, and all orders, and rules of the department. The use of unsafe and defective conveyances imposes a substantial probability of serious and preventable injury to employees and the public exposed to unsafe conditions. The prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interest of the people of this state. It is the policy of the legislature that employees should be protected from workplace reprisal or retaliatory action for the opposition to or reporting in good faith of practices that may violate the provisions of this chapter and the rules promulgated hereunder, or of the safety, installation, repair, or maintenance policies of their employers. Personnel performing work covered by this chapter must, by documented training or experience or both, be familiar with the operation and safety functions of the components and equipment. Training and experience must include, but not be limited to, recognizing the safety

hazards and performing the procedures to which the personnel performing conveyance work covered by this chapter are assigned in conformance with the requirements of this chapter. This chapter establishes the minimum standards for personnel performing conveyance work.

(2) This chapter is not intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, code effectiveness, durability, and safety to those required by this chapter, provided that there is technical documentation to demonstrate the equivalency of the system, method, or device, as prescribed in this chapter and the rules adopted under this chapter.

(3) In any suit for damages allegedly caused by a failure or malfunction of the conveyance, conformity with the rules of the department is prima facie evidence that the conveyance work, operation, and inspection is reasonably safe to persons and property. [2012 c 54 § 1; 2003 c 143 § 10; 2002 c 98 § 2; 1983 c 123 § 2; 1963 c 26 § 2.]

Additional notes found at www.leg.wa.gov

**70.87.030 Rules—Waivers during state of emergency.** The department shall adopt rules governing the mechanical and electrical operation, acceptance tests, conveyance work, operation, and inspection that are necessary and appropriate and shall also adopt minimum standards governing existing installations. In the execution of this rule-making power and before the adoption of rules, the department shall consider the rules for safe conveyance work, operation, and inspection, including the American National Standards Institute Safety Code for Personnel and Material Hoists, the American Society of Mechanical Engineers Safety Code for Elevators, Dumbwaiters, and Escalators, and any amendatory or supplemental provisions thereto. The department by rule shall establish a schedule of fees to pay the costs incurred by the department for the work related to administration and enforcement of this chapter. Nothing in this chapter limits the authority of the department to prescribe or enforce general or special safety orders as provided by law.

The department may consult with: Engineering authorities and organizations concerned with standard safety codes; rules and regulations governing conveyance work, operation, and inspection; and the qualifications that are adequate, reasonable, and necessary for the elevator mechanic, contractor, and inspector.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the collection of fees under this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 206; 2003 c 143 § 11; 2002 c 98 § 3; 1998 c 137 § 2; 1994 c 164 § 28; 1983 c 123 § 3; 1973 1st ex.s. c 52 § 10; 1971 c 66 § 1; 1970 ex.s. c 22 § 1; 1963 c 26 § 3.]

Additional notes found at www.leg.wa.gov

**70.87.034 Additional powers of department.** The department also has the following powers:

(1) The department may adopt any rules necessary or helpful for the department to implement and enforce this chapter.

(2) The director may issue subpoenas for the production of persons, papers, or information in all proceedings and investigations within the scope of this chapter. If a person refuses to obey a subpoena, the director, through the attorney general, may ask the superior court to order the person to obey the subpoena.

(3) The director may take the oral or written testimony of any person. The director has the power to administer oaths.

(4) The director may make specific decisions, cease and desist orders, other orders, and rulings, including demands and findings. [1983 c 123 § 19.]

**70.87.036 Powers of attorney general.** On request of the department, the attorney general may:

(1) File suit to collect a penalty assessed by the department;

(2) Seek a civil injunction, show cause order, or contempt order against the person who repeatedly violates a provision of this chapter;

(3) Seek an ex parte inspection warrant if the person refuses to allow the department to inspect a conveyance;

(4) File suit asking the court to enforce a cease and desist order or a subpoena issued by the director under this chapter; and

(5) Take any other legal action appropriate and necessary for the enforcement of the provisions of this chapter.

All suits shall be brought in the district or superior court of the district or county in which the defendant resides or transacts business. In any suit or other legal action, the department may ask the court to award costs and attorney's fees. If the department prevails, the court shall award the appropriate costs and attorney's fees. [1983 c 123 § 20.]

**70.87.040 Privately and publicly owned conveyances are subject to chapter.** All privately owned and publicly owned conveyances are subject to the provisions of this chapter except as specifically excluded by this chapter. [1983 c 123 § 4; 1963 c 26 § 4.]

**70.87.050 Conveyances in buildings occupied by state, county, or political subdivision.** The conveyance work on, and the operation and inspection of any conveyance located in, or used in connection with, any building owned by the state, a county, or a political subdivision, other than those located within and owned by a city having an elevator code, shall be under the jurisdiction of the department. [2003 c 143 § 12; 2002 c 98 § 4; 1983 c 123 § 5; 1969 ex.s. c 108 § 2; 1963 c 26 § 5.]

Additional notes found at www.leg.wa.gov

**70.87.060 Responsibility for operation and maintenance of equipment and for periodic tests.** (1) The person, elevator contractor, or public agency performing conveyance work is responsible for operation and maintenance of the conveyance until the department has issued an operating permit for the conveyance, except during the period when a limited operating permit in accordance with RCW 70.87.090(2) is in effect, and is also responsible for all tests of a new, relo-

cated, or altered conveyance until the department has issued an operating permit for the conveyance.

(2) The owner or his or her duly appointed agent shall be responsible for the safe operation and proper maintenance of the conveyance after the department has issued the operating permit and also during the period of effectiveness of any limited operating permit in accordance with RCW 70.87.090(2). The owner shall be responsible for all periodic tests required by the department. [2003 c 143 § 13; 1983 c 123 § 6; 1963 c 26 § 6.]

Additional notes found at www.leg.wa.gov

**70.87.070 Serial numbers.** All new and existing conveyances shall have a serial number painted on or attached as directed by the department. This serial number shall be assigned by the department and shown on all required permits. [1983 c 123 § 7; 1963 c 26 § 7.]

**70.87.080 Permits—When required—Application for—Posting.** (1) A permit shall be obtained from the department before performing work, other than maintenance, on a conveyance under the jurisdiction of the department.

(2) The installer of the conveyance shall submit an application for the permit in duplicate, in a form that the department may prescribe.

(3) The permit issued by the department shall be kept posted conspicuously at the site of installation.

(4) A permit is not required for maintenance.

(5) After the effective date of rules adopted under this chapter establishing licensing requirements, the department may issue a permit for conveyance work only to an elevator contractor unless the permit is for conveyance work on private residence conveyances. After July 1, 2004, the department may not issue a permit for conveyance work on private residence conveyances to a person other than an elevator contractor. [2003 c 143 § 14; 1983 c 123 § 8; 1963 c 26 § 8.]

Additional notes found at www.leg.wa.gov

**70.87.090 Operating permits—Limited permits—Duration—Posting.** (1) An operating permit is required for each conveyance operated in the state of Washington except during its erection by the person or firm responsible for its installation. A permit issued by the department shall be kept conspicuously posted near the conveyance.

(2) The department may permit the temporary use of a conveyance during its installation or alteration, under the authority of a limited permit issued by the department for each class of service. Limited permits shall be issued for a period not to exceed thirty days and may be renewed at the discretion of the department. This limited-use permit is to provide transportation for construction personnel, tools, and materials only. Where a limited permit is issued, a notice bearing the information that the equipment has not been finally approved shall be conspicuously posted. [1998 c 137 § 3; 1983 c 123 § 9; 1963 c 26 § 9.]

**70.87.100 Conveyance work to be performed by elevator contractors—Acceptance tests—Inspections.** (1) All conveyance installations, relocations, or alterations must be performed by an elevator contractor employing an elevator mechanic.

(2) The elevator contractor employing an elevator mechanic performing such conveyance work shall notify the department before completion of the work, and shall subject the new, moved, or altered portions of the conveyance to the acceptance tests.

(3) All new, altered, or relocated conveyances for which a permit has been issued, shall be inspected for compliance with the requirements of this chapter by an authorized representative of the department. The authorized representative shall also witness the test specified. [2003 c 143 § 15; 2002 c 98 § 5; 1983 c 123 § 11; 1963 c 26 § 10.]

Additional notes found at www.leg.wa.gov

**70.87.110 Exceptions authorized.** The requirements of this chapter are intended to apply to all conveyances except as modified or waived by the department. They are intended to be modified or waived whenever any requirements are shown to be impracticable, such as involving expense not justified by the protection secured. However, the department shall not allow the modification or waiver unless equivalent or safer construction is secured in other ways. An exception applies only to the installation covered by the application for waiver. [1983 c 123 § 12; 1963 c 26 § 11.]

**70.87.120 Inspectors—Inspections and reinspections—Suspension or revocation of permit—Order to discontinue use—Penalties—Investigation by department—Waiver of provisions during state of emergency.** (1) The department shall appoint and employ inspectors, as may be necessary to carry out the provisions of this chapter, under the provisions of the rules adopted by the Washington personnel resources board in accordance with chapter 41.06 RCW.

(2)(a) Except as provided in (b) of this subsection, the department shall cause all conveyances to be inspected and tested at least once each year. Inspectors have the right during reasonable hours to enter into and upon any building or premises in the discharge of their official duties, for the purpose of making any inspection or testing any conveyance contained thereon or therein. Inspections and tests shall conform with the rules adopted by the department. The department shall inspect all installations before it issues any initial permit for operation. Permits shall not be issued until the fees required by this chapter have been paid.

(b)(i) Private residence conveyances operated exclusively for single-family use shall be inspected and tested only when required under RCW 70.87.100 or as necessary for the purposes of subsection (4) of this section and shall be exempt from RCW 70.87.090 unless an annual inspection and operating permit are requested by the owner.

(ii) The department may perform additional inspections of a private residence conveyance at the request of the owner of the conveyance. Fees for these inspections shall be in accordance with the schedule of fees adopted for operating permits pursuant to RCW 70.87.030. An inspection requested under this subsection (2)(b)(ii) shall not be performed until the required fees have been paid.

(3) If inspection shows a conveyance to be in an unsafe condition, the department shall issue an inspection report in writing requiring the repairs or alterations to be made to the conveyance that are necessary to render it safe and may also

suspend or revoke a permit pursuant to RCW 70.87.125 or order the operation of a conveyance discontinued pursuant to RCW 70.87.145.

(a) A penalty may be assessed under RCW 70.87.185 for failure to correct a violation within ninety days after the owner is notified in writing of inspection results.

(b) The owner may be assessed a penalty under RCW 70.87.185 for failure to submit official notification in writing to the department that all corrections have been completed.

(4) The department may investigate accidents and alleged or apparent violations of this chapter.

(5) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the collection of fees under this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 207; 1998 c 137 § 4; 1997 c 216 § 2; 1993 c 281 § 61; 1983 c 123 § 13; 1970 ex.s. c 22 § 2; 1963 c 26 § 12.]

Additional notes found at www.leg.wa.gov

**70.87.125 Suspension or revocation of license or permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of license or permit.** (1) A license issued under this chapter may be suspended, revoked, or subject to civil penalty by the department upon verification that any one or more of the following reasons exist:

(a) Any false statement as to a material matter in the application;

(b) Fraud, misrepresentation, or bribery in securing a license;

(c) Failure to notify the department and the owner or lessee of a conveyance or related mechanisms of any condition not in compliance with this chapter;

(d) A violation of any provisions of this chapter; and

(e) If the elevator contractor does not employ an individual designated as the primary point of contact with the department and who has successfully completed the elevator contractor examination. In the case of a separation of employment, termination of this relationship or designation, or death of the designated individual, the elevator contractor must, within ninety days, designate a new individual who has successfully completed the elevator contractor examination.

(2) The department may suspend or revoke a permit if:

(a) The permit was obtained through fraud or by error if, in the absence of error, the department would not have issued the permit;

(b) The conveyance for which the permit was issued has not been worked on in accordance with this chapter; or

(c) The conveyance has become unsafe.

(3) The department shall suspend any license issued under this chapter promptly after receiving notice from the department of social and health services that the holder of the license has been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a support order. If the person has continued to meet all other license requirements during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(4) The department shall notify in writing the owner, licensee, or person performing conveyance work, of its action and the reason for the action. The department shall send the notice using a method by which the mailing can be tracked or the delivery can be confirmed to the last known address of the owner or person. The notice shall inform the owner or person that a hearing may be requested pursuant to RCW 70.87.170.

(5)(a) If the department has suspended or revoked a permit or license because of fraud or error, and a hearing is requested, the suspension or revocation shall be stayed until the hearing is concluded and a decision is issued.

(b) If the department has revoked or suspended a license because the licensee performing the work covered by this chapter is working in a manner that does not effectively prevent injuries or deaths or protect employees and the public from unsafe conditions as is required by this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(c) If the department has revoked or suspended a permit because the conveyance is unsafe or the conveyance work is not permitted and performed in accordance with this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(6) The department must remove a suspension or reinstate a revoked license if the licensee pays all the assessed civil penalties and is able to demonstrate to the department that the licensee has met all the qualifications established by this chapter.

(7) The department shall remove a suspension or reinstate a revoked permit if a conveyance is repaired or modified to bring it into compliance with this chapter. [2011 c 301 § 22; 2003 c 143 § 16; 2002 c 98 § 6; 1983 c 123 § 10.]

Additional notes found at www.leg.wa.gov

**70.87.140 Operation without permit enjoinable.** Whenever any conveyance is being operated without a permit required by this chapter, the attorney general or the prosecuting attorney of the county may apply to the superior court of the county in which the conveyance is located for a temporary restraining order or a temporary or permanent injunction restraining the operation of the conveyance until the department issues a permit for the conveyance. No bond may be required from the department in such proceedings. [1983 c 123 § 14; 1963 c 26 § 14.]

**70.87.145 Order to discontinue operation—Notice—Conditions—Contents of order—Recision of order—Violation—Penalty—Random inspections.** (1) An authorized representative of the department may order the owner or person operating a conveyance to discontinue the operation of a conveyance, and may place a notice that states that the conveyance may not be operated on a conspicuous place in the conveyance, if:

(a) The conveyance work has not been permitted and performed in accordance with this chapter; or

(b) The conveyance has otherwise become unsafe.

The order is effective immediately, and shall not be stayed by a request for a hearing.

(2) The department shall prescribe a form for the order to discontinue operation. The order shall specify why the conveyance violates this chapter or is otherwise unsafe, and shall inform the owner or operator that he or she may request a hearing pursuant to RCW 70.87.170. A request for a hearing does not stay the effect of the order.

(3) The department shall rescind the order to discontinue operation if the conveyance is fixed or modified to bring it into compliance with this chapter.

(4) An owner or a person that knowingly operates or allows the operation of a conveyance in contravention of an order to discontinue operation, or removes a notice not to operate, is:

(a) Guilty of a misdemeanor; and

(b) Subject to a civil penalty under RCW 70.87.185.

(5) The department may conduct random on-site inspections and tests on existing installations, witnessing periodic inspections and testing in order to ensure satisfactory conveyance work by persons, firms, or companies performing conveyance work, and assist in development of public awareness programs. [2003 c 143 § 17; 2002 c 98 § 7; 1983 c 123 § 15.]

Additional notes found at www.leg.wa.gov

**70.87.170 Review of department action in accordance with administrative procedure act.** (1) Any person aggrieved by an order or action of the department denying, suspending, revoking, or refusing to renew a permit or license; assessing a penalty for a violation of this chapter; or ordering the operation of a conveyance to be discontinued, may request a hearing within fifteen days after notice of the department's order or action is received. The date the hearing was requested shall be the date the request for hearing was postmarked.

(2) The party requesting the hearing must accompany the request with a certified or cashier's check for two hundred dollars payable to the department, except that if a penalty assessment is the issue for the hearing, the check amount shall be ten percent of the penalty amount or two hundred dollars, whichever is less, but in no event less than one hundred dollars. The department shall refund the amount of the check if the party requesting the hearing prevails at the hearing; otherwise, the department shall retain the amount of the check.

(3) If the department does not receive a timely request for hearing, the department's order or action is final and may not be appealed.

(4) If the aggrieved party requests a hearing, the department shall ask an administrative law judge to preside over the hearing. The hearing shall be conducted in accordance with chapter 34.05 RCW. [2014 c 190 § 5; 2003 c 143 § 18; 2002 c 98 § 8; 1983 c 123 § 16; 1963 c 26 § 17.]

**Effective date—2014 c 190:** See note following RCW 19.28.131.

Additional notes found at www.leg.wa.gov

**70.87.180 Violations.** (1) The performance of conveyance work, other than maintenance, or the operation of a conveyance without a permit by any person owning or having the custody, management, or operation thereof, except as provided in RCW 70.87.080 and 70.87.090, is a misdemeanor. Each day of violation is a separate offense. A prosecution may not be maintained if a person has requested the issuance or renewal of a permit but the department has not acted.

(2) The performance of conveyance work, other than the maintenance of conveyances as specified in RCW 70.87.270, without a license by any person is a misdemeanor. Each day of violation is a separate offense. A prosecution may not be maintained if a person has requested the issuance or renewal of a license but the department has not acted. [2003 c 143 § 19; 2002 c 98 § 9; 1983 c 123 § 17; 1963 c 26 § 18.]

Additional notes found at www.leg.wa.gov

**70.87.185 Penalty for violation of chapter—Rules—Notice.** (1) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(2) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(3) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice using a method by which the mailing can be tracked or the delivery can be confirmed to the violator's last known address. The notice shall inform the violator that a hearing may be requested under RCW 70.87.170. The hearing shall not stay the effect of the penalty. [2011 c 301 § 23; 1983 c 123 § 18.]

**70.87.190 Accidents—Report and investigation—Cessation of use—Removal of damaged parts.** The owner or the owner's duly authorized agent shall promptly notify the department of each accident to a person requiring the service of a physician or resulting in a disability exceeding one day, and shall afford the department every facility for investigating and inspecting the accident. The department shall without delay, after being notified, make an inspection and shall place on file a full and complete report of the accident. The report shall give in detail all material facts and information available and the cause or causes, so far as they can be determined. The report shall be open to public inspection at all reasonable hours. When an accident involves the failure or destruction of any part of the construction or the operating mechanism of a conveyance, the use of the conveyance is forbidden until it has been made safe; it has been reinspected and any repairs, changes, or alterations have been approved by the department; and a permit has been issued by the department. The removal of any part of the damaged construction or operating mechanism from the premises is forbidden until the department grants permission to do so. [1983 c 123 § 21; 1963 c 26 § 19.]

**70.87.200 Exemptions.** (1) The provisions of this chapter do not apply where:

(a) A conveyance is permanently removed from service or made effectively inoperative;

(b) Lifts, hoists for persons, or material hoists are erected temporarily for use during construction work only and are of such a design that they must be operated by a worker stationed at the hoisting machine; or

(c) A single-occupancy farm conveyance is used exclusively by a farm operator and the farm operator's family members.

(2) Except as limited by RCW 70.87.050, municipalities having in effect an elevator code prior to June 13, 1963, may continue to assume jurisdiction over conveyance work and may inspect, issue permits, collect fees, and prescribe minimum requirements for conveyance work and operation if the requirements are equal to the requirements of this chapter and to all rules pertaining to conveyances adopted and administered by the department. Upon the failure of a municipality having jurisdiction over conveyances to carry out the provisions of this chapter with regard to a conveyance, the department may assume jurisdiction over the conveyance. If a municipality elects not to maintain jurisdiction over certain conveyances located therein, it may enter into a written agreement with the department transferring exclusive jurisdiction of the conveyances to the department. The city may not reassume jurisdiction after it enters into such an agreement with the department. [2009 c 549 § 1025; 2009 c 128 § 2; 2003 c 143 § 20; 1983 c 123 § 22; 1969 ex.s. c 108 § 4; 1963 c 26 § 20.]

**Reviser's note:** This section was amended by 2009 c 128 § 2 and by 2009 c 549 § 1025, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

**70.87.205 Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement.** (1) Disputes arising under RCW 70.87.200(2) shall be resolved by arbitration. The request shall be sent using a method by which the mailing can be tracked or the delivery can be confirmed.

(2) The department shall appoint one arbitrator; the municipality shall appoint one arbitrator; and the arbitrators chosen by the department and the municipality shall appoint the third arbitrator. If the two arbitrators cannot agree on the third arbitrator, the presiding judge of the Thurston county superior court, or his or her designee, shall appoint the third arbitrator.

(3) The arbitration shall be held pursuant to the procedures in chapter 7.04A RCW, except that RCW 7.04A.280(1)(f) shall not apply. The decision of the arbitrators is final and binding on the parties. Neither party may appeal a decision to any court.

(4) A party may petition the Thurston county superior court to enforce a decision of the arbitrators. [2011 c 301 § 24; 2005 c 433 § 49; 1983 c 123 § 23.]

Additional notes found at www.leg.wa.gov

**70.87.210 Deposit of moneys from chapter.** All moneys, except fines and penalties, received or collected under the terms of this chapter shall be deposited in the construction registration inspection account. All fines and penalties received or collected under the terms of this chapter shall be deposited in the general fund. [2017 3rd sp.s. c 11 § 3; 1963 c 26 § 21.]

**Effective date—2017 3rd sp.s. c 11:** See note following RCW 51.44.190.

**70.87.220 Elevator safety advisory committee.** (1) The department may adopt the rules necessary to establish and administer the elevator safety advisory committee. The purpose of the advisory committee is to advise the department on the adoption of rules that apply to conveyances; methods of enforcing and administering this chapter; and matters of concern to the conveyance industry and to the individual installers, owners, and users of conveyances.

(2) The advisory committee shall consist of not less than seven persons nor more than nine persons. The director of the department or his or her designee with the advice of the chief elevator inspector shall appoint the committee members as follows:

(a) A minimum of one and a maximum of two representatives of licensed elevator contractors;

(b) A minimum of one and a maximum of two representatives of elevator mechanics licensed to perform all types of conveyance work;

(c) A minimum of one and a maximum of two representatives of owner-employed mechanics exempt from licensing requirements under RCW 70.87.270;

(d) One registered architect or professional engineer representative;

(e) A minimum of one and a maximum of two building owners or manager representatives;

(f) A minimum of one and a maximum of two registered general commercial contractor representatives; and

(g) One ad hoc member representing each municipality maintaining jurisdiction of conveyances in accordance with RCW 70.87.200(2).

(3) The committee members shall serve terms of four years.

(4) The committee shall meet on the third Tuesday of February, May, August, and November of each year, and at other times at the discretion of the chief elevator inspector. The committee members shall serve without per diem or travel expenses.

(5) The chief elevator inspector shall be the secretary for the advisory committee. [2019 c 151 § 1; 2003 c 143 § 7; 2002 c 98 § 11.]

Additional notes found at www.leg.wa.gov

**70.87.230 Conveyance work—Who may perform—Possession of license and identification.** (1) Except as provided in RCW 70.87.270, a person may not perform conveyance work within the state unless he or she is an elevator mechanic who is regularly employed by and is working: (a) For an owner exempt from licensing requirements under RCW 70.87.270 and performing maintenance; (b) for a public agency performing maintenance; or (c) under the direct supervision of an elevator contractor. A person, firm, public agency, or company is not required to be an elevator contractor for removing or dismantling conveyances that are destroyed as a result of a complete demolition of a secured building or structure or where the building is demolished back to the basic support structure whereby no access is permitted therein to endanger the safety and welfare of a person.

(2) When performing conveyance work, an elevator mechanic must have his or her license and photo identification in his or her possession. The elevator mechanic must produce his or her license and identification upon request of

an authorized representative of the department. The department may establish by rule a requirement that the mechanic also wear and visibly display his or her license. [2009 c 36 § 10; 2003 c 143 § 1; 2002 c 98 § 10.]

**Finding—Intent—2009 c 36:** See note following RCW 18.106.020.

Additional notes found at www.leg.wa.gov

**70.87.240 Elevator contractor license, elevator mechanic license—Qualifications—Reciprocity.** (1) Any person, firm, public agency, or company wishing to engage in the business of performing conveyance work within the state must apply for an elevator contractor license with the department on a form provided by the department and be a registered general or specialty contractor under chapter 18.27 RCW.

(2) Except as provided by RCW 70.87.270, any person wishing to perform conveyance work within the state must apply for an elevator mechanic license with the department on a form provided by the department.

(3) An elevator contractor license may not be granted to any person or firm who does not possess the following qualifications:

(a) Five years' experience performing conveyance work, as verified by current and previous elevator contractors licensed to do business; or

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(4) Except as provided in subsection (5) of this section, RCW 70.87.305, and 70.87.245, an elevator mechanic license may not be granted to any person who does not possess the following qualifications:

(a) An acceptable combination of documented experience and education credits: Not less than three years' experience performing conveyance work, as verified by current and previous employers licensed to do business in this state or public agency employers; and

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(5) Any person who furnishes the department with acceptable proof that he or she has performed conveyance work in the category for which a license is sought shall upon making application for a license and paying the license fee receive a license without an examination. The person must have:

(a) Worked without direct and immediate supervision for a general or specialty contractor registered under chapter 18.27 RCW and engaged in the business of performing conveyance work in this state. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(b) Worked without direct and immediate supervision for an owner exempt from licensing requirements under RCW 70.87.270 or a public agency as an individual responsible for maintenance of conveyances owned by the owner exempt from licensing requirements under RCW 70.87.270 or the public agency. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(c) Obtained a certificate of completion and successfully passed the mechanic examination of a nationally recognized training program for the elevator industry such as the national elevator industry educational program or its equivalent; or

(d) Obtained a certificate of completion of an apprenticeship program for an elevator mechanic, having standards substantially equal to those of this chapter, and registered with the Washington state apprenticeship and training council.

(6) A license must be issued to an individual holding a valid license from a state having entered into a reciprocal agreement with the department and having standards substantially equal to those of this chapter, upon application and without examination. [2004 c 66 § 2; 2003 c 143 § 2; 2002 c 98 § 12.]

**Findings—2004 c 66:** See note following RCW 70.87.305.

Additional notes found at www.leg.wa.gov

**70.87.245 Material lift mechanic license.** A material lift mechanic license to perform conveyance work on material lifts subject to WAC 296-96-05010 may be granted to any person who possesses the following qualifications:

(1) The person: (a) Must be employed by an elevator contractor that complies with subsections (2) and (3) of this section; (b) must have successfully completed the training described in subsection (2) of this section; and (c) after successfully completing such training, must have passed a written examination administered by the department that is designed to demonstrate competency with regard to conveyance work on material lifts;

(2) The employer must provide the persons specified in subsection (1) of this section adequate training, including any training provided by the manufacturer, ensuring worker safety and adherence to the published operating specifications of the conveyance manufacturer; and

(3) The employer must maintain: (a) A conveyance work log identifying the equipment, describing the conveyance work performed, and identifying the person who performed the conveyance work; (b) a training log describing the course of study applicable to each conveyance and identifying each employee who has successfully completed the training described in subsection (2) of this section and when such training was completed; and (c) a record evidencing that the employer has notified the conveyance owner in writing that the conveyance is not designed to, is not intended to, and should not be used to convey workers. [2003 c 143 § 3.]

Additional notes found at www.leg.wa.gov

**70.87.250 Licenses—Renewals—Fees—Temporary licenses—Continuing education—Records.** (1) Upon approval of an application, the department may issue a license that is biennially renewable. Each license may include a photograph of the licensee. The fee for the license and for any renewal shall be set by the department in rule.

(2) The department may issue temporary elevator mechanic licenses. These temporary elevator mechanic licenses will be issued to those certified as qualified and competent by licensed elevator contractors. The company shall furnish proof of competency as the department may require.

Each license may include a photograph of the licensee. Each license must recite that it is valid for a period of one year from the date of issuance and for such particular conveyance or geographical areas as the department may designate, and otherwise entitles the licensee to the rights and privileges of an elevator mechanic license issued in this chapter. A temporary elevator mechanic license may be renewed by the department and a fee as established in rule must be charged for any temporary elevator mechanic license or renewal.

(3) The renewal of all licenses granted under this section is conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees on new and existing rules of the department. The course must consist of not less than eight hours of instruction that must be attended and completed within one year immediately preceding any license renewal.

(4) The courses must be taught by instructors through continuing education providers that may include, but are not limited to, association seminars and labor training programs. The department must approve the continuing education providers. All instructors must be approved by the department and are exempt from the requirements of subsection (3) of this section with regard to his or her application for license renewal, provided that such applicant was qualified as an instructor at any time during the one year immediately preceding the scheduled date for such renewal.

(5) A licensee who is unable to complete the continuing education course required under this section before the expiration of his or her license due to a temporary disability may apply for a waiver from the department. This will be on a form provided by the department and signed under the pains and penalties of perjury and accompanied by a certified statement from a competent physician attesting to the temporary disability. Upon the termination of the temporary disability, the licensee must submit to the department a certified statement from the same physician, if practicable, attesting to the termination of the temporary disability. At which time a waiver sticker, valid for ninety days, must be issued to the licensee and affixed to his or her license.

(6) Approved training providers must keep uniform records, for a period of ten years, of attendance of licensees and these records must be available for inspection by the department at its request. Approved training providers are responsible for the security of all attendance records and certificates of completion. However, falsifying or knowingly allowing another to falsify attendance records or certificates of completion constitutes grounds for suspension or revocation of the approval required under this section. [2019 c 151 § 2; 2009 c 36 § 11; 2003 c 143 § 21; 2002 c 98 § 13.]

**Finding—Intent—2009 c 36:** See note following RCW 18.106.020.

Additional notes found at www.leg.wa.gov

**70.87.260 Liability not limited or assumed by state.** This chapter cannot be construed to relieve or lessen the responsibility or liability of any person, firm, or corporation owning, operating, controlling, testing, inspecting, or performing conveyance work on any conveyance or other related mechanisms covered by this chapter for damages to person or property caused by any defect therein, nor does the state assume any such liability or responsibility therefore or any liability to any person for whatever reason whatsoever by the adoption of this chapter or any acts or omissions arising hereunder. [2003 c 143 § 22; 2002 c 98 § 14.]

Additional notes found at www.leg.wa.gov

**70.87.270 Exemptions from licensure.** (1) The licensing requirements of this chapter do not apply to the maintenance of conveyances specified in (a) of this subsection if a person specified in (b) of this subsection performs the maintenance and the owner complies with the requirements specified in (c) and (d) of this subsection.

(a) The conveyance: (i) Must be a conveyance other than a passenger elevator to which the general public has access; and (ii) must be located in a facility in which agricultural products are stored, food products are processed, goods are manufactured, energy is generated, or similar industrial or agricultural processes are performed.

(b) The person performing the maintenance: (i) Must be regularly employed by the owner; (ii) must have completed the training described in (c) of this subsection; and (iii) must have attained journey level status in an electrical or mechanical trade, but only if the employer has or uses an established journey level program to train its electrical or mechanical trade employees and the employees perform maintenance in the course of their regular employment.

(c) The owner must provide the persons specified in (b) of this subsection adequate training to ensure worker safety and adherence to the published operating specifications of the conveyance manufacturer, the applicable provisions of this chapter, and any rules adopted under this chapter.

(d) The owner also must maintain both a maintenance log and a training log. The maintenance log must describe maintenance work performed on the conveyance and identify the person who performed the work. The training log must describe the course of study provided to the persons specified in (b) of this subsection, including whether it is general or conveyance specific, and when the persons completed the course of study.

(2) It is a violation of chapter 49.17 RCW for an owner or an employer: (a) To allow a conveyance exempt from the licensing requirements of this chapter under subsection (1) of this section to be maintained by a person other than a person specified in subsection (1)(b) of this section or a licensee; or (b) to fail to maintain the logs required under subsection (1)(d) of this section.

(3) The licensing requirements of this chapter do not apply to homeowners, or persons employed by homeowners, for permanent removal of a stairway chair lift or a platform lift located in a private residence as described in the American Society of Mechanical Engineers A18.1 Safety Standard for Platform Lifts and Stairway Chairlifts, Sections 5, 6, and 7. [2019 c 151 § 3; 2003 c 143 § 4.]

Additional notes found at www.leg.wa.gov

**70.87.280 License categories—Rules.** In order to effectively administer and implement the elevator mechanic licensing of this chapter, the department may establish elevator mechanic license categories in rule. [2003 c 143 § 5.]

Additional notes found at www.leg.wa.gov

**70.87.290 Rules—Effective date.** The department of labor and industries may not adopt rules to implement chap-

ter 98, Laws of 2002, and to implement chapter 143, Laws of 2003 that take effect before March 1, 2004. [2003 c 143 § 6.]

Additional notes found at www.leg.wa.gov

**70.87.305 Private residence conveyances—Licensing requirements—Rules.** (1) The department shall, by rule, establish licensing requirements for conveyance work performed on private residence conveyances. These rules shall include an exemption from licensing for maintenance work on private residence conveyances performed by an owner or at the direction of the owner, provided the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the general public. However, maintenance work performed on private residence conveyances located in or at adult family homes licensed under chapter 70.128 RCW, assisted living facilities licensed under chapter 18.20 RCW, or similarly licensed caregiving facilities must comply with the licensing requirements of this chapter.

(2) The rules adopted under this section take effect July 1, 2004. [2012 c 10 § 50; 2004 c 66 § 3.]

**Application—2012 c 10:** See note following RCW 18.20.010.

**Findings—2004 c 66:** "The legislature finds that individuals performing conveyance work on private residence conveyances must be licensed by the department of labor and industries. However, the licensing requirements for this type of work need not be to the same level as those established for conveyance work in circumstances where the general public has access to the conveyances. The legislature further finds that the department of labor and industries should be given the authority to develop the licensing requirements for this type of work using the normal rule-making process established under chapter 34.05 RCW. Lastly, the legislature finds that private residence conveyance maintenance work that is performed by an owner or at the direction of the owner is exempt from licensing if the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the general public." [2004 c 66 § 1.]

**70.87.310 Whistleblower—Identity to remain confidential.** (1) An employee who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action has the remedies provided under chapter 49.60 RCW.

(2) The identity of a whistleblower who reports, in good faith, to the department or to a political subdivision that regulates conveyances, practices that may violate the provisions of this chapter or the rules promulgated hereunder must remain confidential. The provisions of RCW 4.24.500 through 4.24.520, providing certain protections to persons who communicate to government agencies, apply to such reports. [2012 c 54 § 3.]

## Chapter 70.90 RCW
## WATER RECREATION FACILITIES

Sections



**70.90.101 Legislative findings.** The legislature finds that water recreation facilities are an important source of recreation for the citizens of this state. To promote the public health, safety, and welfare, the legislature finds it necessary to continue to regulate these facilities. [1987 c 222 § 1.]

**70.90.110 Definitions.** Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) "Water recreation facility" means any artificial basin or other structure containing water used or intended to be used for recreation, bathing, relaxation, or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term includes, but is not limited to:

(a) Conventional swimming pools, wading pools, and spray pools;

(b) Recreational water contact facilities as defined in this chapter;

(c) Spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and

(d) Any area designated for swimming in natural waters with artificial boundaries within the waters.

(2) "Recreational water contact facility" means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to, water slides, wave pools, and water lagoons.

(3) "Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

(4) "Secretary" means the secretary of health.

(5) "Person" means an individual, firm, partnership, copartnership, corporation, company, association, club, government entity, or organization of any kind.

(6) "Department" means the department of health.

(7) "Board" means the state board of health. [1991 c 3 § 352; 1987 c 222 § 2; 1986 c 236 § 2.]

**70.90.120 Adoption of rules governing safety, sanitation, and water quality—Exceptions.** (1) The board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, governing safety, sanitation, and water quality for water recreation facilities. The rules shall include but not be limited to requirements for design; operation; injury and illness reporting; biological and chemical contamination standards; water quality monitoring; inspection; permit application and issuance; and enforcement procedures. However, a water recreation facility intended for the exclusive use of residents of any apartment house complex or of a group of rental housing units of less than fifteen living units, or of a mobile home park, or of a condominium complex or any

group or association of less than fifteen homeowners shall not be subject to preconstruction design review, routine inspection, or permit or fee requirements; and water treatment of hydroelectric reservoirs or natural streams, creeks, lakes, or irrigation canals shall not be required.

(2) In adopting rules under subsection (1) of this section regarding the operation or design of a recreational water contact facility, the board shall review and consider the most recent version of the United States centers for disease control and prevention's model aquatic health code. [2017 c 102 § 1; 1987 c 222 § 5; 1986 c 236 § 3.]

**70.90.125 Regulation by local boards of health.** Nothing in this chapter shall prohibit any local board of health from establishing and enforcing any provisions governing safety, sanitation, and water quality for any water recreation facility, regardless of ownership or use, in addition to those rules established by the state board of health under this chapter. [1987 c 222 § 6.]

**70.90.140 Enforcement.** The secretary shall enforce the rules adopted under this chapter. The secretary may develop joint plans of responsibility with any local health jurisdiction to administer this chapter. [1986 c 236 § 5.]

**70.90.150 Fees.** (1) Local health officers may establish and collect fees sufficient to cover their costs incurred in carrying out their duties under this chapter and the rules adopted under this chapter.

(2) The department may establish and collect fees sufficient to cover its costs incurred in carrying out its duties under this chapter. The fees shall be deposited in the state general fund.

(3) A person shall not be required to submit fees at both the state and local levels. [1986 c 236 § 6.]

**70.90.160 Modification or construction of facility—Permit required—Submission of plans.** A permit is required for any modification to or construction of any recreational water contact facility after June 11, 1986, and for any other water recreation facility after July 26, 1987. Water recreation facilities existing on July 26, 1987, which do not comply with the design and construction requirements established by the state board of health under this chapter may continue to operate without modification to or replacement of the existing physical plant, provided the water quality, sanitation, and lifesaving equipment are in compliance with the requirements established under this chapter. However, if any modifications are made to the physical plant of an existing water recreation facility the modifications shall comply with the requirements established under this chapter. The plans and specifications for the modification or construction shall be submitted to the applicable local authority or the department as applicable, but a person shall not be required to submit plans at both the state and local levels or apply for both a state and local permit. The plans shall be reviewed and may be approved or rejected or modifications or conditions imposed consistent with this chapter as the public health or safety may require, and a permit shall be issued or denied within thirty days of submittal. [1987 c 222 § 7; 1986 c 236 § 7.]

**70.90.170 Operating permit—Renewal.** An operating permit from the department or local health officer, as applicable, is required for each water recreation facility operated in this state. The permit shall be renewed annually. The permit shall be conspicuously displayed at the water recreation facility. [1987 c 222 § 8; 1986 c 236 § 8.]

**70.90.180 State and local health jurisdictions—Chapter not basis for liability.** Nothing in this chapter or the rules adopted under this chapter creates or forms the basis for any liability: (1) On the part of the state and local health jurisdictions, or their officers, employees, or agents, for any injury or damage resulting from the failure of the owner or operator of water recreation facilities to comply with this chapter or the rules adopted under this chapter; or (2) by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter or the rules adopted under this chapter on the part of the state and local health jurisdictions, or by their officers, employees, or agents.

All actions of local health officers and the secretary shall be deemed an exercise of the state's police power. [1987 c 222 § 9; 1986 c 236 § 9.]

**70.90.190 Reporting of injury, disease, or death.** Any person operating a water recreation facility shall report to the local health officer or the department any serious injury, communicable disease, or death occurring at or caused by the water recreation facility. [1987 c 222 § 10; 1986 c 236 § 10.]

**70.90.200 Civil penalties.** County, city, or town legislative authorities and the secretary, as applicable, may establish civil penalties for a violation of this chapter or the rules adopted under this chapter not to exceed five hundred dollars. Each day upon which a violation occurs constitutes a separate violation. A person violating this chapter may be enjoined from continuing the violation. [1986 c 236 § 11.]

**70.90.205 Criminal penalties.** The violation of any provisions of this chapter and any rules adopted under this chapter shall be a misdemeanor punishable by a fine of not more than five hundred dollars. [1987 c 222 § 11.]

**70.90.210 Adjudicative proceeding—Notice.** (1) Any person aggrieved by an order of the department or by the imposition of a civil fine by the department has the right to an adjudicative proceeding. RCW 43.70.095 governs department notice of a civil fine and a person's right to an adjudicative proceeding.

(2) Any person aggrieved by an order of a local health officer or by the imposition of a civil fine by the officer has the right to appeal. The hearing is governed by the local health jurisdiction's administrative appeals process. Notice shall be provided by the local health jurisdiction consistent with its due process requirements. [1991 c 3 § 354; 1989 c 175 § 130; 1986 c 236 § 12.]

Additional notes found at www.leg.wa.gov

**70.90.230 Insurance required.** (1) A recreational water contact facility shall not be operated within the state unless the owner or operator has purchased insurance in an

amount not less than one hundred thousand dollars against liability for bodily injury to or death of one or more persons in any one accident arising out of the use of the recreational water contact facility.

(2) The board may require a recreational water contact facility to purchase insurance in addition to the amount required in subsection (1) of this section. [1986 c 236 § 14.]

**70.90.240 Sale of spas, pools, and tubs—Operating instructions and health caution required.** Every seller of spas, pools and tubs under RCW 70.90.110(1) (a) and (c) shall furnish to the purchaser a complete set of operating instructions which shall include detailed instructions on the safe use of the spa, pool, or tub and for the proper treatment of water to reduce health risks to the purchaser. Included in the instructions shall be information about the health effects of hot water and a specific caution and explanation of the health effects of hot water on pregnant women. [1987 c 222 § 4.]

**70.90.250 Application of chapter.** This chapter applies to all water recreation facilities regardless of whether ownership is public or private and regardless of whether the intended use is commercial or private, except that this chapter shall not apply to:

(1) Any water recreation facility for the sole use of residents and invited guests at a single-family dwelling;

(2) Therapeutic water facilities operated exclusively for physical therapy;

(3) Steam baths and saunas; and

(4) Inflatable equipment operated at a temporary event, including inflatable water slides, that do not allow water to pool more than six inches and do not recirculate water. [2017 c 102 § 2; 1987 c 222 § 3.]

## Chapter 70.92 RCW
## PROVISIONS IN BUILDINGS FOR AGED AND HANDICAPPED PERSONS

Sections



*Making buildings and facilities accessible to and usable by individuals with disabilities: RCW 19.27.031(6).*

**70.92.100 Legislative intent.** It is the intent of the legislature that, notwithstanding any law to the contrary, plans and specifications for the erection of buildings through the use of public or private funds shall make special provisions for elderly or physically disabled persons. [1975 1st ex.s. c 110 § 1.]

**70.92.110 Buildings and structures to which standards and specifications apply—Exemptions.** The standards and specifications adopted under this chapter shall, as provided in this section, apply to buildings, structures, or portions thereof used primarily for group A-1 through group U-1 occupancies, except for group R-3 occupancies, as defined in the Uniform Building Code, 1994 edition, published by the International Conference of Building Officials. All such buildings, structures, or portions thereof, which are constructed, substantially remodeled, or substantially rehabilitated after July 1, 1976, shall conform to the standards and specifications adopted under this chapter: PROVIDED, That the following buildings, structures, or portions thereof shall be exempt from this chapter:

(1) Buildings, structures, or portions thereof for which construction contracts have been awarded prior to July 1, 1976;

(2) Any building, structure, or portion thereof in respect to which the administrative authority deems, after considering all circumstances applying thereto, that full compliance is impracticable: PROVIDED, That, such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: PROVIDED FURTHER, That the board of appeals provided for in chapter 1 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein;

(3) Any building or structure used solely for dwelling purposes and which contains not more than two dwelling units;

(4) Any building or structure not used primarily for group A-1 through group U-1 occupancies, except for group R-3 occupancies, as set forth in the Uniform Building Code, 1994 edition, published by the International Conference of Building Officials; or

(5) Apartment houses with ten or fewer units. [1995 c 343 § 3; 1989 c 14 § 9; 1975 1st ex.s. c 110 § 2.]

**70.92.120 Handicap symbol—Display—Signs showing location of entrance for handicapped.** All buildings built in accordance with the standards and specifications provided for in this chapter, and containing facilities that are in compliance therewith, shall display the following symbol which is known as the International Symbol of Access.

Such symbol shall be white on a blue background and shall indicate the location of facilities designed for the physically disabled or elderly. When a building contains an entrance other than the main entrance which is ramped or level for use by physically disabled or elderly persons, a sign with the symbol showing its location shall be posted at or near the main entrance which shall be visible from the adjacent public sidewalk or way. [1995 c 343 § 4; 1975 1st ex.s. c 110 § 3.]

**70.92.130 Definitions.** As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Administrative authority" means the building department of each county, city, or town of this state;

(2) "Substantially remodeled or substantially rehabilitated" means any alteration or restoration of a building or structure within any twelve-month period, the cost of which exceeds sixty percent of the value of the particular building or structure;

(3) "Council" means the state building code council. [1995 c 343 § 5; 1975 1st ex.s. c 110 § 4.]

**70.92.140 Minimum standards for facilities—Adoption—Facilities to be included.** The *state building code advisory council shall adopt minimum standards by rule and regulation for the provision of facilities in buildings and structures to accommodate the elderly, as well as physically disabled persons, which shall include but not be limited to standards for:

(1) Ramps;

(2) Doors and doorways;

(3) Stairs;

(4) Floors;

(5) Entrances;

(6) Toilet rooms and paraphernalia therein;

(7) Water fountains;

(8) Public telephones;

(9) Elevators;

(10) Switches and levers for the control of light, ventilation, windows, mirrors, etc.;

(11) Plaques identifying such facilities;

(12) Turnstiles and revolving doors;

(13) Kitchen facilities, where appropriate;

(14) Grading of approaches to entrances;

(15) Parking facilities;

(16) Seating facilities, where appropriate, in buildings where people normally assemble. [1975 1st ex.s. c 110 § 5.]

***Reviser's note:** The "state building code advisory council" was redesignated the "state building code council" by 1985 c 360 § 11. See RCW 19.27.070.

**70.92.150 Standards adopted by other states to be considered—Majority vote.** The council in adopting these minimum standards shall consider minimum standards adopted by both law and rule and regulation in other states and the government of the United States: PROVIDED, That no standards adopted by the council pursuant to RCW 70.92.100 through 70.92.160 shall take effect until July 1, 1976. The council shall adopt such standards by majority vote pursuant to the provisions of chapter 34.05 RCW. [1995 c 343 § 6; 1975 1st ex.s. c 110 § 6.]

**70.92.160 Waiver from compliance with standards.** The administrative authority of any jurisdiction may grant a waiver from compliance with any standard adopted hereunder for a particular building or structure if it determines that compliance with the particular standard is impractical: PROVIDED, That such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: PROVIDED FURTHER, That the board of appeals provided for in chapter 1 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein. [1995 c 343 § 7; 1975 1st ex.s. c 110 § 7.]

**70.92.170 Personal wireless service facilities—Rules.** (1) The state building code council shall amend its rules under chapter 70.92 RCW, to the extent practicable while still maintaining the certification of those regulations under the federal Americans with disabilities act, to exempt personal wireless services equipment shelters, or the room or enclosure housing equipment for personal wireless service facilities, that meet the following conditions: (a) The shelter is not staffed; and (b) to conduct maintenance activities, employees who visit the shelter must be able to climb.

(2) For the purposes of this section, "personal wireless service facilities" means facilities for the provision of personal wireless services. [1996 c 323 § 5.]

**Findings—1996 c 323:** See note following RCW 43.70.600.

## Chapter 70.96 RCW
## ALCOHOLISM

Sections



*Chemical dependency benefit provisions*
*group disability contracts: RCW 48.21.160 through 48.21.190.*
*health care services contracts: RCW 48.44.240.*

**70.96.150 Inability to contribute to cost no bar to admission.** [1959 c 85 § 15.] Repealed by 1989 c 270 § 35; and subsequently recodified as RCW 70.96A.430 pursuant to 1993 c 131 § 1.

**Reviser's note:** This section was amended by 1989 c 271 § 308, without cognizance of the repeal thereof; and subsequently recodified without cognizance of the repeal thereof.

**70.96.150 Inability to contribute to cost no bar to admission—Department may limit admissions.** The department shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the program on alcoholism.

The department may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the department for such services or programs. The department may establish admission priorities in the event that the number of eligible applicants exceeds the limits set by the department. [1989 c 271 § 308; 1959 c 85 § 15.]

**Reviser's note:** This section was also repealed by 1989 c 270 § 35, without cognizance of its amendment by 1989 c 271 § 308; and subsequently recodified pursuant to 1993 c 131 § 1. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Additional notes found at www.leg.wa.gov

## Chapter 70.97 RCW
## ENHANCED SERVICES FACILITIES

Sections



**70.97.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Behavioral health disorder" means either a mental disorder, a substance use disorder, or co-occurring mental disorder and substance use disorder.

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

(3) "Detention" or "detain" means the lawful confinement of an individual under chapter 71.05 RCW.

(4) "Discharge" means a transfer to another facility or setting.

(5) "Enhanced services facility" means a facility that provides support and services to persons for whom acute inpatient treatment is not medically necessary.

(6) "Expanded community services program" means a nonsecure program of enhanced behavioral and residential support provided to long-term and residential care providers serving specifically eligible clients who would otherwise be at risk for hospitalization at state hospital geriatric units.

(7) "Facility" means an enhanced services facility.

(8) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(9) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

(10) "Professional person" means a mental health professional and also includes a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

(11) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

(12) "Psychologist" means a person who has been licensed as a psychologist under chapter 18.83 RCW.

(13) "Resident" means a person admitted to an enhanced services facility.

(14) "Secretary" means the secretary of the department or the secretary's designee.

(15) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

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

(17) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW. [2020 c 278 § 1. Prior: 2019 c 444 § 14; 2019 c 325 § 5022; 2016 sp.s. c 29 § 419; 2014 c 225 § 78; 2011 c 89 § 11; 2005 c 504 § 403.]

**Effective date—2019 c 325:** See note following RCW 71.24.011.

**Effective dates—2016 sp.s. c 29:** See note following RCW 71.05.760.

**Short title—Right of action—2016 sp.s. c 29:** See notes following RCW 71.05.010.

**Effective date—2014 c 225:** See note following RCW 71.24.016.

**Findings—2011 c 89:** See RCW 18.320.005.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.020 Advance directives.** A facility shall honor an advance directive that was validly executed pursuant to chapter 70.122 RCW and a mental health advance directive that was validly executed pursuant to chapter 71.32 RCW. [2005 c 504 § 404.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.030 Admission criteria.** A person, eighteen years old or older, may be admitted to an enhanced services facility if he or she meets the criteria in subsections (1) through (4) of this section:

(1) The person requires: (a) Daily care by or under the supervision of a mental health professional or nurse; and (b) assistance with three or more activities of daily living; and

(2) The person has: (a) A behavioral health disorder; (b) an organic or traumatic brain injury; or (c) a cognitive impairment that results in symptoms or behaviors requiring supervision and support services;

(3) The person has been assessed by the department to need the services provided in an enhanced services facility; and

(4) The person has been assessed as medically and psychiatrically stable and two or more of the following apply:

(a) Is currently residing in a state mental hospital or psychiatric unit of a hospital and the hospital has found the person to be ready for discharge;

(b) Has a history of an inability to remain medically or psychiatrically stable for more than six months;

(c) Has exhibited serious challenging behaviors within the last year;

(d) Has complex medication needs and an inability to manage these medications, which has affected their ability to live in the community;

(e) Has a history of or likelihood of unsuccessful placements in other licensed long-term care facilities or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or needs;

(f) Has a history of frequent or prolonged behavioral health disorder-related hospitalizations; or

(g) Requires caregiving staff with training in providing behavioral supports to adults with challenging behaviors. [2020 c 278 § 2; 2019 c 444 § 15; 2005 c 504 § 405.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.040 Rights of residents.** Every person who is a resident of an enhanced services facility shall be entitled to all of the rights set forth in chapter 70.129 RCW. [2021 c 65 § 4. Prior: 2020 c 312 § 730; 2020 c 278 § 3; 2013 c 23 § 179; 2005 c 504 § 406.]

**Effective date—2021 c 65 § 4:** "Section 4 of this act takes effect January 1, 2022." [2021 c 65 § 5.]

**Explanatory statement—2021 c 65:** See note following RCW 53.54.030.

**Effective dates—2020 c 312:** See note following RCW 11.130.915.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.050 Right to refuse antipsychotic medication.** An individual served in a facility has a right to refuse antipsychotic medication. [2020 c 278 § 4; 2005 c 504 § 407.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.060 Capacity—Supervision—Licensing—Application of state and local rules.** (1)(a) The department shall not license an enhanced services facility that serves any residents under sixty-five years of age for a capacity to exceed sixteen residents.

(b) The department may contract for services for the operation of enhanced services facilities only to the extent that funds are specifically provided for that purpose.

(2) The facility shall provide an appropriate level of supervision for the characteristics, behaviors, and legal status of the residents.

(3) An enhanced services facility may hold only one license but, to the extent permitted under state and federal law and medicaid requirements, a facility may be located in the same building as another licensed facility, provided that:

(a) The enhanced services facility is in a location that is totally separate and discrete from the other licensed facility; and

(b) The two facilities maintain separate staffing, unless an exception to this is permitted by the department in rule.

(4) Nursing homes under chapter 18.51 RCW, assisted living facilities under chapter 18.20 RCW, or adult family homes under chapter 70.128 RCW, that become licensed as facilities under this chapter shall be deemed to meet the applicable state and local rules, regulations, permits, and code requirements. All other facilities are required to meet all applicable state and local rules, regulations, permits, and code requirements. [2020 c 278 § 5; 2012 c 10 § 51; 2005 c 504 § 408.]

**Application—2012 c 10:** See note following RCW 18.20.010.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.070 Comprehensive assessments—Individualized behavior support plan.** (1) The enhanced services facility shall complete a comprehensive assessment for each resident within fourteen days of admission, and the assessments shall be repeated upon a significant change in the resident's condition or, at a minimum, every one hundred eighty days if there is no significant change in condition.

(2) The enhanced services facility shall develop an individualized behavior support plan for each resident based on the comprehensive assessment and any other information in the person's record. The plan shall be updated as necessary,

and shall include a plan for appropriate transfer or discharge and reintegration into the community. Where the person is under the supervision of the department of corrections, the facility shall collaborate with the department of corrections to maximize treatment outcomes and reduce the likelihood of reoffense.

(3) The plan shall maximize the opportunities for independence, recovery, employment, the resident's participation in service planning decisions, and collaboration with peer-supported services, and provide for care and services in the least restrictive manner appropriate to the individual resident, and, where relevant, to any court orders with which the resident must comply. [2020 c 278 § 6; 2005 c 504 § 409.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.080 Staffing levels—Staff credentials and training—Background checks.** (1) An enhanced services facility must have sufficient numbers of staff with the appropriate credentials and training to provide residents with the following appropriate care and disorder support:

(a) Behavioral health support;

(b) Medication services;

(c) Assistance with the activities of daily living;

(d) Skilled nursing and support to acquire medical and behavioral health disorder services from local community providers;

(e) Dietary services; and

(f) Supervision.

(2) Where an enhanced services facility specializes in medically fragile persons with behavioral health conditions, the on-site staff must include at least one licensed nurse twenty-four hours per day. The nurse must be a registered nurse for at least sixteen hours per day. If the nurse is not a registered nurse, a registered nurse or a doctor must be on call during the remaining eight hours.

(3) Any employee or other individual who will have unsupervised access to vulnerable adults must successfully pass a background inquiry check. [2020 c 278 § 7; 2005 c 504 § 410.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.090 Facilities exempted.** This chapter does not apply to the following residential facilities:

(1) Nursing homes licensed under chapter 18.51 RCW;

(2) Assisted living facilities licensed under chapter 18.20 RCW;

(3) Adult family homes licensed under chapter 70.128 RCW;

(4) Facilities approved and certified under chapter 71A.22 RCW;

(5) Residential treatment facilities licensed under chapter 71.12 RCW; and

(6) Hospitals licensed under chapter 70.41 RCW. [2012 c 10 § 52; 2005 c 504 § 411.]

**Application—2012 c 10:** See note following RCW 18.20.010.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.100 Licensing requirements—Information available to public, residents, families.** (1) The department shall establish licensing rules for enhanced services facilities to serve the populations defined in this chapter.

(2) No person or public or private agency may operate or maintain an enhanced services facility without a license, which must be renewed annually.

(3) A licensee shall have the following readily accessible and available for review by the department, residents, families of residents, and the public:

(a) Its license to operate and a copy of the department's most recent inspection report and any recent complaint investigation reports issued by the department;

(b) Its written policies and procedures for all care and services provided directly or indirectly by the facility; and

(c) The department's toll-free complaint number, which shall also be posted in a clearly visible place and manner.

(4) Enhanced services facilities shall maintain a grievance procedure that meets the requirements of rules established by the department.

(5) No facility shall discriminate or retaliate in any manner against a resident or employee because the resident, employee, or any other person made a complaint or provided information to the department, the long-term care ombuds, Washington protection and advocacy system, or a behavioral health ombuds.

(6) Each enhanced services facility will post in a prominent place in a common area a notice by the Washington protection and advocacy system providing contact information. [2020 c 278 § 8; 2013 c 23 § 180; 2005 c 504 § 412.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.110 Enforcement authority—Penalties, sanctions.** (1) In any case in which the department finds that a licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee failed or refused to comply with the requirements of this chapter or the rules established under them, the department may take any or all of the following actions:

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

(b) Order stop placement; or

(c) Assess civil monetary penalties.

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

(a) Operated a facility without a license or under a revoked or suspended license;

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

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

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

(e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or of the rules adopted under it; or

(f) Failed to pay any civil monetary penalty assessed by the department under this chapter within ten days after the assessment becomes final.

(3)(a) Civil penalties collected under this chapter shall be deposited into a special fund administered by the department.

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

(4) The department may use the civil penalty monetary fund for the protection of the health or property of residents of facilities found to be deficient including:

(a) Payment for the cost of relocation of residents to other facilities;

(b) Payment to maintain operation of a facility pending correction of deficiencies or closure; and

(c) Reimbursement of a resident for personal funds or property loss.

(5)(a) The department may issue a stop placement order on a facility, effective upon oral or written notice, when the department determines:

(i) The facility no longer substantially meets the requirements of this chapter; and

(ii) The deficiency or deficiencies in the facility:

(A) Jeopardizes the health and safety of the residents; or

(B) Seriously limits the facility's capacity to provide adequate care.

(b) When the department has ordered a stop placement, the department may approve a readmission to the facility from a hospital, residential treatment facility, or crisis intervention facility when the department determines the readmission would be in the best interest of the individual seeking readmission.

(6) If the department determines that an emergency exists and resident health and safety is immediately jeopardized as a result of a facility's failure or refusal to comply with this chapter, the department may summarily suspend the facility's license and order the immediate closure of the facility, or the immediate transfer of residents, or both.

(7) If the department determines that the health or safety of the residents is immediately jeopardized as a result of a facility's failure or refusal to comply with requirements of this chapter, the department may appoint temporary management to:

(a) Oversee the operation of the facility; and

(b) Ensure the health and safety of the facility's residents while:

(i) Orderly closure of the facility occurs; or

(ii) The deficiencies necessitating temporary management are corrected. [2005 c 504 § 413.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.120 Enforcement orders—Hearings.** (1) All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty shall become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested.

(2) All orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or summary license suspension shall be effective immediately upon notice, pending any hearing.

(3) Subject to the requirements of subsection (2) of this section, all hearings under this chapter and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter 34.05 RCW. [2005 c 504 § 414.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.130 Unlicensed operation—Application of consumer protection act.** Operation of a facility without a license in violation of this chapter and discrimination against medicaid recipients is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an enhanced services facility without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2005 c 504 § 415.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.140 Unlicensed operation—Criminal penalty.** A person operating or maintaining a facility without a license under this chapter is guilty of a misdemeanor and each day of a continuing violation after conviction shall be considered a separate offense. [2005 c 504 § 416.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.150 Unlicensed operation—Injunction or other remedies.** Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person to restrain or prevent the operation or maintenance of a facility without a license issued under this chapter. [2005 c 504 § 417.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.160 Inspections.** (1) The department shall make or cause to be made at least one inspection of each facility prior to licensure and an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Any duly authorized officer, employee, or agent of the department may enter and inspect any facility at any time to determine that the facility is in compliance with this chapter and applicable rules, and to enforce any provision of this chapter. Complaint inspections shall be unannounced and conducted in such a manner as to ensure maximum effectiveness. No advance notice shall be given of any inspection unless authorized or required by federal law.

(3) During inspections, the facility must give the department access to areas, materials, and equipment used to provide care or support to residents, including resident and staff records, accounts, and the physical premises, including the buildings, grounds, and equipment. The department has the authority to privately interview the provider, staff, residents, and other individuals familiar with resident care and service plans.

(4) Any public employee giving advance notice of an inspection in violation of this section shall be suspended from all duties without pay for a period of not less than five nor more than fifteen days.

(5) The department shall prepare a written report describing the violations found during an inspection, and shall provide a copy of the inspection report to the facility.

(6) The facility shall develop a written plan of correction for any violations identified by the department and provide a plan of correction to the department within ten working days from the receipt of the inspection report.

(7) If a pandemic, natural disaster, or other declared state of emergency prevents the department from completing inspections according to the timeline in this section, the department shall adopt rules to reestablish inspection timelines based on the length of time since last inspection, compliance history of each facility, and immediate health or safety concerns.

(a) Rules adopted under this subsection (7) are effective until the termination of the pandemic, natural disaster, or other declared state of emergency or until the department determines that all facility inspections are occurring according to time frames established in subsection (1) of this section, whichever is later. Once the department determines a rule adopted under this subsection (7) is no longer necessary, it must repeal the rule under RCW 34.05.353.

(b) Within 12 months of the termination of the pandemic, natural disaster, or other declared state of emergency, the department shall conduct a review of inspection compliance with subsection (1) of this section and provide the legislature with a report. [2021 c 203 § 14; 2020 c 278 § 9; 2005 c 504 § 418.]

**Effective date—Retroactive application—2021 c 203:** See notes following RCW 43.43.832.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.170 Persons eligible for admittance.** The facility shall only admit individuals:

(1) Who are over the age of eighteen;

(2) Who meet the resident eligibility requirements described in RCW 70.97.030; and

(3) Whose needs the facility can safely and appropriately meet through qualified and trained staff, services, equipment, security, and building design. [2005 c 504 § 419.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.180 Services of qualified professional.** If the facility does not employ a qualified professional able to furnish needed services, the facility must have a written contract with a qualified professional or agency outside the facility to furnish the needed services. [2005 c 504 § 420.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.190 Notice of change of ownership or management.** At least sixty days before the effective date of any change of ownership, or change of management of a facility, the current operating entity must provide written notification about the proposed change separately and in writing, to the department, each resident of the facility, or the resident's guardian or representative. [2005 c 504 § 421.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.195 Communication system—Telephones and other equipment.** (1) Each enhanced services facility must be responsive to incoming communications and respond within a reasonable time to phone and electronic messages.

(2) Each enhanced services facility must have a communication system, including a sufficient quantity of working telephones and other communication equipment to assure that residents have 24-hour access to communications with family, medical providers, and others, and also to allow for emergency contact to and from facility staff. The telephones and communication equipment must provide for auditory privacy, not be located in a staff office or station, be accessible and usable by persons with hearing loss and other disabilities, and not require payment for local calls. An enhanced services facility is not required to provide telephones at no cost in each resident room. [2021 c 159 § 15.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**70.97.200 Recordkeeping—Compliance with state, federal regulations—Health care information releases.** The facility shall:

(1) Maintain adequate resident records to enable the provision of necessary behavior support, care, and services and to respond appropriately in emergency situations;

(2) Comply with all state and federal requirements related to documentation, confidentiality, and information sharing, including chapters 10.77, 70.02, 70.24, and 71.05 RCW; and

(3) Where possible, obtain signed releases of information designating the department, the facility, and the department of corrections where the person is under its supervision, as recipients of health care information. [2020 c 278 § 10; 2005 c 504 § 422.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.205 Resident contact information—Department requirements and duties.** (1) The department shall require each enhanced services facility to:

(a) Create and regularly maintain a current resident roster containing the name and room number of each resident and provide a written copy immediately upon an in-person request from any long-term care ombuds;

(b) Create and regularly maintain current, accurate, and aggregated contact information for all residents, including contact information for the resident representative, if any, of each resident. The contact information for each resident must include the resident's name, room number, and, if available, telephone number and email address. The contact information for each resident representative must include the resident representative's name, relationship to the resident, phone number, and, if available, email and mailing address;

(c) Record and update the aggregated contact information required by this section, upon receipt of new or updated contact information from the resident or resident representative; and

(d) Upon the written request of any long-term care ombuds that includes reference to this section and the relevant legal functions and duties of long-term care ombuds, provide a copy of the aggregated contact information required by this section within 48 hours, or within a reasonable time if agreed to by the requesting long-term care ombuds, by electronic copy to the secure email address or facsimile number provided in the written request.

(2) In accordance with the federal older Americans act, federal regulations, and state laws that govern the state long-term care ombuds program, the department shall inform enhanced services facilities that:

(a) Any long-term care ombuds is authorized to request and obtain from enhanced services facilities the information required by this section in order to perform the functions and duties of long-term care ombuds as set forth in federal and state laws;

(b) The state long-term care ombuds program and all long-term care ombuds are considered a "health oversight agency," so that the federal health insurance portability and accountability act and chapter 70.02 RCW do not preclude enhanced services facilities from providing the information required by this section when requested by any long-term care ombuds, and pursuant to these laws, the federal older Americans act, federal regulations, and state laws that govern the state long-term care ombuds program, facilities are not required to seek or obtain consent from residents or resident representatives prior to providing the information required by this section in accordance with the requirements of this section;

(c) The information required by this section, when provided by an enhanced services facility to a requesting long-term care ombuds, becomes property of the state long-term care ombuds program and is subject to all state and federal laws governing the confidentiality and disclosure of the files, records, and information maintained by the state long-term care ombuds program or any local long-term care ombuds entity; and

(d) The enhanced services facility may not refuse to provide or unreasonably delay providing the resident roster, the contact information for a resident or resident representative, or the aggregated contact information required by this section, on any basis, including on the basis that the enhanced services facility must first seek or obtain consent from one or more of the residents or resident representatives.

(3) Nothing in this section shall interfere with or diminish the authority of any long-term care ombuds to access facilities, residents, and resident records as otherwise authorized by law.

(4) For the purposes of this section, "resident representative" has the same meaning as in RCW 70.129.010. [2021 c 159 § 14.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**70.97.210 Standards for fire protection.** (1) Standards for fire protection and the enforcement thereof, with respect to all facilities licensed under this chapter, are the responsibility of the chief of the Washington state patrol, through the director of fire protection, who must adopt recognized standards as applicable to facilities for the protection of life against the cause and spread of fire and fire hazards. If the facility to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, the director of fire protection must submit to the department a written report approving the facility with respect to fire protection before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall conduct an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Inspections of facilities by local authorities must be consistent with the requirements adopted by the chief of the Washington state patrol, through the director of fire protection. Findings of a serious nature must be coordinated with the department and the chief of the Washington state patrol, through the director of fire protection, for determination of appropriate actions to ensure a safe environment for residents. The chief of the Washington state patrol, through the director of fire protection, has exclusive authority to determine appropriate corrective action under this section. [2005 c 504 § 423.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.220 Exemption from liability.** No facility providing care and behavior support for individuals placed in a facility, or agency licensing or placing residents in a facility, acting in the course of its duties, shall be civilly or criminally liable for performing its duties under this chapter, provided that such duties were performed in good faith and without gross negligence. [2020 c 278 § 11; 2005 c 504 § 424.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.230 Rules for implementation of chapter.** (1) The secretary shall adopt rules to implement this chapter.

(2) Such rules shall at the minimum: (a) Promote safe treatment and necessary care of individuals residing in the facility and provide for safe and clean conditions; (b) establish licensee qualifications, licensing and enforcement, and license fees sufficient to cover the cost of licensing and enforcement. [2005 c 504 § 425.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

**70.97.235 Stop placement orders and limited stop placement orders.** The department shall require an enhanced services facility that is subject to a stop placement order or limited stop placement order under RCW 70.97.110 to publicly post in a conspicuous place at the facility a standardized notice that the department has issued a stop placement order or limited stop placement order for the facility. The standardized notice shall be developed by the department to include the date of the stop placement order or limited stop placement order, any conditions placed upon the facility's license, contact information for the department, contact information for the administrator or provider of the facility, and a statement that anyone may contact the department or the administrator or provider for further information. The notice must remain posted until the department has terminated the stop placement order or limited stop placement order. [2021 c 159 § 13.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**70.97.240 Disaster preparedness plan.** (1) Each enhanced services facility shall develop and maintain a comprehensive disaster preparedness plan to be followed in the event of a disaster or emergency, including fires, earthquakes, floods, infectious disease outbreaks, loss of power or water, and other events that may require sheltering in place, evacuations, or other emergency measures to protect the health and safety of residents. The enhanced services facility must review the comprehensive disaster preparedness plan annually, update the plan as needed, and train all employees when they begin work in the enhanced services facility on the comprehensive disaster preparedness plan and related staff procedures.

(2) The department shall adopt rules governing the comprehensive disaster preparedness plan. At a minimum, the rules must address: Timely communication with the residents' emergency contacts; timely communication with state and local agencies, long-term care ombuds, and developmental disabilities ombuds; contacting and requesting emergency assistance; on-duty employees' responsibilities; meeting residents' essential needs; procedures to identify and locate residents; and procedures to provide emergency information to provide for the health and safety of residents. In addition, the rules shall establish standards for maintaining personal protective equipment and infection control capabilities, as well as department inspection procedures with respect to the plans. [2021 c 159 § 16.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**70.97.800 Request for proposal.** To the extent that funds are specifically appropriated for this purpose, the department must issue a request for a proposal for enhanced services facility services by June 1, 2014, and complete the procurement process by January 1, 2015. [2013 c 338 § 3.]

## Chapter 70.100 RCW
## EYE PROTECTION—PUBLIC AND PRIVATE EDUCATIONAL INSTITUTIONS

Sections



**70.100.010 "Eye protection areas" defined.** As used in this chapter:

"Eye protection areas" means areas within vocational or industrial arts shops, science or other school laboratories, or schools within state institutional facilities as designated by the state superintendent of public instruction in which activities take place involving:

(1) Hot molten metals or other molten materials;

(2) Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials;

(3) Heat treatment, tempering or kiln firing of any metal or other materials;

(4) Gas or electric arc welding, or other forms of welding processes;

(5) Corrosive, caustic, or explosive materials;

(6) Custodial or other service activity potentially hazardous to the eye: PROVIDED, That nothing in this chapter shall supersede regulations heretofore or hereafter established by the department of labor and industries respecting such activity; or

(7) Any other activity or operation involving mechanical or manual work in any area that is potentially hazardous to the eye. [1969 ex.s. c 179 § 1.]

**70.100.020 Wearing of eye protection devices required—Furnishing of—Costs.** Every person shall wear eye protection devices when participating in, observing, or performing any function in connection with any courses or activities taking place in eye protection areas of any private or public school, college, university, or other public or private educational institution in this state, as designated by the

superintendent of public instruction. The governing board or authority of any public school shall furnish the eye protection devices prescribed in RCW 70.100.030 without cost to all teachers and students in grades K-12 engaged in activities potentially dangerous to the human eye, and the governing body of each institution of higher education and vocational technical institute shall furnish such eye protection devices free or at cost to all teachers and students similarly engaged at the institutions of higher education and vocational technical institutes. Eye protection devices shall be furnished on a loan basis to all visitors observing activities hazardous to the eye. [1969 ex.s. c 179 § 2.]

**70.100.030 Standard requirement for eye protection devices.** Eye protection devices, which shall include plano safety spectacles, plastic face shields or goggles, shall comply with the U.S.A. Standard Practice for Occupational and Educational Eye and Face Protection, Z87.1-1968 or later revisions thereof. [1969 ex.s. c 179 § 3.]

**70.100.040 Superintendent of public instruction to circulate instruction manual to public and private educational institutions.** The superintendent of public instruction, after consulting with the department of labor and industries, and the division of vocational education shall prepare and circulate to each public and private educational institution in this state within six months of the date of passage of this chapter, a manual containing instructions and recommendations for the guidance of such institutions in implementing the eye safety provisions of this chapter. [1969 ex.s. c 179 § 4.]

## Chapter 70.104 RCW
## PESTICIDES—HEALTH HAZARDS

Sections



**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

**70.104.010 Declaration.** The department of health has responsibility to protect and enhance the public health and welfare. As a consequence, it must be concerned with both natural and artificial environmental factors which may adversely affect the public health and welfare. Dangers to the public health and welfare related to the use of pesticides require specific legislative recognition of departmental authority and responsibility in this area. [1991 c 3 § 356; 1971 ex.s. c 41 § 1.]

**70.104.020 "Pesticide" defined.** For the purposes of this chapter pesticide means, but is not limited to:

(1) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus on or in a living human being or other animal, which is normally considered to be a pest or which the director of agriculture may declare to be a pest; or

(2) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; or

(3) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used; or

(4) Any fungicide, rodenticide, herbicide, insecticide, and nematocide. [2009 c 549 § 1026; 1971 ex.s. c 41 § 2.]

**70.104.030 Powers and duties of department of health.** (1) The department of health may investigate all suspected human cases of pesticide poisoning and such cases of suspected pesticide poisoning of animals that may relate to human illness. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the case or suspected case of pesticide poisoning.

In order to adequately investigate such cases, the department shall have the power to:

(a) Take all necessary samples and human or animal tissue specimens for diagnostic purposes: PROVIDED, That tissue, if taken from a living human, shall be taken from a living human only with the consent of a person legally qualified to give such consent;

(b) Secure any and all such information as may be necessary to adequately determine the nature and causes of any case of pesticide poisoning.

(2) The department shall immediately notify the department of agriculture, the department of labor and industries, and other appropriate agencies of the results of its investigation for such action as the other departments or agencies deem appropriate. The notification of such investigations and their results may include recommendations for further action by the appropriate department or agency. [2009 c 495 § 10; 1991 c 3 § 357; 1989 c 380 § 71; 1971 ex.s. c 41 § 3.]

Additional notes found at www.leg.wa.gov

**70.104.040 Pesticide emergencies—Authority of department of agriculture not infringed upon.** (1) In any case where an emergency relating to pesticides occurs that represents a hazard to the public due to toxicity of the material, the quantities involved or the environment in which the incident takes place, such emergencies including but not limited to fires, spillage, and accidental contamination, the person or agent of such person having actual or constructive control of the pesticides involved shall immediately notify the department of health by telephone or the fastest available method.

(2) Upon notification or discovery of any pesticide emergency the department of health shall:

(a) Make such orders and take such actions as are appropriate to assume control of the property and to dispose of hazardous substances, prevent further contamination, and restore any property involved to a nonhazardous condition. In the event of failure of any individual to obey and carry out orders pursuant to this section, the department shall have all power and authority to accomplish those things necessary to carry out such order. Any expenses incurred by the department as a result of intentional failure of any individual to obey its lawful orders shall be charged as a debt against such individual.

(3) In any case where the department of health has assumed control of property pursuant to this chapter, such property shall not be reoccupied or used until such time as written notification of its release for use is received from the secretary of the department or his or her designee. Such action shall take into consideration the economic hardship, if any, caused by having the department assume control of property, and release shall be accomplished as expeditiously as possible. Nothing in this chapter shall prevent a farmer from continuing to process his or her crops and/or animals provided that the processing does not endanger the public health.

(4) The department shall recognize the pesticide industry's responsibility and active role in minimizing the effect of pesticide emergencies and shall provide for maximum utilization of these services.

(5) Nothing in this chapter shall be construed in any way to infringe upon or negate the authority and responsibility of the department of agriculture in its application and enforcement of the Washington Pesticide Control Act, chapter 15.58 RCW and the Washington Pesticide Application Act, chapter 17.21 RCW. The department of health shall work closely with the department of agriculture in the enforcement of this chapter and shall keep it appropriately advised. [1991 c 3 § 358; 1983 c 3 § 178; 1971 ex.s. c 41 § 4.]

**70.104.050 Investigation of human exposure to pesticides.** The department of health shall investigate human exposure to pesticides according to the degree of risk that the exposure presents to the individual and the greater population as well as the level of funding appropriated in the operating budget, and in order to carry out such investigations shall have authority to secure and analyze appropriate specimens of human tissue and samples representing sources of possible exposure. [2009 c 495 § 11; 1991 c 3 § 359; 1971 ex.s. c 41 § 5.]

Additional notes found at www.leg.wa.gov

**70.104.055 Pesticide poisonings—Reports.** (1) Any attending physician or other health care provider recognized as primarily responsible for the diagnosis and treatment of a patient or, in the absence of a primary health care provider, the health care provider initiating diagnostic testing or therapy for a patient shall report a case or suspected case of pesticide poisoning to the department of health in the manner prescribed by, and within the reasonable time periods established by, rules of the state board of health. Time periods established by the board shall range from immediate reporting to reporting within seven days depending on the severity of the case or suspected case of pesticide poisoning. The reporting requirements shall be patterned after other board rules establishing requirements for reporting of diseases or conditions. Confidentiality requirements shall be the same as the confidentiality requirements established for other reportable diseases or conditions. The information to be reported may include information from relevant pesticide application records and shall include information required under board rules. Reports shall be made on forms provided to health care providers by the department of health. For purposes of any oral reporting, the department of health shall make available a toll-free telephone number.

(2) Within a reasonable time period as established by board rules, the department of health shall investigate the report of a case or suspected case of pesticide poisoning to document the incident. The department shall report the results of the investigation to the health care provider submitting the original report.

(3) Cases or suspected cases of pesticide poisoning shall be reported by the department of health to the *pesticide reporting and tracking review panel within the time periods established by state board of health rules.

(4) Upon request of the primary health care provider, pesticide applicators or employers shall provide a copy of records of pesticide applications which may have affected the health of the provider's patient. This information is to be used only for the purposes of providing health care services to the patient.

(5) Any failure of the primary health care provider to make the reports required under this section may be cause for the department of health to submit information about such nonreporting to the applicable disciplining authority for the provider under RCW 18.130.040.

(6) No cause of action shall arise as the result of: (a) The failure to report under this section; or (b) any report submitted to the department of health under this section.

(7) For the purposes of this section, a suspected case of pesticide poisoning is a case in which the diagnosis is thought more likely than not to be pesticide poisoning. [1992 c 173 § 4; 1991 c 3 § 360; 1989 c 380 § 72.]

***Reviser's note:** The "pesticide incident reporting and tracking review panel" was eliminated pursuant to 2010 1st sp.s. c 7 § 132.

Additional notes found at www.leg.wa.gov

**70.104.057 Pesticide poisonings—Medical education program.** The department of health, after seeking advice from the state board of health, local health officers, and state and local medical associations, shall develop a program of medical education to alert physicians and other health care providers to the symptoms, diagnosis, treatment, and reporting of pesticide poisonings. [1991 c 3 § 361; 1989 c 380 § 73.]

Additional notes found at www.leg.wa.gov

**70.104.060 Technical assistance, consultations and services to physicians and agencies authorized.** In order effectively to prevent human illness due to pesticides and to carry out the requirements of this chapter, the department of health is authorized to provide technical assistance and consultation regarding health effects of pesticides to physicians and other agencies, and is authorized to operate an analytical chemical laboratory and may provide analytical and laboratory services to physicians and other agencies to determine

pesticide levels in human and other tissues, and appropriate environmental samples. [1991 c 3 § 362; 1971 ex.s. c 41 § 6.]

**70.104.110 Pesticide application safety committee—Report to the legislature.** ***(Expires July 1, 2025.)*** (1) The pesticide application safety committee is established. Appointments to the committee must be made as soon as possible after the legislature convenes in regular session. The committee is composed of the following members:

(a) One member from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;

(b) One member from each of the two largest caucuses of the senate, appointed by the president of the senate;

(c) The director of the department of agriculture, or an assistant director designated by the director;

(d) The secretary of the department of health, or an assistant secretary designated by the secretary;

(e) The director of the department of labor and industries, or an assistant director designated by the director;

(f) The commissioner of public lands, or an assistant commissioner designated by the commissioner;

(g) The dean of the college of agricultural, human, and natural resource sciences at the Washington State University, or an assistant dean designated by the dean;

(h) The pesticide safety education coordinator at the Washington State University cooperative extension; and

(i) The director of the University of Washington Pacific Northwest agricultural safety and health center, or an assistant designated by the director.

(2) The committee shall be cochaired by the secretary of the department of health, or the assistant secretary designated by the secretary, and the director of the department of agriculture, or the assistant director designated by the director.

(3) Primary responsibility for administrative support for the committee, including developing reports, research, and other organizational support, shall be provided by the department of health and the department of agriculture. The committee must hold its first meeting by September 2019. The committee must meet at least three times each year. The meetings shall be at a time and place specified by the cochairs, or at the call of a majority of the committee. When determining the time and place of meetings, the cochairs must consider costs and conduct committee meetings in Olympia when this choice would reduce costs to the state.

(4)(a) An advisory work group is created to collect information and make recommendations to the full committee on topics requiring unique expertise and perspectives on issues within the jurisdiction of the committee.

(b) The advisory work group shall consist of a representative from the department of agriculture, two representatives of employee organizations that represent farmworkers, two farmworkers with expertise on pesticide application, a representative of community and migrant health centers, a toxicologist, a representative of growers who use air blast sprayers, a representative of growers who use aerial pesticide application, a representative of growers who use fumigation to apply pesticides, and a representative of aerial applicators. The secretary of health, in consultation with the director of the department of agriculture and the full committee, must appoint members of the advisory work group, and the department of health must staff the advisory work group. The letter of appointment to the advisory work group members must be signed by both cochairs.

(c) The advisory work group must hold meetings only upon the committee's request. To reduce costs, the advisory work group must conduct meetings using teleconferencing or other methods, but may hold one in-person meeting per fiscal year.

(d) Members of the advisory work group shall be reimbursed for mileage expenses in accordance with RCW 43.03.060.

(e) The advisory work group must provide a report on their activities and recommendations to the full committee by November 9th of each year.

(5) The first priority of the committee is to explore how the departments of agriculture, labor and industries, and health, and the Washington poison center collect and track data. The committee must also consider the feasibility and requirements of developing a shared database, including how the department of health could use existing tools, such as the tracking network, to better display multiagency data regarding pesticides. The committee may also evaluate and recommend policy options that would take action to:

(a) Improve pesticide application safety with agricultural applications;

(b) Lead an effort to establish baseline data for the type and quantity of pesticide applications used in Washington to be able to compare the number of exposures with overall number of applications;

(c) Research ways to improve pesticide application communication among different members of the agricultural community, including educating the public in English and Spanish about acute and chronic health information about pesticides;

(d) Compile industry's best practices for use to improve pesticide application safety to limit pesticide exposure;

(e) Continue to investigate reasons why members of the agricultural workforce do not or may not report pesticide exposure;

(f) Explore new avenues for reporting with investigation without fear of retaliation;

(g) Work with stakeholders to consider trainings for how and when to report;

(h) Explore incentives for using new technology by funding a partial buy-out program for old spray technology;

(i) Consider developing an effective community health education plan;

(j) Consult with community partners to enhance educational initiatives that work with the agricultural workforce, their families, and surrounding communities to reduce the risk of pesticide exposure;

(k) Enhance efforts to work with pesticide manufacturers and the environmental protection agency to improve access to non-English pesticide labeling in the United States;

(l) Work with research partners to develop, or promote the use of translation apps for pesticide label safety information, or both;

(m) Evaluate prevention techniques to minimize exposure events;

(n) Develop more Spanish language and other language educational materials for distribution, including through

social media and app-based learning for agricultural workforce communities;

(o) Explore development of an agricultural workforce education safety program to improve the understanding about leaving an area being sprayed; and

(p) Work with the industry and the agricultural workforce to improve protocols and best practices for use of personal safety equipment for applicators and reflective gear for the general workforce.

(6) The committee must provide a report to the appropriate committees of the legislature by May 1, 2020, and each year thereafter. An initial report on the progress of the committee must be provided in January 2020. The report may include recommendations the committee determines necessary, and must document the activities of the committee and report on the subjects listed in subsection (5) of this section. The department of health and the department of agriculture must provide staff support to the committee for the purpose of authoring the report and transmitting it to the legislature. Any member of the committee may provide a minority report as an appendix to the report submitted to the legislature under this section.

(7) This section expires July 1, 2025. [2019 c 327 § 2.]

**Findings—2019 c 327:** "(1) In 2018, the legislature passed Engrossed Second Substitute Senate Bill No. 6529. The bill recognized that farmers, farmworkers, and the broader community share an interest in minimizing human exposure to pesticides. It also recognized that gains have been made in reducing human exposure to pesticides and that collaboration between state agencies and the farming community could further reduce agricultural workers exposure to pesticide drift.

(2) The legislation established a pesticide application safety work group that would make recommendations for improving pesticide application safety. Work group members included legislators from both chambers and caucuses, as well as representation from state agencies and the commission on Hispanic affairs. The work group sought public participation to learn more about pesticide application safety. Many stakeholders including but not limited to local farm hosts, the agricultural industry, and members of the agricultural workforce contributed valuable assistance and input.

(3) The work group reached two noteworthy recommendations regarding what can be done now to improve pesticide application safety. The recommendations are to:

(a) Expand training because the department of agriculture lacks sufficient resources to meet the training demand from pesticide applicators and handlers; and

(b) Establish a new pesticide application safety panel to provide an opportunity to evaluate and recommend policy options, and investigate exposure cases.

(4) The work group concluded that legislation is warranted to expand funding for a training program and set up a new pesticide application safety panel with clear objectives.

(5) This section expires July 1, 2025." [2019 c 327 § 1.]

## Chapter 70.108 RCW
## OUTDOOR MUSIC FESTIVALS

Sections



**Reviser's note:** Throughout chapter 70.108 RCW the references to "this act" have been changed to "this chapter." "This act" [1971 ex.s. c 302] consists of this chapter, the 1971 amendments to RCW 9.40.110-9.40.130, 9.41.010, 9.41.070, 26.44.050, 70.74.135, 70.74.270, 70.74.280, and the enactment of RCW 9.27.015 and 9.91.110.

**70.108.010 Legislative declaration.** The legislature hereby declares it to be the public interest, and for the protection of the health, welfare and property of the residents of the state of Washington to provide for the orderly and lawful conduct of outdoor music festivals by assuring that proper sanitary, health, fire, safety, and police measures are provided and maintained. This invocation of the police power is prompted by and based upon prior experience with outdoor music festivals where the enforcement of the existing laws and regulations on dangerous and narcotic drugs, indecent exposure, intoxicating liquor, and sanitation has been rendered most difficult by the flagrant violations thereof by a large number of festival patrons. [1971 ex.s. c 302 § 19.]

Additional notes found at www.leg.wa.gov

**70.108.020 Definitions.** For the purposes of this chapter the following words and phrases shall have the indicated meanings:

(1) "Applicant" means the promoter who has the right of control of the conduct of an outdoor music festival who applies to the appropriate legislative authority for a license to hold an outdoor music festival.

(2) "Issuing authority" means the legislative body of the local governmental unit where the site for an outdoor music festival is located.

(3) "Outdoor music festival" or "music festival" or "festival" means an assembly of persons gathered primarily for outdoor, live or recorded musical entertainment, where the predicted attendance is two thousand persons or more and where the duration of the program is five hours or longer: PROVIDED, That this definition shall not be applied to any regularly established permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established places of assembly for assemblies which do not exceed by more than two hundred fifty people the maximum seating capacity of the structure where the assembly is held: PROVIDED, FURTHER, That this definition shall not apply to government sponsored fairs held on regularly established fairgrounds nor to assemblies required to be licensed under other laws or regulations of the state.

(4) "Participate" means to knowingly provide or deliver to the festival site supplies, materials, food, lumber, beverages, sound equipment, generators, or musical entertainment and/or to attend a music festival. A person shall be presumed to have knowingly provided as that phrase is used herein after he or she has been served with a court order.

(5) "Promoter" means any person or other legal entity issued a permit to conduct an outdoor music festival. [2012 c 117 § 421; 1971 ex.s. c 302 § 21.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**70.108.030 Permits—Required—Compliance with rules and regulations.** No person or other legal entity shall knowingly allow, conduct, hold, maintain, cause to be advertised or permit an outdoor music festival unless a valid permit has been obtained from the issuing authority for the operation of such music festival as provided for by this chapter. One such permit shall be required for each outdoor music festival. A permit may be granted for a period not to exceed sixteen consecutive days and a festival may be operated during any or all of the days within such period. Any person, persons, partnership, corporation, association, society, fraternal or social organization, failing to comply with the rules, regulations or conditions contained in this chapter shall be subject to the appropriate penalties as prescribed by this chapter. [1971 ex.s. c 302 § 22.]

**70.108.040 Application for permit—Contents—Filing.** Application for an outdoor music festival permit shall be in writing and filed with the clerk of the issuing authority wherein the festival is to be held. Said application shall be filed not less than ninety days prior to the first scheduled day of the festival and shall be accompanied with a permit fee in the amount of two thousand five hundred dollars. Said application shall include:

(1) The name of the person or other legal entity on behalf of whom said application is made: PROVIDED, That a natural person applying for such permit shall be eighteen years of age or older;

(2) A financial statement of the applicant;

(3) The nature of the business organization of the applicant;

(4) Names and addresses of all individuals or other entities having a ten percent or more proprietary interest in the festival;

(5) The principal place of business of applicant;

(6) A legal description of the land to be occupied, the name and address of the owner thereof, together with a document showing the consent of said owner to the issuance of a permit, if the land be owned by a person other than the applicant;

(7) The scheduled performances and program;

(8) Written confirmation from the local health officer that he or she has reviewed and approved plans for site and development in accordance with rules, regulations and standards adopted by the state board of health. Such rules and regulations shall include criteria as to the following and such other matters as the state board of health deems necessary to protect the public's health:

(a) Submission of plans
(b) Site
(c) Water supply
(d) Sewage disposal
(e) Food preparation facilities
(f) Toilet facilities
(g) Solid waste
(h) Insect and rodent control
(i) Shelter
(j) Dust control
(k) Lighting
(l) Emergency medical facilities
(m) Emergency air evacuation
(n) Attendant physicians
(o) Communication systems

(9) A written confirmation from the appropriate law enforcement agency from the area where the outdoor music festival is to take place, showing that traffic control and crowd protection policing have been contracted for or otherwise provided by the applicant meeting the following conditions:

(a) One person for each two hundred persons reasonably expected to be in attendance at any time during the event for purposes of traffic and crowd control.

(b) The names and addresses of all traffic and crowd control personnel shall be provided to the appropriate law enforcement authority: PROVIDED, That not less than twenty percent of the traffic and crowd control personnel shall be commissioned police officers or deputy sheriffs: PROVIDED FURTHER, That on and after February 25, 1972 any commissioned police officer or deputy sheriff who is employed and compensated by the promoter of an outdoor music festival shall not be eligible and shall not receive any benefits whatsoever from any public pension or disability plan of which he or she is a member for the time he is so employed or for any injuries received during the course of such employment.

(c) During the hours that the festival site shall be open to the public there shall be at least one regularly commissioned police officer employed by the jurisdiction wherein the festival site is located for every one thousand persons in attendance and said officer shall be on duty within the confines of the actual outdoor music festival site.

(d) All law enforcement personnel shall be charged with enforcing the provisions of this chapter and all existing statutes, ordinances and regulations.

(10) A written confirmation from the appropriate law enforcement authority that sufficient access roads are available for ingress and egress to the parking areas of the outdoor music festival site and that parking areas are available on the actual site of the festival or immediately adjacent thereto which are capable of accommodating one auto for every four persons in estimated attendance at the outdoor music festival site.

(11) A written confirmation from the department of natural resources, where applicable, and the chief of the Washington state patrol, through the director of fire protection, that all fire prevention requirements have been complied with.

(12) A written statement of the applicant that all state and local law enforcement officers, fire control officers and other necessary governmental personnel shall have free access to the site of the outdoor music festival.

(13) A statement that the applicant will abide by the provisions of this chapter.

(14) The verification of the applicant warranting the truth of the matters set forth in the application to the best of the applicant's knowledge, under the penalty of perjury. [1995 c 369 § 59; 1986 c 266 § 120; 1972 ex.s. c 123 § 1; 1971 ex.s. c 302 § 23.]

Additional notes found at www.leg.wa.gov

**70.108.050 Approval or denial of permit—Corrections—Procedure—Judicial review.** Within fifteen days after the filing of the application the issuing authority shall

either approve or deny the permit to the applicant. Any denial shall set forth in detail the specific grounds therefor. The applicant shall have fifteen days after the receipt of such denial or such additional time as the issuing authority shall grant to correct the deficiencies set forth and the issuing authority shall within fifteen days after receipt of such corrections either approve or deny the permit. Any denial shall set forth in detail the specific grounds therefor.

After the applicant has filed corrections and the issuing authority has thereafter again denied the permit, the applicant may within five days after receipt of such second denial seek judicial review of such denial by filing a petition in the superior court for the county of the issuing authority. The review shall take precedence over all other civil actions and shall be conducted by the court without a jury. The court shall, upon request, hear oral argument and receive written briefs and shall either affirm the denial or order that the permit be issued. An applicant may not use any other procedure to obtain judicial review of a denial. [1972 ex.s. c 123 § 2; 1971 ex.s. c 302 § 24.]

**70.108.060 Reimbursement of expenses incurred in reviewing request.** Any local agency requested by an applicant to give written approval as required by RCW 70.108.040 may within fifteen days after the applicant has filed his or her application apply to the issuing authority for reimbursement of expenses reasonably incurred in reviewing such request. Upon a finding that such expenses were reasonably incurred, the issuing authority shall reimburse the local agency therefor from the funds of the permit fee. The issuing authority shall prior to the first scheduled date of the festival return to the applicant that portion of the permit fee remaining after all such reimbursements have been made. [2012 c 117 § 422; 1971 ex.s. c 302 § 25.]

**70.108.070 Cash deposit—Surety bond—Insurance.** After the application has been approved, the promoter shall deposit with the issuing authority, a cash deposit or surety bond. The bond or deposit shall be used to pay any costs or charges incurred to regulate health or to clean up afterwards outside the festival grounds or any extraordinary costs or charges incurred to regulate traffic or parking. The bond or other deposit shall be returned to the promoter when the issuing authority is satisfied that no claims for damage or loss will be made against said bond or deposit, or that the loss or damage claimed is less than the amount of the deposit, in which case the uncommitted balance thereof shall be returned: PROVIDED, That the bond or cash deposit or the uncommitted portion thereof shall be returned not later than thirty days after the last day of the festival.

In addition, the promoter shall be required to furnish evidence that he or she has in full force and effect a liability insurance policy in an amount of not less than one hundred thousand dollars bodily injury coverage per person covering any bodily injury negligently caused by any officer or employee of the festival while acting in the performance of his or her duties. The policy shall name the issuing authority of the permit as an additional named insured.

In addition, the promoter shall be required to furnish evidence that he or she has in full force and effect a one hundred thousand dollar liability property damage insurance policy covering any property damaged due to negligent failure by any officer or employee of the festival to carry out duties imposed by this chapter. The policy shall have the issuing authority of the permit as an additional named insured. [2012 c 117 § 423; 1972 ex.s. c 123 § 3; 1971 ex.s. c 302 § 26.]

**70.108.080 Revocation of permits.** Revocation of any permit granted pursuant to this chapter shall not preclude the imposition of penalties as provided for in this chapter and the laws of the state of Washington. Any permit granted pursuant to the provisions of this chapter to conduct a music festival shall be summarily revoked by the issuing authority when it finds that by reason of emergency the public peace, health, safety, morals or welfare can only be preserved and protected by such revocation.

Any permit granted pursuant to the provisions of this chapter to conduct a music festival may otherwise be revoked for any material violation of this chapter or the laws of the state of Washington after a hearing held upon not less than three days notice served upon the promoter personally or by certified mail.

Every permit issued under the provisions of this chapter shall state that such permit is issued as a measure to protect and preserve the public peace, health, safety, morals and welfare, and that the right of the appropriate authority to revoke such permit is a consideration of its issuance. [1971 ex.s. c 302 § 27.]

**70.108.090 Drugs prohibited.** No person, persons, partnership, corporation, association, society, fraternal or social organization to whom a music festival permit has been granted shall, during the time an outdoor music festival is in operation, knowingly permit or allow any person to bring upon the premises of said music festival, any narcotic or dangerous drug as defined by chapters *69.33 or 69.40 RCW, or knowingly permit or allow narcotic or dangerous drug to be consumed on the premises, and no person shall take or carry onto said premises any narcotic or dangerous drug. [1971 ex.s. c 302 § 28.]

***Reviser's note:** Chapter 69.33 RCW was repealed by 1971 ex.s. c 308 § 69.50.606.

**70.108.100 Proximity to schools, churches, homes.** No music festival shall be operated in a location which is closer than one thousand yards from any schoolhouse or church, or five hundred yards from any house, residence or other human habitation unless waived by occupants. [1971 ex.s. c 302 § 29.]

**70.108.110 Age of patrons.** No person under the age of sixteen years shall be admitted to any outdoor music festival without the escort of his or her parents or legal guardian and proof of age shall be provided upon request. [1971 ex.s. c 302 § 30.]

**70.108.120 Permits—Posting—Transferability.** Any permit granted pursuant to this chapter shall be posted in a conspicuous place on the site of the outdoor music festival and such permit shall be not transferable or assignable without the consent of the issuing authority. [1971 ex.s. c 302 § 31.]

**70.108.130 Penalty.** (1) Except as otherwise provided in this section, any person who willfully fails to comply with the rules, regulations, and conditions set forth in this chapter or who aids or abets such a violation or failure to comply is guilty of a gross misdemeanor.

(2)(a) Except as provided in (b) of this subsection, violation of such a rule, regulation, or condition relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule, regulation, or condition equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 is a misdemeanor. [2003 c 53 § 359; 1979 ex.s. c 136 § 104; 1971 ex.s. c 302 § 32.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

**70.108.140 Inspection of books and records.** The department of revenue shall be allowed to inspect the books and records of any outdoor music festival during the period of operation of the festival and after the festival has concluded for the purpose of determining whether or not the tax laws of this state are complied with. [1972 ex.s. c 123 § 4.]

**70.108.150 Firearms—Penalty.** It shall be unlawful for any person, except law enforcement officers, to carry, transport, or convey, or to have in his or her possession or under his or her control any firearm while on the site of an outdoor music festival.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and not more than two hundred dollars or by imprisonment in the county jail for not less than ten days and not more than ninety days or by both such fine and imprisonment. [2012 c 117 § 424; 1972 ex.s. c 123 § 5.]

**70.108.160 Preparations—Completion requirements.** All preparations required to be made by the provisions of this chapter on the music festival site shall be completed thirty days prior to the first day scheduled for the festival. Upon such date or such earlier date when all preparations have been completed, the promoter shall notify the issuing authority thereof, and the issuing authority shall make an inspection of the festival site to determine if such preparations are in reasonably full compliance with plans submitted pursuant to RCW 70.108.040. If a material violation exists the issuing authority shall move to revoke the music festival permit in the manner provided by RCW 70.108.080. [1972 ex.s. c 123 § 6.]

**70.108.170 Local regulations and ordinances not precluded.** Nothing in this chapter shall be construed as precluding counties, cities and other political subdivisions of the state of Washington from enacting ordinances or regulations for the control and regulation of outdoor music festivals nor shall this chapter repeal any existing ordinances or regulations. [1972 ex.s. c 123 § 7.]

## Chapter 70.110 RCW

## FLAMMABLE FABRICS—CHILDREN'S SLEEPWEAR

Sections



**70.110.010 Short title.** This chapter may be known and cited as the "Flammable Fabrics Act". [1973 1st ex.s. c 211 § 1.]

**70.110.020 Legislative finding.** The legislature hereby finds and declares that fabric related burns from children's sleepwear present an immediate and serious danger to the infants and children of this state. The legislature therefore declares it to be in the public interest, and for the protection of the health, property, and welfare of the residents of this state to herein provide for flammability standards for children's sleepwear. [1973 1st ex.s. c 211 § 2.]

**70.110.030 Definitions.** As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Person" means an individual, partnership, corporation, association, or any other form of business enterprise, and every officer thereof.

(2) "Children's sleepwear" means any product of wearing apparel from infant size up to and including size fourteen which is sold or intended for sale for the primary use of sleeping or activities related to sleeping, such as nightgowns, pajamas, and similar or related items such as robes, but excluding diapers and underwear.

(3) "Fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any material or synthetic fiber, film, or substitute therefor which is intended for use, or which may reasonably be expected to be used, in children's sleepwear.

(4) The term "infant size up to and including size six-x" means the sizes defined as infant through and including six-x in Department of Commerce Voluntary Standards, Commercial Standard 151-50, "Body Measurements for the Sizing of Apparel for Infants, Babies, Toddlers, and Children", Commercial Standard 153, "Body Measurements for the Sizing of Apparel for Girls", and Commercial Standard 155, "Body Measurements for the Sizing of Boys' Apparel".

(5) "Fabric related burns" means burns that would not have been incurred but for the fact that sleepwear worn at the time of the burns did not comply with commercial standards promulgated by the secretary of commerce of the United States in March, 1971, identified as Standard for the Flammability of Children's Sleepwear (DOC FF 3-71) 36 F.R. 14062 and by the Flammable Fabrics Act 15 U.S.C. 1193. [1973 1st ex.s. c 211 § 3.]

**70.110.040 Compliance required.** (1) It shall be unlawful to manufacture for sale, sell, or offer for sale any new and unused article of children's sleepwear which does not comply with the standards established in the Standard for the Flammability of Children's Sleepwear (DOC FF 3-71), 36 F.R. 14062 and the Flammable Fabrics Act, 15 U.S.C. 1191-1204.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 360; 1973 1st ex.s. c 211 § 4.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.110.050 Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations.** The attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1973 1st ex.s. c 211 § 5.]

**70.110.070 Strict liability.** Any person who violates RCW 70.110.040 shall be strictly liable for fabric-related burns. [1973 1st ex.s. c 211 § 7.]

**70.110.080 Personal service of process—Jurisdiction of courts.** Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has violated any provision of this chapter. Such person shall be deemed to have thereby submitted himself or herself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185, as now or hereafter amended. [2012 c 117 § 425; 1973 1st ex.s. c 211 § 8.]

**70.110.900 Provisions additional.** The provisions of this chapter shall be in addition to and not a substitution for or limitation of any other law. [1973 1st ex.s. c 211 § 9.]

## Chapter 70.111 RCW
## INFANT CRIB SAFETY ACT

Sections



**70.111.010 Findings—Purpose—Intent.** (1) The legislature finds all of the following:

(a) The disability and death of infants resulting from injuries sustained in crib accidents are a serious threat to the public health, welfare, and safety of the people of this state.

(b) Infants are an especially vulnerable class of people.

(c) The design and construction of a baby crib must ensure that it is safe to leave an infant unattended for extended periods of time. A parent or caregiver has a right to believe that the crib in use is a safe place to leave an infant.

(d) Over thirteen thousand infants are injured in unsafe cribs every year.

(e) In the past decade, six hundred twenty-two infants died (a rate of sixty-two infants each year) from injuries sustained in unsafe cribs.

(f) The United States consumer product safety commission estimates that the cost to society resulting from injuries and death due to unsafe cribs is two hundred thirty-five million dollars per year.

(g) Secondhand, hand-me-down, and heirloom cribs pose a special problem. There were four million infants born in this country last year, but only one million new cribs sold. As many as three out of four infants are placed in secondhand, hand-me-down, or heirloom cribs.

(h) Most injuries and deaths occur in secondhand, hand-me-down, or heirloom cribs.

(i) Existing state and federal legislation is inadequate to deal with this hazard.

(j) Prohibiting the remanufacture, retrofit, sale, contracting to sell or resell, leasing, or subletting of unsafe cribs, particularly unsafe secondhand, hand-me-down, or heirloom cribs, will prevent injuries and deaths caused by cribs.

(2) The purpose of this chapter is to prevent the occurrence of injuries and deaths to infants as a result of unsafe cribs by making it illegal to remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, after June 6, 1996, any full-size or nonfull-size crib that is unsafe for any infant using the crib.

(3) It is the intent of the legislature to encourage public and private collaboration in disseminating materials relative to the safety of baby cribs to parents, child care providers, and those who would be likely to place unsafe cribs in the stream of commerce. The legislature also intends that informational materials regarding baby crib safety be available to consumers through the department of health. [1996 c 158 § 1.]

**70.111.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Infant" means any person less than thirty-five inches tall and less than three years of age.

(2) "Crib" means a bed or containment designed to accommodate an infant.

(3) "Full-size crib" means a full-size crib as defined in Section 1508.3 of Title 16 of the Code of Federal Regulations regarding the requirements for full-size cribs.

(4) "Nonfull-size crib" means a nonfull-size crib as defined in Section 1509.2(b) of Title 16 of the Code of the Federal Regulations regarding the requirements for nonfull-size cribs.

(5) "Person" means any natural person, firm, corporation, association, or agent or employee thereof.

(6) "Commercial user" means any person who deals in full-size or nonfull-size cribs of the kind governed by this chapter or who otherwise by one's occupation holds oneself out as having knowledge or skill peculiar to the full-size or nonfull-size cribs governed by this chapter, including child care facilities and family child care homes licensed by the department of social and health services under chapter 74.15 RCW, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce full-size or nonfull-size cribs. [1996 c 158 § 3.]

**70.111.030 Unsafe cribs—Prohibition—Definition—Penalty.** (1) No commercial user may remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, on or after June 6, 1996, a full-size or nonfull-size crib that is unsafe for any infant using the crib.

(2) A crib is presumed to be unsafe pursuant to this chapter if it does not conform to all of the following:

(a) Part 1508 (commencing with Section 1508.1) of Title 16 of the Code of Federal Regulations;

(b) Part 1509 (commencing with Section 1509.1) of Title 16 of the Code of Federal Regulations;

(c) Part 1303 (commencing with Section 1303.1) of Title 16 of the Code of Federal Regulations;

(d) American Society for Testing Materials Voluntary Standards F966-90;

(e) American Society for Testing Materials Voluntary Standards F1169.88;

(f) Any regulations that are adopted in order to amend or supplement the regulations described in (a) through (e) of this subsection.

(3) Cribs that are unsafe or fail to perform as expected pursuant to subsection (2) of this section include, but are not limited to, cribs that have any of the following dangerous features or characteristics:

(a) Corner posts that extend more than one-sixteenth of an inch;

(b) Spaces between side slats more than two and three-eighths inches;

(c) Mattress support than can be easily dislodged from any point of the crib. A mattress segment can be easily dislodged if it cannot withstand at least a twenty-five pound upward force from underneath the crib;

(d) Cutout designs on the end panels;

(e) Rail height dimensions that do not conform to the following:

(i) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least nine inches;

(ii) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least twenty-six inches;

(f) Any screws, bolts, or hardware that are loose and not secured;

(g) Sharp edges, points, or rough surfaces, or any wood surfaces that are not smooth and free from splinters, splits, or cracks;

(h) Nonfull-size cribs with tears in mesh or fabric sides.

(4) On or after January 1, 1997, any commercial user who willfully and knowingly violates this section is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars. Hotels, motels, and similar transient lodging, child care facilities, and family child care homes are not subject to this section until January 1, 1999. [2003 c 53 § 361; 1996 c 158 § 4.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.111.040 Exemption.** Any crib that is clearly not intended for use by an infant is exempt from the provisions of this chapter, provided that it is accompanied at the time of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce, by a notice to be furnished by the commercial user declaring that it is not intended to be used for an infant and is dangerous to use for an infant. The commercial user is further exempt from claims for liability resulting from use of a crib contrary to the notice required in this section. [1996 c 158 § 5.]

**70.111.060 Civil actions.** Any person may maintain an action against any commercial user who violates RCW 70.111.030 to enjoin the remanufacture, retrofit, sale, contract to sell, contract to resell, lease, or subletting of a full-size or nonfull-size crib that is unsafe for any infant using the crib, and for reasonable attorneys' fees and costs. This section does not apply to hotels, motels, and similar transient lodging, child care facilities, and family child care homes until January 1, 1999. [1996 c 158 § 7.]

**70.111.070 Remedies.** Remedies available under this chapter are in addition to any other remedies or procedures under any other provision of law that may be available to an aggrieved party. [1996 c 158 § 8.]

**70.111.900 Short title.** This chapter may be known and cited as the infant crib safety act. [1996 c 158 § 2.]

## Chapter 70.112 RCW
## FAMILY MEDICINE—EDUCATION AND RESIDENCY PROGRAMS

Sections



*Council for children and families: Chapter 43.121 RCW.*

**70.112.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory board" means the family medicine education advisory board created in RCW 70.112.080.

(2) "Affiliated" means established or developed in cooperation with the schools of medicine.

(3) "Health professional shortage areas" has the same definition as in RCW 28B.115.020.

(4) "Residency programs" means community-based residency educational programs in family medicine, either in existence or established under this chapter and that are certified by the accreditation council for graduate medical education or by the American osteopathic association.

(5) "Schools of medicine" means the University of Washington school of medicine located in Seattle, Washington; the Pacific Northwest University of Health Sciences located in Yakima, Washington; the Washington State University college of medicine located in Spokane, Washington; and any other such medical schools that are accredited by the

liaison committee on medical education or the American osteopathic association's commission on osteopathic college accreditation, and that locate their entire four-year medical program in Washington. [2018 c 93 § 1; 2015 c 252 § 3. Prior: 2010 1st sp.s. c 7 § 41; 1975 1st ex.s. c 108 § 1.]

**Intent—2015 c 252:** "It is the intent of the legislature to increase the number of family medicine physicians in shortage areas in the state by providing a fiscal incentive for hospitals and clinics to develop or expand residency programs in these areas. The legislature also intends to encourage family medicine residents to work in shortage areas by funding the health professional loan repayment and scholarship program." [2015 c 252 § 1.]

Additional notes found at www.leg.wa.gov

**70.112.020 Education in family medicine—Department in school of medicine—Residency programs—Financial support.** (1) There is established a statewide medical education system for the purpose of training resident physicians in family medicine.

(2) The deans of the schools of medicine shall be responsible for implementing the development and expansion of residency programs in cooperation with the medical profession, hospitals, and clinics located throughout the state. The schools of medicine shall support development of high quality, accredited, affiliated residency programs, giving consideration to communities in the state where the population, hospital facilities, number of physicians, and interest in medical education indicate the potential success of the residency program and prioritizing support for health professional shortage areas in the state.

(3) The medical education system shall provide financial support for residents in training for those programs which are affiliated with the schools of medicine and shall establish positions for appropriate faculty to staff these programs.

(4) The schools of medicine shall coordinate with the office of student financial assistance to notify prospective family medicine students and residents of their eligibility for the health professional loan repayment and scholarship program under chapter 28B.115 RCW.

(5) The number of programs shall be determined by the board and be in keeping with the needs of the state. [2015 c 252 § 4; 2012 c 117 § 426; 2010 1st sp.s. c 7 § 42; 1975 1st ex.s. c 108 § 2.]

**Intent—2015 c 252:** See note following RCW 70.112.010.

Additional notes found at www.leg.wa.gov

**70.112.060 Funding of residency programs.** (1) The moneys appropriated for these statewide family medicine residency programs shall be in addition to all the income of the schools of medicine and shall not be used to supplant funds for other programs under the administration of the schools of medicine.

(2) The allocation of state funds for the residency programs shall not exceed fifty percent of the total cost of the program.

(3) No more than twenty-five percent of the appropriation for each fiscal year for the affiliated programs shall be authorized for expenditures made in support of the faculty and staff of the schools of medicine who are associated with the affiliated residency programs and are located at the schools of medicine.

(4) No funds for the purposes of this chapter shall be used to subsidize the cost of care incurred by patients.

(5) No more than ten percent of the state funds appropriated for the purposes of this chapter may be used for administrative or overhead costs to administer the statewide family medicine residency programs.

(6) The family medicine residency network at the University of Washington shall, in collaboration with the schools of medicine, administer the state funds appropriated for the purposes of this chapter. [2015 c 252 § 5; 1975 1st ex.s. c 108 § 6.]

**Intent—2015 c 252:** See note following RCW 70.112.010.

**70.112.070 Report to the department of health—Report to the legislature.** (1) Each family medicine residency program shall annually report the following information to the department of health:

(a) The location of the residency program and whether the program, or any portion of the program, is located in a health professional shortage area as defined in RCW 70.112.010;

(b) The number of residents in the program and the number who attended an in-state versus an out-of-state medical school; and

(c) The number of graduates of the residency program who work within health professional shortage areas.

(2) The department of health shall aggregate the information received under subsection (1) of this section and report it to the appropriate legislative committees of the house of representatives and the senate by November 1, 2016, and November 1st every even year thereafter. The report must also include information on how the geographic distribution of family residency programs changes over time and, if information on the number of residents in specialty areas is readily available, a comparison of the number of residents in family medicine versus specialty areas. [2015 c 252 § 2.]

**Intent—2015 c 252:** See note following RCW 70.112.010.

**70.112.080 Family medicine education advisory board.** (1) There is created a family medicine education advisory board, which must consist of the following twelve members:

(a) One member appointed by the dean of the school of medicine at the University of Washington school of medicine;

(b) One member appointed by the dean of the school of medicine at the Pacific Northwest University of Health Sciences;

(c) One member appointed by the dean of the college of medicine at Washington State University;

(d) Two citizen members, one from west of the crest of the Cascade mountains and one from east of the crest of the Cascade mountains, to be appointed by the governor;

(e) One member appointed by the Washington state medical association;

(f) One member appointed by the Washington osteopathic medical association;

(g) One member appointed by the Washington state academy of family physicians;

(h) One hospital administrator representing those Washington hospitals with family medicine residency programs, appointed by the Washington state hospital association;

(i) One director representing the directors of community-based family medicine residency programs, appointed by the family medicine residency network;

(j) One member of the house of representatives appointed by the speaker of the house; and

(k) One member of the senate appointed by the president of the senate.

(2) The three members of the advisory board appointed by the deans of the schools and colleges of medicine shall serve as chairs of the advisory board.

(3) The cochairs of the advisory board, appointed by the deans of the schools of medicine, shall serve as permanent members of the advisory board without specified term limits. The deans of the schools of medicine have the authority to replace the chair representing their school. The deans of the schools of medicine shall appoint a new member in the event that the member representing their school vacates his or her position.

(4) Other members must be initially appointed as follows: Terms of the two public members must be two years; terms of the members appointed by the medical association and the hospital association must be three years; and the remaining members must be four years. Thereafter, terms for the nonpermanent members must be four years. Members may serve two consecutive terms. New appointments must be filled in the same manner as for original appointments. Vacancies must be filled for an unexpired term in the manner of the original appointment. [2018 c 93 § 2; 2015 c 252 § 6.]

**Intent—2015 c 252:** See note following RCW 70.112.010.

**70.112.090 Advisory board—Duties.** The advisory board shall consider and provide recommendations on the selection of the areas within the state where affiliate residency programs could exist, the allocation of funds appropriated under this chapter, and the procedures for review and evaluation of the residency programs. [2015 c 252 § 7.]

**Intent—2015 c 252:** See note following RCW 70.112.010.

## Chapter 70.114 RCW
## MIGRANT LABOR HOUSING

Sections



**70.114.010 Legislative declaration—Fees for use of housing.** The legislature finds that the migrant labor housing project constructed on property purchased by the state in Yakima county should be continued until June 30, 1981. The employment security department is authorized to set day use or extended period use fees, consistent with those established by the department of parks and recreation [parks and recreation commission]. [1979 ex.s. c 79 § 1; 1977 ex.s. c 287 § 1; 1975 1st ex.s. c 50 § 1; 1974 ex.s. c 125 § 1.]

**70.114.020 Migrant labor housing facility—Employment security department authorized to contract for continued operation.** The employment security department is authorized to enter into such agreements and contracts as may be necessary to provide for the continued operation of the facility by a state agency, an appropriate local governmental body, or by such other entity as the commissioner may deem appropriate and in the state's best interest. [1979 ex.s. c 79 § 2; 1977 ex.s. c 287 § 2; 1975 1st ex.s. c 50 § 3; 1974 ex.s. c 125 § 4.]

## Chapter 70.114A RCW
## TEMPORARY WORKER HOUSING—HEALTH AND SAFETY REGULATION

Sections



**70.114A.010 Findings—Intent.** The legislature finds that there is an inadequate supply of temporary and permanent housing for migrant and seasonal workers in this state. The legislature also finds that unclear, complex regulations related to the development, construction, and permitting of worker housing inhibit the development of this much needed housing. The legislature further finds that as a result, many workers are forced to obtain housing that is unsafe and unsanitary.

Therefore, it is the intent of the legislature to encourage the development of temporary and permanent housing for workers that is safe and sanitary by: Establishing a clear and concise set of regulations for temporary housing; establishing a streamlined permitting and administrative process that will be locally administered and encourage the development of such housing; and by providing technical assistance to organizations or individuals interested in the development of worker housing. [1995 c 220 § 1.]

**70.114A.020 Definitions.** The definitions in this section apply throughout this chapter.

(1) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

(2) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

(3) "Department" means the department of health.

(4) "Dwelling unit" means a shelter, building, or portion of a building, that may include cooking and eating facilities, that is:

(a) Provided and designated by the operator as either a sleeping area, living area, or both, for occupants; and

(b) Physically separated from other sleeping and common-use areas.

(5) "Enforcement" and "enforcement actions" include the authority to levy and collect fines.

(6) "Facility" means a sleeping place, drinking water, toilet, sewage disposal, food handling installation, or other installations required for compliance with this chapter.

(7) "Occupant" means a temporary worker or a person who resides with a temporary worker at the housing site.

(8) "Operator" means a person holding legal title to the land on which temporary worker housing is located. However, if the legal title and the right to possession are in different persons, "operator" means a person having the lawful control or supervision over the temporary worker housing under a lease or other arrangement.

(9) "Temporary worker" means an agricultural employee employed intermittently and not residing year-round at the same site.

(10) "Temporary worker housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an agricultural employer for his or her agricultural employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy. [1999 c 374 § 6; 1995 c 220 § 2.]

**70.114A.030 Application of chapter.** Chapter 220, Laws of 1995, applies to temporary worker housing that consists of five or more dwelling units, or any combination of dwelling units, dormitories, or spaces that house ten or more occupants. [1995 c 220 § 3.]

**70.114A.040 Responsibilities of department.** The department is designated the single state agency responsible for encouraging the development of additional temporary worker housing, and shall be responsible for coordinating the activities of the various state and local agencies to assure a seamless, nonduplicative system for the development and operation of temporary worker housing. [1995 c 220 § 4.]

**70.114A.045 Housing operation standards—Departments' agreement—Enforcement.** By December 1, 1999, the department and the department of labor and industries shall jointly establish a formal agreement that identifies the roles of each of the two agencies with respect to the enforcement of temporary worker housing operation standards.

The agreement shall, to the extent feasible, provide for inspection and enforcement actions by a single agency, and shall include measures to avoid multiple citations for the same violation. [1999 c 374 § 3.]

**70.114A.050 Housing on rural worksites.** Temporary worker housing located on a rural worksite, and used for workers employed on the worksite, shall be considered a permitted use at the rural worksite for the purposes of zoning or other land use review processes, subject only to height, setback, and road access requirements of the underlying zone. [1995 c 220 § 5.]

**70.114A.060 Inspection of housing.** The secretary of the department or authorized representative may inspect housing covered by chapter 220, Laws of 1995, to enforce temporary worker housing rules adopted by the state board of health prior to July 25, 1999, or the department, or when the secretary or representative has reasonable cause to believe that a violation of temporary worker housing rules adopted by the state board of health prior to July 25, 1999, or the department is occurring or is being maintained. If the buildings or premises are occupied as a residence, a reasonable effort shall be made to obtain permission from the resident. If the premises or building is unoccupied, a reasonable effort shall be made to locate the owner or other person having charge or control of the building or premises and request entry. If consent for entry is not obtained, for whatever reason, the secretary or representative shall have recourse to every remedy provided by law to secure entry. [1999 c 374 § 7; 1995 c 220 § 6.]

**70.114A.065 Licensing, operation, and inspection—Rules.** The department and the department of labor and industries shall adopt joint rules for the licensing, operation, and inspection of temporary worker housing, and the enforcement thereof. These rules shall establish standards that are as effective as the standards developed under the Washington industrial safety and health act, chapter 49.17 RCW. [1999 c 374 § 1.]

**70.114A.070 Technical assistance.** The *department of community, trade, and economic development shall contract with private, nonprofit corporations to provide technical assistance to any private individual or nonprofit organization wishing to construct temporary or permanent worker housing. The assistance may include information on state and local application and approval procedures, information or assistance in applying for federal, state, or local financial assistance, including tax incentives, information on cost-effective housing designs, or any other assistance the *department of community, trade, and economic development may deem helpful in obtaining the active participation of private individuals or groups in constructing or operating temporary or permanent worker housing. [1995 c 220 § 7.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

**70.114A.081 Temporary worker building code—Rules—Guidelines—Exceptions—Enforcement—Variations.** (1) The department shall adopt by rule a temporary worker building code in conformance with the temporary worker housing standards developed under the Washington industrial safety and health act, chapter 49.17 RCW, and the following guidelines:

(a) The temporary worker building code shall provide construction standards for shelter and associated facilities that are safe, secure, and capable of withstanding the stresses and loads associated with their designated use, and to which they are likely to be subjected by the elements;

(b) The temporary worker building code shall permit and facilitate designs and formats that allow for maximum affordability, consistent with the provision of decent, safe, and sanitary housing;

(c) In developing the temporary worker building code the department of health shall consider:

(i) The need for dormitory type housing for groups of unrelated individuals; and

(ii) The need for housing to accommodate families;

(d) The temporary worker building code shall incorporate the opportunity for the use of construction alternatives and the use of new technologies that meet the performance standards required by law;

(e) The temporary worker building code shall include standards for heating and insulation appropriate to the type of structure and length and season of occupancy;

(f) The temporary worker building code shall include standards for temporary worker housing that are to be used only during periods when no auxiliary heat is required; and

(g) The temporary worker building code shall provide that persons operating temporary worker housing consisting of four or fewer dwelling units or combinations of dwelling units, dormitories, or spaces that house nine or fewer occupants may elect to comply with the provisions of the temporary worker building code, and that unless the election is made, such housing is subject to the codes adopted under RCW 19.27.031.

(2) In adopting the temporary worker building code, the department shall make exceptions to the codes listed in RCW 19.27.031 and chapter 19.27A RCW, in keeping with the guidelines set forth in this section. The initial temporary worker building code adopted by the department shall be substantially equivalent with the temporary worker building code developed by the state building code council as directed by section 8, chapter 220, Laws of 1995.

(3) The temporary worker building code authorized and required by this section shall be enforced by the department.

The department shall have the authority to allow minor variations from the temporary worker building code that do not compromise the health or safety of workers. Procedures for requesting variations and guidelines for granting such requests shall be included in the rules adopted under this section. [1999 c 374 § 8; 1998 c 37 § 2.]

**70.114A.100 Rules—Compliance with federal act.** Any rules adopted under chapter 220, Laws of 1995, pertaining to an employer who is subject to the migrant and seasonal agricultural worker protection act (96 Stat. 2583; 29 U.S.C. Sec. 1801 et seq.), must comply with the housing provisions of that federal act. [1995 c 220 § 10.]

**70.114A.110 Cherry harvest temporary labor camps—Rule making—Definition—Conditions for occupation—Application.** (1) The department and the department of labor and industries are directed to engage in joint rule making to establish standards for cherry harvest temporary labor camps. These standards may include some variation from standards that are necessary for longer occupancies, provided they are as effective as the standards adopted under the Washington industrial safety and health act, chapter 49.17 RCW. As used in this section "cherry harvest temporary labor camp" means a place where housing and related facilities are provided to agricultural employees by agricultural employers for their use while employed for the harvest of cherries. The housing and facilities may be occupied by agricultural employees for a period not to exceed one week before the commencement through one week following the conclusion of the cherry crop harvest within the state.

(2) Facilities licensed under rules adopted under this section may not be used to provide housing for agricultural employees who are nonimmigrant aliens admitted to the United States for agricultural labor or services of a temporary or seasonal nature under section 1101(a)(15)(H)(ii)(a) of the immigration and nationality act (8 U.S.C. Sec. 1101(a)(15)(H)(ii)(a)).

(3) This section has no application to temporary worker housing constructed in conformance with codes listed in RCW 19.27.031 or 70.114A.081. [2002 c 23 § 1; 1999 c 374 § 5.]

**70.114A.901 Effective date—1995 c 220.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 3, 1995]. [1995 c 220 § 14.]

## Chapter 70.115 RCW
## DRUG INJECTION DEVICES

Sections



**70.115.050 Retail sale of hypodermic syringes, needles—Duty of retailer.** On the sale at retail of any hypodermic syringe, hypodermic needle, or any device adapted for the use of drugs by injection, the retailer shall satisfy himself or herself that the device will be used for the legal use intended. [1981 c 147 § 5.]

**70.115.060 Retailers not required to sell hypodermic syringes.** Nothing contained in chapter 213, Laws of 2002 shall be construed to require a retailer to sell hypodermic needles or syringes to any person. [2002 c 213 § 3.]

## Chapter 70.122 RCW
## NATURAL DEATH ACT

Sections



*Futile treatment and emergency medical personnel: RCW 43.70.480.*

**70.122.010 Legislative findings.** The legislature finds that adult persons have the fundamental right to control the decisions relating to the rendering of their own health care, including the decision to have life-sustaining treatment withheld or withdrawn in instances of a terminal condition or permanent unconscious condition.

The legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits.

The legislature further finds that, in the interest of protecting individual autonomy, such prolongation of the process of dying for persons with a terminal condition or permanent unconscious condition may cause loss of patient dignity, and unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the patient. The legislature further believes that physicians and nurses should not withhold or unreasonably diminish pain medication for patients in a terminal condition where the primary intent of providing such medication is to alleviate pain and maintain or increase the patient's comfort.

The legislature further finds that there exists considerable uncertainty in the medical and legal professions as to the legality of terminating the use or application of life-sustaining treatment where the patient having the capacity to make health care decisions has voluntarily evidenced a desire that such treatment be withheld or withdrawn.

In recognition of the dignity and privacy which patients have a right to expect, the legislature hereby declares that the laws of the state of Washington shall recognize the right of an adult person to make a written directive instructing such person's physician to withhold or withdraw life-sustaining treatment in the event of a terminal condition or permanent unconscious condition. The legislature also recognizes that a person's right to control his or her health care may be exercised by an authorized representative who validly holds the person's durable power of attorney for health care. [1992 c 98 § 1; 1979 c 112 § 2.]

**70.122.020 Definitions.** Unless the context clearly requires otherwise, the definitions contained in this section shall apply throughout this chapter.

(1) "Adult person" means a person who has attained the age of majority as defined in RCW 26.28.010 and 26.28.015, and who has the capacity to make health care decisions.

(2) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(3) "Directive" means a written document voluntarily executed by the declarer generally consistent with the guidelines of RCW 70.122.030.

(4) "Health facility" means a hospital as defined in *RCW 70.41.020(4) or a nursing home as defined in RCW 18.51.010, a home health agency or hospice agency as defined in RCW 70.126.010, or an assisted living facility as defined in RCW 18.20.020.

(5) "Life-sustaining treatment" means any medical or surgical intervention that uses mechanical or other artificial means, including artificially provided nutrition and hydration, to sustain, restore, or replace a vital function, which, when applied to a qualified patient, would serve only to prolong the process of dying. "Life-sustaining treatment" shall not include the administration of medication or the performance of any medical or surgical intervention deemed necessary solely to alleviate pain.

(6) "Permanent unconscious condition" means an incurable and irreversible condition in which the patient is medically assessed within reasonable medical judgment as having no reasonable probability of recovery from an irreversible coma or a persistent vegetative state.

(7) "Physician" means a person licensed under chapters 18.71 or 18.57 RCW.

(8) "Qualified patient" means an adult person who is a patient diagnosed in writing to have a terminal condition by the patient's attending physician, who has personally examined the patient, or a patient who is diagnosed in writing to be in a permanent unconscious condition in accordance with accepted medical standards by two physicians, one of whom is the patient's attending physician, and both of whom have personally examined the patient.

(9) "Terminal condition" means an incurable and irreversible condition caused by injury, disease, or illness, that, within reasonable medical judgment, will cause death within a reasonable period of time in accordance with accepted medical standards, and where the application of life-sustaining treatment serves only to prolong the process of dying. [2012 c 10 § 53; 1992 c 98 § 2; 1979 c 112 § 3.]

***Reviser's note:** RCW 70.41.020 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (4) to subsection (5). RCW 70.41.020 was subsequently amended by 2016 c 226 § 1, changing subsection (5) to subsection (7). RCW 70.41.020 was subsequently amended by 2021 c 157 § 3, changing subsection (7) to subsection (8).

**Application—2012 c 10:** See note following RCW 18.20.010.

**70.122.030 Directive to withhold or withdraw life-sustaining treatment.** (1) Any adult person may execute a directive directing the withholding or withdrawal of life-sustaining treatment in a terminal condition or permanent unconscious condition. The directive shall be signed by the declarer and acknowledged before a notary public or other individual authorized by law to take acknowledgments or signed by the declarer in the presence of two witnesses not related to the declarer by blood or marriage and who would not be entitled to any portion of the estate of the declarer upon declarer's decease under any will of the declarer or codicil thereto then existing or, at the time of the directive, by operation of law then existing. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarer is a patient, or any person who has a claim against any portion of the estate of the declarer upon declarer's decease at the time of the execution of the directive. The directive, or a copy thereof, shall be made part of the patient's medical records retained by the attending physician, a copy of which shall be forwarded by the custodian of the records to the health facility when the withholding or withdrawal of life-support treatment is contemplated. The directive may be in the following form and may include a notarial certificate for an acknowledgment in an individual capacity in short form as permitted by state law, but in addition may include other specific directions:

Health Care Directive

Directive made this . . . . day of . . . . . (month, year).

I . . . . . ., having the capacity to make health care decisions, willfully, and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, and do hereby declare that:

(a) If at any time I should be diagnosed in writing to be in a terminal condition by the attending physician, or in a permanent unconscious condition by two physicians, and where the application of life-sustaining treatment would serve only to artificially prolong the process of my dying, I direct that such treatment be withheld or withdrawn, and that I be permitted to die naturally. I understand by using this form that a terminal condition means an incurable and irreversible condition caused by injury, disease, or illness, that would within reasonable medical judgment cause death within a reasonable period of time in accordance with accepted medical standards, and where the application of life-sustaining treatment would serve only to prolong the process of dying. I further understand in using this form that a permanent unconscious condition means an incurable and irreversible condition in which I am medically assessed within reasonable medical judgment as having no reasonable probability of recovery from an irreversible coma or a persistent vegetative state.

(b) In the absence of my ability to give directions regarding the use of such life-sustaining treatment, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences of such refusal. If another person is appointed to make these decisions for me, whether through a durable power of attorney or otherwise, I request that the person be guided by this directive and any other clear expressions of my desires.

(c) If I am diagnosed to be in a terminal condition or in a permanent unconscious condition (check one):

I DO want to have artificially provided nutrition and hydration.

I DO NOT want to have artificially provided nutrition and hydration.

(d) If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

(e) I understand the full import of this directive and I am emotionally and mentally capable to make the health care decisions contained in this directive.

(f) I understand that before I sign this directive, I can add to or delete from or otherwise change the wording of this directive and that I may add to or delete from this directive at any time and that any changes shall be consistent with Washington state law or federal constitutional law to be legally valid.

(g) It is my wish that every part of this directive be fully implemented. If for any reason any part is held invalid it is my wish that the remainder of my directive be implemented.

Signed . . . . . .

City, County, and State of Residence

The declarer has been personally known to me or has provided proof of identity and I believe him or her to be capable of making health care decisions.

Witness . . . . . .

Witness . . . . . .

(2) Prior to withholding or withdrawing life-sustaining treatment, the diagnosis of a terminal condition by the attending physician or the diagnosis of a permanent unconscious state by two physicians shall be entered in writing and made a permanent part of the patient's medical records.

(3) A directive executed in another political jurisdiction is valid to the extent permitted by Washington state law and federal constitutional law. [2019 c 209 § 2; 1992 c 98 § 3; 1979 c 112 § 4.]

**70.122.040 Revocation of directive.** (1) A directive may be revoked at any time by the declarer, without regard to the declarer's mental state or competency, by any of the following methods:

(a) By being canceled, defaced, obliterated, burned, torn, or otherwise destroyed by the declarer or by some person in the declarer's presence and by the declarer's direction.

(b) By a written revocation of the declarer expressing his or her intent to revoke, signed, and dated by the declarer. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient's medical record the time and date when the physician received notification of the written revocation.

(c) By a verbal expression by the declarer of his or her intent to revoke the directive. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when the physician received notification of the revocation.

(d) In the case of a directive that is stored in the health care declarations registry under RCW 70.122.130, by an online method established by the department of health. Failure to use this method of revocation for a directive that is stored in the registry does not invalidate a revocation that is made by another method described under this section.

(2) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual or constructive knowledge of the revocation except as provided in RCW 70.122.051(4).

(3) If the declarer becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarer's condition renders the declarer able to communicate with the attending physician. [2006 c 108 § 4; 1979 c 112 § 5.]

**Finding—Intent—2006 c 108:** See note following RCW 70.122.130.

**70.122.051 Liability of health care provider.** (1) For the purposes of this section, "provider" means a physician, advanced registered nurse practitioner, health care provider acting under the direction of a physician or an advanced registered nurse practitioner, or health care facility, as defined in this chapter or in chapter 71.32 RCW, and its personnel.

(2) Any provider who participates in good faith in the withholding or withdrawal of life-sustaining treatment from a qualified patient in accordance with the requirements of this chapter, shall be immune from legal liability, including civil, criminal, or professional conduct sanctions, unless otherwise negligent.

(3) The establishment of a health care declarations registry does not create any new or distinct obligation for a provider to determine whether a patient has a health care declaration.

(4) A provider is not subject to civil or criminal liability or sanctions for unprofessional conduct under the uniform disciplinary act, chapter 18.130 RCW, when in good faith and without negligence:

(a) The provider provides, does not provide, withdraws, or withholds treatment to a patient in the absence of actual knowledge of the existence of a health care declaration stored in the health care declarations registry established in RCW 70.122.130;

(b) The provider provides, does not provide, withdraws, or withholds treatment pursuant to a health care declaration stored in the health care declarations registry established in RCW 70.122.130 in the absence of actual knowledge of the revocation of the declaration;

(c) The provider provides, does not provide, withdraws, or withholds treatment according to a health care declaration stored in the health care declarations registry established in RCW 70.122.130 in good faith reliance upon the validity of the health care declaration and the declaration is subsequently found to be invalid; or

(d) The provider provides, does not provide, withdraws, or withholds treatment according to the patient's health care declaration stored in the health care declarations registry established in RCW 70.122.130.

(5) Except for acts of gross negligence, willful misconduct, or intentional wrongdoing, the department of health is not subject to civil liability for any claims or demands arising out of the administration or operation of the health care declarations registry established in RCW 70.122.130. [2006 c 108 § 6; 1992 c 98 § 5.]

**Finding—Intent—2006 c 108:** See note following RCW 70.122.130.

**70.122.060 Procedures by physician—Health care facility or personnel may refuse to participate.** (1) Prior to the withholding or withdrawal of life-sustaining treatment from a qualified patient pursuant to the directive, the attending physician shall make a reasonable effort to determine that the directive complies with RCW 70.122.030 and, if the patient is capable of making health care decisions, that the directive and all steps proposed by the attending physician to be undertaken are currently in accord with the desires of the qualified patient.

(2) The attending physician or health facility shall inform a patient or patient's authorized representative of the existence of any policy or practice that would preclude the honoring of the patient's directive at the time the physician or facility becomes aware of the existence of such a directive. If the patient, after being informed of such policy or directive, chooses to retain the physician or facility, the physician or facility with the patient or the patient's representative shall prepare a written plan to be filed with the patient's directive that sets forth the physician's or facilities' intended actions should the patient's medical status change so that the directive would become operative. The physician or facility under this subsection has no obligation to honor the patient's directive if they have complied with the requirements of this subsection, including compliance with the written plan required under this subsection.

(3) The directive shall be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life-sustaining treatment. No physician, health facility, or health personnel acting in good faith with the directive or in accordance with the written plan in subsection (2) of this section shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection.

(4) No nurse, physician, or other health care practitioner may be required by law or contract in any circumstances to participate in the withholding or withdrawal of life-sustaining treatment if such person objects to so doing. No person may be discriminated against in employment or professional privileges because of the person's participation or refusal to participate in the withholding or withdrawal of life-sustaining treatment. [1992 c 98 § 6; 1979 c 112 § 7.]

**70.122.070 Effects of carrying out directive—Insurance.** (1) The withholding or withdrawal of life-sustaining treatment from a qualified patient pursuant to the patient's directive in accordance with the provisions of this chapter shall not, for any purpose, constitute a suicide or a homicide.

(2) The making of a directive pursuant to RCW 70.122.030 shall not restrict, inhibit, or impair in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(3) No physician, health facility, or other health provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan, shall require any person to execute a directive as a condition for being insured for, or receiving, health care services. [1992 c 98 § 7; 1979 c 112 § 8.]

**70.122.080 Effects of carrying out directive on cause of death.** The act of withholding or withdrawing life-sustaining treatment, when done pursuant to a directive described in RCW 70.122.030 and which results in the death of the declarer, shall not be construed to be an intervening force or to affect the chain of proximate cause between the conduct of anyone that placed the declarer in a terminal condition or a permanent unconscious condition and the death of the declarer. [1992 c 98 § 8; 1979 c 112 § 10.]

**70.122.090 Criminal conduct—Penalties.** (1) Any person who willfully conceals, cancels, defaces, obliterates, or damages the directive of another without such declarer's consent is guilty of a gross misdemeanor.

(2) Any person who falsifies or forges the directive of another, or willfully conceals or withholds personal knowledge of a revocation as provided in RCW 70.122.040 with the intent to cause a withholding or withdrawal of life-sustaining treatment contrary to the wishes of the declarer, and thereby, because of any such act, directly causes life-sustaining treatment to be withheld or withdrawn and death to thereby be hastened, shall be subject to prosecution for murder in the first degree as defined in RCW 9A.32.030. [2003 c 53 § 362; 1992 c 98 § 9; 1979 c 112 § 9.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

**70.122.100 Mercy killing, lethal injection, or active euthanasia not authorized.** Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing, lethal injection, or active euthanasia. [2009 c 1 § 25 (Initiative Measure No. 1000, approved November 4, 2008); 1992 c 98 § 10; 1979 c 112 § 11.]

Additional notes found at www.leg.wa.gov

**70.122.110 Discharge so that patient may die at home.** If a qualified patient capable of making health care decisions indicates that he or she wishes to die at home, the patient shall be discharged as soon as reasonably possible. The health care provider or facility has an obligation to explain the medical risks of an immediate discharge to the qualified patient. If the provider or facility complies with the obligation to explain the medical risks of an immediate discharge to a qualified patient, there shall be no civil or criminal liability for claims arising from such discharge. [1992 c 98 § 4.]

**70.122.120 Directive's validity assumed.** Any person or health facility may assume that a directive complies with this chapter and is valid. [1992 c 98 § 12.]

**70.122.130 Health care declarations registry—Rules—Report.** (1) The department of health shall establish and maintain a statewide health care declarations registry containing the health care declarations identified in subsection (2) of this section as submitted by residents of Washington. The department shall digitally reproduce and store health care declarations in the registry. The department may establish standards for individuals to submit digitally reproduced health care declarations directly to the registry, but is not required to review the health care declarations that it receives to ensure they comply with the particular statutory requirements applicable to the document. The department may contract with an organization that meets the standards identified in this section.

(2)(a) An individual may submit any of the following health care declarations to the department of health to be digitally reproduced and stored in the registry:

(i) A directive, as defined by this chapter;

(ii) A durable power of attorney for health care, as authorized in chapter 11.125 RCW;

(iii) A mental health advance directive, as defined by chapter 71.32 RCW; or

(iv) A form adopted pursuant to the department of health's authority in RCW 43.70.480.

(b) Failure to submit a health care declaration to the department of health does not affect the validity of the declaration.

(c) Failure to notify the department of health of a valid revocation of a health care declaration does not affect the validity of the revocation.

(d) The entry of a health care directive in the registry under this section does not:

(i) Affect the validity of the document;

(ii) Take the place of any requirements in law necessary to make the submitted document legal; or

(iii) Create a presumption regarding the validity of the document.

(3) The department of health shall prescribe a procedure for an individual to revoke a health care declaration contained in the registry.

(4) The registry must:

(a) Be maintained in a secure database that is accessible through a website maintained by the department of health;

(b) Send annual electronic messages to individuals that have submitted health care declarations to request that they review the registry materials to ensure that it is current;

(c) Provide individuals who have submitted one or more health care declarations with access to their documents and the ability to revoke their documents at all times; and

(d) Provide the personal representatives of individuals who have submitted one or more health care declarations to the registry, attending physicians, advanced registered nurse practitioners, health care providers licensed by a disciplining authority identified in RCW 18.130.040 who is acting under the direction of a physician or an advanced registered nurse practitioner, and health care facilities, as defined in this chapter or in chapter 71.32 RCW, access to the registry at all times.

(5) In designing the registry and website, the department of health shall ensure compliance with state and federal requirements related to patient confidentiality.

(6) The department shall provide information to health care providers and health care facilities on the registry website regarding the different federal and Washington state requirements to ascertain and document whether a patient has an advance directive.

(7) The department of health may accept donations, grants, gifts, or other forms of voluntary contributions to support activities related to the creation and maintenance of the health care declarations registry and statewide public education campaigns related to the existence of the registry. All receipts from donations made under this section, and other contributions and appropriations specifically made for the purposes of creating and maintaining the registry established under this section and statewide public education campaigns related to the existence of the registry, shall be deposited into the general fund. These moneys in the general fund may be spent only after appropriation.

(8) The department of health may adopt rules as necessary to implement chapter 108, Laws of 2006.

(9) By December 1, 2008, the department shall report to the house and senate committees on health care the following information:

(a) Number of participants in the registry;

(b) Number of health care declarations submitted by type of declaration as defined in this section;

(c) Number of health care declarations revoked and the method of revocation;

(d) Number of providers and facilities, by type, that have been provided access to the registry;

(e) Actual costs of operation of the registry. [2016 c 209 § 406; 2013 c 251 § 12; 2006 c 108 § 2.]

**Short title—Application—Uniformity—Federal law application—Federal electronic signatures in global and national commerce act—Application—Dates—Effective date—2016 c 209:** See RCW 11.125.010 and 11.125.900 through 11.125.903.

**Residual balance of funds—Effective date—2013 c 251:** See notes following RCW 41.06.280.

**Finding—Intent—2006 c 108:** "The legislature finds that effective communication between patients, their families, and their caregivers regarding their wishes if they become incapacitated results in health care decisions that are more respectful of patients' desires. Whether the communication is for end-of-life planning or incapacity resulting from mental illness, the state must respect those wishes and support efforts to facilitate such communications and to make that information available when it is needed.

It is the intent of the legislature to establish an electronic registry to improve access to health care decision-making documents. The registry would support, not supplant, the current systems for advance directives and mental health advance directives by improving access to these documents. It is the legislature's intent that the registry would be consulted by health care providers in every instance where there may be a question about the patient's wishes for periods of incapacity and the existence of a document that may clarify a patient's intentions unless the circumstances are such that consulting the registry would compromise the emergency care of the patient." [2006 c 108 § 1.]

**70.122.900 Short title—1979 c 112.** This act shall be known and may be cited as the "Natural Death Act". [1979 c 112 § 1.]

**70.122.910 Construction.** This chapter shall not be construed as providing the exclusive means by which individuals may make decisions regarding their health treatment, including but not limited to, the withholding or withdrawal of life-sustaining treatment, nor limiting the means provided by case law more expansive than chapter 98, Laws of 1992. [1992 c 98 § 11.]

**70.122.915 Application—1992 c 98.** A directive executed anytime before June 11, 1992, which generally complies with chapter 98, Laws of 1992 is effective under chapter 98, Laws of 1992. [1992 c 98 § 13.]

**70.122.925 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 154.]

# Chapter 70.123 RCW
# SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE

Sections



*Domestic violence—Official response: Chapter 10.99 RCW.*

*Donations of surplus state property: RCW 43.19.1920.*

*Public records: Chapter 42.56 RCW.*

**70.123.010 Legislative findings.** (1) The legislature finds that domestic violence is an issue of serious concern at all levels of society and government and that there is a pressing need for innovative strategies to address and prevent domestic violence and to strengthen services which will ameliorate and reduce the trauma of domestic violence and enhance survivors' resiliency and autonomy.

(2) The legislature finds that there are a wide range of consequences to domestic violence, including deaths, injuries, hospitalizations, homelessness, employment problems, property damage, and lifelong physical and psychological impacts on victims and their children. These impacts also affect victims' friends and families, neighbors, employers, landlords, law enforcement, the courts, the health care system, and Washington state and society as a whole. Advocacy and shelters for victims of domestic violence are essential to provide support to victims in preventing further abuse and to help victims assess and plan for their immediate and longer term safety, including finding long-range alternative living situations, if requested.

(3) Thus, it is the intent of the legislature to:

(a) Provide for a statewide network of supportive services, emergency shelter services, and advocacy for victims of domestic violence and their dependents;

(b) Provide for culturally relevant and appropriate services for victims of domestic violence and their children from populations that have been traditionally unserved or underserved;

(c) Provide for a statewide domestic violence information and referral resource;

(d) Assist communities in efforts to increase public awareness about, and primary and secondary prevention of domestic violence;

(e) Provide for the collection, analysis, and dissemination of current information related to emerging issues and model and promising practices related to preventing and intervening in situations involving domestic violence; and

(f) Provide for ongoing training and technical assistance for individuals working with victims in community-based domestic violence programs and other persons seeking such

training and technical assistance. [2015 c 275 § 1; 1979 ex.s. c 245 § 1.]

**70.123.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Community advocate" means a person employed or supervised by a community-based domestic violence program who is trained to provide ongoing assistance and advocacy for victims of domestic violence in assessing and planning for safety needs, making appropriate social service, legal, and housing referrals, providing community education, maintaining contacts necessary for prevention efforts, and developing protocols for local systems coordination.

(2) "Community-based domestic violence program" means a nonprofit program or organization that provides, as its primary purpose, assistance and advocacy for domestic violence victims. Domestic violence assistance and advocacy includes crisis intervention, individual and group support, information and referrals, and safety assessment and planning. Domestic violence assistance and advocacy may also include, but is not limited to: Provision of shelter, emergency transportation, self-help services, culturally specific services, legal advocacy, economic advocacy, community education, primary and secondary prevention efforts, and accompaniment and advocacy through medical, legal, immigration, human services, and financial assistance systems. Domestic violence programs that are under the auspices of, or the direct supervision of, a court, law enforcement or prosecution agency, or the child protective services section of the department as defined in RCW 26.44.020, are not considered community-based domestic violence programs.

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

(4) "Domestic violence" means the infliction or threat of physical harm against an intimate partner, and includes physical, sexual, and psychological abuse against the partner, and is a part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over that intimate partner. It may include, but is not limited to, a categorization of offenses, as defined in RCW 10.99.020, committed by one intimate partner against another.

(5) "Domestic violence coalition" means a statewide nonprofit domestic violence organization that has a membership that includes the majority of the primary purpose, community-based domestic violence programs in the state, has board membership that is representative of community-based, primary purpose domestic violence programs, and has as its purpose to provide education, support, and technical assistance to such community-based, primary purpose domestic violence programs and to assist the programs in providing shelter, advocacy, supportive services, and prevention efforts for victims of domestic violence and dating violence and their dependents.

(6) "Domestic violence program" means an agency, organization, or program with a primary purpose and a history of effective work in providing advocacy, safety assessment and planning, and self-help services for domestic violence in a supportive environment, and includes, but is not limited to, a community-based domestic violence program, emergency shelter, or domestic violence transitional housing program.

(7) "Emergency shelter" means a place of supportive services and safe, temporary lodging offered on a twenty-four hour, seven-day per week basis to victims of domestic violence and their children.

(8) "Intimate partner" means a person who is or was married, in a state registered domestic partnership, or in an intimate or dating relationship with another person at the present or at sometime in the past. Any person who has one or more children in common with another person, regardless of whether they have been married, in a domestic partnership with each other, or lived together at any time, shall be treated as an intimate partner.

(9) "Legal advocate" means a person employed by a domestic violence program or court system to advocate for victims of domestic violence, within the criminal and civil justice systems, by attending court proceedings, assisting in document and case preparation, and ensuring linkage with the community advocate.

(10) "Secretary" means the secretary of the department of social and health services or the secretary's designee.

(11) "Shelter" means temporary lodging and supportive services, offered by community-based domestic violence programs to victims of domestic violence and their children.

(12) "Victim" means an intimate partner who has been subjected to domestic violence. [2015 c 275 § 2; 2008 c 6 § 303; 1991 c 301 § 9; 1979 ex.s. c 245 § 2.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Finding—1991 c 301:** See note following RCW 10.99.020.

Additional notes found at www.leg.wa.gov

**70.123.030 Departmental duties and responsibilities.** The department of social and health services, in consultation with relevant state departments, the domestic violence coalition, and individuals or groups having experience and knowledge of the prevention of, and the problems facing victims of domestic violence, including those with experience providing culturally appropriate services to populations that have traditionally been underserved or unserved, shall:

(1) Develop and maintain a plan for delivering domestic violence victim services, prevention efforts, and access to emergency shelter across the state. In developing the plan under this section, the department shall consider the distribution of community-based domestic violence programs and emergency shelter programs in a particular geographic area, population density, and specific population needs, including the needs in rural and urban areas, the availability and existence of domestic violence outreach and prevention activities, and the need for culturally and linguistically appropriate services. The department shall also develop and maintain a plan for providing a statewide toll-free information and referral hotline or other statewide accessible information and referral service for victims of domestic violence;

(2) Establish minimum standards for community-based domestic violence programs, emergency shelter programs, programs providing culturally or linguistically specific services, programs providing prevention and intervention services to children or youth, and programs conducting domestic

violence outreach and prevention activities applying for grants from the department under this chapter;

(3) Receive grant applications for the development and establishment of community-based domestic violence programs, emergency shelter programs, and culturally or linguistically specific services for victims of domestic violence, programs providing prevention and intervention services to children who have been exposed to domestic violence or youth who have been victims of dating violence, and programs conducting domestic violence outreach and prevention activities;

(4) Distribute funds to those community-based domestic violence programs, emergency shelter programs, programs providing culturally or linguistically specific services, programs providing prevention and intervention services to children or youth, and programs conducting domestic violence outreach and prevention activities meeting departmental standards;

(5) Evaluate biennially each community-based domestic violence program, emergency shelter program, program providing culturally or linguistically specific services, program providing prevention and intervention services to children or youth, and program conducting domestic violence outreach and prevention activities receiving departmental funds for compliance with the established minimum standards;

(6) Review the minimum standards each biennium to ensure applicability to community and client needs;

(7) Administer funds available from the domestic violence prevention account under RCW 70.123.150 to provide for:

(a) Culturally specific prevention efforts and culturally appropriate community-based domestic violence services for victims of domestic violence from populations that have been traditionally underserved or unserved;

(b) Age appropriate prevention and intervention services for children who have been exposed to domestic violence or youth who have been victims of dating violence; and

(c) Outreach and education efforts by community-based domestic violence programs designed to increase public awareness about, and primary and secondary prevention of, domestic and dating violence; and

(8) Receive applications from, and award grants or issue contracts to, eligible nonprofit groups or organizations with experience and expertise in the field of domestic violence and a statewide perspective for:

(a) Providing resources, ongoing training opportunities, and technical assistance relating to domestic violence for community-based domestic violence programs across the state to develop effective means for preventing domestic violence and providing effective and supportive services and interventions for victims of domestic violence;

(b) Providing resource information, technical assistance, and collaborating to develop model policies and protocols to improve the capacity of individuals, governmental entities, and communities to prevent domestic violence and to provide effective, supportive services and interventions to address domestic violence; and

(c) Providing opportunities to persons working in the area of domestic violence to exchange information and resources. [2015 c 275 § 3; 2005 c 374 § 4; 1989 1st ex.s. c 9 § 235; 1979 ex.s. c 245 § 3.]

Additional notes found at www.leg.wa.gov

**70.123.040 Department to establish minimum standards.** (1) The department shall establish minimum standards that ensure that community-based domestic violence programs provide client-centered advocacy and services designed to enhance immediate and longer term safety, victim autonomy, and security by means such as, but not limited to, safety assessment and planning, information and referral, legal advocacy, culturally and linguistically appropriate services, access to shelter, and client confidentiality.

(2) Minimum standards established by the department under RCW 70.123.030 shall ensure that emergency shelter programs receiving grants under this chapter provide services meeting basic survival needs, where not provided by other means, such as, but not limited to, food, clothing, housing, emergency transportation, child care assistance, safety assessment and planning, and security. Emergency shelters receiving grants under this chapter shall also provide client-centered advocacy and services designed to enhance client autonomy, client confidentiality, and immediate and longer term safety. These services shall be problem-oriented and designed to provide necessary assistance to the victims of domestic violence and their children.

(3) In establishing minimum standards for programs providing culturally relevant prevention efforts and culturally appropriate services, priority for funding must be given to agencies or organizations that have a demonstrated history and expertise of serving domestic violence victims from the relevant populations that have traditionally been underserved or unserved.

(4) In establishing minimum standards for age appropriate prevention and intervention services for children who have been exposed to domestic violence, or youth who have been victims of dating violence, priority for funding must be given to programs with a documented history of effective work in providing advocacy and services to victims of domestic violence or dating violence, or an agency with a demonstrated history of effective work with children and youth partnered with a domestic violence program. [2015 c 275 § 4; 2006 c 259 § 3; 1979 ex.s. c 245 § 4.]

**70.123.070 Duties and responsibilities of community-based domestic violence programs and emergency shelter programs.** (1) Community-based domestic violence programs receiving state funds under this chapter shall:

(a) Provide a location to assist victims of domestic violence who have a need for community advocacy or support services;

(b) Make available confidential services, advocacy, and prevention programs to victims of domestic violence and to their children within available resources;

(c) Require that persons employed by or volunteering services for a community-based domestic violence program protect the confidentiality and privacy of domestic violence victims and their families in accordance with this chapter and RCW 5.60.060(8);

(d) Recruit, to the extent feasible, persons who are former victims of domestic violence to work as volunteers or staff personnel. An effort shall also be made to recruit staff and volunteers from relevant communities to provide culturally and linguistically appropriate services;

(e) Ensure that all employees or volunteers providing intervention or prevention programming to domestic violence victims or their children have completed or will complete sufficient training in connection with domestic violence; and

(f) Refrain from engaging in activities that compromise the safety of victims or their children.

(2) Emergency shelter programs receiving state funds under this chapter shall:

(a) Provide intake for and access to safe shelter services to any person who is a victim of domestic violence and to that person's children, within available resources. Priority for emergency shelter shall be made for victims who are in immediate risk of harm or imminent danger from domestic violence;

(b) Require that persons employed by or volunteering services for an emergency shelter protect the confidentiality and privacy of domestic violence victims and their families in accordance with this chapter and RCW 5.60.060(8);

(c) Recruit, to the extent feasible, persons who are former victims of domestic violence to work as volunteers or staff personnel. An effort shall also be made to recruit staff and volunteers from relevant communities to provide culturally and linguistically appropriate services;

(d) Ensure that all employees or volunteers providing intervention or prevention programming to domestic violence victims or their children have completed or will complete sufficient training in connection with domestic violence; and

(e) Refrain from engaging in activities that compromise the safety of victims or their children. [2015 c 275 § 5; 1979 ex.s. c 245 § 7.]

**70.123.075 Client records.** (1) Client records maintained by domestic violence programs shall not be subject to discovery in any judicial proceeding unless:

(a) A written pretrial motion is made to a court stating that discovery is requested of the client's domestic violence records;

(b) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why discovery is requested of the domestic violence program's records;

(c) The court reviews the domestic violence program's records in camera to determine whether the domestic violence program's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records, taking into account the further trauma that may be inflicted upon the victim or the victim's children by the disclosure of the records; and

(d) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings. The court shall further order that the parties are prohibited from further dissemination of the records or parts of the records that are discoverable, and that any portion of any domestic violence program records included in the court file be sealed.

(2) For purposes of this section, "domestic violence program" means a program that provides shelter, advocacy, or counseling services for domestic violence victims.

(3) Disclosure of domestic violence program records is not a waiver of the victim's rights or privileges under statutes, rules of evidence, or common law.

(4) If disclosure of a victim's records is required by court order, the domestic violence program shall make reasonable attempts to provide notice to the recipient affected by the disclosure, and shall take steps necessary to protect the privacy and safety of the persons affected by the disclosure of the information. [2015 c 275 § 6; 1994 c 233 § 1; 1991 c 301 § 10.]

**Finding—1991 c 301:** See note following RCW 10.99.020.

Additional notes found at www.leg.wa.gov

**70.123.076 Disclosure of recipient information.** (1) Except as authorized in subsections (2) and (3) of this section, or pursuant to court order under RCW 70.123.075, a domestic violence program, an individual who assists a domestic violence program in the delivery of services, or an agent, employee, or volunteer of a domestic violence program shall not disclose information about a recipient of shelter, advocacy, or counseling services without the informed authorization of the recipient. In the case of an unemancipated minor, the minor and the parent or guardian must provide the authorization. For the purposes of this section, a "domestic violence program" means an agency that provides shelter, advocacy, or counseling for domestic violence victims in a supportive environment.

(2)(a) A recipient of shelter, advocacy, or counseling services may authorize a domestic violence program to disclose information about the recipient. The authorization must be in writing, signed by the recipient, or if an unemancipated minor is the recipient, signed by the minor and the parent or guardian, and must contain a reasonable time limit on the duration of the recipient's authorization. If the authorization does not contain a date upon which the authorization to disclose information expires, the recipient's authorization expires ninety days after the date it was signed.

(b) The domestic violence program's disclosure of information shall be only to the extent authorized by the recipient. The domestic violence program, if requested, shall provide a copy of the disclosed information to the recipient.

(c) Except as provided under this chapter, an authorization is not a waiver of the recipient's rights or privileges under other statutes, rules of evidence, or common law.

(3) If disclosure of a recipient's information is required by statute or court order, the domestic violence program shall make reasonable attempts to provide notice to the recipient affected by the disclosure of information. If personally identifying information is or will be disclosed, the domestic violence program shall take steps necessary to protect the privacy and safety of the persons affected by the disclosure of the information.

(4) To comply with tribal, federal, state, or territorial reporting, evaluation, or data collection requirements, domestic violence programs may share data in the aggregate that does not contain personally identifying information and that: (a) Pertains to services to their clients; or (b) is demographic information. [2006 c 259 § 4.]

**70.123.078 Disclosure of information.** (1)(a) No court or administrative body may compel any person or domestic

violence program as defined in RCW 70.123.020 to disclose the name, address, or location of any domestic violence program, including a shelter or transitional housing facility location, in any civil or criminal case or in any administrative proceeding unless the court finds by clear and convincing evidence that disclosure is necessary for the implementation of justice after consideration of safety and confidentiality concerns of the parties and other residents of the domestic violence program, and other alternatives to disclosure that would protect the interests of the parties.

(b) The court's findings shall be made following a hearing in which the domestic violence program has been provided notice of the request for disclosure and an opportunity to respond.

(2) In any proceeding where the confidential name, address, or location of a domestic violence program is ordered to be disclosed, the court shall order that the parties be prohibited from further dissemination of the confidential information, and that any portion of any records containing such confidential information be sealed.

(3) Any person who obtains access to and intentionally and maliciously releases confidential information about the location of a domestic violence program for any purpose other than required by a court proceeding is guilty of a gross misdemeanor. [2012 c 223 § 9. Formerly RCW 26.50.250.]

**70.123.080 Department to consult.** The department shall consult in all phases with key stakeholders in the implementation of this chapter, including relevant state departments, the domestic violence coalition, individuals or groups who have experience providing culturally appropriate services to populations that have traditionally been underserved or unserved, and other persons and organizations having experience and expertise in the field of domestic violence. [2015 c 275 § 7; 1979 ex.s. c 245 § 8.]

**70.123.090 Department authorized to make available grants to certain entities.** The department is authorized, under this chapter and the rules adopted to effectuate its purposes, to make available grants awarded on a contract basis to public or private nonprofit agencies, organizations, or individuals providing community-based domestic violence services, emergency shelter services, domestic violence hotline or information and referral services, and prevention efforts meeting minimum standards established by the department. Consideration as to need, geographic location, population ratios, the needs of specific underserved and cultural populations, and the extent of existing services shall be made in the award of grants. The department shall provide consultation to any nonprofit organization desiring to apply for the contracts if the organization does not possess the resources and expertise necessary to develop and transmit an application without assistance. [2015 c 275 § 8; 1979 ex.s. c 245 § 9.]

**70.123.100 Funding for shelters.** The department shall seek, receive, and make use of any funds which may be available from federal or other sources in order to augment state funds appropriated for the purpose of this chapter, and shall make every effort to qualify for federal funding. [1997 c 160 § 1; 1979 ex.s. c 245 § 10.]

**70.123.110 Assistance to families in shelters.** Aged, blind, or disabled assistance benefits, essential needs and housing support benefits, pregnant women assistance benefits, or temporary assistance for needy families payments shall be made to otherwise eligible individuals who are residing in a secure shelter, a housing network, an emergency shelter, or other shelter facility which provides shelter services to persons who are victims of domestic violence. Provisions shall be made by the department for the confidentiality of the shelter addresses where victims are residing. [2015 c 275 § 9; 2011 1st sp.s. c 36 § 16; 2010 1st sp.s. c 8 § 16; 1997 c 59 § 9; 1979 ex.s. c 245 § 11.]

**Findings—Intent—2011 1st sp.s. c 36:** See RCW 74.62.005.

**Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8:** See notes following RCW 74.04.225.

Additional notes found at www.leg.wa.gov

**70.123.120 Liability for withholding services.** A shelter shall not be held liable in any civil action for denial or withdrawal of services provided pursuant to the provisions of this chapter. [1979 ex.s. c 245 § 12.]

**70.123.140 Technical assistance grant for county plans.** (1) A county or group of counties may apply to the department for a technical assistance grant to develop a comprehensive county plan for dealing with domestic violence. The county authority may contract with a local nonprofit entity to develop the plan.

(2) County comprehensive plans shall be developed in consultation with the department, domestic violence programs, schools, law enforcement, and health care, legal, and social service providers that provide services to persons affected by domestic violence.

(3) County comprehensive plans shall be based on the following principles:

(a) The safety of the victim is primary;

(b) The community needs to be well-educated about domestic violence;

(c) Those who want to and who should intervene need to know how to do so effectively;

(d) Adequate services, both crisis and long-term support, should exist throughout all parts of the county;

(e) Police and courts should hold the batterer accountable for his or her crimes;

(f) Treatment for batterers should be provided by qualified counselors; and

(g) Coordination teams are needed to ensure that the system continues to work over the coming decades.

(4) County comprehensive plans shall provide for the following:

(a) Public education about domestic violence;

(b) Training for professionals on how to recognize domestic violence and assist those affected by it;

(c) Development of protocols among agencies so that professionals respond to domestic violence in an effective, consistent manner;

(d) Development of services to victims of domestic violence and their families, including shelters, safe homes, transitional housing, community and legal advocates, and children's services; and

(e) Local and regional teams to oversee implementation of the system, ensure that efforts continue over the years, and assist with day-to-day and systemwide coordination. [1991 c 301 § 12.]

**Finding—1991 c 301:** See note following RCW 10.99.020.

**70.123.150 Domestic violence prevention account.** The domestic violence prevention account is created in the state treasury. All receipts from fees imposed for deposit in the domestic violence prevention account under RCW 36.18.016 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for funding the following:

(1) Culturally specific prevention efforts and culturally appropriate community-based domestic violence services for victims of domestic violence from populations that have been traditionally underserved or unserved;

(2) Age appropriate prevention and intervention services for children who have been exposed to domestic violence or youth who have been victims of dating violence; and

(3) Outreach and education efforts by community-based domestic violence programs designed to increase public awareness about, and primary and secondary prevention of, domestic and dating violence. [2015 c 275 § 10; 2005 c 374 § 3.]

## Chapter 70.124 RCW
## ABUSE OF PATIENTS

Sections



*Persons over sixty, abuse: Chapter 74.34 RCW.*

**70.124.010 Legislative findings.** (1) The Washington state legislature finds and declares that a reporting system is needed to protect state hospital patients from abuse. Instances of nonaccidental injury, neglect, death, sexual abuse, and cruelty to such patients have occurred, and in the instance where such a patient is deprived of his or her right to conditions of minimal health and safety, the state is justified in emergency intervention based upon verified information. Therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities.

(2) It is the intent of the legislature that: (a) As a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of the patients; and (b) such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious, or erroneous information or actions. [1999 c 176 § 20; 1981 c 174 § 1; 1979 ex.s. c 228 § 1.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**70.124.020 Definitions.** Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

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

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

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, pharmacy, physical therapy, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery. The term "practitioner" includes a nurse's aide and a duly accredited Christian Science practitioner.

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

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

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

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

(8) "Abuse or neglect" or "patient abuse or neglect" means the nonaccidental physical injury or condition, sexual abuse, or negligent treatment of a state hospital patient under circumstances which indicate that the patient's health, welfare, or safety is harmed thereby.

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

(10) "State hospital" means any hospital operated and maintained by the state for the care of the mentally ill under chapter 72.23 RCW. [1999 c 176 § 21; 1997 c 392 § 519; 1996 c 178 § 24; 1981 c 174 § 2; 1979 ex.s. c 228 § 2.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

**70.124.030 Reports of abuse or neglect.** (1) When any practitioner, social worker, psychologist, pharmacist, employee of a state hospital, or employee of the department has reasonable cause to believe that a state hospital patient has suffered abuse or neglect, the person shall report such incident, or cause a report to be made, to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(2) Any other person who has reasonable cause to believe that a state hospital patient has suffered abuse or neglect may report such incident to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(3) The department or any law enforcement agency receiving a report of an incident of abuse or neglect involving a state hospital patient who has died or has had physical injury or injuries inflicted other than by accidental means or who has been subjected to sexual abuse shall report the incident to the proper county prosecutor for appropriate action. [1999 c 176 § 22; 1981 c 174 § 3; 1979 ex.s. c 228 § 3.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**70.124.040 Reports to department or law enforcement agency—Action required.** (1) Where a report is required under RCW 70.124.030, an immediate oral report must be made by telephone or otherwise to either a law enforcement agency or to the department and, upon request, must be followed by a report in writing. The reports must contain the following information, if known:

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

(b) The name and address of the state hospital patient;

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

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

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

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

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

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

(2) Each law enforcement agency receiving such a report shall, in addition to taking the action required by RCW 70.124.050, immediately relay the report to the department, and to other law enforcement agencies, including the medicaid fraud control unit of the office of the attorney general, as appropriate. For any report it receives, the department shall likewise take the required action and in addition relay the report to the appropriate law enforcement agency or agencies. The appropriate law enforcement agency or agencies must receive immediate notification when the department, upon receipt of such report, has reasonable cause to believe that a criminal act has been committed. [1999 c 176 § 23. Prior: 1997 c 392 § 520; 1997 c 386 § 30; 1981 c 174 § 4; 1979 ex.s. c 228 § 4.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

**70.124.050 Investigations required—Seeking restraining orders authorized.** Upon the receipt of a report concerning the possible occurrence of abuse or neglect, it is the duty of the law enforcement agency and the department to commence an investigation within twenty-four hours of such receipt and, where appropriate, submit a report to the appropriate prosecuting attorney. The local prosecutor may seek a restraining order to prohibit continued patient abuse. In all cases investigated by the department a report to the complainant shall be made by the department. [1983 1st ex.s. c 41 § 24; 1979 ex.s. c 228 § 5.]

Additional notes found at www.leg.wa.gov

**70.124.060 Liability of persons making reports.** (1) A person other than a person alleged to have committed the abuse or neglect participating in good faith in the making of a report pursuant to this chapter, or testifying as to alleged patient abuse or neglect in a judicial proceeding, is, in so doing, immune from any liability, civil or criminal, arising out of such reporting or testifying under any law of this state or its political subdivisions, and if such person is an employee of a state hospital it is an unfair practice under chapter 49.60 RCW for the employer to discharge, expel, or otherwise discriminate against the employee for such reporting activity.

(2) Conduct conforming with the reporting requirements of this chapter is not a violation of the confidential communication privilege of RCW 5.60.060 (3) or (4) or 18.83.110. Nothing in this chapter supersedes or abridges remedies provided in chapter 4.92 RCW. [1999 c 176 § 24; 1993 c 510 § 25; 1981 c 174 § 5; 1979 ex.s. c 228 § 6.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

Additional notes found at www.leg.wa.gov

**70.124.070 Failure to report is gross misdemeanor.** A person who is required to make or to cause to be made a report pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to make such report or fails to cause such report to be made is guilty of a gross misdemeanor. [1997 c 392 § 521; 1979 ex.s. c 228 § 7.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.124.080 Department reports of abused or neglected patients.** The department shall forward to the appropriate state licensing authority a copy of any report received pursuant to this chapter which alleges that a person who is professionally licensed by this state has abused or neglected a patient. [1979 ex.s. c 228 § 8.]

**70.124.090 Publicizing objectives.** In the adoption of rules under the authority of this chapter, the department shall provide for the publication and dissemination to state hospitals and state hospital employees and the posting where appropriate by state hospitals of informational, educational, or training materials calculated to aid and assist in achieving the objectives of this chapter. [1999 c 176 § 25; 1981 c 174 § 6; 1979 ex.s. c 228 § 9.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**70.124.100 Retaliation against whistleblowers and residents—Remedies—Rules.** (1) An employee who is a whistleblower and who as a result of being a whistleblower

has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. The identity of a whistleblower who complains, in good faith, to the department about suspected abuse, neglect, financial exploitation, or abandonment by any person in a state hospital may remain confidential if requested. The identity of the whistleblower shall subsequently remain confidential unless the department determines that the complaint was not made in good faith.

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

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

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

(3) For the purposes of this section:

(a) "Whistleblower" means a resident or employee of a state hospital or any person licensed under Title 18 RCW, who in good faith reports alleged abuse, neglect, financial exploitation, or abandonment to the department or to a law enforcement agency;

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

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

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

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

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

(7) The department shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes. [1999 c 176 § 26; 1997 c 392 § 201.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

## Chapter 70.125 RCW
## VICTIMS OF SEXUAL ASSAULT ACT

Sections



*Public records: Chapter 42.56 RCW.*

*Victims of crimes*
*compensation, assistance: Chapter 7.68 RCW.*
*survivors, witnesses: Chapter 7.69 RCW.*

**70.125.010 Short title.** This chapter may be known and cited as the Victims of Sexual Assault Act. [1979 ex.s. c 219 § 1.]

Additional notes found at www.leg.wa.gov

**70.125.020 Findings.** The legislature hereby finds and declares that:

(1) Sexual assault is a serious crime in society, affecting a large number of children, women, and men each year;

(2) Efforts over many years to distribute information and collect data have demonstrated the incidence of sexual assault that continues to impact communities, families, and individuals;

(3) Over the past three decades, law enforcement, prosecutors, medical professionals, educators, mental health providers, public health professionals, and victim advocates have benefited from a commitment to training and learning regarding appropriate responses to and services for victims of sexual assault;

(4) This same effort has resulted in increased public awareness of sexual assault and its impact on communities, families, and individuals;

(5) Law enforcement, prosecutors, medical professionals, educators, mental health providers, public health profes-

sionals, and victim advocates should continue to work closely and collaboratively to improve responses to and services for victims of sexual assault;

(6) The physical, emotional, financial, and psychological needs of victims and their families are particularly well-served by timely and effective services provided in local communities; and

(7) Persons who are victims of sexual assault benefit directly from continued public awareness and education, prosecutions of offenders, a criminal justice system which treats them in a humane manner, and access to victim-centered, culturally relevant services. [2012 c 29 § 9; 1979 ex.s. c 219 § 2.]

Additional notes found at www.leg.wa.gov

**70.125.030 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Community sexual assault program" means a community-based social service agency that is qualified to provide and provides core services to victims of sexual assault.

(2) "Core services" means those services that are victim-centered community-based advocacy responses to alleviate the impact of sexual assault, as delineated in the Washington state sexual assault services plan of 1995 and its subsequent revisions.

(3) "Department" means the department of commerce.

(4) "Law enforcement agencies" means police and sheriff's departments and tribal law enforcement departments or agencies of this state.

(5) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a community sexual assault program or specialized treatment service provider.

(6) "Services for underserved populations" means culturally relevant victim-centered community-based advocacy responses to alleviate the impact of sexual assault, as delineated in the Washington state sexual assault services plan of 1995 and its subsequent revisions.

(7) "Sexual assault" means one or more of the following:

(a) Rape or rape of a child;

(b) Assault with intent to commit rape or rape of a child;

(c) Incest or indecent liberties;

(d) Child molestation;

(e) Sexual misconduct with a minor;

(f) Custodial sexual misconduct;

(g) Crimes with a sexual motivation;

(h) Sexual exploitation or commercial sex abuse of a minor;

(i) Promoting prostitution; or

(j) An attempt to commit any of the aforementioned offenses.

(8) "Specialized services" means those services intended to alleviate the impact of sexual assault, as delineated in the Washington state sexual assault services plan of 1995 and its subsequent revisions.

(9) "Victim" means any person who suffers physical, emotional, financial, and psychological impact as a proximate result of a sexual assault. [2012 c 29 § 10. Prior: 2009 c 565 § 50; 2000 c 54 § 1; 1999 c 45 § 6; 1996 c 123 § 6; 1988 c 145 § 19; 1979 ex.s. c 219 § 3.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

**70.125.060 Personal representative may accompany victim during treatment or proceedings.** If the victim of a sexual assault so desires, a personal representative of the victim's choice may accompany the victim to the hospital or other health care facility, and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings. [1979 ex.s. c 219 § 6.]

Additional notes found at www.leg.wa.gov

**70.125.065 Records of community sexual assault program and underserved populations provider not available as part of discovery—Exceptions.** Records maintained by a community sexual assault program and underserved populations provider shall not be made available to any defense attorney as part of discovery in a sexual assault case unless:

(1) A written pretrial motion is made by the defendant to the court stating that the defendant is requesting discovery of the community sexual assault program or underserved populations provider records;

(2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why the defendant is requesting discovery of the community sexual assault program or underserved populations provider records;

(3) The court reviews the community sexual assault program or underserved populations provider records in camera to determine whether the community sexual assault program or underserved populations provider records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records to the defendant; and

(4) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings. [2012 c 29 § 11; 1981 c 145 § 9.]

**70.125.110 Rights of sexual assault survivors.** (1) In addition to all other rights provided in law, a sexual assault survivor has the right to:

(a) Receive a medical forensic examination at no cost;

(b) Receive written notice of the right under (a) of this subsection and that he or she may be eligible for other benefits under the crime victim compensation program, through a form developed by the office of crime victims advocacy, from the medical facility providing the survivor medical treatment relating to the sexual assault;

(c) Receive a referral to an accredited community sexual assault program or, in the case of a survivor who is a minor, receive a connection to services in accordance with the county child sexual abuse investigation protocol under RCW 26.44.180, which may include a referral to a children's advocacy center, when presenting at a medical facility for medical treatment relating to the assault and also when reporting the assault to a law enforcement officer;

(d) Consult with a sexual assault survivor's advocate throughout the investigatory process and prosecution of the survivor's case, including during: Any medical evidentiary examination at a medical facility; any interview by law enforcement officers, prosecuting attorneys, or defense attorneys; and court proceedings, except while providing testimony in a criminal trial, in which case the advocate may be present in the courtroom. Medical facilities, law enforcement officers, prosecuting attorneys, defense attorneys, courts and other applicable criminal justice agencies, including correctional facilities, are responsible for providing advocates access to facilities where necessary to fulfill the requirements under this subsection. The right in this subsection applies regardless of whether a survivor has waived the right in a previous examination or interview;

(e) Be informed, upon the request of a survivor, of when the forensic analysis of his or her sexual assault kit and other related physical evidence will be or was completed, the results of the forensic analysis, and whether the analysis yielded a DNA profile and match, provided that the disclosure is made at an appropriate time so as to not impede or compromise an ongoing investigation;

(f) Receive notice prior to the destruction or disposal of his or her sexual assault kit;

(g) Receive a copy of the police report related to the investigation without charge;

(h) Review his or her statement before law enforcement refers a case to the prosecuting attorney;

(i) Receive timely notifications from the law enforcement agency and prosecuting attorney as to the status of the investigation and any related prosecution of the survivor's case;

(j) Be informed by the law enforcement agency and prosecuting attorney as to the expected and appropriate time frames for receiving responses to the survivor's inquiries regarding the status of the investigation and any related prosecution of the survivor's case; and further, receive responses to the survivor's inquiries in a manner consistent with those time frames;

(k) Access interpreter services where necessary to facilitate communication throughout the investigatory process and prosecution of the survivor's case; and

(l) Where the sexual assault survivor is a minor, have:

(i) The prosecutor consider and discuss the survivor's requests for remote video testimony under RCW 9A.44.150 when appropriate; and

(ii) The court consider requests from the prosecutor for safeguarding the survivor's feelings of security and safety in the courtroom in order to facilitate the survivor's testimony and participation in the criminal justice process.

(2) A sexual assault survivor retains all the rights of this section regardless of whether the survivor agrees to participate in the criminal justice system and regardless of whether the survivor agrees to receive a forensic examination to collect evidence.

(3) If a survivor is denied any right enumerated in subsection (1) of this section, he or she may seek an order directing compliance by the relevant party or parties by filing a petition in the superior court in the county in which the sexual assault occurred and providing notice of such petition to the relevant party or parties. Compliance with the right is the sole remedy available to the survivor. The court shall expedite consideration of a petition filed under this subsection.

(4) Nothing contained in this section may be construed to provide grounds for error in favor of a criminal defendant in a criminal proceeding. Except in the circumstances as provided in subsection (3) of this section, this section does not grant a new cause of action or remedy against the state, its political subdivisions, law enforcement agencies, or prosecuting attorneys. The failure of a person to make a reasonable effort to protect or adhere to the rights enumerated in this section may not result in civil liability against that person. This section does not limit other civil remedies or defenses of the sexual assault survivor or the offender.

(5) For the purposes of this section:

(a) "Law enforcement officer" means a general authority Washington peace officer, as defined in RCW 10.93.020, or any person employed by a private police agency at a public school as described in RCW 28A.150.010 or an institution of higher education, as defined in RCW 28B.10.016.

(b) "Sexual assault survivor" means any person who is a victim, as defined in RCW 7.69.020, of sexual assault. However, if a victim is incapacitated, deceased, or a minor, sexual assault survivor also includes any lawful representative of the victim, including a parent, guardian, spouse, or other designated representative, unless the person is an alleged perpetrator or suspect.

(c) "Sexual assault survivor's advocate" means any person who is defined in RCW 5.60.060 as a sexual assault advocate, or a crime victim advocate. [2021 c 118 § 4; 2019 c 93 § 9.]

**Effective date—2021 c 118:** See note following RCW 5.70.060.

## Chapter 70.126 RCW
## HOME HEALTH CARE AND HOSPICE CARE

Sections



*Optional coverage required by certain insurers: RCW 48.21.220, 48.21A.090, 48.44.320.*

**70.126.001 Legislative finding.** The legislature finds that the cost of medical care in general and hospital care in particular has risen dramatically in recent years, and that in 1981, such costs rose faster than in any year since World War II. The purpose of RCW 70.126.001 through *70.126.050 is to support the provision of less expensive and more appropriate levels of care, home health care and hospice care, in order to avoid hospitalization or shorten hospital stays. [1983 c 249 § 4.]

***Reviser's note:** RCW 70.126.040 and 70.126.050 were repealed by 1988 c 245 § 34, effective July 1, 1989.

Additional notes found at www.leg.wa.gov

**70.126.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Hospice" means a private or public agency or organization that administers and provides hospice care and is licensed by the department of social and health services as a hospice care agency.

(2) "Hospice care" means care prescribed and supervised by the attending physician and provided by the hospice to the terminally ill in accordance with the standards of RCW 70.126.030.

(3) "Home health agency" means a private or public agency or organization that administers and provides home health care and is licensed by the department of social and health services as a home health care agency.

(4) "Home health care" means services, supplies, and medical equipment that meet the standards of RCW 70.126.020, prescribed and supervised by the attending physician, and provided through a home health agency and rendered to members in their residences when hospitalization would otherwise be required.

(5) "Home health aide" means a person employed by a home health agency or a hospice who is providing part-time or intermittent care under the supervision of a registered nurse, a physical therapist, occupational therapist, or speech therapist. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or household services that are needed to achieve the medically desired results.

(6) "Home health care plan of treatment" means a written plan of care established and periodically reviewed by a physician that describes medically necessary home health care to be provided to a patient for treatment of illness or injury.

(7) "Hospice plan of care" means a written plan of care established and periodically reviewed by a physician that describes hospice care to be provided to a terminally ill patient for palliation or medically necessary treatment of an illness or injury.

(8) "Physician" means a physician licensed under chapter 18.57 or 18.71 RCW. [1988 c 245 § 29; 1984 c 22 § 4; 1983 c 249 § 5.]

Additional notes found at www.leg.wa.gov

**70.126.020 Home health care—Services and supplies included, not included.** (1) Home health care shall be provided by a home health agency and shall:

(a) Be delivered by a registered nurse, physical therapist, occupational therapist, speech therapist, or home health aide on a part-time or intermittent basis;

(b) Include, as applicable under the written plan, supplies and equipment such as:

(i) Drugs and medicines that are legally obtainable only upon a physician's written prescription, and insulin;

(ii) Rental of durable medical apparatus and medical equipment such as wheelchairs, hospital beds, respirators, splints, trusses, braces, or crutches needed for treatment;

(iii) Supplies normally used for hospital inpatients and dispensed by the home health agency such as oxygen, catheters, needles, syringes, dressings, materials used in aseptic techniques, irrigation solutions, and intravenous fluids.

(2) The following services may be included when medically necessary, ordered by the attending physician, and included in the approved plan of treatment:

(a) Licensed practical nurses;

(b) Respiratory therapists;

(c) Social workers holding a master's degree or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(d) Ambulance service that is certified by the physician as necessary in the approved plan of treatment because of the patient's physical condition or for unexpected emergency situations.

(3) Services not included in home health care include:

(a) Nonmedical, custodial, or housekeeping services except by home health aides as ordered in the approved plan of treatment;

(b) "Meals on Wheels" or similar food services;

(c) Nutritional guidance;

(d) Services performed by family members;

(e) Services not included in an approved plan of treatment;

(f) Supportive environmental materials such as handrails, ramps, telephones, air conditioners, and similar appliances and devices. [2011 c 89 § 12; 1984 c 22 § 5; 1983 c 249 § 6.]

**Findings—2011 c 89:** See RCW 18.320.005.

Additional notes found at www.leg.wa.gov

**70.126.030 Hospice care—Provider, plan, services included.** (1) Hospice care shall be provided by a hospice and shall meet the standards of RCW 70.126.020(1) (a) and (b)(ii) and (iii).

(2) A written hospice care plan shall be approved by a physician and shall be reviewed at designated intervals.

(3) The following services for necessary medical or palliative care shall be included when ordered by the attending physician and included in the approved plan of treatment:

(a) Short-term care as an inpatient;

(b) Care of the terminally ill in an individual's home on an outpatient basis as included in the approved plan of treatment;

(c) Respite care that is continuous care in the most appropriate setting for a maximum of five days per three-month period of hospice care. [1984 c 22 § 6; 1983 c 249 § 7.]

Additional notes found at www.leg.wa.gov

**70.126.060 Application of chapter.** The provisions of this chapter apply only for the purposes of determining benefits to be included in the offering of optional coverage for home health and hospice care services, as provided in RCW 48.21.220, 48.21A.090, and 48.44.320 and do not apply for the purposes of licensure. [1988 c 245 § 30.]

## Chapter 70.127 RCW
## IN-HOME SERVICES AGENCIES

Sections

**70.127.005 Legislative intent.** The legislature finds that the availability of home health, hospice, and home care services has improved the quality of life for Washington's citizens. However, the delivery of these services bring risks because the in-home location of services makes their actual delivery virtually invisible. Also, the complexity of products, services, and delivery systems in today's health care delivery system challenges even informed and healthy individuals. The fact that these services are delivered to the state's most vulnerable population, the ill or disabled who are frequently also elderly, adds to these risks.

It is the intent of the legislature to protect the citizens of Washington state by licensing home health, hospice, and home care agencies. This legislation is not intended to unreasonably restrict entry into the in-home service marketplace. Standards established are intended to be the minimum necessary to ensure safe and competent care, and should be demonstrably related to patient safety and welfare. [1988 c 245 § 1.]

**70.127.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrator" means an individual responsible for managing the operation of an agency.

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

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

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

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

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

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

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

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

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

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

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

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

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

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

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

(17) "Quality improvement" means reviewing and evaluating appropriateness and effectiveness of services provided under this chapter.

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

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

(20) "Survey" means an inspection conducted by the department to evaluate and monitor an agency's compliance with this chapter. [2011 c 89 § 13; 2003 c 140 § 7; 2000 c 175 § 1; 1999 c 190 § 1; 1993 c 42 § 1; 1991 c 3 § 373; 1988 c 245 § 2.]

**Findings—2011 c 89:** See RCW 18.320.005.

Additional notes found at www.leg.wa.gov

**70.127.020 Licenses required after July 1, 1990—Penalties.** (1) After July 1, 1990, a license is required for a person to advertise, operate, manage, conduct, open, or maintain an in-home services agency.

(2) An in-home services agency license is required for a nursing home, hospital, or other person that functions as a home health, hospice, hospice care center, or home care agency.

(3) Any person violating this section is guilty of a misdemeanor. Each day of a continuing violation is a separate violation.

(4) If any corporation conducts any activity for which a license is required by this chapter without the required license, it may be punished by forfeiture of its corporate charter.

(5) All fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be deposited in the department's local fee account. [2003 c 53 § 363; 2000 c 175 § 2; 1988 c 245 § 3.]

**Intent—Effective date—2003 c 53:** See notes following RCW 2.48.180.

Additional notes found at www.leg.wa.gov

**70.127.030 Use of certain terms limited to licensees.** It is unlawful for any person to use the words:

(1) "Home health agency," "home health care services," "visiting nurse services," "home health," or "home health services" in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter;

(2) "Hospice agency," "hospice," "hospice services," "hospice care," or "hospice care center" in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter;

(3) "Home care agency," "home care services," or "home care" in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter; or

(4) "In-home services agency," "in-home services," or any similar term to indicate that a person is a home health, home care, hospice care center, or hospice agency in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter. [2000 c 175 § 3; 1988 c 245 § 4.]

Additional notes found at www.leg.wa.gov

**70.127.040 Persons, activities, or entities not subject to regulation under chapter.** The following are not subject to regulation for the purposes of this chapter:

(1) A family member providing home health, hospice, or home care services;

(2) A person who provides only meal services in an individual's permanent or temporary residence;

(3) An individual providing home care through a direct agreement with a recipient of care in an individual's permanent or temporary residence;

(4) A person furnishing or delivering home medical supplies or equipment that does not involve the provision of services beyond those necessary to deliver, set up, and monitor the proper functioning of the equipment and educate the user on its proper use;

(5) A person who provides services through a contract with a licensed agency;

(6) An employee or volunteer of a licensed agency who provides services only as an employee or volunteer;

(7) Facilities and institutions, including but not limited to nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41 RCW, adult family homes under chapter 70.128 RCW, assisted living facilities under chapter 18.20 RCW, developmental disability residential programs under chapter 71A.12 RCW, other entities licensed under chapter 71.12 RCW, or other licensed facilities and institutions, only when providing services to persons residing within the facility or institution;

(8) Local and combined city-county health departments providing services under chapters 70.05 and 70.08 RCW;

(9) An individual providing care to ill individuals, individuals with disabilities, or vulnerable individuals through a contract with the department of social and health services;

(10) Nursing homes, hospitals, or other institutions, agencies, organizations, or persons that contract with licensed home health, hospice, or home care agencies for the delivery of services;

(11) In-home assessments of an ill individual, an individual with a disability, or a vulnerable individual that does not result in regular ongoing care at home;

(12) Services conducted by and for the adherents of a church or religious denomination that rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents;

(13) A medicare-approved dialysis center operating a medicare-approved home dialysis program;

(14) A person providing case management services. For the purposes of this subsection, "case management" means the assessment, coordination, authorization, planning, training, and monitoring of home health, hospice, and home care,

and does not include the direct provision of care to an individual;

(15) Pharmacies licensed under RCW 18.64.043 that deliver prescription drugs and durable medical equipment that does not involve the use of professional services beyond those authorized to be performed by licensed pharmacists pursuant to chapter 18.64 RCW and those necessary to set up and monitor the proper functioning of the equipment and educate the person on its proper use;

(16) A volunteer hospice complying with the requirements of RCW 70.127.050;

(17) A person who provides home care services without compensation;

(18) Nursing homes that provide telephone or web-based transitional care management services; and

(19) A rural health clinic providing health services in a home health shortage area as declared by the department pursuant to 42 C.F.R. Sec. 405.2416. [2020 c 258 § 2; 2012 c 10 § 54; 2011 c 366 § 6. Prior: 2003 c 275 § 3; 2003 c 140 § 8; 2000 c 175 § 4; 1993 c 42 § 2; 1988 c 245 § 5.]

**Application—2012 c 10:** See note following RCW 18.20.010.

**Findings—Purpose—Conflict with federal requirements—2011 c 366:** See notes following RCW 18.20.020.

Additional notes found at www.leg.wa.gov

**70.127.050 Volunteer organizations—Use of phrase "volunteer hospice."** (1) An entity that provides hospice care without receiving compensation for delivery of any of its services is exempt from licensure pursuant to RCW 70.127.020(1) if it notifies the department, on forms provided by the department, of its name, address, name of owner, and a statement affirming that it provides hospice care without receiving compensation for delivery of any of its services. This form must be filed with the department within sixty days after being informed in writing by the department of this requirement for obtaining exemption from licensure under this chapter.

(2) For the purposes of this section, it is not relevant if the entity compensates its staff. For the purposes of this section, the word "compensation" does not include donations.

(3) Notwithstanding the provisions of RCW 70.127.030(2), an entity that provides hospice care without receiving compensation for delivery of any of its services is allowed to use the phrase "volunteer hospice."

(4) Nothing in this chapter precludes an entity providing hospice care without receiving compensation for delivery of any of its services from obtaining a hospice license if it so chooses, but that entity would be exempt from the requirements set forth in RCW 70.127.080(1)(d). [2000 c 175 § 5; 1993 c 42 § 3; 1988 c 245 § 6.]

Additional notes found at www.leg.wa.gov

**70.127.080 Licenses—Application procedure and requirements.** (1) An applicant for an in-home services agency license shall:

(a) File a written application on a form provided by the department;

(b) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(c) Cooperate with on-site survey conducted by the department except as provided in RCW 70.127.085;

(d) Provide evidence of and maintain professional liability, public liability, and property damage insurance in an amount established by the department, based on industry standards. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;

(e) Provide documentation of an organizational structure, and the identity of the applicant, officers, administrator, directors of clinical services, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(f) File with the department for approval a description of the service area in which the applicant will operate and a description of how the applicant intends to provide management and supervision of services throughout the service area. The department shall adopt rules necessary to establish criteria for approval that are related to appropriate management and supervision of services throughout the service area. In developing the rules, the department may not establish criteria that:

(i) Limit the number or type of agencies in any service area; or

(ii) Limit the number of persons any agency may serve within its service area unless the criteria are related to the need for trained and available staff to provide services within the service area;

(g) File with the department a list of the home health, hospice, and home care services provided directly and under contract;

(h) Pay to the department a license fee as provided in RCW 70.127.090;

(i) Comply with RCW 43.43.830 through 43.43.842 for criminal background checks; and

(j) Provide any other information that the department may reasonably require.

(2) A certificate of need under chapter 70.38 RCW is not required for licensure except for the operation of a hospice care center. [2000 c 175 § 6; 1999 c 190 § 2; 1993 c 42 § 4; 1988 c 245 § 9.]

Additional notes found at www.leg.wa.gov

**70.127.085 State licensure survey.** (1) Notwithstanding the provisions of RCW 70.127.080(1)(c), an in-home services agency that is certified by the federal medicare program, or accredited by the community health accreditation program, or the joint commission on accreditation of health care organizations as a home health or hospice agency is not subject to a state licensure survey if:

(a) The department determines that the applicable survey standards of the certification or accreditation program are substantially equivalent to those required by this chapter;

(b) An on-site survey has been conducted for the purposes of certification or accreditation during the previous twenty-four months; and

(c) The department receives directly from the certifying or accrediting entity or from the licensee applicant copies of the initial and subsequent survey reports and other relevant reports or findings that indicate compliance with licensure requirements.

(2) Notwithstanding the provisions of RCW 70.127.080(1)(c), an in-home services agency providing services under contract with the department of social and health

services or area agency on aging to provide home care services and that is monitored by the department of social and health services or area agency on aging is not subject to a state licensure survey by the department of health if:

(a) The department determines that the department of social and health services or an area agency on aging monitoring standards are substantially equivalent to those required by this chapter;

(b) An on-site monitoring has been conducted by the department of social and health services or an area agency on aging during the previous twenty-four months;

(c) The department of social and health services or an area agency on aging includes in its monitoring a sample of private pay clients, if applicable; and

(d) The department receives directly from the department of social and health services copies of monitoring reports and other relevant reports or findings that indicate compliance with licensure requirements.

(3) The department retains authority to survey those services areas not addressed by the national accrediting body, department of social and health services, or an area agency on aging.

(4) In reviewing the federal, the joint commission on accreditation of health care organizations, the community health accreditation program, or the department of social and health services survey standards for substantial equivalency to those set forth in this chapter, the department is directed to provide the most liberal interpretation consistent with the intent of this chapter. In the event the department determines at any time that the survey standards are not substantially equivalent to those required by this chapter, the department is directed to notify the affected licensees. The notification shall contain a detailed description of the deficiencies in the alternative survey process, as well as an explanation concerning the risk to the consumer. The determination of substantial equivalency for alternative survey process and lack of substantial equivalency are agency actions and subject to RCW 34.05.210 through 34.05.395 and 34.05.510 through 34.05.675.

(5) The department is authorized to perform a validation survey on in-home services agencies who previously received a survey through accreditation or contracts with the department of social and health services or an area agency on aging under subsection (2) of this section. The department is authorized to perform a validation survey on no greater than ten percent of each type of certification or accreditation survey.

(6) This section does not affect the department's enforcement authority for licensed agencies. [2000 c 175 § 7; 1993 c 42 § 11.]

Additional notes found at www.leg.wa.gov

**70.127.090 License or renewal—Fees—Sliding scale.** (1) Application and renewal fee: An application for a license or any renewal shall be accompanied by a fee as established by the department under RCW 43.70.250. The department shall adopt by rule licensure fees based on a sliding scale using such factors as the number of agency full-time equivalents, geographic area served, number of locations, or type and volume of services provided. For agencies receiving a licensure survey that requires more than two on-site surveys by the department per licensure period, an additional fee as determined by the department by rule shall be charged for each additional on-site survey. The department may set different licensure fees for each licensure category. Agencies receiving a license without necessity of an on-site survey by the department under this chapter shall pay the same licensure or transfer fee as other agencies in their licensure category.

(2) Change of ownership fee: The department shall charge a reasonable fee for processing changes in ownership. The fee for transfer of ownership may not exceed fifty percent of the base licensure fee.

(3) Late fee: The department may establish a late fee for failure to apply for licensure or renewal as required by this chapter. [2000 c 175 § 8; 1999 c 190 § 3; 1993 c 42 § 5; 1988 c 245 § 10.]

Additional notes found at www.leg.wa.gov

**70.127.100 Licenses—Issuance—Prerequisites—Transfer or assignment—Surveys.** Upon receipt of an application under RCW 70.127.080 for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. A license issued under this chapter shall not be transferred or assigned without thirty days prior notice to the department and the department's approval. A license, unless suspended or revoked, is effective for a period of two years, however an initial license is only effective for twelve months. The department shall conduct a survey within each licensure period and may conduct a licensure survey after ownership transfer. [2000 c 175 § 9; 1993 c 42 § 6; 1988 c 245 § 11.]

Additional notes found at www.leg.wa.gov

**70.127.120 Rules for recordkeeping, services, staff and volunteer policies, complaints.** The department shall adopt rules consistent with RCW 70.127.005 necessary to implement this chapter under chapter 34.05 RCW. In order to ensure safe and adequate care, the rules shall address at a minimum the following:

(1) Maintenance and preservation of all records relating directly to the care and treatment of individuals by licensees;

(2) Establishment and implementation of a procedure for the receipt, investigation, and disposition of complaints regarding services provided;

(3) Establishment and implementation of a plan for ongoing care of individuals and preservation of records if the licensee ceases operations;

(4) Supervision of services;

(5) Establishment and implementation of written policies regarding response to referrals and access to services;

(6) Establishment and implementation of written personnel policies, procedures and personnel records for paid staff that provide for prehire screening, minimum qualifications, regular performance evaluations, including observation in the home, participation in orientation and in-service training, and involvement in quality improvement activities. The department may not establish experience or other qualifications for agency personnel or contractors beyond that required by state law;

(7) Establishment and implementation of written policies and procedures for volunteers who have direct patient/client

contact and that provide for background and health screening, orientation, and supervision;

(8) Establishment and implementation of written policies for obtaining regular reports on patient satisfaction;

(9) Establishment and implementation of a quality improvement process;

(10) Establishment and implementation of policies related to the delivery of care including:

(a) Plan of care for each individual served;

(b) Periodic review of the plan of care;

(c) Supervision of care and clinical consultation as necessary;

(d) Care consistent with the plan;

(e) Admission, transfer, and discharge from care; and

(f) For hospice services:

(i) Availability of twenty-four hour seven days a week hospice registered nurse consultation and in-home services as appropriate;

(ii) Interdisciplinary team communication as appropriate and necessary; and

(iii) The use and availability of volunteers to provide family support and respite care; and

(11) Establishment and implementation of policies related to agency implementation and oversight of nurse delegation as defined in RCW 18.79.260(3)(e). [2003 c 140 § 9; 2000 c 175 § 10; 1993 c 42 § 8; 1988 c 245 § 13.]

Additional notes found at www.leg.wa.gov

**70.127.125 Interpretive guidelines for services.** The department is directed to continue to develop, with opportunity for comment from licensees, interpretive guidelines that are specific to each type of service and consistent with legislative intent. [2000 c 175 § 11; 1993 c 42 § 7.]

Additional notes found at www.leg.wa.gov

**70.127.130 Legend drugs and controlled substances—Rules.** Licensees shall conform to the standards of RCW 69.41.030 and 69.50.308. Rules adopted by the department concerning the use of legend drugs or controlled substances shall reference and be consistent with pharmacy quality assurance commission rules. [2013 c 19 § 125; 1993 c 42 § 9; 1988 c 245 § 14.]

Additional notes found at www.leg.wa.gov

**70.127.140 Bill of rights—Billing statements.** (1) An in-home services agency shall provide each individual or designated representative with a written bill of rights affirming each individual's right to:

(a) A listing of the in-home services offered by the in-home services agency and those being provided;

(b) The name of the individual supervising the care and the manner in which that individual may be contacted;

(c) A description of the process for submitting and addressing complaints;

(d) Submit complaints without retaliation and to have the complaint addressed by the agency;

(e) Be informed of the state complaint hotline number;

(f) A statement advising the individual or representative of the right to ongoing participation in the development of the plan of care;

(g) A statement providing that the individual or representative is entitled to information regarding access to the department's listing of providers and to select any licensee to provide care, subject to the individual's reimbursement mechanism or other relevant contractual obligations;

(h) Be treated with courtesy, respect, privacy, and freedom from abuse and discrimination;

(i) Refuse treatment or services;

(j) Have property treated with respect;

(k) Privacy of personal information and confidentiality of health care records;

(l) Be cared for by properly trained staff with coordination of services;

(m) A fully itemized billing statement upon request, including the date of each service and the charge. Licensees providing services through a managed care plan shall not be required to provide itemized billing statements; and

(n) Be informed about advanced directives and the agency's responsibility to implement them.

(2) An in-home services agency shall ensure rights under this section are implemented and updated as appropriate. [2000 c 175 § 12; 1988 c 245 § 15.]

Additional notes found at www.leg.wa.gov

**70.127.150 Durable power of attorney—Prohibition for licensees, contractees, or employees.** No licensee, contractee, or employee may hold a durable power of attorney on behalf of any individual who is receiving care from the licensee. [2000 c 175 § 13; 1988 c 245 § 16.]

Additional notes found at www.leg.wa.gov

**70.127.170 Licenses—Denial, restriction, conditions, modification, suspension, revocation—Civil penalties.** Pursuant to chapter 34.05 RCW and RCW 70.127.180(3), the department may deny, restrict, condition, modify, suspend, or revoke a license under this chapter or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, or require a refund of any amounts billed to, and collected from, the consumer or third-party payor in any case in which it finds that the licensee, or any applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or licensee's assets:

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

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

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

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

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

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

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

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

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

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

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

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

(13) Violated any state or federal statute, or administrative rule regulating the operation of the agency;

(14) Failed to comply with an order issued by the secretary or designee;

(15) Aided or abetted the unlicensed operation of an in-home services agency;

(16) Operated beyond the scope of the in-home services agency license;

(17) Failed to adequately supervise staff to the extent that the health or safety of a patient or client was at risk;

(18) Compromised the health or safety of a patient or client, including, but not limited to, the individual performing services beyond their authorized scope of practice;

(19) Continued to operate after license revocation, suspension, or expiration, or operating outside the parameters of a modified, conditioned, or restricted license;

(20) Failed or refused to comply with chapter 70.02 RCW;

(21) Abused, neglected, abandoned, or financially exploited a patient or client as these terms are defined in RCW 74.34.020;

(22) Misappropriated the property of an individual;

(23) Is unqualified or unable to operate or direct the operation of the agency according to this chapter and the rules adopted under this chapter;

(24) Obtained or attempted to obtain a license by fraudulent means or misrepresentation; or

(25) Failed to report abuse or neglect of a patient or client in violation of chapter 74.34 RCW. [2003 c 140 § 10; 2000 c 175 § 14; 1988 c 245 § 18.]

Additional notes found at www.leg.wa.gov

**70.127.180 Surveys and in-home visits—Notice of violations—Enforcement action.** (1) The department may at any time conduct a survey of all records and operations of a licensee in order to determine compliance with this chapter. The department may conduct in-home visits to observe patient/client care and services. The right to conduct a survey shall extend to any premises and records of persons whom the department has reason to believe are providing home health, hospice, or home care services without a license.

(2) Following a survey, the department shall give written notice of any violation of this chapter or the rules adopted under this chapter. The notice shall describe the reasons for noncompliance.

(3) The licensee may be subject to formal enforcement action under RCW 70.127.170 if the department determines: (a) The licensee has previously been subject to a formal enforcement action for the same or similar type of violation of the same statute or rule, or has been given previous notice of the same or similar type of violation of the same statute or rule; (b) the licensee failed to achieve compliance with a statute, rule, or order by the date established in a previously issued notice or order; (c) the violation resulted in actual serious physical or emotional harm or immediate threat to the health, safety, welfare, or rights of one or more individuals; or (d) the violation has a potential for serious physical or emotional harm or immediate threat to the health, safety, welfare, or rights of one or more individuals. [2000 c 175 § 15; 1988 c 245 § 19.]

Additional notes found at www.leg.wa.gov

**70.127.190 Disclosure of compliance information.** All information received by the department through filed reports, surveys, and in-home visits conducted under this chapter shall not be disclosed publicly in any manner that would identify individuals receiving care under this chapter. [2000 c 175 § 16; 1988 c 245 § 20.]

Additional notes found at www.leg.wa.gov

**70.127.200 Unlicensed agencies—Department may seek injunctive or other relief—Injunctive relief does not prohibit criminal or civil penalties—Fines.** (1) Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the advertising, operating, maintaining, managing, or opening of a home health, hospice, hospice care center, or home care agency without an in-home services agency license under this chapter.

(2) The injunction shall not relieve the person operating an in-home services agency without a license from criminal prosecution, or the imposition of a civil fine under RCW 70.127.213(2), but the remedy by injunction shall be in addition to any criminal liability or civil fine. A person that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be deposited in the department's local fee account. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. All fines, forfeitures, and penalties collected or assessed by a court because of a violation of RCW 70.127.020 shall be deposited in the department's local fee account. [2000 c 175 § 17; 1988 c 245 § 21.]

Additional notes found at www.leg.wa.gov

**70.127.213 Unlicensed operation of an in-home services agency—Cease and desist orders—Adjudicative proceedings—Fines.** (1) The department may issue a notice of intention to issue a cease and desist order to any person whom the department has reason to believe is engaged in the unlicensed operation of an in-home services agency. The person to whom the notice of intent is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intent to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the department may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

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

(3) If the department makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the department may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the department. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the department may enter a permanent cease and desist order, which may include a civil fine.

(4) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so operating an in-home services agency without a license from criminal prosecution, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed operation and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW. [2000 c 175 § 19.]

Additional notes found at www.leg.wa.gov

**70.127.216 Unlicensed operation of an in-home services agency—Consumer protection act.** The legislature finds that the operation of an in-home services agency without a license in violation of this chapter is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an in-home services agency without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2000 c 175 § 20.]

Additional notes found at www.leg.wa.gov

**70.127.280 Hospice care centers—Applicants—Rules.** (1) Applicants desiring to operate a hospice care center are subject to the following:

(a) The application may only be made by a licensed hospice agency. The agency shall list which of the following service categories will be provided:

(i) General inpatient care;

(ii) Continuous home care;

(iii) Routine home care; or

(iv) Inpatient respite care;

(b) A certificate of need is required under chapter 70.38 RCW;

(c) A hospice agency may operate more than one hospice care center in its service area;

(d) For hospice agencies that operate a hospice care center, no more than forty-nine percent of patient care days, in the aggregate on a biennial basis, may be provided in the hospice care center;

(e) The maximum number of beds in a hospice care center is twenty;

(f) The maximum number of individuals per room is one, unless the individual requests a roommate;

(g) A hospice care center may either be owned or leased by a hospice agency. If the agency leases space, all delivery of interdisciplinary services, to include staffing and management, shall be done by the hospice agency; and

(h) A hospice care center may either be freestanding or a separate portion of another building.

(2) The department is authorized to develop rules to implement this section. The rules shall be specific to each hospice care center service category provided. The rules shall at least specifically address the following:

(a) Adequate space for family members to visit, meet, cook, share meals, and stay overnight with patients or clients;

(b) A separate external entrance, clearly identifiable to the public when part of an existing structure;

(c) Construction, maintenance, and operation of a hospice care center;

(d) Means to inform the public which hospice care center service categories are provided; and

(e) A registered nurse present twenty-four hours a day, seven days a week for hospice care centers delivering general inpatient services.

(3) Hospice agencies which as of January 1, 2000, operate the functional equivalent of a hospice care center through licensure as a hospital, under chapter 70.41 RCW, shall be exempt from the certificate of need requirement for hospice care centers if they apply for and receive a license as an in-home services agency to operate a hospice home care center by July 1, 2002. [2000 c 175 § 21.]

Additional notes found at www.leg.wa.gov

## Chapter 70.128 RCW
## ADULT FAMILY HOMES

Sections



**70.128.005 Findings—Intent.** (1) The legislature finds that:

(a) Adult family homes are an important part of the state's long-term care system. Adult family homes provide an alternative to institutional care and promote a high degree of independent living for residents.

(b) Persons with functional limitations have broadly varying service needs. Adult family homes that can meet those needs are an essential component of a long-term system. Different populations living in adult family homes, such as persons with developmental disabilities and elderly persons, often have significantly different needs and capacities from one another.

(c) There is a need to update certain restrictive covenants to take into consideration the legislative findings cited in (a) and (b) of this subsection; the need to prevent or reduce institutionalization; and the legislative and judicial mandates to provide care and services in the least restrictive setting appropriate to the needs of the individual. Restrictive covenants which directly or indirectly restrict or prohibit the use of property for adult family homes (i) are contrary to the public interest served by establishing adult family homes and (ii) discriminate against individuals with disabilities in violation of RCW 49.60.224.

(2) It is the legislature's intent that department rules and policies relating to the licensing and operation of adult family homes recognize and accommodate the different needs and capacities of the various populations served by the homes. Furthermore, the development and operation of adult family homes that promote the health, welfare, and safety of residents, and provide quality personal care and special care services should be encouraged.

(3) The legislature finds that many residents of community-based long-term care facilities are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and residents' needs increase. The legislature intends that current training standards be enhanced.

(4) The legislature finds that the state of Washington has a compelling interest in developing and enforcing standards that promote the health, welfare, and safety of vulnerable adults residing in adult family homes. The health, safety, and well-being of vulnerable adults must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, or whether to take other licensing actions. [2011 1st sp.s. c 3 § 201; 2009 c 530 § 2; 2001 c 319 § 1; 2000 c 121 § 4; 1995 c 260 § 1; 1989 c 427 § 14.]

**Finding—Intent—2011 1st sp.s. c 3:** "The legislature finds that Washington's long-term care system should more aggressively promote protec-

tions for the vulnerable populations it serves. The legislature intends to address current statutes and funding levels that limit the department of social and health services' ability to promote vulnerable adult protections. The legislature further intends that the cost of facility oversight should be supported by an appropriate license fee paid by the regulated businesses, rather than by the general taxpayers." [2011 1st sp.s. c 3 § 101.]

**70.128.007 Purpose.** The purposes of this chapter are to:

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

(2) Establish standards for regulating adult family homes that adequately protect residents;

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

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

(5) Accord each resident the right to participate in the development of the care plan and in other major decisions involving the resident and their care. [2001 c 319 § 5; 1995 1st sp.s. c 18 § 19; 1989 c 427 § 15.]

Additional notes found at www.leg.wa.gov

**70.128.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a residential home in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An adult family home may provide services to up to eight adults upon approval from the department under RCW 70.128.066.

(2) "Adult family home licensee" means a provider as defined in this section who does not receive payments from the medicaid and state-funded long-term care programs.

(3) "Adult family home training network" means a nonprofit organization established by the exclusive bargaining representative of adult family homes designated under RCW 41.56.029 with the capacity to provide training, workforce development, and other services to adult family homes.

(4) "Adults" means persons who have attained the age of eighteen years.

(5) "Capacity" means the maximum number of persons in need of personal or special care permitted in an adult family home at a given time. This number shall include related children or adults in the home and who received special care.

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

(7) "Home" means an adult family home.

(8) "Imminent danger" means serious physical harm to or death of a resident has occurred, or there is a serious threat to resident life, health, or safety.

(9) "Provider" means any person who is licensed under this chapter to operate an adult family home. For the purposes of this section, "person" means any individual, partnership, corporation, association, or limited liability company.

(10) "Resident" means an adult in need of personal or special care in an adult family home who is not related to the provider.

(11) "Resident manager" means a person employed or designated by the provider to manage the adult family home.

(12) "Special care" means care beyond personal care as defined by the department, in rule. [2020 c 220 § 1. Prior: 2019 c 466 § 2; 2007 c 184 § 7; prior: 2001 c 319 § 6; 2001 c 319 § 2; 1995 c 260 § 2; 1989 c 427 § 16.]

Additional notes found at www.leg.wa.gov

**70.128.030 Exemptions.** The following residential facilities shall be exempt from the operation of this chapter:

(1) Nursing homes licensed under chapter 18.51 RCW;

(2) Assisted living facilities licensed under chapter 18.20 RCW;

(3) Facilities approved and certified under chapter 71A.22 RCW;

(4) Residential treatment centers for individuals with mental illness licensed under chapter 71.24 RCW;

(5) Hospitals licensed under chapter 70.41 RCW;

(6) Homes for individuals with developmental disabilities licensed under chapter 74.15 RCW. [2012 c 10 § 55; 1989 c 427 § 17.]

**Application—2012 c 10:** See note following RCW 18.20.010.

**70.128.040 Adoption of rules and standards—Negotiated rule making—Specialty license.** (1) The department shall adopt rules and standards with respect to adult family homes and the operators thereof to be licensed under this chapter to carry out the purposes and requirements of this chapter. The rules and standards relating to applicants and operators shall address the differences between individual providers and providers that are partnerships, corporations, associations, or companies. The rules and standards shall also recognize and be appropriate to the different needs and capacities of the various populations served by adult family homes such as but not limited to persons who are developmentally disabled or elderly. In developing rules and standards the department shall recognize the residential family-like nature of adult family homes and not develop rules and standards which by their complexity serve as an overly restrictive barrier to the development of the adult family homes in the state. Procedures and forms established by the department shall be developed so they are easy to understand and comply with. Paper work requirements shall be minimal. Easy to understand materials shall be developed for applicants and providers explaining licensure requirements and procedures.

(2)(a) In developing the rules and standards, the department shall consult with all divisions and administrations within the department serving the various populations living in adult family homes, including the division of developmental disabilities and the aging and adult services administration. Involvement by the divisions and administration shall be for the purposes of assisting the department to develop rules and standards appropriate to the different needs and capacities of the various populations served by adult family homes. During the initial stages of development of proposed

rules, the department shall provide notice of development of the rules to organizations representing adult family homes and their residents, and other groups that the department finds appropriate. The notice shall state the subject of the rules under consideration and solicit written recommendations regarding their form and content.

(b) In addition, the department shall engage in negotiated rule making pursuant to RCW 34.05.310(2)(a) with the exclusive representative of the adult family home licensees selected in accordance with RCW 70.128.043 and with other affected interests before adopting requirements that affect adult family home licensees.

(3) Except where provided otherwise, chapter 34.05 RCW shall govern all department rule-making and adjudicative activities under this chapter.

(4) The department shall establish a specialty license to include geriatric specialty certification for providers who have successfully completed the University of Washington school of nursing certified geriatric certification program and testing. [2009 c 530 § 1; 2007 c 184 § 8; 1995 c 260 § 3; 1989 c 427 § 18.]

Additional notes found at www.leg.wa.gov

**70.128.043 Negotiated rule making—Statewide unit of licensees—Intent.** (1) Solely for the purposes of negotiated rule making pursuant to RCW 34.05.310(2)(a) and 70.128.040, a statewide unit of all adult family home licensees is appropriate. As of July 22, 2007, the exclusive representative of adult family home licensees in the statewide unit shall be the organization certified by the American arbitration association as the sole representative after the association conducts a cross-check comparing authorization cards against the department of social and health services' records and finds that majority support for the organization exists. If adult family home licensees seek to select a different representative thereafter, the adult family home licensees may request that the American arbitration association conduct an election and certify the results of the election.

(2) In enacting this section, the legislature intends to provide state action immunity under federal and state antitrust laws for the joint activities of licensees and their exclusive representative to the extent such activities are authorized by this chapter. [2007 c 184 § 6.]

Additional notes found at www.leg.wa.gov

**70.128.050 License—Required as of July 1, 1990—Limitations.** (1) After July 1, 1990, no person shall operate or maintain an adult family home in this state without a license under this chapter.

(2) Couples legally married or state registered domestic partners:

(a) May not apply for separate licenses; and

(b) May apply jointly to be coproviders if they are both qualified. One person may apply to be a provider without requiring the other person to apply. [2011 1st sp.s. c 3 § 202; 1989 c 427 § 19.]

**Finding—Intent—2011 1st sp.s. c 3:** See note following RCW 70.128.005.

**70.128.055 Operating without a license—Misdemeanor.** A person operating or maintaining an adult family home without a license under this chapter is guilty of a misdemeanor. Each day of a continuing violation after conviction is considered a separate offense. [1991 c 40 § 1.]

**70.128.057 Operating without a license—Injunction or civil penalty.** Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person to restrain or prevent the operation or maintenance of an adult family home without a license under this chapter. [1995 1st sp.s. c 18 § 20; 1991 c 40 § 2.]

Additional notes found at www.leg.wa.gov

**70.128.058 Operating without a license—Application of consumer protection act.** The legislature finds that the operation of an adult family home without a license in violation of this chapter is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an adult family home without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1995 1st sp.s. c 18 § 21.]

Additional notes found at www.leg.wa.gov

**70.128.060 License—Generally—Fees.** (1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) Subject to the provisions of this section, the department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter. The department may not issue a license if (a) the applicant or a person affiliated with the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past ten years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department; or (b) the applicant or a person affiliated with the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children. A person is considered affiliated with an applicant if the person is listed on the license application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

(3) The license fee shall be submitted with the application.

(4) Proof of financial solvency must be submitted when requested by the department.

(5) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter

34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

(6) The department shall not issue a license to a provider if the department finds that the provider or spouse of the provider or any partner, officer, director, managerial employee, or majority owner has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.

(7) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(8) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers consistent with RCW 70.128.230, and also is required for caregivers, with standardized competency testing for caregivers hired after July 28, 2013, as set forth by the department in rule. The department shall examine, with input from experts, providers, consumers, and advocates, whether the existing specialty training courses are adequate for providers, resident managers, and caregivers to meet these residents' special needs, are sufficiently standardized in curricula and instructional techniques, and are accompanied by effective tools to fairly evaluate successful student completion. The department may enhance the existing specialty training requirements by rule, and may update curricula, instructional techniques, and competency testing based upon its review and stakeholder input. In addition, the department shall examine, with input from experts, providers, consumers, and advocates, whether additional specialty training categories should be created for adult family homes serving residents with other special needs, such as traumatic brain injury, skilled nursing, or bariatric care. The department may establish, by rule, additional specialty training categories and requirements for providers, resident managers, and caregivers, if needed to better serve residents with such special needs.

(9) The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.

(10) The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.

(11)(a)(i) At the time of an application for an adult family home license and upon the annual fee renewal date set by the department, the licensee shall pay a license fee. Beginning July 1, 2011, the per bed license fee and any processing fees, including the initial license fee, must be established in the omnibus appropriations act and any amendment or additions made to that act. The license fees established in the omnibus appropriations act and any amendment or additions made to that act may not exceed the department's annual licensing and oversight activity costs and must include the department's cost of paying providers for the amount of the license fee attributed to medicaid clients.

(ii) In addition to the fees established in (a)(i) of this subsection, the department shall charge the licensee a nonrefundable fee to increase bed capacity at the adult family home to seven or eight beds or in the event of a change in ownership of the adult family home. The fee must be established in the omnibus appropriations act and any amendment or additions made to that act.

(b) The department may authorize a one-time waiver of all or any portion of the licensing, processing, or change of ownership fees required under this subsection (11) in any case in which the department determines that an adult family home is being relicensed because of exceptional circumstances, such as death or incapacity of a provider, and that to require the full payment of the licensing, processing, or change of ownership fees would present a hardship to the applicant.

(12) A provider who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of an adult family home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the provider, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the provider relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.

(13) The department shall establish, by rule, the circumstances requiring a change in the licensed provider, which include, but are not limited to, a change in ownership or control of the adult family home or provider, a change in the provider's form of legal organization, such as from sole proprietorship to partnership or corporation, and a dissolution or merger of the licensed entity with another legal organization. The new provider is subject to the provisions of this chapter, the rules adopted under this chapter, and other applicable law. In order to ensure that the safety of residents is not compromised by a change in provider, the new provider is responsible for correction of all violations that may exist at the time of the new license. [2020 c 220 § 3; 2015 c 66 § 1; 2013 c 300 § 2; 2011 1st sp.s. c 3 § 403; 2009 c 530 § 5; 2004 c 140 § 3; 2001 c 193 § 9; 1995 c 260 § 4; 1989 c 427 § 20.]

**Finding—Intent—2011 1st sp.s. c 3:** See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

**70.128.064 Priority processing for license applications—Provisional license.** (1) A provisional license permits the operation of an adult family home for a period of time to be determined by the department, not to exceed twelve months, and is not subject to renewal. A provisional license may be issued:

(a) When a currently licensed adult family home provider has applied to be licensed as the new provider for a currently licensed adult family home, the application has been initially processed, and all that remains to complete the application process is an on-site inspection; or

(b) Under exceptional circumstances, such as the sudden and unexpected death of the sole provider of an adult family home.

(2) In order to prevent disruption to current residents, the department shall give priority processing to an application for a change of ownership:

(a) At the request of the currently licensed provider; or

(b) When the department has issued a provisional license. [2018 c 160 § 1; 2001 c 319 § 10.]

**70.128.065 Multiple facility operators—Requirements—Licensure of additional homes.** (1) A multiple facility operator must successfully demonstrate to the department financial solvency and management experience for the homes under its ownership and the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes.

(2) The department shall only accept and process an application for licensure of an additional home when:

(a) A period of no less than twenty-four months has passed since the issuance of the initial adult family home license; and

(b) The department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twenty-four months prior to application.

(3)(a) Except as provided in (b) of this subsection, the department shall only accept and process an additional application for licensure of other adult family homes when twelve months has passed since the previous adult family home license, and the department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twelve months prior to application.

(b) The department shall accept and process applications for licensure of additional adult family homes when less than twelve months have passed since the previous adult family home license, if the applications are due to the change in ownership of existing adult family homes that are currently licensed and the department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twelve months prior to application.

(4) In the event of serious noncompliance leading to the imposition of one or more actions listed in RCW 70.128.160(2) for violation of federal, state, or local laws, or regulations relating to provision of care or services to vulnerable adults or children, the department is authorized to take one or more actions listed in RCW 70.128.160(2) against any home or homes operated by the provider if there is a violation in the home or homes.

(5) In the event of serious noncompliance in a home operated by a provider with multiple adult family homes, leading to the imposition of one or more actions listed in RCW 70.128.160(2), the department shall inspect the other homes operated by the provider to determine whether the same or related deficiencies are present in those homes. The cost of these additional inspections may be imposed on the provider as a civil penalty up to a maximum of three hundred dollars per additional inspection.

(6) A provider is ultimately responsible for the day-to-day operations of each licensed home. [2013 c 185 § 1; 2011 1st sp.s. c 3 § 203; 1996 c 81 § 6.]

**Finding—Intent—2011 1st sp.s. c 3:** See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

**70.128.066 Seven or eight bed adult family homes—Requirements—Licensure.** (1) An applicant requesting to increase bed capacity to seven or eight beds must successfully demonstrate to the department financial solvency and management experience for the home under its ownership and the ability to meet other relevant safety, health, and operating standards pertaining to the operation of an eight bed home, including the ability to meet the needs of all current and prospective residents and ways to mitigate the potential impact of vehicular traffic related to the operation of the home.

(2) The department may only accept and process an application to increase the bed capacity to seven or eight beds when:

(a) A period of no less than twenty-four months has passed since the issuance of the initial adult family home license;

(b) The home has been licensed for six residents for at least twelve months prior to application;

(c) The home has completed two full inspections that have resulted in no enforcement actions;

(d) The home has submitted an attestation that an increase in the number of beds will not adversely affect the health, safety, or quality of life of current residents of the home;

(e) The home has demonstrated to the department the ability to comply with the emergency evacuation standards established by the department in rule;

(f) The home has a residential sprinkler system in place in order to serve residents who require assistance during an evacuation; and

(g) The home has paid any fees associated with licensure or additional inspections.

(3) The department shall accept and process applications under RCW 70.128.060(13) for a seven or eight bed adult family home only if:

(a) The new provider is a provider of a currently licensed adult family home that has been licensed for a period of no less than twenty-four months since the issuance of the initial adult family home license;

(b) The new provider's current adult family home has been licensed for six or more residents for at least twelve months prior to application; and

(c) The adult family home has completed at least two full inspections, and the most recent two full inspections have resulted in no enforcement actions.

(4) Prior to issuing a license to operate a seven or eight bed adult family home, the department shall:

(a) Notify the local jurisdiction in which the home is located, in writing, of the applicant's request to increase bed capacity, and allow the local jurisdiction to provide any recommendations to the department as to whether or not the department should approve the applicant's request to increase its bed capacity to seven or eight beds; and

(b) Conduct an inspection to determine compliance with licensing standards and the ability to meet the needs of eight residents.

(5) In addition to the consideration of other criteria established in this section, the department shall consider

comments received from current residents of the adult family home related to the quality of care and quality of life offered by the home, as well as their views regarding the addition of one or two more residents.

(6) Upon application for an initial seven or eight bed adult family home, a home must provide at least sixty days' notice to all residents and the residents' designated representatives that the home has applied for a license to admit up to seven or eight residents before admitting a seventh resident. The notice must be in writing and written in a manner or language that is understood by the residents and the residents' designated representatives.

(7) In the event of serious noncompliance in a seven or eight bed adult family home, in addition to, or in lieu of, the imposition of one or more actions listed in RCW 70.128.160(2), the department may revoke the adult family home's authority to accept more than six residents. [2020 c 220 § 2.]

**70.128.070 License—Inspections—Correction of violations.** (1) A license shall remain valid unless voluntarily surrendered, suspended, or revoked in accordance with this chapter.

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

(b) Homes licensed by the department shall be inspected at least every eighteen months, with an annual average of fifteen months. However, an adult family home may be allowed to continue without inspection for two years if the adult family home had no inspection citations for the past three consecutive inspections and has received no written notice of violations resulting from complaint investigations during that same time period.

(c) The department may make an unannounced inspection of a licensed home at any time to assure that the home and provider are in compliance with this chapter and the rules adopted under this chapter.

(d) If a pandemic, natural disaster, or other declared state of emergency prevents the department from completing inspections according to the timeline in this subsection, the department shall adopt rules to reestablish inspection timelines based on the length of time since last inspection, compliance history of each facility, and immediate health or safety concerns.

(i) Rules adopted under this subsection (2)(d) are effective until the termination of the pandemic, natural disaster, or other declared state of emergency or until the department determines that all facility inspections are occurring according to time frames established in (b) of this subsection, whichever is later. Once the department determines a rule adopted under this subsection (2)(d) is no longer necessary, it must repeal the rule under RCW 34.05.353.

(ii) Within 12 months of the termination of the pandemic, natural disaster, or declared state of emergency, the department shall conduct a review of inspection compliance with (b) of this subsection and provide the legislature with a report.

(3) If the department finds that the home is not in compliance with this chapter, it shall require the home to correct any violations as provided in this chapter. [2021 c 203 § 13; 2011 1st sp.s. c 3 § 204; 2004 c 143 § 1; 1998 c 272 § 4; 1995 1st sp.s. c 18 § 22; 1989 c 427 § 22.]

**Effective date—Retroactive application—2021 c 203:** See note following RCW 43.43.832.

**Finding—Intent—2011 1st sp.s. c 3:** See note following RCW 70.128.005.

**Findings—Severability—Effective date—1998 c 272:** See notes following RCW 18.20.230.

Additional notes found at www.leg.wa.gov

**70.128.080 License and inspection report—Availability for review.** An adult family home shall have readily available for review by the department, residents, and the public:

(1) Its license to operate; and

(2) A copy of each inspection report received by the home from the department for the past three years. [1995 1st sp.s. c 18 § 23; 1989 c 427 § 21.]

Additional notes found at www.leg.wa.gov

**70.128.090 Inspections—Generally.** (1) During inspections of an adult family home, the department shall have access and authority to examine areas and articles in the home used to provide care or support to residents, including residents' records, accounts, and the physical premises, including the buildings, grounds, and equipment. The personal records of the provider are not subject to department inspection nor is the separate bedroom of the provider, not used in direct care of a client, subject to review. The department may inspect all rooms during the initial licensing of the home. However, during a complaint investigation, the department shall have access to the entire premises and all pertinent records when necessary to conduct official business. The department also shall have the authority to interview the provider and residents of an adult family home.

(2) Whenever an inspection is conducted, the department shall prepare a written report that summarizes all information obtained during the inspection, and if the home is in violation of this chapter, serve a copy of the inspection report upon the provider at the same time as a notice of violation. This notice shall be mailed to the provider within ten working days of the completion of the inspection process. If the home is not in violation of this chapter, a copy of the inspection report shall be mailed to the provider within ten calendar days of the inspection of the home. All inspection reports shall be made available to the public at the department during business hours.

(3) The provider shall develop corrective measures for any violations found by the department's inspection. The department shall upon request provide consultation and technical assistance to assist the provider in developing effective corrective measures. The department shall include a statement of the provider's corrective measures in the department's inspection report. [2001 c 319 § 7; 1995 1st sp.s. c 18 § 24; 1989 c 427 § 30.]

Additional notes found at www.leg.wa.gov

**70.128.100 Immediate suspension of license when conditions warrant.** The department has the authority to immediately suspend a license if it finds that conditions there

constitute an imminent danger to residents. [1989 c 427 § 32.]

**70.128.105 Injunction if conditions warrant.** The department may commence an action in superior court to enjoin the operation of an adult family home if it finds that conditions there constitute an imminent danger to residents. [1991 c 40 § 3.]

**70.128.110 Prohibition against recommending unlicensed home—Report and investigation of unlicensed home.** (1) No public agency contractor or employee shall place, refer, or recommend placement of a person into an adult family home that is operating without a license.

(2) Any public agency contractor or employee who knows that an adult family home is operating without a license shall report the name and address of the home to the department. The department shall investigate any report filed under this section. [1989 c 427 § 23.]

**70.128.120 Adult family home provider, applicant, resident manager—Minimum qualifications.** Each adult family home provider, applicant, and each resident manager shall have the following minimum qualifications, except that only applicants are required to meet the provisions of subsections (10) and (11) of this section:

(1) Twenty-one years of age or older;

(2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 or any English or translated government documentation of the following:

(a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;

(b) A foreign college, foreign university, or United States community college two-year diploma;

(c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;

(d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;

(e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;

(3) Good moral and responsible character and reputation;

(4) Literacy and the ability to communicate in the English language;

(5) Management and administrative ability to carry out the requirements of this chapter;

(6) Satisfactory completion of department-approved basic training and continuing education training as required by RCW 74.39A.074, and in rules adopted by the department;

(7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;

(8) Not be disqualified by a department background check;

(9) For those applying to be licensed as providers, and for resident managers whose employment begins after August 24, 2011, at least one thousand hours in the previous sixty months of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home. The applicant or resident manager must have credible evidence of the successful, direct caregiving experience or, currently hold one of the following professional licenses: Physician licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; physician assistant licensed under chapter 18.71A RCW; registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW;

(10) For applicants, proof of financial solvency, as defined in rule; and

(11) Applicants must successfully complete an adult family home administration and business planning class, prior to being granted a license. The class must be a minimum of forty-eight hours of classroom time and approved by the department. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose. Under exceptional circumstances, such as the sudden and unexpected death of a provider, the department may consider granting a license to an applicant who has not completed the class but who meets all other requirements. If the department decides to grant the license due to exceptional circumstances, the applicant must have enrolled in or completed the class within four months of licensure. [2021 c 219 § 6; (2021 c 219 § 5 expired July 1, 2022); 2020 c 80 § 47; 2015 c 66 § 2; 2013 c 39 § 21; 2012 c 164 § 703; 2011 1st sp.s. c 3 § 205; 2006 c 249 § 1; 2002 c 223 § 1; 2001 c 319 § 8; 2000 c 121 § 5; 1996 c 81 § 1; 1995 1st sp.s. c 18 § 117; 1995 c 260 § 5; 1989 c 427 § 24.]

**Effective date—2021 c 219 § 6:** "Section 6 of this act takes effect July 1, 2022." [2021 c 219 § 11.]

**Expiration date—2021 c 219 § 5:** "Section 5 of this act expires July 1, 2022." [2021 c 219 § 10.]

**Rules—Conflict with federal requirements—2021 c 219:** See notes following RCW 43.20A.715.

**Effective date—2020 c 80 §§ 12-59:** See note following RCW 7.68.030.

**Intent—2020 c 80:** See note following RCW 18.71A.010.

**Finding—Intent—Rules—Effective date—2012 c 164:** See notes following RCW 18.88B.010.

**Finding—Intent—2011 1st sp.s. c 3:** See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

**70.128.122 Adult family homes licensed by Indian tribes.** The legislature recognizes that adult family homes located within the boundaries of a federally recognized Indian reservation may be licensed by the Indian tribe. The department may pay for care for persons residing in such

homes, if there has been a tribal or state criminal background check of the provider and any staff, and the client is otherwise eligible for services administered by the department. [1995 1st sp.s. c 18 § 25.]

Additional notes found at www.leg.wa.gov

**70.128.125 Resident rights.** RCW 70.129.005 through 70.129.030, 70.129.040, and 70.129.050 through 70.129.170 apply to this chapter and persons regulated under this chapter. [2011 1st sp.s. c 3 § 302; 1994 c 214 § 24.]

**Finding—Intent—2011 1st sp.s. c 3:** See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

**70.128.130 Adult family homes—Requirements.** (1) The provider is ultimately responsible for the day-to-day operations of each licensed adult family home.

(2) The provider shall promote the health, safety, and well-being of each resident residing in each licensed adult family home.

(3) Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

(4) In order to preserve and promote the residential home-like nature of adult family homes, adult family homes licensed after August 24, 2011, shall:

(a) Have sufficient space to accommodate all residents at one time in the dining and living room areas;

(b) Have hallways and doorways wide enough to accommodate residents who use mobility aids such as wheelchairs and walkers; and

(c) Have outdoor areas that are safe and accessible for residents to use.

(5) The adult family home must provide all residents access to resident common areas throughout the adult family home including, but not limited to, kitchens, dining and living areas, and bathrooms, to the extent that they are safe under the resident's care plan.

(6) Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(7) Adult family homes shall develop a fire drill plan for emergency evacuation of residents, shall have working smoke detectors in each bedroom where a resident is located, shall have working fire extinguishers on each floor of the home, and shall house nonambulatory residents on a level with safe egress to a public right-of-way. Nonambulatory residents must have a bedroom on the floor of the home from which the resident can be evacuated to a designated safe location outside the home without the use of stairs, elevators, chair lifts, platform lifts, or other devices as determined by the department in rule.

(8) The adult family home shall ensure that all residents can be safely evacuated from the home in an emergency as established by the department in rule. The rules established by the department must be developed in consultation with the largest organization representing fire chiefs in the state of Washington.

(9) Adult family homes shall have clean, functioning, and safe household items and furnishings.

(10) Adult family homes shall provide a nutritious and balanced diet and shall recognize residents' needs for special diets.

(11) Adult family homes shall establish health care procedures for the care of residents including medication administration and emergency medical care.

(a) Adult family home residents shall be permitted to self-administer medications.

(b) Adult family home providers may administer medications and deliver special care only to the extent authorized by law.

(12) Adult family home providers shall either: (a) Reside at the adult family home; or (b) employ or otherwise contract with a qualified resident manager to reside at the adult family home. The department may exempt, for good cause, a provider from the requirements of this subsection by rule.

(13) A provider will ensure that any volunteer, student, employee, or person residing within the adult family home who will have unsupervised access to any resident shall not be disqualified by a department background check. A provider may conditionally employ a person pending the completion of a criminal conviction background inquiry, but may not allow the person to have unsupervised access to any resident.

(14) A provider shall offer activities to residents under care as defined by the department in rule.

(15) An adult family home must be financially solvent, and upon request for good cause, shall provide the department with detailed information about the home's finances. Financial records of the adult family home may be examined when the department has good cause to believe that a financial obligation related to resident care or services will not be met.

(16) An adult family home provider must ensure that staff are competent and receive necessary training to perform assigned tasks. Staff must satisfactorily complete department-approved staff orientation, basic training, and continuing education as specified by the department by rule. The provider shall ensure that a qualified caregiver is on-site whenever a resident is at the adult family home; any exceptions will be specified by the department in rule. Notwithstanding RCW 70.128.230, until orientation and basic training are successfully completed, a caregiver may not provide hands-on personal care to a resident without on-site supervision by a person who has successfully completed basic training or been exempted from the training pursuant to statute.

(17) The provider and resident manager must assure that there is:

(a) A mechanism to communicate with the resident in his or her primary language either through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as language lines; and

(b) Staff on-site at all times capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans. [2021 c 219 § 7; 2019 c 80 § 1; 2012 c 164 § 704; 2011 1st sp.s. c 3 § 206; 2000 c 121 § 6; 1995 c 260 § 6; 1989 c 427 § 26.]

**Rules—Conflict with federal requirements—2021 c 219:** See notes following RCW 43.20A.715.

**Finding—Intent—Rules—Effective date—2012 c 164:** See notes following RCW 18.88B.010.

**Finding—Intent—2011 1st sp.s. c 3:** See note following RCW 70.128.005.

**70.128.135 Compliance with chapter 70.24 RCW.** Adult family homes shall comply with the provisions of chapter 70.24 RCW. [2001 c 319 § 9.]

**70.128.140 Compliance with local codes and state and local fire safety regulations.** (1) Each adult family home shall meet applicable local licensing, zoning, building, and housing codes, and state and local fire safety regulations as they pertain to a single-family residence. It is the responsibility of the home to check with local authorities to ensure all local codes are met.

(2) An adult family home must be considered a residential use of property for zoning and public and private utility rate purposes. Adult family homes are a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings. [2011 1st sp.s. c 3 § 207; 1995 1st sp.s. c 18 § 26; 1989 c 427 § 27.]

**Finding—Intent—2011 1st sp.s. c 3:** See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

**70.128.150 Adult family homes to work with local quality assurance projects—Interference with representative of ombuds program—Penalty.** Whenever possible, adult family homes are encouraged to contact and work with local quality assurance projects such as the volunteer ombuds with the goal of assuring high quality care is provided in the home.

An adult family home may not willfully interfere with a representative of the long-term care ombuds program in the performance of official duties. The department shall impose a penalty of not more than one thousand dollars for any such willful interference. [2013 c 23 § 181; 1995 1st sp.s. c 18 § 27; 1989 c 427 § 28.]

Additional notes found at www.leg.wa.gov

**70.128.155 Resident contact information—Department requirements and duties.** (1) The department shall require each adult family home to:

(a) Create and regularly maintain a current resident roster containing the name and room number of each resident and provide a written copy immediately upon an in-person request from any long-term care ombuds;

(b) Create and regularly maintain current, accurate, and aggregated contact information for all residents, including contact information for the resident representative, if any, of each resident. The contact information for each resident must include the resident's name, room number, and, if available, telephone number and email address. The contact information for each resident representative must include the resident representative's name, relationship to the resident, phone number, and, if available, email and mailing address;

(c) Record and update the aggregated contact information required by this section, upon receipt of new or updated contact information from the resident or resident representative; and

(d) Upon the written request of any long-term care ombuds that includes reference to this section and the relevant legal functions and duties of long-term care ombuds, provide a copy of the aggregated contact information required by this section within 48 hours, or within a reasonable time if agreed to by the requesting long-term care ombuds, by electronic copy to the secure email address or facsimile number provided in the written request.

(2) In accordance with the federal older Americans act, federal regulations, and state laws that govern the state long-term care ombuds program, the department shall inform adult family homes that:

(a) Any long-term care ombuds is authorized to request and obtain from adult family homes the information required by this section in order to perform the functions and duties of long-term care ombuds as set forth in federal and state laws;

(b) The state long-term care ombuds program and all long-term care ombuds are considered a "health oversight agency," so that the federal health insurance portability and accountability act and chapter 70.02 RCW do not preclude adult family homes from providing the information required by this section when requested by any long-term care ombuds, and pursuant to these laws, the federal older Americans act, federal regulations, and state laws that govern the state long-term care ombuds program, adult family homes are not required to seek or obtain consent from residents or resident representatives prior to providing the information required by this section in accordance with the requirements of this section;

(c) The information required by this section, when provided by an adult family home to a requesting long-term care ombuds, becomes property of the state long-term care ombuds program and is subject to all state and federal laws governing the confidentiality and disclosure of the files, records, and information maintained by the state long-term care ombuds program or any local long-term care ombuds entity; and

(d) The adult family home may not refuse to provide or unreasonably delay providing the resident roster, the contact information for a resident or resident representative, or the aggregated contact information required by this section, on any basis, including on the basis that the adult family home must first seek or obtain consent from one or more of the residents or resident representatives.

(3) Nothing in this section shall interfere with or diminish the authority of any long-term care ombuds to access facilities, residents, and resident records as otherwise authorized by law.

(4) For the purposes of this section, "resident representative" has the same meaning as in RCW 70.129.010. [2021 c 159 § 17.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**70.128.160 Department authority to take actions in response to noncompliance or violations—Civil penalties—Adult family home account.** (1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that an adult family home provider has:

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

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

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

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

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

(a) Refuse to issue a license;

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

(c) Impose civil penalties of at least one hundred dollars per day per violation;

(d) Impose civil penalties of up to three thousand dollars for each incident that violates adult family home licensing laws and rules, including, but not limited to, chapters 70.128, 70.129, 74.34, and 74.39A RCW and related rules. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty;

(e) Impose civil penalties of up to ten thousand dollars for a current or former licensed provider who is operating an unlicensed home;

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

(g) Suspend admissions to the adult family home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any person until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement only after: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed. In order to protect the home's existing residents from potential ongoing neglect, when the provider has been cited for a violation that is repeated, uncorrected, pervasive, or presents a threat to the health, safety, or welfare of one or more residents, and the department has imposed a stop placement, the department shall also impose a condition on license or other remedy to facilitate or spur prompter compliance if the violation has not been corrected, and the provider has not exhibited the capacity to maintain correction, within sixty days of the stop placement.

(4) Nothing in subsection (3) of this section is intended to apply to stop placement imposed in conjunction with a license revocation or summary suspension or to prevent the department from imposing a condition on license or other remedy prior to sixty days after a stop placement, if the department considers it necessary to protect one or more residents' well-being. After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(5) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue in effect pending a hearing, which must commence no later than sixty days after receipt of a request for a hearing. The time for commencement of a hearing may be extended by agreement of the parties or by the presiding officer for good cause shown by either party, but must commence no later than one hundred twenty days after receipt of a request for a hearing.

(6) A separate adult family home account is created in the custody of the state treasurer. All receipts from civil penalties imposed under this chapter must be deposited into the account. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. The department shall use the special account only for promoting the quality of life and care of residents living in adult family homes. During the 2015-2017 fiscal biennium, the account may be expended for funding costs associated with the adult family home program.

(7) The department shall by rule specify criteria as to when and how the sanctions specified in this section must be applied. The criteria must provide for the imposition of incrementally more severe penalties for deficiencies that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of one or more residents. The criteria shall be tiered such that those homes consistently found to have deficiencies will be subjected to increasingly severe penalties. The department shall implement prompt and specific enforcement remedies without delay for providers found to have delivered care or failed to deliver care resulting in problems that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of one or more residents. In the selection of remedies, the health, safety, and well-being of residents must be of paramount importance. [2016 sp.s. c 36 § 944; 2015 c 266 § 1; 2013 c 300 § 4; 2011 1st sp.s. c 3 § 208; 2001 c 193 § 5; 1995 1st sp.s. c 18 § 28; 1989 c 427 § 31.]

**Effective date—2016 sp.s. c 36:** See note following RCW 18.20.430.

**Finding—Intent—2011 1st sp.s. c 3:** See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

**70.128.163 Temporary management program—Purposes—Voluntary participation—Temporary management duties, duration—Rules.** (1) When the department has summarily suspended a license, the licensee may, subject to the department's approval, elect to participate in a temporary management program. All provisions of this section shall apply.

The purposes of a temporary management program are as follows:

(a) To mitigate dislocation and transfer trauma of residents while the department and licensee may pursue dispute resolution or appeal of a summary suspension of license;

(b) To facilitate the continuity of safe and appropriate resident care and services;

(c) To preserve a residential option that meets a specialized service need and/or is in a geographical area that has a lack of available providers; and

(d) To provide residents with the opportunity for orderly discharge.

(2) Licensee participation in the temporary management program is voluntary. The department shall have the discretion to approve any temporary manager and the temporary management arrangements. The temporary management shall assume the total responsibility for the daily operations of the home.

(3) The temporary management shall contract with the licensee as an independent contractor and is responsible for ensuring that all minimum licensing requirements are met. The temporary management shall protect the health, safety, and well-being of the residents for the duration of the temporary management and shall perform all acts reasonably necessary to ensure that residents' needs are met. The licensee is responsible for all costs related to administering the temporary management program and contracting with the temporary management. The temporary management agreement shall at a minimum address the following:

(a) Provision of liability insurance to protect residents and their property;

(b) Preservation of resident trust funds;

(c) The timely payment of past due or current accounts, operating expenses, including but not limited to staff compensation, and all debt that comes due during the period of the temporary management;

(d) The responsibilities for addressing all other financial obligations that would interfere with the ability of the temporary manager to provide adequate care and services to residents; and

(e) The authority of the temporary manager to manage the home, including the hiring, managing, and firing of employees for good cause, and to provide adequate care and services to residents.

(4) The licensee and department shall provide written notification immediately to all residents, legal representatives, interested family members, and the state long-term care ombuds program, of the temporary management and the reasons for it. This notification shall include notice that residents may move from the home without notifying the licensee in advance, and without incurring any charges, fees, or costs otherwise available for insufficient advance notice, during the temporary management period.

(5) The temporary management period under this section concludes twenty-eight days after issuance of the formal notification of enforcement action or conclusion of administrative proceedings, whichever date is later. Nothing in this section precludes the department from revoking its approval of the temporary management and/or exercising its licensing enforcement authority under this chapter. The department's decision whether to approve or to revoke a temporary management arrangement is not subject to the administrative procedure act, chapter 34.05 RCW.

(6) The department is authorized to adopt rules implementing this section. In implementing this section, the department shall consult with consumers, advocates, and organizations representing adult family homes. The department may recruit and approve qualified, licensed providers interested in serving as temporary managers. [2013 c 23 § 182; 2009 c 560 § 6; 2001 c 193 § 6.]

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**70.128.167 Disputed violations, enforcement remedies—Informal dispute resolution process.** (1) The licensee or its designee has the right to an informal dispute resolution process to dispute any violation found or enforcement remedy imposed by the department during a licensing inspection or complaint investigation. The purpose of the informal dispute resolution process is to provide an opportunity for an exchange of information that may lead to the modification, deletion, or removal of a violation, or parts of a violation, or enforcement remedy imposed by the department.

(2) The informal dispute resolution process provided by the department shall include, but is not necessarily limited to, an opportunity for review by a department employee who did not participate in, or oversee, the determination of the violation or enforcement remedy under dispute. The department shall develop, or further develop, an informal dispute resolution process consistent with this section.

(3) A request for an informal dispute resolution shall be made to the department within ten working days from the receipt of a written finding of a violation or enforcement remedy. The request shall identify the violation or violations and enforcement remedy or remedies being disputed. The department shall convene a meeting, when possible, within ten working days of receipt of the request for informal dispute resolution, unless by mutual agreement a later date is agreed upon.

(4) If the department determines that a violation or enforcement remedy should not be cited or imposed, the department shall delete the violation or immediately rescind or modify the enforcement remedy. Upon request, the department shall issue a clean copy of the revised report, statement of deficiencies, or notice of enforcement action.

(5) The request for informal dispute resolution does not delay the effective date of any enforcement remedy imposed by the department, except that civil monetary fines are not payable until the exhaustion of any formal hearing and appeal rights provided under this chapter. The licensee shall submit

to the department, within the time period prescribed by the department, a plan of correction to address any undisputed violations, and including any violations that still remain following the informal dispute resolution. [2001 c 193 § 8.]

**70.128.170 Homes relying on prayer for healing—Application of chapter.** Nothing in this chapter or the rules adopted under it may be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents in any adult family home conducted by and for the adherents of a church or religious denomination who rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents. [1989 c 427 § 33.]

**70.128.200 Toll-free telephone number for complaints—Discrimination or retaliation prohibited.** (1) The department shall maintain a toll-free telephone number for receiving complaints regarding adult family homes.

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

(3) No adult family home shall discriminate or retaliate in any manner against a resident on the basis or for the reason that such resident or any other person made a complaint to the department or the long-term care ombuds or cooperated with the investigation of such a complaint. [2013 c 23 § 183; 1995 1st sp.s. c 18 § 30.]

Additional notes found at www.leg.wa.gov

**70.128.210 Training standards review—Delivery system—Issues reviewed—Report to the legislature.** (1) The department of social and health services shall review, in coordination with the department of health, the nursing care quality assurance commission, adult family home providers, assisted living facility providers, in-home personal care providers, and long-term care consumers and advocates, training standards for providers, resident managers, and resident caregiving staff. The departments and the commission shall submit to the appropriate committees of the house of representatives and the senate by December 1, 1998, specific recommendations on training standards and the delivery system, including necessary statutory changes and funding requirements. Any proposed enhancements shall be consistent with this section, shall take into account and not duplicate other training requirements applicable to adult family homes and staff, and shall be developed with the input of adult family home and resident representatives, health care professionals, and other vested interest groups. Training standards and the delivery system shall be relevant to the needs of residents served by the adult family home and recipients of long-term in-home personal care services and shall be sufficient to ensure that providers, resident managers, and caregiving staff have the skills and knowledge necessary to provide high quality, appropriate care.

(2) The recommendations on training standards and the delivery system developed under subsection (1) of this section shall be based on a review and consideration of the following: Quality of care; availability of training; affordability, including the training costs incurred by the department of social and health services and private providers; portability of existing training requirements; competency testing; practical and clinical course work; methods of delivery of training; standards for management; uniform caregiving staff training; necessary enhancements for special needs populations; and resident rights training. Residents with special needs include, but are not limited to, residents with a diagnosis of mental illness, dementia, or developmental disability. Development of training recommendations for developmental disabilities services shall be coordinated with the study requirements in section 6, chapter 272, Laws of 1998.

(3) The department of social and health services shall report to the appropriate committees of the house of representatives and the senate by December 1, 1998, on the cost of implementing the proposed training standards for state-funded residents, and on the extent to which that cost is covered by existing state payment rates. [2012 c 10 § 56; 1998 c 272 § 3.]

**Application—2012 c 10:** See note following RCW 18.20.010.

**Findings—Severability—Effective date—1998 c 272:** See notes following RCW 18.20.230.

**70.128.220 Elder care—Professionalization of providers.** Adult family homes have developed rapidly in response to the health and social needs of the aging population in community settings, especially as the aging population has increased in proportion to the general population. The growing demand for elder care with a new focus on issues affecting senior citizens, including persons with developmental disabilities, mental illness, or dementia, has prompted a growing professionalization of adult family home providers to address quality care and quality of life issues consistent with standards of accountability and regulatory safeguards for the health and safety of the residents. [2011 1st sp.s. c 3 § 209; 2002 c 223 § 3; 1998 c 272 § 9.]

**Finding—Intent—2011 1st sp.s. c 3:** See note following RCW 70.128.005.

**Findings—Severability—Effective date—1998 c 272:** See notes following RCW 18.20.230.

**70.128.230 Long-term caregiver training.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Caregiver" includes all adult family home resident managers and any person who provides residents with hands-on personal care on behalf of an adult family home, except volunteers who are directly supervised.

(b) "Indirect supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section and is quickly and easily available to the caregiver, but not necessarily on-site.

(2) Training must have three components: Orientation, basic training, and continuing education. All adult family home providers, resident managers, and employees, or volunteers who routinely interact with residents shall complete orientation. Caregivers shall complete orientation, basic training, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at

the facility by appropriate adult family home staff to all adult family home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without direct supervision.

(5) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers.

(a) Specialty training consists of modules on the core knowledge and skills that providers and resident managers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test.

(b) Specialty training must be completed by providers and resident managers before admitting and serving residents who have been determined to have special needs related to mental illness, dementia, or a developmental disability. Should a resident develop special needs while living in a home without specialty designation, the provider and resident manager have one hundred twenty days to complete specialty training.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully complete the competency challenge test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully complete the specialty training competency challenge test are fully exempt from the specialty training requirements of this section.

(8)(a) Registered nurses and licensed practical nurses licensed under chapter 18.79 RCW are exempt from any continuing education requirement established under this section.

(b) The department may adopt rules that would exempt licensed persons from all or part of the training requirements under this chapter, if they are (i) performing the tasks for which they are licensed and (ii) subject to chapter 18.130 RCW.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the adult family home training network must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges, private associations, or other entities, as defined by the department.

(10) The adult family home training network shall assist adult family homes that desire to deliver facility-based training with facility designated trainers, or adult family homes that desire to pool their resources to create shared training systems. The department shall develop criteria for reviewing and approving trainers and training materials. The department may approve a curriculum based upon attestation by an adult family home administrator that the adult family home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled inspection authorized under RCW 70.128.070. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(11) The department shall adopt rules by September 1, 2002, for the implementation of this section.

(12)(a) Except as provided in (b) of this subsection, the orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, and shall be applied to (i) employees hired subsequent to September 1, 2002; or (ii) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 and this section. Existing employees who have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 shall be subject to all applicable requirements of this section.

(b) Beginning January 7, 2012, long-term care workers, as defined in RCW 74.39A.009, employed by an adult family home are also subject to the training requirements under RCW 74.39A.074.

(13) If a pandemic, natural disaster, or other declared state of emergency makes specialty training unavailable, the department may adopt rules to allow an adult family home where the provider and resident manager have not completed specialty training to admit a resident or residents with special needs related to mental illness, dementia, or a developmental disability, or to care for a resident or residents already living in the home who develop special needs. Such rules must include information about how to complete the specialty training once the training is available.

(a) Rules adopted under this subsection (13) are effective until the termination of the pandemic, natural disaster, or other declared state of emergency or until the department determines that providers and resident managers who were unable to complete the specialty training required in subsection (5)(b) of this section have had adequate access to complete the required training, whichever is later. Once the department determines a rule adopted under this subsection (13) is no longer necessary, it must repeal the rule under RCW 34.05.353.

(b) Within 12 months of the termination of the pandemic, natural disaster, or other declared state of emergency, the department shall conduct a review of training compliance

with subsection (5)(b) of this section and provide the legislature with a report. [2021 c 203 § 11; 2019 c 466 § 5; 2013 c 259 § 5; 2012 c 164 § 705; 2002 c 233 § 3; 2000 c 121 § 3.]

**Effective date—Retroactive application—2021 c 203:** See notes following RCW 43.43.832.

**Finding—Intent—Rules—Effective date—2012 c 164:** See notes following RCW 18.88B.010.

Additional notes found at www.leg.wa.gov

**70.128.240 Approval system—Department-approved training—Adoption of rules.** By March 1, 2002, the department must, by rule, create an approval system for those seeking to conduct department-approved training under RCW 70.128.230, *70.128.120 (5) and (6), and **70.128.130(10). The department shall adopt rules based on recommendations of the community long-term care training and education steering committee established in ***RCW 74.39A.190. [2000 c 121 § 7.]

**Reviser's note:** *(1) RCW 70.128.120 was amended by 2001 c 319 § 8, changing subsections (5) and (6) to subsections (6) and (7).

**(2) RCW 70.128.130 was amended by 2011 1st sp.s. c 3 § 206, changing subsection (10) to subsection (16).

***(3) RCW 74.39A.190 was repealed by 2007 c 361 § 10.

**70.128.250 Required training and continuing education—Food safety training and testing.** The department shall implement, as part of the required training and continuing education, food safety training and testing integrated into the curriculum that meets the standards established by the state board of health pursuant to chapter 69.06 RCW. Individual food handler permits are not required for persons who begin working in an adult family home after June 30, 2005, and successfully complete the basic and modified-basic caregiver training, provided they receive information or training regarding safe food handling practices from the employer prior to providing food handling or service for the clients. Documentation that the information or training has been provided to the individual must be kept on file by the employer.

Licensed adult family home providers or employees who hold individual food handler permits prior to June 30, 2005, will be required to maintain continuing education of .5 hours per year in order to maintain food handling and safety training. Licensed adult family home providers or employees who hold individual food handler permits prior to June 30, 2005, will not be required to renew the permit provided the continuing education requirement as stated above is met. [2005 c 505 § 6.]

**70.128.260 Limitation on restrictive covenants.** (1) To effectuate the public policies of this chapter, restrictive covenants may not limit, directly or indirectly:

(a) Persons with disabilities from living in an adult family home licensed under this chapter; or

(b) Persons and legal entities from operating adult family homes licensed under this chapter, whether for-profit or nonprofit, to provide services covered under this chapter. However, this subsection does not prohibit application of reasonable nondiscriminatory regulation, including but not limited to landscaping standards or regulation of sign location or size, that applies to all residential property subject to the restrictive covenant.

(2) This section applies retroactively to all restrictive covenants in effect on July 26, 2009. Any provision in a restrictive covenant in effect on or after July 26, 2009, that is inconsistent with subsection (1) of this section is unenforceable to the extent of the conflict. [2009 c 530 § 3.]

**70.128.270 Legislative intent—Enacting recommendations included in the adult family home quality assurance panel report.** (1) The protection of vulnerable residents living in adult family homes and other long-term care facilities in the state is a matter of ongoing concern and grave importance. In 2011, the legislature examined problems with the quality of care and oversight of adult family homes in Washington. The 2011 legislature passed Engrossed Substitute House Bill No. 1277 to address some of these issues, and in addition, created an adult family home quality assurance panel, chaired by the state long-term care ombudsman [ombuds], to meet and make recommendations to the governor and legislature by December 1, 2012, for further improvements in adult family home care and the oversight of the homes by the department of social and health services.

(2) The legislature recognizes that significant progress has been made over the years in adult family home care, and that many adult family homes provide high quality care and are the preferred alternative for many residents in contrast to a larger care facility setting. The legislature finds however that the quality of care in some adult family homes would be improved, and abuse and neglect would decline, if these homes' caregivers and providers received better training and mentoring, residents and their families were more informed and able to select an appropriate home, and oversight by the department of social and health services was more vigorous and prompt against poorly performing homes. It is therefore the intent of the legislature to enact the recommendations included in the adult family home quality assurance panel report in order to improve the quality of care of vulnerable residents and the department's oversight of adult family homes. [2013 c 300 § 1.]

**70.128.280 Required disclosure—Forms—Decrease in scope of care, services, activities—Notice—Increased needs of a resident—Denial of admission to a prospective resident—Department website.** (1) In order to enhance the selection of an appropriate adult family home, all adult family homes licensed under this chapter shall disclose the scope of, and charges for, the care, services, and activities provided by the home or customarily arranged for by the home. The disclosure must be provided to the home's residents and the residents' representatives, if any, prior to admission, and to interested prospective residents and their representatives upon request, using standardized disclosure forms developed by the department with stakeholders' input. The home may also disclose supplemental information to prospective residents and other interested persons.

(2)(a) The disclosure forms that the department develops must be standardized, reasonable in length, and easy to read. The form setting forth the scope of an adult family home's care, services, and activities must be available from the adult family home through a link to the department's website developed pursuant to this section. This form must indicate, among other categories, the scope of personal care and med-

ication service provided, the scope of skilled nursing services or nursing delegation provided or available, any specialty care designations held by the adult family home, the customary number of caregivers present during the day and whether the home has awake staff at night, any particular cultural or language access available, and clearly state whether the home admits medicaid clients or retains residents who later become eligible for medicaid. The adult family home shall provide or arrange for the care, services, and activities disclosed in its form.

(b) The department must also develop a second standardized disclosure form with stakeholders' input for use by adult family homes to set forth an adult family home's charges for its care, services, items, and activities, including the charges not covered by the home's daily or monthly rate, or by medicaid, medicare, or other programs. This form must be available from the home and disclosed to residents and their representatives, if any, prior to admission, and to interested prospective residents and their representatives upon request.

(3)(a) If the adult family home decreases the scope of care, services, or activities it provides, due to circumstances beyond the home's control, the home shall provide a minimum of thirty days' written notice to the residents, and the residents' representative if any, before the effective date of the decrease in the scope of care, services, or activities provided.

(b) If the adult family home voluntarily decreases the scope of care, services, or activities it provides, and any such decrease will result in the discharge of one or more residents, then ninety days' written notice must be provided prior to the effective date of the decrease. Notice must be given to the residents and the residents' representative, if any.

(c) If the adult family home increases the scope of care, services, or activities it provides, the home shall promptly provide written notice to the residents, and the residents' representative if any, and shall indicate the date on which the increase is effective.

(4) When the care needs of a resident exceed the disclosed scope of care or services that the adult family home provides, the home may exceed the care or services previously disclosed, provided that the additional care or services are permitted by the adult family home's license, and the home can safely and appropriately serve the resident with available staff or through the provision of reasonable accommodations required by state or federal law. The provision of care or services to a resident that exceed those previously disclosed by the home does not mean that the home is capable of or required to provide the same care or services to other residents, unless required as a reasonable accommodation under state or federal law.

(5) An adult family home may deny admission to a prospective resident if the home determines that the needs of the prospective resident cannot be met, so long as the adult family home operates in compliance with state and federal law, including RCW 70.129.030(3) and the reasonable accommodation requirements of state and federal antidiscrimination laws.

(6) The department shall work with consumers, advocates, and other stakeholders to combine and improve existing web resources to create a more robust, comprehensive, and user-friendly website for family members, residents, and prospective residents of adult family homes in Washington. The department may contract with outside vendors and experts to assist in the development of the website. The website should be easy to navigate and have links to information important for residents, prospective residents, and their family members or representatives including, but not limited to: (a) Explanations of the types of licensed long-term care facilities, levels of care, and specialty designations; (b) lists of suggested questions when looking for a care facility; (c) warning signs of abuse, neglect, or financial exploitation; and (d) contact information for the department and the long-term care ombudsman [ombuds]. In addition, the consumer oriented website should include a searchable list of all adult family homes in Washington, with links to inspection and investigation reports and any enforcement actions by the department for the previous three years. If a violation or enforcement remedy is deleted, rescinded, or modified under RCW 70.128.167 or chapter 34.05 RCW, the department shall make the appropriate changes to the information on the website as soon as reasonably feasible, but no later than thirty days after the violation or enforcement remedy has been deleted, rescinded, or modified. To facilitate the comparison of adult family homes, the website should also include a link to each licensed adult family home's disclosure form required by subsection (2)(a) of this section. The department's website should also include periodically updated information about whether an adult family home has a current vacancy, if the home provides such information to the department, or may include links to other consumer-oriented websites with the vacancy information. [2013 c 300 § 3.]

**70.128.290 Correction of a violation or deficiency—Not included in a home's report—Criteria.** (1) If during an inspection, reinspection, or complaint investigation by the department, an adult family home corrects a violation or deficiency that the department discovers, the department shall record and consider such violation or deficiency for purposes of the home's compliance history; however, the licensor or complaint investigator may not include in the home's report the violation or deficiency if the violation or deficiency:

(a) Is corrected to the satisfaction of the department prior to the exit conference;

(b) Is not recurring; and

(c) Did not pose a significant risk of harm or actual harm to a resident.

(2) For the purposes of this section, "recurring" means that the violation or deficiency was found under the same regulation or statute in one of the two most recent preceding inspections, reinspections, or complaint investigations. [2013 c 300 § 5.]

**70.128.300 Services for adult family home residents with a primary need of care related to a developmental or intellectual disability—Services for residents of adult family homes dedicated solely to dementia care—Design and implementation—Recommendations.** (1) Subject to the availability of amounts appropriated for this specific purpose, the developmental disabilities administration within the department shall work with stakeholders to design and implement services for individuals living in adult family homes who have a primary need of care related to a developmental

or intellectual disability. These services must be enhancements or in addition to services currently available, and designed to meet the specific provisions related to the assessment, environment, regulations, provision of care, and training requirements. These services must be enhancements or in addition to services currently available, and designed to support an intentional environment to improve resident quality of life, promote resident safety, including protecting safety in relationships between residents, increase resident length of stay, clarify regulations, streamline training requirements, reduce the need for institutional settings, and attract more adult family home providers to develop such highly needed resources. The recommendations for these services must be completed by June 1, 2020, for consideration and implementation in the 2021-2023 biennium.

(2) Subject to the availability of amounts appropriated for this specific purpose, the aging and long-term support administration within the department shall work with stakeholders to design and implement proposed services for individuals living in adult family homes that are dedicated solely to the care of individuals with dementia, including Alzheimer's disease. These services must be enhancements or in addition to services currently available, and designed to include specific provisions related to the assessment, environment, regulations, provision of care, and training requirements. These services must be designed to support an intentional environment to improve resident quality of life, promote resident safety, including protecting safety in relationships between residents, increase resident length of stay, clarify regulations, streamline training requirements, reduce the need for institutional settings, and attract more adult family home providers to develop such highly needed resources. The recommendations for these services must be completed by June 1, 2020, for consideration and implementation in the 2021-2023 biennium. [2019 c 466 § 1.]

**70.128.305 Adult family home training network—Requirements.** (1) If the department has any contracts for personal care services with any adult family home represented by an exclusive bargaining representative:

(a) Effective July 1, 2020, training required under this chapter for adult family homes must be available through an adult family home training network.

(b) The exclusive bargaining representative shall designate the adult family home training network.

(c) The parties to the collective bargaining agreement must negotiate a memorandum of understanding to provide for contributions to the adult family home training network. Contributions to the adult family home training network must begin no sooner than January 1, 2020. Contributions to the adult family home training network for fiscal year 2021 must be limited to no more than the amount appropriated for training in the 2019-2021 collective bargaining agreement.

(d) Contributions must be provided to the adult family home training network through a vendor contract executed by the department.

(e) The adult family home training network shall provide reports as required by the department verifying that providers have complied with all training requirements.

(2) Nothing in subsection (1) of this section:

(a) Limits the ability of a department-approved training entity or instructor to provide training to an adult family home provider, resident manager, or caregiver;

(b) Requires that a department-approved training entity or instructor contract with an adult family home training network; or

(c) Prevents an adult family home provider, resident manager, or caregiver from receiving training from a department-approved training entity or instructor. [2019 c 466 § 3.]

**70.128.306 Stop placement orders and limited stop placement orders.** The department must require an adult family home that is subject to a stop placement order or limited stop placement order under RCW 70.128.160 to publicly post in a conspicuous place at the adult family home a standardized notice that the department has issued a stop placement order or limited stop placement order for the adult family home. The standardized notice shall be developed by the department to include the date of the stop placement order or limited stop placement order, any conditions placed upon the adult family home's license, contact information for the department, contact information for the administrator or provider of the adult family home, and a statement that anyone may contact the department or the administrator or provider for further information. The notice must remain posted until the department has terminated the stop placement order or limited stop placement order. [2021 c 159 § 18.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**70.128.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 155.]

## Chapter 70.129 RCW
## LONG-TERM CARE RESIDENT RIGHTS

Sections

**70.129.005 Intent—Basic rights.** The legislature recognizes that long-term care facilities are a critical part of the state's long-term care services system. It is the intent of the legislature that individuals who reside in long-term care facilities receive appropriate services, be treated with courtesy, and continue to enjoy their basic civil and legal rights.

It is also the intent of the legislature that long-term care facility residents have the opportunity to exercise reasonable control over life decisions. The legislature finds that choice, participation, privacy, and the opportunity to engage in religious, political, civic, recreational, and other social activities foster a sense of self-worth and enhance the quality of life for long-term care residents.

The legislature finds that the public interest would be best served by providing the same basic resident rights in all long-term care settings. Residents in nursing facilities are guaranteed certain rights by federal law and regulation, 42 U.S.C. 1396r and 42 C.F.R. part 483. It is the intent of the legislature to extend those basic rights to residents in veterans' homes, assisted living facilities, enhanced services facilities, and adult family homes.

The legislature intends that a facility should care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life. A resident should have a safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible. [2020 c 278 § 12; 2012 c 10 § 57; 1994 c 214 § 1.]

**Application—2012 c 10:** See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

**70.129.007 Rights are minimal—Other rights not diminished.** The rights set forth in this chapter are the minimal rights guaranteed to all residents of long-term care facilities, and are not intended to diminish rights set forth in other state or federal laws that may contain additional rights. [1994 c 214 § 20.]

**70.129.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

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

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

(4) "Long-term care facility" means a facility that is licensed or required to be licensed under chapter 18.20, 70.97, 72.36, or 70.128 RCW.

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

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

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

(8) "Resident representative" means:

(a)(i) A court-appointed guardian or conservator of a resident, if any;

(ii) An individual otherwise authorized by state or federal law including, but not limited to, agents under power of attorney, representative payees, and other fiduciaries, to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications; or

(iii) If there is no individual who meets the criteria under (a)(i) or (ii) of this subsection, an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications.

(b) The term "resident representative" does not include any individual described in (a) of this subsection who is affiliated with any long-term care facility or nursing home where the resident resides, or its licensee or management company, unless the affiliated individual is a family member of the resident. [2021 c 159 § 21. Prior: 2020 c 278 § 13; 1997 c 392 § 203; 1994 c 214 § 2.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.129.020 Exercise of rights.** The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident and assist the resident which include:

(1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States and the state of Washington.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(3) In the case of a resident adjudged incompetent by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed to act on the resident's behalf.

(4) In the case of a resident who has not been adjudged incompetent by a court of competent jurisdiction, a resident

representative may exercise the resident's rights to the extent provided by law. [2021 c 159 § 22; 1994 c 214 § 3.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**70.129.030 Notice of rights and services—Admission of individuals.** (1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The notification must be made prior to or upon admission. Receipt of the information must be acknowledged in writing.

(2) The resident to the extent provided by law or resident representative to the extent provided by law, has the right:

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

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

(3) The facility shall only admit or retain individuals whose needs it can safely and appropriately serve in the facility with appropriate available staff and through the provision of reasonable accommodations required by state or federal law. Except in cases of genuine emergency, the facility shall not admit an individual before obtaining a thorough assessment of the resident's needs and preferences. The assessment shall contain, unless unavailable despite the best efforts of the facility, the resident applicant, and other interested parties, the following minimum information: Recent medical history; necessary and contraindicated medications; a licensed medical or other health professional's diagnosis, unless the individual objects for religious reasons; significant known behaviors or symptoms that may cause concern or require special care; mental illness, except where protected by confidentiality laws; level of personal care needs; activities and service preferences; and preferences regarding other issues important to the resident applicant, such as food and daily routine.

(4) The facility must inform each resident in writing in a language the resident or resident representative understands before admission, and at least once every twenty-four months thereafter of: (a) Services, items, and activities customarily available in the facility or arranged for by the facility as permitted by the facility's license; (b) charges for those services, items, and activities including charges for services, items, and activities not covered by the facility's per diem rate or applicable public benefit programs; and (c) the rules of facility operations required under RCW 70.129.140(2). Each resident and resident representative must be informed in writing in advance of changes in the availability or the charges for services, items, or activities, or of changes in the facility's rules. Except in emergencies, thirty days' advance notice must be given prior to the change. However, for facilities licensed for six or fewer residents, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities, then the charges for those services, items, or activities may be changed upon fourteen days' advance written notice.

(5) The facility must furnish a written description of residents rights that includes:

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

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

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

(6) Notification of changes.

(a) A facility must immediately consult with the resident's physician, and if known, make reasonable efforts to notify the resident representative to the extent provided by law when there is:

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

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

(b) The facility must promptly notify the resident or resident representative when there is:

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

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

(c) The facility must record and update the address, phone number, and any other contact information of the resident representative, upon receipt of notice from them. [2021 c 159 § 23; 2013 c 23 § 184; 1998 c 272 § 5; 1997 c 386 § 31; 1994 c 214 § 4.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

Additional notes found at www.leg.wa.gov

**70.129.040 Protection of resident's funds—Financial affairs rights.** (1) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

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

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

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

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

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

(b) The individual financial record must be available on request to the resident, or resident representative to the extent provided by law.

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

(5) If any funds in excess of one hundred dollars are paid to an adult family home by the resident or resident representative, as a security deposit for performance of the resident's obligations, or as prepayment of charges beyond the first month's residency, the funds shall be deposited by the adult family home in an interest-bearing account that is separate from any of the home's operating accounts, and that credits all interest earned on the resident's funds to that account. In pooled accounts, there must be a separate accounting for each resident's share. The account or accounts shall be in a financial institution as defined by RCW 30A.22.041, and the resident shall be notified in writing of the name, address, and location of the depository. The adult family home may not commingle resident funds from these accounts with the adult family home's funds or with the funds of any person other than another resident. The individual resident's account record shall be available upon request by the resident or resident representative to the extent provided by law.

(6) The adult family home shall provide the resident or resident representative full disclosure in writing, prior to the receipt of any funds for a deposit, security, prepaid charges, or any other fees or charges, specifying what the funds are paid for and the basis for retaining any portion of the funds if the resident dies, is hospitalized, or is transferred or discharged from the adult family home. The disclosure must be in a language that the resident or resident representative understands, and be acknowledged in writing by the resident or resident representative. The adult family home shall retain a copy of the disclosure and the acknowledgment. The adult family home may not retain funds for reasonable wear and tear by the resident or for any basis that would violate RCW 70.129.150.

(7) Funds paid by the resident or resident representative to the adult family home, which the adult family home in turn pays to a placement agency or person, shall be governed by the disclosure requirements of this section. If the resident then dies, is hospitalized, or is transferred or discharged from the adult family home, and is entitled to any refund of funds under this section or RCW 70.129.150, the adult family home shall refund the funds to the resident or resident representative to the extent provided by law, within thirty days of the resident leaving the adult family home, and may not require the resident to obtain the refund from the placement agency or person.

(8) If, during the stay of the resident, the status of the adult family home licensee or ownership is changed or transferred to another, any funds in the resident's accounts affected by the change or transfer shall simultaneously be deposited in an equivalent account or accounts by the successor or new licensee or owner, who shall promptly notify the resident or resident representative to the extent provided by law, in writing of the name, address, and location of the new depository.

(9) Because it is a matter of great public importance to protect residents who need long-term care from deceptive disclosures and unfair retention of deposits, fees, or prepaid charges by adult family homes, a violation of this section or RCW 70.129.150 shall be construed for purposes of the consumer protection act, chapter 19.86 RCW, to constitute an unfair or deceptive act or practice or an unfair method of competition in the conduct of trade or commerce. The resident's claim to any funds paid under this section shall be prior to that of any creditor of the adult family home, its owner, or licensee, even if such funds are commingled. [2021 c 159 § 24; 2011 1st sp.s. c 3 § 301; 1995 1st sp.s. c 18 § 66; 1994 c 214 § 5.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**Finding—Intent—2011 1st sp.s. c 3:** See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

**70.129.050 Privacy and confidentiality of personal and medical records.** The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. This does not require the facility to provide a private room for each resident however, a resident cannot be prohibited by the facility from meeting with guests in his or her bedroom if no roommates object.

(2) The resident may approve or refuse the release of personal and clinical records to an individual outside the facility unless otherwise provided by law. [1994 c 214 § 6.]

**70.129.060 Grievances.** A resident has the right to:

(1) Voice grievances. Such grievances include those with respect to treatment that has been furnished as well as that which has not been furnished; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents. [1994 c 214 § 7.]

**70.129.070 Examination of survey or inspection results—Contact with client advocates.** A resident has the right to:

(1) Examine the results of the most recent survey or inspection of the facility conducted by federal or state surveyors or inspectors and plans of correction in effect with respect to the facility. A notice that the results are available must be publicly posted with the facility's state license, and the results must be made available for examination by the facility in a place readily accessible to residents; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies. [1994 c 214 § 8.]

**70.129.080 Mail and telephone—Privacy in communications.** The resident has the right to privacy in communications, including the right to:

(1) Send and promptly receive mail that is unopened;

(2) Have access to stationery, postage, and writing implements at the resident's own expense; and

(3) Have reasonable access within a reasonable time to the use of a telephone and other communication equipment where calls can be made without being overheard. [2021 c 159 § 25; 1994 c 214 § 9.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**70.129.090 Advocacy, access, and visitation rights.** (1) The resident has the right and the facility must not interfere with access to any resident by the following:

(a) Any representative of the state;

(b) The resident's individual physician;

(c) The state long-term care ombuds as established under chapter 43.190 RCW;

(d) The agency responsible for the protection and advocacy system for individuals with developmental disabilities as established under part C of the developmental disabilities assistance and bill of rights act;

(e) The agency responsible for the protection and advocacy system for individuals with mental illness as established under the protection and advocacy for mentally ill individuals act;

(f) Subject to reasonable restrictions to protect the rights of others and to the resident's right to deny or withdraw consent at any time, resident representative, immediate family or other relatives of the resident, and others who are visiting with the consent of the resident;

(g) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the rehabilitation act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law.

(2) The facility must provide reasonable access to a resident by the resident representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility must allow representatives of the state ombuds to examine a resident's clinical records with the permission of the resident or resident representative to the extent provided by law, and consistent with state and federal law. [2021 c 159 § 26; 2013 c 23 § 185; 1994 c 214 § 10.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**70.129.100 Personal property—Storage space.** (1) The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(2) The facility shall, upon request, provide the resident with a lockable container or other lockable storage space for small items of personal property, unless the resident's individual room is lockable with a key issued to the resident. [1994 c 214 § 11.]

**70.129.105 Waiver of liability and resident rights limited.** No long-term care facility or nursing facility licensed under chapter 18.51 RCW shall require or request residents to sign waivers of potential liability for losses of personal property or injury, or to sign waivers of residents' rights set forth in this chapter or in the applicable licensing or certification laws. [1997 c 392 § 211; 1994 c 214 § 17.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.129.110 Disclosure, transfer, and discharge requirements.** (1) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

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

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

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

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

(e) The facility ceases to operate.

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

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

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

(b) Notify the resident and resident representative of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

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

(d) Include in the notice the items described in subsection (5) of this section.

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

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

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

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

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

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

(5) The written notice specified in subsection (3) of this section must include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

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

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

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

(f) For residents with mental illness, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with mental illness established under the protection and advocacy for mentally ill individuals act.

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

(7) A resident discharged in violation of this section has the right to be readmitted immediately upon the first availability of a gender-appropriate bed in the facility. [2021 c 159 § 27; 2013 c 23 § 186; 1997 c 392 § 205; 1994 c 214 § 12.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.129.120 Restraints—Physical or chemical.** The resident has the right to be free from physical restraint or chemical restraint. This section does not require or prohibit facility staff from reviewing the judgment of the resident's physician in prescribing psychopharmacologic medications. [1994 c 214 § 13.]

**70.129.130 Abuse, punishment, seclusion—Background checks.** The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(1) The facility must not use verbal, mental, sexual, or physical abuse, including corporal punishment or involuntary seclusion.

(2) Subject to available resources, the department of social and health services shall provide background checks required by RCW 43.43.842 for employees of facilities licensed under chapter 18.20 RCW without charge to the facility. [1994 c 214 § 14.]

**70.129.140 Quality of life—Rights.** (1) The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(2) Within reasonable facility rules designed to protect the rights and quality of life of residents, the resident has the right to:

(a) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(b) Interact with members of the community both inside and outside the facility;

(c) Make choices about aspects of his or her life in the facility that are significant to the resident;

(d) Wear his or her own clothing and determine his or her own dress, hair style, or other personal effects according to individual preference;

(e) Unless adjudged incompetent or otherwise found to be legally incapacitated, participate in planning care and treatment or changes in care and treatment;

(f) Unless adjudged incompetent or otherwise found to be legally incapacitated, to direct his or her own service plan and changes in the service plan, and to refuse any particular service so long as such refusal is documented in the record of the resident.

(3)(a) A resident has the right to organize and participate in resident groups in the facility.

(b) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(c) The facility must provide a resident or family group, if one exists, with meeting space.

(d) Staff or visitors may attend meetings at the group's invitation.

(e) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(f) The resident has the right to refuse to perform services for the facility except as voluntarily agreed by the resident and the facility in the resident's service plan.

(4) A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(5) A resident has the right to:

(a) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(b) Receive notice before the resident's room or roommate in the facility is changed.

(6) A resident has the right to share a double room with his or her spouse or domestic partner when residents who are married to each other or in a domestic partnership with each other live in the same facility and both spouses or both domestic partners consent to the arrangement. [2008 c 6 § 304; 1994 c 214 § 15.]

Additional notes found at www.leg.wa.gov

**70.129.150 Disclosure of fees and notice requirements—Deposits.** (1) Prior to admission, all long-term care facilities or nursing facilities licensed under chapter 18.51 RCW that require payment of an admissions fee, deposit, or a minimum stay fee, by or on behalf of a person seeking admission to the long-term care facility or nursing facility, shall provide the resident, or resident representative, full disclosure in writing in a language the resident or resident representative understands, a statement of the amount of any admissions fees, deposits, prepaid charges, or minimum stay fees. The facility shall also disclose to the person, or resident representative, the facility's advance notice or transfer requirements, prior to admission. In addition, the long-term care facility or nursing facility shall also fully disclose in writing prior to admission what portion of the deposits, admissions fees, prepaid charges, or minimum stay fees will be refunded

to the resident or resident representative to the extent provided by law, if the resident leaves the long-term care facility or nursing facility. Receipt of the disclosures required under this subsection must be acknowledged in writing. If the facility does not provide these disclosures, the deposits, admissions fees, prepaid charges, or minimum stay fees may not be kept by the facility. If a resident dies or is hospitalized or is transferred to another facility for more appropriate care and does not return to the original facility, the facility shall refund any deposit or charges already paid less the facility's per diem rate for the days the resident actually resided or reserved or retained a bed in the facility notwithstanding any minimum stay policy or discharge notice requirements, except that the facility may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private-pay resident's move, not to exceed five days' per diem charges, unless the resident has given advance notice in compliance with the admission agreement. All long-term care facilities or nursing facilities covered under this section are required to refund any and all refunds due the resident or resident representative to the extent provided by law, within thirty days from the resident's date of discharge from the facility. Nothing in this section applies to provisions in contracts negotiated between a nursing facility or long-term care facility and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(2) Where a long-term care facility or nursing facility requires the execution of an admission contract by or on behalf of an individual seeking admission to the facility, the terms of the contract shall be consistent with the requirements of this section, and the terms of an admission contract by a long-term care facility shall be consistent with the requirements of this chapter. [2021 c 159 § 28; 1997 c 392 § 206; 1994 c 214 § 16.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**70.129.160 Ombuds implementation duties.** The long-term care ombuds shall monitor implementation of this chapter and determine the degree to which veterans' homes, nursing facilities, adult family homes, enhanced services facilities, and assisted living facilities ensure that residents are able to exercise their rights. The long-term care ombuds shall consult with the departments of health and social and health services, long-term care facility organizations, resident groups, senior citizen organizations, and organizations concerning individuals with disabilities. [2020 c 278 § 14; 2013 c 23 § 187; 2012 c 10 § 58; 1998 c 245 § 113; 1994 c 214 § 18.]

**Application—2012 c 10:** See note following RCW 18.20.010.

**70.129.170 Nonjudicial remedies through regulatory authorities encouraged—Remedies cumulative.** The legislature intends that long-term care facility or nursing home residents, their family members or guardians, the long-term care ombuds, protection and advocacy personnel identified in RCW 70.129.110(5) (e) and (f), and others who may seek to assist long-term care facility or nursing home residents, use the least formal means available to satisfactorily resolve disputes that may arise regarding the rights conferred by the provisions of this chapter and RCW 18.20.180, 18.51.009, 72.36.037, and 70.128.125. Wherever feasible, direct discussion with facility personnel or administrators should be employed. Failing that, and where feasible, recourse may be sought through state or federal long-term care or nursing home licensing or other regulatory authorities. However, the procedures suggested in this section are cumulative and shall not restrict an agency or person from seeking a remedy provided by law or from obtaining additional relief based on the same facts, including any remedy available to an individual at common law. Chapter 214, Laws of 1994 is not intended to, and shall not be construed to, create any right of action on the part of any individual beyond those in existence under any common law or statutory doctrine. Chapter 214, Laws of 1994 is not intended to, and shall not be construed to, operate in derogation of any right of action on the part of any individual in existence on June 9, 1994. [2013 c 23 § 188; 1994 c 214 § 19.]

**70.129.180 Facility's policy on accepting medicaid as a payment source—Disclosure.** (1) A long-term care facility must fully disclose to residents the facility's policy on accepting medicaid as a payment source. The policy shall clearly state the circumstances under which the facility provides care for medicaid eligible residents and for residents who may later become eligible for medicaid.

(2) The policy under this section must be provided to residents orally and in writing prior to admission, in a language that the resident or resident representative understands. The written policy must be in type font no smaller than fourteen point and written on a page that is separate from other documents. The policy must be signed and dated by the resident or resident representative to the extent provided by law, if the resident lacks capacity. The facility must retain a copy of the disclosure. Current residents must receive a copy of the policy consistent with this section by July 26, 2009. [2021 c 159 § 29; 2009 c 489 § 1.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**70.129.185 Training materials for leadership and staff—Local health jurisdictions.** The department of social and health services and the department of health, in collaboration with the state office of the long-term care ombuds and representatives of long-term care facilities, shall develop training materials to educate the leadership and staff of local health jurisdictions on the state's long-term care system. The training materials must provide information to assist local health jurisdiction personnel when establishing and enforcing public health measures in long-term care facilities and nursing homes, including:

(1) All applicable state and federal resident rights, including the due process rights of residents; and

(2) The process for local health jurisdiction personnel to report abuse and neglect in facilities and nursing homes, including during periods when visitation may be limited. [2021 c 159 § 19.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**70.129.190 Essential support person.** (1) In circumstances in which limitations must be placed on resident visitation due to a public health emergency or other threat to the health and safety of the residents and staff of a facility or nursing home, residents must still be allowed access to an essential support person, subject to reasonable limitations on such access tailored to protecting the health and safety of essential support persons, residents, and staff.

(2) The facility or nursing home must allow private, in-person access to the resident by the essential support person in the resident's room. If the resident resides in a shared room, and the roommate, or the roommate's resident representative, if any, does not consent or the visit cannot be conducted safely in a shared room, then the facility or nursing home shall designate a substitute location in the facility or nursing home for the resident and essential support person to visit.

(3) The facility or nursing home shall develop and implement reasonable conditions on access by an essential support person tailored to protecting the health and safety of the essential support person, residents, and staff, based upon the particular public health emergency or other health or safety threat.

(4) The facility or nursing home may temporarily suspend an individual's designation as an essential support person for failure to comply with these requirements or reasonable conditions developed and implemented by the facility or nursing home that are tailored to protecting that health and safety of the essential support person, residents, and staff, based upon the particular public health emergency or other health or safety threat. Unless immediate action is necessary to prevent an imminent and serious threat to the health or safety of residents or staff, the facility or nursing home shall attempt to resolve the concerns with the essential support person and the resident prior to temporarily suspending the individual's designation as an essential support person. The suspension shall last no longer than 48 hours during which time the facility or nursing home must contact the department for guidance and must provide the essential support person:

(a) Information regarding the steps the essential support person must take to resume the visits, such as agreeing to comply with reasonable conditions tailored to protecting the health and safety of the essential support person, residents, and staff, based upon the particular public health emergency or other health or safety threat;

(b) The contact information for the long-term care ombuds program; and

(c) As appropriate, the contact information for the developmental disabilities ombuds, the agency responsible for the protection and advocacy system for individuals with developmental disabilities, and the agency responsible for the protection and advocacy system for individuals with mental illness.

(5) For the purposes of this section, "essential support person" means an individual who is:

(a) At least 18 years of age;

(b) Designated by the resident, or by the resident's representative, if the resident is determined to be incapacitated or otherwise legally incapacitated; and

(c) Necessary for the resident's emotional, mental, or physical well-being during situations that include, but are not limited to, circumstances involving compassionate care or end-of-life care, circumstances where visitation from a familiar person will assist with important continuity of care or the reduction of confusion and anxiety for residents with cognitive impairments, or other circumstances where the presence of an essential support person will prevent or reduce significant emotional distress to the resident. [2021 c 159 § 20.]

**Findings—2021 c 159:** See note following RCW 18.20.520.

**70.129.901 Conflict with federal requirements—1994 c 214.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [1994 c 214 § 27.]

## Chapter 70.136 RCW
## HAZARDOUS MATERIALS INCIDENTS

Sections



*Emergency management: Chapter 38.52 RCW.*

*Hazardous waste disposal: Chapter 70A.300 RCW.*

*Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.*

*Transport of hazardous materials, state patrol authority over: Chapter 46.48 RCW.*

**70.136.010 Legislative intent.** It is the intent of the legislature to promote and encourage advance planning, cooperation, and mutual assistance between applicable political subdivisions of the state and persons with equipment, personnel, and expertise in the handling of hazardous materials incidents, by establishing limitations on liability for those persons responding in accordance with the provisions of RCW 70.136.020 through 70.136.070. [1982 c 172 § 1.]

**Reviser's note:** Although 1982 c 172 directed that sections 1 through 7 of that enactment be added to chapter 4.24 RCW, codification of these sections as a new chapter in Title 70 RCW appears more appropriate.

**70.136.020 Definitions.** The definitions set forth in this section apply throughout RCW 70.136.010 through 70.136.070.

(1) "Hazardous materials" means:

(a) Materials which, if not contained may cause unacceptable risks to human life within a specified area adjacent to the spill, seepage, fire, explosion, or other release, and will, consequently, require evacuation;

(b) Materials that, if spilled, could cause unusual risks to the general public and to emergency response personnel responding at the scene;

(c) Materials that, if involved in a fire will pose unusual risks to emergency response personnel;

(d) Materials requiring unusual storage or transportation conditions to assure safe containment; or

(e) Materials requiring unusual treatment, packaging, or vehicles during transportation to assure safe containment.

(2) "Applicable political subdivisions of the state" means cities, towns, counties, fire districts, and those port authorities with emergency response capabilities.

(3) "Person" means an individual, partnership, corporation, or association.

(4) "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

(5) "Hazardous materials incident" means an incident creating a danger to persons, property, or the environment as a result of spillage, seepage, fire, explosion, or release of hazardous materials, or the possibility thereof.

(6) "Governing body" means the elected legislative council, board, or commission or the chief executive of the applicable political subdivision of the state with public safety responsibility.

(7) "Incident command agency" means the predesignated or appointed agency charged with coordinating all activities and resources at the incident scene.

(8) "Representative" means an agent from the designated hazardous materials incident command agency with the authority to secure the services of persons with hazardous materials expertise or equipment.

(9) "Profit" means compensation for rendering care, assistance, or advice in excess of expenses actually incurred. [1987 c 238 § 1; 1982 c 172 § 2.]

**70.136.030 Incident command agencies—Designation by political subdivisions.** The governing body of each applicable political subdivision of this state shall designate a hazardous materials incident command agency within its respective boundaries, and file this designation with the *director of community, trade, and economic development. In designating an incident command agency, the political subdivision shall consider the training, manpower, expertise, and equipment of various available agencies as well as the Uniform Fire Code and other existing codes and regulations. Along state and interstate highway corridors, the Washington state patrol shall be the designated incident command agency unless by mutual agreement that role has been assumed by another designated incident command agency. If a political subdivision has not designated an incident command agency within six months after July 26, 1987, the Washington state patrol shall then assume the role of incident command agency by action of the chief until a designation has been made. [1995 c 399 § 197; 1987 c 238 § 2; 1986 c 266 § 50; 1985 c 7 § 132; 1984 c 165 § 1; 1982 c 172 § 4.]

***Reviser's note:** The "director of community, trade, and economic development" was changed to the "director of commerce" by 2009 c 565.

Additional notes found at www.leg.wa.gov

**70.136.035 Incident command agencies—Assistance from state patrol.** In political subdivisions where an incident command agency has been designated, the Washington state patrol shall continue to respond with a supervisor to provide assistance to the incident command agency. [1987 c 238 § 3.]

**70.136.040 Incident command agencies—Emergency assistance agreements.** Hazardous materials incident command agencies, so designated by all applicable political subdivisions of the state, are authorized and encouraged, prior to a hazardous materials incident, to enter individually or jointly into written hazardous materials emergency assistance agreements with any person whose knowledge or expertise is deemed potentially useful. [1982 c 172 § 3.]

**70.136.050 Persons and agencies rendering emergency aid in hazardous materials incidents—Immunity from liability—Limitations.** An incident command agency in the good faith performance of its duties, is not liable for civil damages resulting from any act or omission in the performance of its duties, other than acts or omissions constituting gross negligence or wilful or wanton misconduct.

Any person or public agency whose assistance has been requested by an incident command agency, who has entered into a written hazardous materials assistance agreement before or at the scene of the incident pursuant to RCW 70.136.060 and 70.136.070, and who, in good faith, renders emergency care, assistance, or advice with respect to a hazardous materials incident, is not liable for civil damages resulting from any act or omission in the rendering of such care, assistance, or advice, other than acts or omissions constituting gross negligence or wilful or wanton misconduct. [1987 c 238 § 4; 1984 c 165 § 2; 1982 c 172 § 5.]

**70.136.060 Written emergency assistance agreements—Terms and conditions—Records.** Hazardous materials emergency assistance agreements which are executed prior to a hazardous materials incident shall include the following terms and conditions:

(1) The person or public agency requested to assist shall not be obligated to assist;

(2) The person or public agency requested to assist may act only under the direction of the incident command agency or its representative;

(3) The person or public agency requested to assist may withdraw its assistance if it deems the actions or directions of the incident command agency to be contrary to accepted hazardous materials response practices;

(4) The person or public agency requested to assist shall not profit from rendering the assistance;

(5) Any person responsible for causing the hazardous materials incident shall not be covered by the liability standard defined in RCW 70.136.050.

It is the responsibility of both parties to ensure that mutually agreeable procedures are established for identifying the incident command agency when assistance is requested, for

recording the name of the person or public agency whose assistance is requested, and the time and date of the request, which records shall be retained for three years by the incident command agency. A copy of the official incident command agency designation shall be a part of the assistance agreement specified in this section. [1987 c 238 § 5; 1982 c 172 § 6.]

**70.136.070 Verbal emergency assistance agreements—Good Samaritan law—Notification—Form.** (1) Verbal hazardous materials emergency assistance agreements may be entered into at the scene of an incident where execution of a written agreement prior to the incident is not possible. A notification of the terms of this section shall be presented at the scene by the incident command agency or its representative to the person or public agency whose assistance is requested. The incident command agency and the person or public agency whose assistance is requested shall both sign the notification which appears in subsection (2) of this section, indicating the date and time of signature. If a requesting incident command agency deliberately misrepresents individual or agency status, that agency shall assume full liability for any damages resulting from the actions of the person or public agency whose assistance is requested, other than those damages resulting from gross negligence or wilful or wanton misconduct.

(2) The notification required by subsection (1) of this section shall be in substantially the following form:

NOTIFICATION OF "GOOD SAMARITAN" LAW

You have been requested to provide emergency assistance by a representative of a hazardous materials incident command agency. To encourage your assistance, the Washington state legislature has passed "Good Samaritan" legislation (RCW 70.136.050) to protect you from potential liability. The law reads, in part:

> "Any person or public agency whose assistance has been requested by an incident command agency, who has entered into a written hazardous materials assistance agreement . . . at the scene of the incident pursuant to . . . RCW 70.136.070, and who, in good faith, renders emergency care, assistance, or advice with respect to a hazardous materials incident, is not liable for civil damages resulting from any act or omission in the rendering of such care, assistance, or advice, other than acts or omissions constituting gross negligence or wilful or wanton misconduct."

The law requires that you be advised of certain conditions to ensure your protection:

1. You are not obligated to assist and you may withdraw your assistance at any time.
2. You cannot profit from assisting.
3. You must agree to act under the direction of the incident command agency.
4. You are not covered by this law if you caused the initial accident.

I have read and understand the above.

(Name) . . . . . .

Date . . . . . Time . . . . . .

I am a representative of a designated hazardous materials incident command agency and I am authorized to make this request for assistance.

(Name) . . . . . .

(Agency) . . . . . .

Date . . . . . Time . . . . . .

[1987 c 238 § 6; 1982 c 172 § 7.]

## Chapter 70.155 RCW
## TOBACCO—ACCESS TO MINORS

Sections



**70.155.005 Legislative findings.** (1) The legislature finds that chapter 15, Laws of 2019 furthers the public health, safety, and welfare by reducing youth access to addictive and harmful products.

(2) While present state law prohibits the sale and distribution of tobacco and vapor products to youth under the age of eighteen, youth obtain these products with ease.

(3) The legislature recognizes that many people who purchase cigarettes for minors are between the ages of eighteen to twenty. By decreasing the number of eligible buyers in high school, raising the minimum legal age to sell tobacco and vapor products will decrease the access of students to tobacco products. According to the 2014 healthy youth survey, forty-one percent of tenth graders say it is "sort of easy" to "very easy" to get cigarettes. Nationally, among youth who smoke, more than twice as many get their cigarettes from social sources than from a store or vending machine.

(4) The legislature recognizes that ninety-five percent of smokers start by the age of twenty-one.

(5) The legislature recognizes that jurisdictions across the country are increasing the age of sale for tobacco products to twenty-one. As of October 2018, six states (California, Hawaii, Maine, Massachusetts, New Jersey, and Oregon), the District of Columbia, the territory of Guam, and more than three hundred fifty cities and counties in twenty-one states have raised the minimum legal sales age to twenty-one. Approximately thirty percent of the population of the United States is covered by such a policy.

(6) The legislature recognizes the scientific report issued by the national institute of medicine, one of the most prestigious scientific authorities in the United States, which pre-

dicted that increasing the age of sale for tobacco products in the United States to twenty-one will significantly reduce the number of adolescents and young adults who start smoking, reduce deaths from smoking, and immediately improve the health of adolescents, young adults, young mothers, and their children.

(7) The legislature recognizes the national institute of medicine report predicted increasing the tobacco sale age will make the greatest difference among those ages fifteen to seventeen, who will no longer be able to pass for legal age and will have a harder time getting tobacco products from older classmates and friends. The national institute of medicine report also predicted raising the minimum age for the sale of tobacco products in the United States to twenty-one will, over time, reduce the smoking rate by about twelve percent and smoking-related deaths by ten percent.

(8) The legislature recognizes scientific study of the brain is increasingly showing that the brain continues to be highly vulnerable to addictive substances until age twenty-five. Nicotine adversely affects the development of the cerebral cortex and hippocampus in adolescents.

(9) The legislature recognizes that a strategy of increasing the minimum legal age for alcohol was highly successful in reducing adverse effects of alcohol consumption. A national drinking age of twenty-one resulted in reduced alcohol consumption among youth, decreased alcohol dependence, and has led to significant reductions in drunk driving fatalities.

(10) The legislature recognizes that if the age of sale is raised to twenty-one, eighteen to twenty year olds will likely substitute other in-store purchases for cigarettes. The legislature recognizes that when Needham, Massachusetts raised the smoking age to twenty-one in 2005, no convenience stores went out of business.

(11) The legislature recognizes that reducing the youth smoking rate will save lives and reduce health care costs. Every year, two billion eight hundred ten million dollars in health care costs can be directly attributed to tobacco use in Washington. Smoking-caused government expenditures cost every Washington household eight hundred twenty-one dollars per year.

(12) Federal law requires states to enforce laws prohibiting sale and distribution of tobacco products to minors in a manner that can reasonably be expected to reduce the extent to which the products are available to minors. It is imperative to effectively reduce the sale, distribution, and availability of tobacco products to minors. [2019 c 15 § 2; 1993 c 507 § 1.]

**Effective date—2019 c 15:** See note following RCW 26.28.080.

*Minors and tobacco: RCW 26.28.080.*

*Raising the minimum legal age of sale in certain compacts, consultations with federally recognized Indian tribes: RCW 43.06.468.*

*Taxation: Chapters 82.24 and 82.26 RCW.*

*Tobacco on school grounds: RCW 28A.210.310.*

**70.155.010 Definitions.** The definitions set forth in RCW 82.24.010 apply to this chapter. In addition, for the purposes of this chapter, unless otherwise required by the context:

(1) "Board" means the Washington state liquor and cannabis board.

(2) "Internet" means any computer network, telephonic network, or other electronic network.

(3) "Sample" means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotion purposes.

(4) "Sampling" means the distribution of samples to members of the public.

(5) "Tobacco product" means a product that contains tobacco and is intended for human use, including any product defined in RCW 82.24.010(2) or 82.26.010(21), except that for the purposes of RCW 70.155.140 only, "tobacco product" does not include cigars defined in RCW 82.26.010 as to which one thousand units weigh more than three pounds.

(6) "Vapor product" has the same meaning as defined in RCW 70.345.010. [2019 c 15 § 3; 2009 c 278 § 1; 2006 c 14 § 2; 2003 c 113 § 1; 1993 c 507 § 2.]

**Effective date—2019 c 15:** See note following RCW 26.28.080.

**Finding—Intent—2006 c 14:** See note following RCW 70.155.050.

*Raising the minimum legal age of sale in certain compacts, consultations with federally recognized Indian tribes: RCW 43.06.468.*

**70.155.020 Cigarette wholesaler or retailer licensee duties—Prohibition sign to be posted.** A person who holds a license issued under RCW 82.24.520 or 82.24.530 shall:

(1) Display the license or a copy in a prominent location at the outlet for which the license is issued; and

(2) Display a sign concerning the prohibition of tobacco sales to persons under the age of twenty-one.

Such sign shall:

(a) Be posted so that it is clearly visible to anyone purchasing tobacco products from the licensee;

(b) Be designed and produced by the department of health to read: "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 21 IS STRICTLY PROHIBITED BY STATE LAW. PHOTO ID REQUIRED UPON REQUEST"; and

(c) Be provided free of charge by the liquor and cannabis board. [2019 c 15 § 5; 1993 c 507 § 3.]

**Effective date—2019 c 15:** See note following RCW 26.28.080.

*Raising the minimum legal age of sale in certain compacts, consultations with federally recognized Indian tribes: RCW 43.06.468.*

**70.155.030 Cigarette machine location.** (1) No person shall sell or permit to be sold any tobacco product through any device that mechanically dispenses tobacco products unless the device is located fully within premises from which persons under the age of twenty-one are prohibited or in industrial worksites where persons under the age of twenty-one are not employed and not less than ten feet from all entrance or exit ways to and from each premise.

(2) The board shall adopt rules that allow an exception to the requirement that a device be located not less than ten feet from all entrance or exit ways to and from a premise if it is architecturally impractical for the device to be located not less than ten feet from all entrance and exit ways. [2019 c 15 § 8; 1994 c 202 § 1; 1993 c 507 § 4.]

**Effective date—2019 c 15:** See note following RCW 26.28.080.

*Raising the minimum legal age of sale in certain compacts, consultations with federally recognized Indian tribes: RCW 43.06.468.*

**70.155.040 Cigarettes must be sold in original package—Exception.** No person shall sell or permit to be sold cigarettes not in the original unopened package or container to which the stamps required by RCW 82.24.060 have been affixed.

This section does not apply to the sale of loose leaf tobacco by a retail business that generates a minimum of sixty percent of annual gross sales from the sale of tobacco products. [1993 c 507 § 5.]

**70.155.050 Sampling prohibited—Penalty.** (1) No person may engage in the business of sampling tobacco products.

(2) A violation of this section is a misdemeanor. [2006 c 14 § 3; 1993 c 507 § 6.]

**Reviser's note:** In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

**Finding—Intent—2006 c 14:** "The legislature recognizes that tobacco use among children is a serious and preventable health problem. Every day sixty-five more children in Washington state become smokers, and every year more than eight thousand two hundred state residents die from tobacco-related illnesses. The legislature further finds that tobacco samples contribute to children's access to tobacco products by providing a no-cost initiation that encourages minors to experiment with nicotine at early ages. Sampling activity often occurs in venues frequented by minors, and tobacco samples are distributed along with other promotional items that contain tobacco brand logos, thus increasing the appeal of the tobacco products as well as the chances that children will obtain them. Sampling events in this state have increased twenty-fold over the past nine years, and nationwide, tobacco industry spending on samples has increased significantly. It is therefore the intent of the legislature to protect minors from the influence of tobacco sampling by eliminating the distribution of samples in this state." [2006 c 14 § 1.]

**70.155.070 Coupons.** No person shall give or distribute cigarettes or other tobacco products to a person by a coupon if such coupon is redeemed in any manner that does not require an in-person transaction in a retail store. [1993 c 507 § 8.]

**70.155.080 Purchasing, possessing by persons under eighteen—Civil infraction—Jurisdiction.** (1) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes or tobacco products commits a class 3 civil infraction under chapter 7.80 RCW and is subject to a fine as set out in chapter 7.80 RCW or participation in up to four hours of community restitution, or both. The court may also require participation in a smoking cessation program. This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a *liquor control board, law enforcement, or local health department activity.

(2) Municipal and district courts within the state have jurisdiction for enforcement of this section. [2002 c 175 § 47; 1998 c 133 § 2; 1993 c 507 § 9.]

***Reviser's note:** The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

**Finding—Intent—1998 c 133:** "The legislature finds that the protection of adolescents' health requires a strong set of comprehensive health and law enforcement interventions. We know that youth are deterred from using alcohol in public because of existing laws making possession illegal. However, while the purchase of tobacco by youth is clearly prohibited, the possession of tobacco is not. It is the legislature's intent that youth hear consistent messages from public entities, including law enforcement, about public opposition to their illegal use of tobacco products." [1998 c 133 § 1.]

Additional notes found at www.leg.wa.gov

**70.155.090 Age identification requirement.** (1) Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the retailer or agent thereof, shall require the purchaser to present any one of the following officially issued identification that shows the purchaser's age and bears his or her signature and photograph: (a) Liquor control authority card of identification of a state or province of Canada; (b) driver's license, instruction permit, or identification card of a state or province of Canada; (c) "identicard" issued by the Washington state department of licensing under chapter 46.20 RCW; (d) United States military identification; (e) passport; (f) enrollment card, issued by the governing authority of a federally recognized Indian tribe located in Washington, that incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ninety days prior to implementation of an enrollment card under this subsection, the appropriate tribal authority shall give notice to the board. The board shall publish and communicate to licensees regarding the implementation of each new enrollment card; or (g) merchant marine identification card issued by the United States coast guard.

(2) It is a defense to a prosecution under RCW 26.28.080 that the person making a sale reasonably relied on any of the officially issued identification as defined in subsection (1) of this section. The *liquor control board shall waive the suspension or revocation of a license if the licensee clearly establishes that he or she acted in good faith to prevent violations and a violation occurred despite the licensee's exercise of due diligence. [2006 c 14 § 4; 2005 c 206 § 2; 1993 c 507 § 10.]

**Reviser's note:** *(1) The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

(2) In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

**Finding—Intent—2006 c 14:** See note following RCW 70.155.050.

**70.155.100 Penalties, sanctions, and actions against licensees.** (1) The liquor and cannabis board may suspend or revoke a retailer's license issued under RCW 82.24.510(1)(b) or 82.26.150(1)(b) held by a business at any location, or may impose a monetary penalty as set forth in subsection (3) of this section, if the liquor and cannabis board finds that the licensee has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

(2) Any retailer's licenses issued under RCW 70.345.020 to a person whose license or licenses under chapter 82.24 or 82.26 RCW have been suspended or revoked for violating RCW 26.28.080 must also be suspended or revoked during the period of suspension or revocation under this section.

(3) The sanctions that the liquor and cannabis board may impose against a person licensed under RCW 82.24.530 or

82.26.170 based upon one or more findings under subsection (1) of this section may not exceed the following:

(a) For violations of RCW 26.28.080, 70.155.020, or 21 C.F.R. Sec. 1140.14, and for violations of RCW 70.155.040 occurring on the licensed premises:

(i) A monetary penalty of two hundred dollars for the first violation within any three-year period;

(ii) A monetary penalty of six hundred dollars for the second violation within any three-year period;

(iii) A monetary penalty of two thousand dollars and suspension of the license for a period of six months for the third violation within any three-year period;

(iv) A monetary penalty of three thousand dollars and suspension of the license for a period of twelve months for the fourth violation within any three-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any three-year period;

(b) If the board finds that a person licensed under chapter 82.24 or 82.26 RCW and RCW 70.345.020 has violated RCW 26.28.080, each subsequent violation of either of the person's licenses counts as an additional violation within that three-year period.

(c) For violations of RCW 70.155.030, a monetary penalty in the amount of one hundred dollars for each day upon which such violation occurred;

(d) For violations of RCW 70.155.050, a monetary penalty in the amount of six hundred dollars for each violation;

(e) For violations of RCW 70.155.070, a monetary penalty in the amount of two thousand dollars for each violation.

(4) The liquor and cannabis board may impose a monetary penalty upon any person other than a licensed cigarette or tobacco product retailer if the liquor and cannabis board finds that the person has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

(5) The monetary penalty that the liquor and cannabis board may impose based upon one or more findings under subsection (4) of this section may not exceed the following:

(a) For violation of RCW 26.28.080 or 70.155.020, one hundred dollars for the first violation and two hundred dollars for each subsequent violation;

(b) For violations of RCW 70.155.030, two hundred dollars for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040, two hundred dollars for each violation;

(d) For violations of RCW 70.155.050, six hundred dollars for each violation;

(e) For violations of RCW 70.155.070, two thousand dollars for each violation.

(6) The liquor and cannabis board may develop and offer a class for retail clerks and use this class in lieu of a monetary penalty for the clerk's first violation.

(7) The liquor and cannabis board may issue a cease and desist order to any person who is found by the liquor and cannabis board to have violated or intending to violate the provisions of this chapter, RCW 26.28.080, 82.24.500, or 82.26.190 requiring such person to cease specified conduct that is in violation. The issuance of a cease and desist order does not preclude the imposition of other sanctions authorized by this statute or any other provision of law.

(8) The liquor and cannabis board may seek injunctive relief to enforce the provisions of RCW 26.28.080, 82.24.500, 82.26.190 or this chapter. The liquor and cannabis board may initiate legal action to collect civil penalties imposed under this chapter if the same have not been paid within thirty days after imposition of such penalties. In any action filed by the liquor and cannabis board under this chapter, the court may, in addition to any other relief, award the liquor and cannabis board reasonable attorneys' fees and costs.

(9) All proceedings under subsections (1) through (7) of this section shall be conducted in accordance with chapter 34.05 RCW.

(10) The liquor and cannabis board may reduce or waive either the penalties or the suspension or revocation of a license, or both, as set forth in this chapter where the elements of proof are inadequate or where there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a retailer. Further, the board may exceed penalties set forth in this chapter based on aggravating circumstances. [2016 sp.s. c 38 § 23; 2006 c 14 § 5; 1998 c 133 § 3; 1993 c 507 § 11.]

**Reviser's note:** In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

**Finding—Intent—2006 c 14:** See note following RCW 70.155.050.

**Finding—Intent—1998 c 133:** See note following RCW 70.155.080.

**70.155.110 Liquor control board authority.** (1) The *liquor control board shall, in addition to the board's other powers and authorities, have the authority to enforce the provisions of this chapter and RCW **26.28.080(4) and 82.24.500. The *liquor control board shall have full power to revoke or suspend the license of any retailer or wholesaler in accordance with the provisions of RCW 70.155.100.

(2) The *liquor control board and the board's authorized agents or employees shall have full power and authority to enter any place of business where tobacco products are sold for the purpose of enforcing the provisions of this chapter.

(3) For the purpose of enforcing the provisions of this chapter and RCW **26.28.080(4) and 82.24.500, a peace officer or enforcement officer of the *liquor control board who has reasonable grounds to believe a person observed by the officer purchasing, attempting to purchase, or in possession of tobacco products is under the age of eighteen years of age, may detain such person for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth. Further, tobacco products possessed by persons under the age of eighteen years of age are considered contraband and may be seized by a peace officer or enforcement officer of the *liquor control board.

(4) The *liquor control board may work with local county health departments or districts and local law enforcement agencies to conduct random, unannounced, inspections to assure compliance. [1993 c 507 § 12.]

**Reviser's note:** *(1) The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

**(2) RCW 26.28.080 was amended by 1994 sp.s. c 7 § 437, removing the numbered subsections. RCW 26.28.080 was subsequently amended by 2013 c 47 § 1, adding numbered subsections (1) through (3). RCW 26.28.080 was subsequently amended by 2016 sp.s. c 38 § 1. There is no subsection (4).

**70.155.120 Youth tobacco and vapor products prevention account—Source and use of funds.** (1) The youth tobacco and vapor products prevention account is created in the state treasury. All fees collected pursuant to RCW 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and funds collected by the liquor and cannabis board from the imposition of monetary penalties shall be deposited into this account, except that ten percent of all such fees and penalties shall be deposited in the state general fund.

(2) Moneys appropriated from the youth tobacco and vapor products prevention account to the department of health shall be used by the department of health for implementation of this chapter, including collection and reporting of data regarding enforcement and the extent to which access to tobacco products and vapor products by youth has been reduced.

(3) The department of health shall enter into interagency agreements with the liquor and cannabis board to pay the costs incurred, up to thirty percent of available funds, in carrying out its enforcement responsibilities under this chapter. Such agreements shall set forth standards of enforcement, consistent with the funding available, so as to reduce the extent to which tobacco products and vapor products are available to individuals under the age of twenty-one. The agreements shall also set forth requirements for data reporting by the liquor and cannabis board regarding its enforcement activities. During the 2019-2021 fiscal biennium, the department of health shall pay the costs incurred, up to twenty-three percent of available funds, in carrying out its enforcement responsibilities.

(4) The department of health, the liquor and cannabis board, and the department of revenue shall enter into an interagency agreement for payment of the cost of administering the tobacco retailer licensing system and for the provision of quarterly documentation of tobacco wholesaler, retailer, and vending machine names and locations.

(5) The department of health shall, within up to seventy percent of available funds, provide grants to local health departments or other local community agencies to develop and implement coordinated tobacco and vapor product intervention strategies to prevent and reduce tobacco and vapor product use by youth. During the 2019-2021 fiscal biennium, the department of health shall, within up to seventy-seven percent of available funds, provide grants to local health departments or other local community agencies to develop and implement coordinated tobacco and vapor product intervention strategies to prevent and reduce tobacco and vapor product use by youth. [2019 c 415 § 979; 2019 c 15 § 10; 2016 sp.s. c 38 § 2; 1993 c 507 § 13.]

**Reviser's note:** This section was amended by 2019 c 15 § 10 and by 2019 c 415 § 979, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2019 c 415:** See note following RCW 28B.20.476.

**Effective date—2019 c 15:** See note following RCW 26.28.080.

*Raising the minimum legal age of sale in certain compacts, consultations with federally recognized Indian tribes: RCW 43.06.468.*

**70.155.130 Preemption of political subdivisions.** This chapter preempts political subdivisions from adopting or enforcing requirements for the licensure and regulation of tobacco product promotions and sales within retail stores, except that political subdivisions that have adopted ordinances prohibiting sampling by January 1, 1993, may continue to enforce these ordinances. No political subdivision may: (1) Impose fees or license requirements on retail businesses for possessing or selling cigarettes or tobacco products, other than general business taxes or license fees not primarily levied on tobacco products; or (2) regulate or prohibit activities covered by RCW 70.155.020 through 70.155.080. This chapter does not otherwise preempt political subdivisions from adopting ordinances regulating the sale, purchase, use, or promotion of tobacco products not inconsistent with chapter 507, Laws of 1993. [1993 c 507 § 14.]

**70.155.140 Shipping or transporting tobacco products ordered or purchased by mail or through the internet prohibited—Penalty.** (1) A person may not:

(a) Ship or transport, or cause to be shipped or transported, any tobacco product ordered or purchased by mail or through the internet to anyone in this state other than a licensed wholesaler or retailer; or

(b) With knowledge or reason to know of the violation, provide substantial assistance to a person who is in violation of this section.

(2)(a) A person who knowingly violates subsection (1) of this section is guilty of a class C felony, except that the maximum fine that may be imposed is five thousand dollars.

(b) In addition to or in lieu of any other civil or criminal remedy provided by law, a person who has violated subsection (1) of this section is subject to a civil penalty of up to five thousand dollars for each violation. The attorney general, acting in the name of the state, may seek recovery of the penalty in a civil action in superior court. For purposes of this subsection, each shipment or transport of tobacco products constitutes a separate violation.

(3) The attorney general may seek an injunction in superior court to restrain a threatened or actual violation of subsection (1) of this section and to compel compliance with subsection (1) of this section.

(4) Any violation of subsection (1) of this section is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for violation of subsection (1) of this section lies solely with the attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

(5)(a) In any action brought under this section, the state is entitled to recover, in addition to other relief, the costs of investigation, expert witness fees, costs of the action, and reasonable attorneys' fees.

(b) If a court determines that a person has violated subsection (1) of this section, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the general fund.

(6) Unless otherwise expressly provided, the penalties or remedies, or both, under this section are in addition to any other penalties and remedies available under any other law of this state. [2009 c 278 § 2.]

**70.155.150 Licensee compliance with certain other laws.** (1) A person who holds a license issued under chapter 82.24 or 82.26 RCW or RCW 70.345.020 must conduct the business and maintain the premises in compliance with Titles 9 and 9A RCW and chapter 69.50 RCW.

(2) The board may revoke or suspend a license issued under chapter 82.24 or 82.26 RCW or RCW 70.345.020 upon sufficient cause showing a violation of this section. [2016 sp.s. c 38 § 30.]

## Chapter 70.157 RCW
## NATIONAL UNIFORM TOBACCO SETTLEMENT—NONPARTICIPATING TOBACCO PRODUCT MANUFACTURERS

Sections



**70.157.005 Findings and purpose.** (a) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise. [1999 c 393 § 1.]

Additional notes found at www.leg.wa.gov

**70.157.010 Definitions.** (a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette".

(e) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with RCW 70.157.020(b).

(g) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(h) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(i) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in paragraph (1) or (2).

The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1)-(3) above.

(j) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs bearing the excise tax stamp of the State or "roll-your-own" tobacco containers. The department of revenue shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year. [1999 c 393 § 2.]

Additional notes found at www.leg.wa.gov

**70.157.020 Requirements.** ***(Contingent expiration date.)*** Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after May 18, 1999, shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—

1999: $.0094241 per unit sold after May 18, 1999;

2000: $.0104712 per unit sold;

for each of 2001 and 2002: $.0136125 per unit sold;

for each of 2003 through 2006: $.0167539 per unit sold;

for each of 2007 and each year thereafter: $.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold, had it been a Participating Manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. The violator shall also pay the State's costs and attorney's fees incurred during a successful prosecution under this paragraph (3). [2003 c 342 § 1; 1999 c 393 § 3.]

Additional notes found at www.leg.wa.gov

**70.157.020 Requirements.** ***(Contingent effective date.)*** Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after May 18, 1999, shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—

1999: $.0094241 per unit sold after May 18, 1999;

2000: $.0104712 per unit sold;

for each of 2001 and 2002: $.0136125 per unit sold;

for each of 2003 through 2006: $.0167539 per unit sold;

for each of 2007 and each year thereafter: $.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. The violator shall also pay the State's costs and attorney's fees incurred during a successful prosecution under this paragraph (3). [1999 c 393 § 3.]

Additional notes found at www.leg.wa.gov

**70.157.030 Contingent expiration date—Court action.** If chapter 342, Laws of 2003 is held by a court of competent jurisdiction to be unconstitutional, then RCW 70.157.020(b)(2)(B) shall be repealed in its entirety. If RCW 70.157.020(b)(2) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then chapter 342, Laws of 2003 shall be repealed, and RCW 70.157.020(b)(2)(B) be restored as if no amendments had been made. Neither any holding of unconstitutionality nor the repeal of RCW 70.157.020(b)(2)(B) shall affect, impair, or invalidate any other portion of RCW 70.157.020 or the application of that section to any other person or circumstance, and the remaining portions of RCW 70.157.020 shall at all times continue in full force and effect. [2003 c 342 § 2.]

## Chapter 70.158 RCW
## TOBACCO PRODUCT MANUFACTURERS

Sections



**70.158.010 Findings.** The legislature finds that violations of RCW 70.157.020 threaten the integrity of the tobacco master settlement agreement, the fiscal soundness of the state, and the public health. The legislature finds the enacting procedural enhancements will help prevent violations and aid the enforcement of RCW 70.157.020 and thereby safeguard the master settlement agreement, the fiscal

soundness of the state, and the public health. The provisions of chapter 25, Laws of 2003 are not intended to and shall not be interpreted to amend chapter 70.157 RCW. [2003 c 25 § 1.]

**70.158.020 Definitions.** The following definitions apply to this chapter unless the context clearly requires otherwise.

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s," and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) "Board" means the *liquor control board.

(3) "Cigarette" has the same meaning as in RCW 70.157.010(d).

(4) "Director" means the director of the department of revenue except as otherwise noted.

(5) "Directory" means the directory to be created and published on a website by the attorney general pursuant to RCW 70.158.030(2).

(6) "Distributor" has the same meaning as in **RCW 82.26.010(3), except that for purposes of this chapter, no person is a distributor if that person does not deal with cigarettes as defined in this section.

(7) "Master settlement agreement" has the same meaning as in RCW 70.157.010(e).

(8) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(9) "Participating manufacturer" has the meaning given that term in section II(jj) of the master settlement agreement.

(10) "Qualified escrow fund" has the same meaning as in RCW 70.157.010(f).

(11) "Stamp" means "stamp" as defined in ***RCW 82.24.010(7) or as referred to in RCW 43.06.455(4).

(12) "Tobacco product manufacturer" has the same meaning as in RCW 70.157.010(i).

(13) "Units sold" has the same meaning as in RCW 70.157.010(j).

(14) "Wholesaler" has the same meaning as in RCW 82.24.010. [2003 c 25 § 2.]

**Reviser's note:** *(1) The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

**(2) RCW 82.26.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (3) to subsection (8).

***(3) RCW 82.24.010 was amended by 2012 2nd sp.s. c 4 § 1, changing subsection (7) to subsection (11).

**70.158.030 Tobacco product manufacturers—Certification—Attorney general to publish directory—Violations.** (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the attorney general a certification to the attorney general, no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, the tobacco product manufacturer is either a participating manufacturer; or is in full compliance with RCW 70.157.020(b)(1), including all payments required by that section or chapter 25, Laws of 2003.

(a) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(b) A nonparticipating manufacturer shall include in its certification: (i) A list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year; (ii) a list of all of its brand families that have been sold in the state at anytime during the current calendar year; (iii) indicating, by an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification; and (iv) identifying by name and address any other manufacturer of brand families in the preceding or current calendar year. The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(c) In the case of a nonparticipating manufacturer, the certification shall further certify:

(i) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice as required by RCW 70.158.040;

(ii) That the nonparticipating manufacturer: (A) Has established and continues to maintain a qualified escrow fund; and (B) has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(iii) That the nonparticipating manufacturer is in full compliance with RCW 70.157.020(b)(1) and this chapter, and any rules adopted pursuant thereto; and

(iv)(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established a qualified escrow fund required pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder; (B) the account number of the qualified escrow fund and any subaccount number for the state of Washington; (C) the amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing; and (D) the amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder.

(d) A tobacco product manufacturer may not include a brand family in its certification unless: (i) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement

agreement; and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of RCW 70.157.020(b)(1). Nothing in this section limits or otherwise affects the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of RCW 70.157.020.

(e) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

(2) Not later than November 1, 2003, the attorney general shall develop and publish on its website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of this section and all brand families that are listed in these certifications, except as noted below:

(a) The attorney general shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with subsection (1)(b) and (c) of this section, unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that: (i) Any escrow payment required pursuant to RCW 70.157.020(b)(1) for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or (ii) any outstanding final judgment, including interest, for a violation of RCW 70.157.020(b)(1) that has not been fully satisfied for the brand family or manufacturer.

(c) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter. The attorney general shall transmit, by email or other practicable means to each wholesaler or distributor, notice of any addition to or removal from the directory of any tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the wholesaler or distributor and a tobacco product manufacturer, the wholesaler or distributor shall be entitled to a refund from a tobacco product manufacturer for any money paid by the wholesaler or distributor to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the wholesaler or distributor on the date of notice by the attorney general of the removal from the directory of that tobacco product manufacturer or the brand family of the cigarettes. The attorney general shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the wholesaler or distributor any refund due.

(d) Every wholesaler and distributor shall provide and update as necessary an electronic mail address to the attorney general for the purpose of receiving any notifications as may be required by this chapter.

(e) A tobacco product manufacturer included in the directory may request that a new brand family be certified and added to the directory. Within forty-five business days of receiving the request, the attorney general will respond by either: (i) Certifying the new brand family; or (ii) denying the request. However, in cases where the attorney general determines that it needs clarification as to whether the requestor is actually the tobacco product manufacturer, the attorney general may take more time as needed to clarify the request, to locate and assemble information or documents needed to process the request, and to notify persons or agencies affected by the request.

(f) The website will state that chapter 25, Laws of 2003 applies only to cigarettes including, pursuant to the definition of "cigarettes" in chapter 25, Laws of 2003, roll-your-own tobacco.

(3) It is unlawful for any person (a) to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory, or to pay or cause to be paid the tobacco products tax on any package or container; or (b) to sell, offer, or possess for sale in this state or import for sale in this state, any cigarettes of a tobacco product manufacturer or brand family not included in the directory. [2003 c 25 § 3.]

**70.158.040 Nonresident, nonparticipating manufacturers—Agent for service of process.** (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this chapter and RCW 70.157.020(b)(1), may be served in any manner authorized by law. The service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of the attorney general.

(2) The nonparticipating manufacturer shall provide notice to the attorney general thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of the termination within five calendar days and include proof to the satisfaction of the attorney general of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose cigarettes are sold in this state, who has not appointed and engaged an agent as required in this section, shall be deemed to have appointed the secretary of state as the agent and may be pro-

ceeded against in courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory. [2003 c 25 § 4.]

**70.158.050 Reports, records—Confidentiality, disclosures, voluntary waivers—Escrow payments.** (1) In addition to the reporting requirements under *RCW 70.157.010(j) and the rules adopted thereunder, not later than twenty-five calendar days after the end of each calendar month, and more frequently if directed by the director, each wholesaler and distributor shall submit information the director requires to facilitate compliance with this chapter, including, but not limited to, a list by brand family of the total number of cigarettes, or, in the case of roll-your-own, the equivalent stick count for which the wholesaler or distributor affixed stamps during the previous calendar month or otherwise paid the tax due for the cigarettes. Each wholesaler and distributor shall maintain and make available to the director, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general or the director for a period of five years.

(2) Information or records required to be furnished to the department, the board, or the attorney general are confidential and shall not be disclosed. However, the director and the board are authorized to disclose to the attorney general any information received under this chapter and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this chapter. The director, the board, and the attorney general may share with each other the information received under this chapter, and may share information with other federal, state, or local agencies, including without limitation the board, only for purposes of enforcement of this chapter, RCW 70.157.020, or corresponding laws of other states. If a tobacco product manufacturer that is required to establish a qualified escrow fund under RCW 70.157.020 disputes the attorney general's determination of what that manufacturer needs to place into escrow, and the attorney general determines that the dispute can likely be resolved by disclosing reports from the relevant distributors and wholesalers indicating the sales or purchases of the tobacco manufacturer's products, then the attorney general shall request voluntary waivers of confidentiality so that the reports may be disclosed to the tobacco product manufacturer to help resolve the dispute. If the waivers are provided, then the director and the attorney general are authorized to disclose the waived confidential information collected on the sales or purchases of cigarettes to the tobacco product manufacturer. However, before the attorney general or the director discloses the waived confidential information, the tobacco product manufacturer must provide to the attorney general all records relating to its sales or purchases of cigarettes in dispute. The information provided to a tobacco product manufacturer pursuant to this subsection (2) shall be limited to brands or products of that manufacturer only, may be used only for the limited purpose of determining the appropriate escrow deposit, and may not be disclosed by the tobacco product manufacturer.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with RCW 70.157.020(b)(1), of the amount of money in the fund, exclusive of interest, the amount and date of each deposit to the fund, and the amount and date of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to RCW 70.158.030, this section, and chapters 82.24 and 82.26 RCW, the director, the board, or the attorney general may require a wholesaler, distributor, or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this chapter. If the director, the board, or the attorney general makes a request for information pursuant to this subsection (4), the tobacco product manufacturer, distributor, or wholesaler shall comply promptly.

(5) A nonparticipating manufacturer that either: (a) Has not previously made escrow payments to the state of Washington pursuant to RCW 70.157.020; or (b) has not actually made any escrow payments for more than one year, shall make the required escrow deposits in quarterly installments during the first year in which the sales covered by the deposits are made or in the first year in which the payments are made. The director or the attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit. [2003 c 25 § 5.]

***Reviser's note:** For rules and reporting requirements adopted pursuant to RCW 70.157.010, see WAC 458-20-264.

**70.158.060 Penalties—Application of consumer protection act.** (1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a wholesaler has violated RCW 70.158.030(3) or any rule adopted pursuant to this chapter, the director or the board may revoke or suspend the license of the wholesaler in the manner provided by chapter 82.24 or 82.32 RCW. Each stamp affixed and each sale or offer to sell cigarettes in violation of RCW 70.158.030(3) shall constitute a separate violation. For each violation of this chapter, the director or the board may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of RCW 70.158.030(3) or any rules adopted pursuant thereto. The penalty shall be imposed in the manner provided by chapter 82.24 RCW.

(2) The attorney general may seek an injunction in superior court to restrain a threatened or actual violation of RCW 70.158.030(3) or 70.158.050 (1) or (4) by a person and to compel the person to comply with these sections. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney fees.

(3) It is unlawful for a person to: (a) Sell or distribute cigarettes or (b) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes, that the person

knows or should know are intended for distribution or sale in the state in violation of RCW 70.158.030(3). A violation of this subsection (3) is a gross misdemeanor.

(4) Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for violation of this chapter shall lie solely with the attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive. [2003 c 25 § 6.]

**70.158.070 Attorney general's directory decision to be final agency action—Due dates for reports, certifications, directory—Rules—Costs—Penalties.** (1) A determination of the attorney general not to include or to remove from the directory a brand family or tobacco product manufacturer shall be final agency action for purposes of review under RCW 34.05.570(4).

(2) No person shall be issued a license or granted a renewal of a license to act as a wholesaler unless the person has certified in writing under penalty of perjury, that the person will comply fully with this section.

(3) The first reports of wholesalers and distributors are due August 25, 2003. The certifications by a tobacco product manufacturer described in RCW 70.158.030(1) are due September 15, 2003. The directory described in RCW 70.158.030(2) shall be published or made available by November 1, 2003.

(4) The attorney general, the board, and the director may adopt rules as necessary to effect the administration of this chapter.

(5) In any action brought by the state to enforce this chapter, the state is entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(6) If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the general fund. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state. [2003 c 25 § 7.]

**70.158.900 Conflict of law—Severability—2003 c 25.** If a court of competent jurisdiction finds that the provisions of chapter 25, Laws of 2003 and chapter 70.157 RCW conflict and cannot be harmonized, then the provisions of chapter 70.157 RCW shall control. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of chapter 25, Laws of 2003 causes chapter 70.157 RCW no longer to constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of chapter 25, Laws of 2003 shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of chapter 25, Laws of 2003 is for any reason held to be invalid, unlawful, or unconstitutional, the decision shall not affect the validity of the remaining portions of chapter 25, Laws of 2003 or any part thereof. [2003 c 25 § 8.]

**70.158.901 Effective date—2003 c 25.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003. [2003 c 25 § 13.]

## Chapter 70.160 RCW
## SMOKING IN PUBLIC PLACES
(Formerly: Washington clean indoor air act)

Sections



*Smoking in municipal transit vehicle, unlawful conduct: RCW 9.91.025.*

**70.160.011 Findings—Intent—2006 c 2 (Initiative Measure No. 901).** The people of the state of Washington recognize that exposure to secondhand smoke is known to cause cancer in humans. Secondhand smoke is a known cause of other diseases including pneumonia, asthma, bronchitis, and heart disease. Citizens are often exposed to secondhand smoke in the workplace, and are likely to develop chronic, potentially fatal diseases as a result of such exposure. In order to protect the health and welfare of all citizens, including workers in their places of employment, it is necessary to prohibit smoking in public places and workplaces. [2006 c 2 § 1 (Initiative Measure No. 901, approved November 8, 2005).]

Additional notes found at www.leg.wa.gov

**70.160.020 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly indicates otherwise.

(1) "Smoke" or "smoking" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment.

(2) "Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance, as set forth in RCW 70.160.075, of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises.

Public places include, but are not limited to: Schools, elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health

care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests. A public place does not include a private residence. This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public.

(3) "Place of employment" means any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to: Entrances and exits to the places of employment, and including a presumptively reasonable minimum distance, as set forth in RCW 70.160.075, of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment. [2006 c 2 § 2 (Initiative Measure No. 901, approved November 8, 2005); 1985 c 236 § 2.]

Additional notes found at www.leg.wa.gov

**70.160.030 Smoking prohibited in public places or places of employment.** No person may smoke in a public place or in any place of employment. [2006 c 2 § 3 (Initiative Measure No. 901, approved November 8, 2005); 1985 c 236 § 3.]

Additional notes found at www.leg.wa.gov

**70.160.050 Owners, lessees to post signs prohibiting smoking.** Owners, or in the case of a leased or rented space the lessee or other person in charge, of a place regulated under this chapter shall prohibit smoking in public places and places of employment and shall post signs prohibiting smoking as appropriate under this chapter. Signs shall be posted conspicuously at each building entrance. In the case of retail stores and retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place. [2006 c 2 § 4 (Initiative Measure No. 901, approved November 8, 2005); 1985 c 236 § 5.]

Additional notes found at www.leg.wa.gov

**70.160.060 Intent of chapter as applied to certain private workplaces.** This chapter is not intended to regulate smoking in a private enclosed workplace, within a public place, even though such workplace may be visited by nonsmokers, excepting places in which smoking is prohibited by the chief of the Washington state patrol, through the director of fire protection, or by other law, ordinance, or regulation. [1995 c 369 § 60; 1986 c 266 § 121; 1985 c 236 § 6.]

Additional notes found at www.leg.wa.gov

**70.160.070 Intentional violation of chapter—Removing, defacing, or destroying required sign—Fine—Notice of infraction—Exceptions—Violations of RCW 70.160.050—Fine—Enforcement.** (1) Any person intentionally violating this chapter by smoking in a public place or place of employment, or any person removing, defacing, or destroying a sign required by this chapter, is subject to a civil fine of up to one hundred dollars. Any person passing by or through a public place while on a public sidewalk or public right-of-way has not intentionally violated this chapter. Local law enforcement agencies shall enforce this section by issuing a notice of infraction to be assessed in the same manner as traffic infractions. The provisions contained in chapter 46.63 RCW for the disposition of traffic infractions apply to the disposition of infractions for violation of this subsection except as follows:

(a) The provisions in chapter 46.63 RCW relating to the provision of records to the department of licensing in accordance with RCW 46.20.270 are not applicable to this chapter; and

(b) The provisions in chapter 46.63 RCW relating to the imposition of sanctions against a person's driver's license or vehicle license are not applicable to this chapter.

The form for the notice of infraction for a violation of this subsection shall be prescribed by rule of the supreme court.

(2) When violations of RCW 70.160.050 occur, a warning shall first be given to the owner or other person in charge. Any subsequent violation is subject to a civil fine of up to one hundred dollars. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.

(3) Local health departments shall enforce RCW 70.160.050 regarding the duties of owners or persons in control of public places and places of employment by either of the following actions:

(a) Serving notice requiring the correction of any violation; or

(b) Calling upon the city or town attorney or county prosecutor or local health department attorney to maintain an action for an injunction to enforce RCW 70.160.050, to correct a violation, and to assess and recover a civil penalty for the violation. [2006 c 2 § 5 (Initiative Measure No. 901, approved November 8, 2005); 1985 c 236 § 7.]

Additional notes found at www.leg.wa.gov

**70.160.075 Smoking prohibited within twenty-five feet of public places or places of employment—Application to modify presumptively reasonable minimum distance.** Smoking is prohibited within a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited so as to ensure that tobacco smoke does not enter the area through entrances, exits, open windows, or other means. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty-five feet is a reasonable minimum distance by making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventila-

tion intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance. [2006 c 2 § 6 (Initiative Measure No. 901, approved November 8, 2005).]

Additional notes found at www.leg.wa.gov

**70.160.080 Local regulations authorized.** Local fire departments or fire districts and local health departments may adopt regulations as required to implement this chapter. [1985 c 236 § 9.]

**70.160.100 Penalty assessed under this chapter paid to jurisdiction bringing action.** Any penalty assessed and recovered in an action brought under this chapter shall be paid to the city or county bringing the action. [1985 c 236 § 8.]

## Chapter 70.162 RCW
## INDOOR AIR QUALITY IN PUBLIC BUILDINGS

Sections



**70.162.005 Finding—Intent.** The legislature finds that many Washington residents spend a significant amount of their time working indoors and that exposure to indoor air pollutants may occur in public buildings, schools, workplaces, and other indoor environments. Scientific studies indicate that pollutants common in the indoor air may include radon, asbestos, volatile organic chemicals including formaldehyde and benzene, combustion by-products including carbon monoxide, nitrogen oxides, and carbon dioxide, metals and gases including lead, chlorine, and ozone, respirable particles, tobacco smoke, biological contaminants, microorganisms, and other contaminants. In some circumstances, exposure to these substances may cause adverse health effects, including respiratory illnesses, multiple chemical sensitivities, skin and eye irritations, headaches, and other related symptoms. There is inadequate information about indoor air quality within the state of Washington, including the sources and nature of indoor air pollution.

The intent of the legislature is to develop a control strategy that will improve indoor air quality, provide for the evaluation of indoor air quality in public buildings, and encourage voluntary measures to improve indoor air quality. [1989 c 315 § 1.]

**70.162.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of labor and industries.

(2) "Public agency" means a state office, commission, committee, bureau, or department.

(3) "Industry standard" means the 62-1981R standard established by the American society of heating, refrigerating, and air-conditioning engineers as codified in M-1602 of the building officials and code administrators international manual as of January 1, 1990. [1989 c 315 § 2.]

**70.162.020 Department duties.** The department shall, in coordination with other appropriate state agencies:

(1) Recommend a policy for evaluation and prioritization of state-owned or leased buildings with respect to indoor air quality;

(2) Recommend stronger workplace regulation of indoor air quality under the Washington industrial safety and health act;

(3) Review indoor air quality programs in public schools administered by the superintendent of public instruction and the department of social and health services;

(4) Provide educational and informational pamphlets or brochures to state agencies on indoor air quality standards; and

(5) Recommend to the legislature measures to implement the recommendations, if any, for the improvement of indoor air quality in public buildings within a reasonable period of time. [1989 c 315 § 3.]

**70.162.030 State building code council duties.** The state building code council is directed to:

(1) Review the state building code to determine the adequacy of current mechanical ventilation and filtration standards prescribed by the state compared to the industry standard; and

(2) Make appropriate changes in the building code to bring the state prescribed standards into conformity with the industry standard. [1989 c 315 § 4.]

**70.162.040 Public agencies—Directive.** Public agencies are encouraged to:

(1) Evaluate the adequacy of mechanical ventilation and filtration systems in light of the recommendations of the American society of heating, refrigerating, and air-conditioning engineers and the building officials and code administrators international; and

(2) Maintain and operate any mechanical ventilation and filtration systems in a manner that allows for maximum operating efficiency consistent with the recommendations of the American society of heating, refrigerating, and air-conditioning engineers and the building officials and code administrators international. [1989 c 315 § 5.]

**70.162.050 Superintendent of public instruction—Model program.** (1) The superintendent of public instruction may implement a model indoor air quality program in a school district selected by the superintendent.

(2) The superintendent shall ensure that the model program includes:

(a) An initial evaluation by an indoor air quality expert of the current indoor air quality in the school district. The evaluation shall be completed within ninety days after the beginning of the school year;

(b) Establishment of procedures to ensure the maintenance and operation of any ventilation and filtration system

used. These procedures shall be implemented within thirty days of the initial evaluation;

(c) A reevaluation by an indoor air quality expert, to be conducted approximately two hundred seventy days after the initial evaluation; and

(d) The implementation of other procedures or plans that the superintendent deems necessary to implement the model program. [1998 c 245 § 116; 1989 c 315 § 6.]

## Chapter 70.168 RCW
## STATEWIDE TRAUMA CARE SYSTEM

Sections



**70.168.010 Legislative finding.** The legislature finds and declares that:

(1) Trauma is a severe health problem in the state of Washington and a major cause of death;

(2) Presently, trauma care is very limited in many parts of the state, and health care in rural areas is in transition with the danger that some communities will be without emergency medical care;

(3) It is in the best interest of the citizens of Washington state to establish an efficient and well-coordinated statewide emergency medical services and trauma care system to reduce costs and incidence of inappropriate and inadequate trauma care and emergency medical service and minimize the human suffering and costs associated with preventable mortality and morbidity;

(4) The goals and objectives of an emergency medical services and trauma care system are to: (a) Pursue trauma prevention activities to decrease the incidence of trauma; (b) provide optimal care for the trauma victim; (c) prevent unnecessary death and disability from trauma and emergency illness; and (d) contain costs of trauma care and trauma system implementation; and

(5) In other parts of the United States where trauma care systems have failed and trauma care centers have closed, there is a direct relationship between such failures and closures and a lack of commitment to fair and equitable reimbursement for trauma care participating providers and system overhead costs. [1990 c 269 § 1; 1988 c 183 § 1.]

**70.168.015 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Cardiac" means acute coronary syndrome, an umbrella term used to cover any group of clinical symptoms compatible with acute myocardial ischemia, which is chest discomfort or other symptoms due to insufficient blood supply to the heart muscle resulting from coronary artery disease. "Cardiac" also includes out-of-hospital cardiac arrest, which is the cessation of mechanical heart activity as assessed by emergency medical services personnel, or other acute heart conditions.

(2) "Communications system" means a radio and landline network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in an emergency medical services and trauma care system.

(3) "Department" means the department of health.

(4) "Designated trauma care service" means a level I, II, III, IV, or V trauma care service or level I, II, or III pediatric trauma care service or level I, I-pediatric, II, or III trauma-related rehabilitative service.

(5) "Designation" means a formal determination by the department that hospitals or health care facilities are capable of providing designated trauma care services as authorized in RCW 70.168.070.

(6) "Emergency medical service" means medical treatment and care that may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

(7) "Emergency medical services and trauma care planning and service regions" means geographic areas established by the department under this chapter.

(8) "Emergency medical services and trauma care system plan" means a statewide plan that identifies statewide emergency medical services and trauma care objectives and priorities and identifies equipment, facility, personnel, training, and other needs required to create and maintain a statewide emergency medical services and trauma care system. The plan also includes a plan of implementation that identifies the state, regional, and local activities that will create, operate, maintain, and enhance the system. The plan is formulated by incorporating the regional emergency medical services and trauma care plans required under this chapter. The plan shall be updated every two years and shall be made available to the state board of health in sufficient time to be considered in preparation of the biennial state health report required in *RCW 43.20.050.

(9) "Emergency medical services medical program director" means a person who is an approved program director as defined by RCW 18.71.205(4).

(10) "Facility patient care protocols" means the written procedures adopted by the medical staff that direct the care of the patient. These procedures shall be based upon the assess-

ment of the patients' medical needs. The procedures shall follow minimum statewide standards for trauma care services.

(11) "Hospital" means a facility licensed under chapter 70.41 RCW, or comparable health care facility operated by the federal government or located and licensed in another state.

(12) "Level I-pediatric rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level I-pediatric rehabilitative services provide the same services as facilities authorized to provide level I rehabilitative services except these services are exclusively for children under the age of fifteen years.

(13) "Level I pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level I services shall provide definitive, comprehensive, specialized care for pediatric trauma patients and shall also provide ongoing research and health care professional education in pediatric trauma care.

(14) "Level I rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level I rehabilitative services provide rehabilitative treatment to patients with traumatic brain injuries, spinal cord injuries, complicated amputations, and other diagnoses resulting in functional impairment, with moderate to severe impairment or complexity. These facilities serve as referral facilities for facilities authorized to provide level II and III rehabilitative services.

(15) "Level I trauma care services" means trauma care services as established in RCW 70.168.060. Hospitals providing level I services shall have specialized trauma care teams and provide ongoing research and health care professional education in trauma care.

(16) "Level II pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level II services shall provide initial stabilization and evaluation of pediatric trauma patients and provide comprehensive general medicine and surgical care to pediatric patients who can be maintained in a stable or improving condition without the specialized care available in the level I hospital. Complex surgeries and research and health care professional education in pediatric trauma care activities are not required.

(17) "Level II rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level II rehabilitative services treat individuals with musculoskeletal trauma, peripheral nerve lesions, lower extremity amputations, and other diagnoses resulting in functional impairment in more than one functional area, with moderate to severe impairment or complexity.

(18) "Level II trauma care services" means trauma care services as established in RCW 70.168.060. Hospitals providing level II services shall be similar to those provided by level I hospitals, although complex surgeries and research and health care professional education activities are not required to be provided.

(19) "Level III pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level III services shall provide initial evaluation and stabilization of patients. The range of pediatric trauma care services provided in level III hospitals are not as comprehensive as level I and II hospitals.

(20) "Level III rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level III rehabilitative services provide treatment to individuals with musculoskeletal injuries, peripheral nerve injuries, uncomplicated lower extremity amputations, and other diagnoses resulting in functional impairment in more than one functional area but with minimal to moderate impairment or complexity.

(21) "Level III trauma care services" means trauma care services as established in RCW 70.168.060. The range of trauma care services provided by level III hospitals are not as comprehensive as level I and II hospitals.

(22) "Level IV trauma care services" means trauma care services as established in RCW 70.168.060.

(23) "Level V trauma care services" means trauma care services as established in RCW 70.168.060. Facilities providing level V services shall provide stabilization and transfer of all patients with potentially life-threatening injuries.

(24) "Patient care procedures" means written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with minimum statewide standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility, mental health facility, or chemical dependency program to first receive the patient, and the name and location of other trauma care facilities, mental health facilities, or chemical dependency programs to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients shall be consistent with the transfer procedures required in chapter 70.170 RCW.

(25) "Pediatric trauma patient" means trauma patients known or estimated to be less than fifteen years of age.

(26) "Prehospital" means emergency medical care or transportation rendered to patients prior to hospital admission or during interfacility transfer by licensed ambulance or aid service under chapter 18.73 RCW, by personnel certified to provide emergency medical care under chapters 18.71 and 18.73 RCW, or by facilities providing level V trauma care services as provided for in this chapter.

(27) "Prehospital patient care protocols" means the written procedures adopted by the emergency medical services medical program director that direct the out-of-hospital emergency care of the emergency patient which includes the trauma patient. These procedures shall be based upon the assessment of the patients' medical needs and the treatment to be provided for serious conditions. The procedures shall meet or exceed statewide minimum standards for trauma and other prehospital care services.

(28) "Rehabilitative services" means a formal program of multidisciplinary, coordinated, and integrated services for evaluation, treatment, education, and training to help individuals with disabling impairments achieve and maintain optimal functional independence in physical, psychosocial, social, vocational, and avocational realms. Rehabilitation is indicated for the trauma patient who has sustained neurologic

or musculoskeletal injury and who needs physical or cognitive intervention to return to home, work, or society.

(29) "Secretary" means the secretary of the department of health.

(30) "Trauma" means a major single or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

(31) "Trauma care system" means an organized approach to providing care to trauma patients that provides personnel, facilities, and equipment for effective and coordinated trauma care. The trauma care system shall: Identify facilities with specific capabilities to provide care, triage trauma victims at the scene, and require that all trauma victims be sent to an appropriate trauma facility. The trauma care system includes prevention, prehospital care, hospital care, and rehabilitation.

(32) "Triage" means the sorting of patients in terms of disposition, destination, or priority. Triage of prehospital trauma victims requires identifying injury severity so that the appropriate care level can be readily assessed according to patient care guidelines.

(33) "Verification" means the identification of prehospital providers who are capable of providing verified trauma care services and shall be a part of the licensure process required in chapter 18.73 RCW.

(34) "Verified trauma care service" means prehospital service as provided for in RCW 70.168.080, and identified in the regional emergency medical services and trauma care plan as required by RCW 70.168.100. [2015 c 157 § 2. Prior: 2010 c 52 § 2; 1990 c 269 § 4.]

***Reviser's note:** RCW 43.20.050 was amended by 2011 c 27 § 1, eliminating the "state health report."

**Findings—Intent—2010 c 52:** "(1) The legislature finds that:

(a) In 2006, the governor's emergency medical services and trauma care steering committee charged the emergency cardiac and stroke work group with assessing the burden of acute coronary syndrome, otherwise known as heart attack, cardiac arrest, and stroke and the care that people receive for these acute cardiovascular events in Washington.

(b) The work group's report found that:

(i) Despite falling death rates, heart disease and stroke were still the second and third leading causes of death in 2005. All cardiovascular diseases accounted for thirty-four percent of deaths, surpassing all other causes of death.

(ii) Cardiovascular diseases have a substantial social and economic impact on individuals and families, as well as the state's health and long-term care systems. Although many people who survive acute cardiac and stroke events have significant physical and cognitive disability, early evidence-based treatments can help more people return to their productive lives.

(iii) Heart disease and stroke are among the most costly medical conditions at nearly four billion dollars per year for hospitalization and long-term care alone.

(iv) The age group at highest risk for heart disease or stroke, people sixty-five and older, is projected to double by 2030, potentially doubling the social and economic impact of heart disease and stroke in Washington. Early recognition is important, as Washington demographics indicate a significant occurrence of acute coronary syndromes by the age of fifty-five.

(c) The assessment of emergency cardiac and stroke care found:

(i) Many cardiac and stroke patients are not receiving evidence-based treatments;

(ii) Access to diagnostic and treatment resources varies greatly, especially for rural parts of the state;

(iii) Training, protocols, procedures, and resources in dispatch services, emergency medical services, and hospitals vary significantly;

(iv) Cardiac mortality rates vary widely depending on hospital and regional resources; and

(v) Advances in technology and streamlined approaches to care can significantly improve emergency cardiac and stroke care, but many people do not get the benefit of these treatments.

(d) Time is critical throughout the chain of survival, from dispatch of emergency medical services, to transport, to the emergency room, for emergency cardiac and stroke patients. The minutes after the onset of heart attack, cardiac arrest, and stroke are as important as the "golden hour" in trauma. When treatment is delayed, more brain or heart tissue dies. Timely treatment can mean the difference between returning to work or becoming permanently disabled, living at home, or living in a nursing home. It can be the difference between life and death. Ensuring most patients will get lifesaving care in time requires preplanning and an organized system of care.

(e) Many other states have improved systems of care to respond to and treat acute cardiac and stroke events, similar to improvements in trauma care in Washington.

(f) Some areas of Washington have deployed local systems to respond to and treat acute cardiac and stroke events.

(2) It is the intent of the legislature to support efforts to improve emergency cardiac and stroke care in Washington through an evidence-based coordinated system of care." [2010 c 52 § 1.]

**70.168.020 Steering committee—Composition—Appointment.** (1) There is hereby created an emergency medical services and trauma care steering committee composed of representatives of individuals knowledgeable in emergency medical services and trauma care, including emergency medical providers such as physicians, nurses, hospital personnel, emergency medical technicians, paramedics, ambulance services, a member of the emergency medical services licensing and certification advisory committee, local government officials, state officials, consumers, and persons affiliated professionally with health science schools. The secretary shall appoint members of the steering committee. Members shall be appointed for a period of three years. The department shall provide administrative support to the committee. All appointive members of the committee, in the performance of their duties, may be entitled to receive travel expenses as provided in RCW 43.03.050 and 43.03.060. The secretary may remove members from the committee who have three unexcused absences from committee meetings. The secretary shall fill any vacancies of the committee in a timely manner. The terms of those members representing the same field shall not expire at the same time.

The committee shall elect a chair and a vice chair whose terms of office shall be for one year each. The chair shall be ineligible for reelection after serving four consecutive terms.

The committee shall meet on call by the secretary or the chair.

(2) The emergency medical services and trauma care steering committee shall:

(a) Advise the department regarding emergency medical services and trauma care needs throughout the state.

(b) Review the regional emergency medical services and trauma care plans and recommend changes to the department before the department adopts the plans.

(c) Review proposed departmental rules for emergency medical services and trauma care.

(d) Recommend modifications in rules regarding emergency medical services and trauma care. [2011 1st sp.s. c 21 § 28; 2000 c 93 § 20; 1990 c 269 § 5; 1988 c 183 § 2.]

Additional notes found at www.leg.wa.gov

**70.168.030 Analysis of state's trauma system—Plan.** (1) Upon the recommendation of the steering committee, the director of the office of financial management shall contract with an independent party for an analysis of the state's trauma system.

(2) The analysis shall contain at a minimum, the following:

(a) The identification of components of a functional statewide trauma care system, including standards; and

(b) An assessment of the current trauma care program compared with the functional statewide model identified in subsection (a) of this section, including an analysis of deficiencies and reasons for the deficiencies.

(3) The analysis shall provide a design for a statewide trauma care system based on the findings of the committee under subsection (2) of this section, with a plan for phased-in implementation. The plan shall include, at a minimum, the following:

(a) Responsibility for implementation;

(b) Administrative authority at the state, regional, and local levels;

(c) Facility, equipment, and personnel standards;

(d) Triage and care criteria;

(e) Data collection and use;

(f) Cost containment strategies;

(g) System evaluation; and

(h) Projected costs. [1998 c 245 § 117; 1988 c 183 § 3.]

**70.168.040 Emergency medical services and trauma care system trust account.** The emergency medical services and trauma care system trust account is hereby created in the state treasury. Moneys shall be transferred to the emergency medical services and trauma care system trust account from the public safety education account or other sources as appropriated, and as collected under RCW 46.63.110(7) and 46.68.440. Disbursements shall be made by the department subject to legislative appropriation. Expenditures may be made only for the purposes of the state trauma care system under this chapter, including emergency medical services, trauma care services, rehabilitative services, and the planning and development of related services under this chapter and for reimbursement by the health care authority for trauma care services provided by designated trauma centers. [2011 1st sp.s. c 15 § 86; 2010 c 161 § 1158; 2002 c 371 § 922; 1997 c 331 § 2; 1990 c 269 § 17; 1988 c 183 § 4.]

**Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15:** See notes following RCW 74.09.010.

**Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161:** See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

**70.168.050 Emergency medical services and trauma care system—Department to establish—Rule making—Gifts.** (1) The department, in consultation with, and having solicited the advice of, the emergency medical services and trauma care steering committee, shall establish the Washington state emergency medical services and trauma care system.

(2) The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for facilities and other participants. The department shall assure an opportunity for consultation, review, and comment by the public and providers of emergency medical services and trauma care before adoption of rules. When developing rules to implement this chapter the department shall consider the report of the Washington state trauma project established under chapter 183, Laws of 1988. Nothing in this chapter requires the department to follow any specific recommendation in that report except as it may also be included in this chapter.

(3) The department may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including any activities related to the design, maintenance, or enhancements of the emergency medical services and trauma care system in the state. The department shall make available upon request to the appropriate legislative committees information concerning the source, amount, and use of such gifts or payments. [1990 c 269 § 3.]

**70.168.060 Department duties—Timelines.** The department, in consultation with and having solicited the advice of the emergency medical services and trauma care steering committee, shall:

(1) Establish the following on a statewide basis:

(a) By September 1990, minimum standards for facility, equipment, and personnel for level I, II, III, IV, and V trauma care services;

(b) By September 1990, minimum standards for facility, equipment, and personnel for level I, I-pediatric, II, and III trauma-related rehabilitative services;

(c) By September 1990, minimum standards for facility, equipment, and personnel for level I, II, and III pediatric trauma care services;

(d) By September 1990, minimum standards required for verified prehospital trauma care services, including equipment and personnel;

(e) Personnel training requirements and programs for providers of trauma care. The department shall design programs which are accessible to rural providers including on-site training;

(f) Statewide emergency medical services and trauma care system objectives and priorities;

(g) Minimum standards for the development of facility patient care protocols and prehospital patient care protocols and patient care procedures;

(h) By July 1991, minimum standards for an effective emergency medical communication system;

(i) Minimum standards for an effective emergency medical services transportation system; and

(j) By July 1991, establish a program for emergency medical services and trauma care research and development;

(2) Establish statewide standards, personnel training requirements and programs, system objectives and priorities, protocols and guidelines as required in subsection (1) of this section, by utilizing those standards adopted in the report of the Washington trauma advisory committee as authorized by chapter 183, Laws of 1988. In establishing standards for level IV or V trauma care services the department may adopt similar standards adopted for services provided in rural health care facilities authorized in chapter 70.175 RCW. The department may modify standards, personnel training requirements

and programs, system objectives and priorities, and guidelines in rule if the department determines that such modifications are necessary to meet federal and other state requirements or are essential to allow the department and others to establish the system or should it determine that public health considerations or efficiencies in the delivery of emergency medical services and trauma care warrant such modifications;

(3) Designate emergency medical services and trauma care planning and service regions as provided for in this chapter;

(4) By July 1, 1992, establish the minimum and maximum number of hospitals and health care facilities in the state and within each emergency medical services and trauma care planning and service region that may provide designated trauma care services based upon approved regional emergency medical services and trauma care plans;

(5) By July 1, 1991, establish the minimum and maximum number of prehospital providers in the state and within each emergency medical services and trauma care planning and service region that may provide verified trauma care services based upon approved regional emergency medical services and trauma care plans;

(6) By July 1993, begin the designation of hospitals and health care facilities to provide designated trauma care services in accordance with needs identified in the statewide emergency medical services and trauma care plan;

(7) By July 1990, adopt a format for submission of the regional plans to the department;

(8) By July 1991, begin the review and approval of regional emergency medical services and trauma care plans;

(9) By July 1992, prepare regional plans for those regions that do not submit a regional plan to the department that meets the requirements of this chapter;

(10) By October 1992, prepare and implement the statewide emergency medical services and trauma care system plan incorporating the regional plans;

(11) Coordinate the statewide emergency medical services and trauma care system to assure integration and smooth operation between the regions;

(12) Facilitate coordination between the emergency medical services and trauma care steering committee and the emergency medical services licensing and certification advisory committee;

(13) Monitor the statewide emergency medical services and trauma care system;

(14) Conduct a study of all costs, charges, expenses, and levels of reimbursement associated with providers of trauma care services, and provide its findings and any recommendations regarding adequate and equitable reimbursement to trauma care providers to the legislature by July 1, 1991;

(15) Monitor the level of public and private payments made on behalf of trauma care patients to determine whether health care providers have been adequately reimbursed for the costs of care rendered such persons;

(16) By July 1991, design and establish the statewide trauma care registry as authorized in RCW 70.168.090 to (a) assess the effectiveness of emergency medical services and trauma care delivery, and (b) modify standards and other system requirements to improve the provision of emergency medical services and trauma care;

(17) By July 1991, develop patient outcome measures to assess the effectiveness of emergency medical services and trauma care in the system;

(18) By July 1993, develop standards for regional emergency medical services and trauma care quality assurance programs required in RCW 70.168.090;

(19) Administer funding allocated to the department for the purpose of creating, maintaining, or enhancing the statewide emergency medical services and trauma care system; and

(20) By October 1990, begin coordination and development of trauma prevention and education programs. [1990 c 269 § 8.]

**70.168.070 Provision of trauma care service—Designation.** Any hospital or health care facility that desires to be authorized to provide a designated trauma care service shall request designation from the department. Designation involves a contractual relationship between the state and a hospital or health care facility whereby each agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards required by the statewide emergency medical services and trauma care system plan. By January 1992, the department shall determine by rule the manner and form of such requests. Upon receiving a request, the department shall review the request to determine whether the hospital or health care facility is in compliance with standards for the trauma care service or services for which designation is desired. If requests are received from more than one hospital or health care facility within the same emergency medical planning and trauma care planning and service region, the department shall select the most qualified applicant or applicants to be selected through a competitive process. Any applicant not designated may request a hearing to review the decision.

Designations are valid for a period of three years and are renewable upon receipt of a request for renewal prior to expiration from the hospital or health care facility. When an authorization for designation is due for renewal other hospitals and health care facilities in the area may also apply and compete for designation. Regional emergency medical and trauma care councils shall be notified promptly of designated hospitals and health care facilities in their region so they may incorporate them into the regional plan as required by this chapter. The department may revoke or suspend the designation should it determine that the hospital or health care facility is substantially out of compliance with the standards and has refused or been unable to comply after a reasonable period of time has elapsed. The department shall promptly notify the regional emergency medical and trauma care planning and service region of suspensions or revocations. Any facility whose designation has been revoked or suspended may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.

As a part of the process to designate and renew the designation of hospitals authorized to provide level I, II, or III trauma care services or level I, II, and III pediatric trauma care services, the department shall contract for on-site reviews of such hospitals to determine compliance with required standards. The department may contract for on-site reviews of hospitals and health care facilities authorized to

provide level IV or V trauma care services or level I, I-pediatric, II, or III trauma-related rehabilitative services to determine compliance with required standards. Members of on-site review teams and staff included in site visits are exempt from chapter 42.56 RCW. They may not divulge and cannot be subpoenaed to divulge information obtained or reports written pursuant to this section in any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (1) In actions arising out of the department's designation of a hospital or health care facility pursuant to this section; (2) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under this section; or (3) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent. When a facility requests designation for more than one service, the department may coordinate the joint consideration of such requests.

The department may establish fees to help defray the costs of this section, though such fees shall not be assessed to health care facilities authorized to provide level IV and V trauma care services.

This section shall not restrict the authority of a hospital or a health care provider licensed under Title 18 RCW to provide services which it has been authorized to provide by state law. [2005 c 274 § 343; 1990 c 269 § 9.]

**70.168.080 Prehospital trauma care service—Verification—Compliance—Variance.** (1) Any provider desiring to provide a verified prehospital trauma care service shall indicate on the licensing application how they meet the standards required for verification as a provider of this service. The department shall notify the regional emergency medical services and trauma care councils of the providers of verified trauma care services in their regions. The department may conduct on-site reviews of prehospital providers to assess compliance with the applicable standards.

(2) Should the department determine that a prehospital provider is substantially out of compliance with the standards, the department shall notify the regional emergency medical services and trauma care council. If the failure of a prehospital provider to comply with the applicable standards results in the region being out of compliance with its regional plan, the council shall take such steps necessary to assure the region is brought into compliance within a reasonable period of time. The council may seek assistance and funding from the department and others to provide training or grants necessary to bring a prehospital provider into compliance. The council may appeal to the department for modification of the regional plan if it is unable to assure continued compliance with the regional plan. The department may authorize modification of the plan if such modifications meet the requirements of this chapter. The department may suspend or revoke the authorization of a prehospital provider to provide a verified prehospital service if the provider has refused or been unable to comply after a reasonable period of time has elapsed. The council shall be notified promptly of any revocations or suspensions. Any prehospital provider whose verification has been suspended or revoked may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.

(3) The department may grant a variance from provisions of this section if the department determines: (a) That no detriment to public health and safety will result from the variance, and (b) compliance with provisions of this section will cause a reduction or loss of existing prehospital services. Variances may be granted for a period not to exceed one year. A variance may be renewed by the department. If a renewal is granted, a plan of compliance shall be prepared specifying steps necessary to bring a provider or region into compliance and expected date of compliance.

(4) This section shall not restrict the authority of a provider licensed under Title 18 RCW to provide services which it has been authorized to provide by state law. [1990 c 269 § 10.]

**70.168.090 Statewide data registry—Statewide electronic emergency medical services data system—Quality assurance program—Confidentiality.** (1)(a) By July 1991, the department shall establish a statewide data registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The department shall collect additional data on traumatic brain injury should additional data requirements be enacted by the legislature. The registry shall be used to improve the availability and delivery of prehospital and hospital trauma care services. Specific data elements of the registry shall be defined by rule by the department. To the extent possible, the department shall coordinate data collection from hospitals for the trauma registry with the health care data system authorized in chapter 70.170 RCW. Every hospital, facility, or health care provider authorized to provide level I, II, III, IV, or V trauma care services, level I, II, or III pediatric trauma care services, level I, level I-pediatric, II, or III trauma-related rehabilitative services, and prehospital trauma-related services in the state shall furnish data to the registry. All other hospitals and prehospital providers shall furnish trauma data as required by the department by rule.

(b) The department may respond to requests for data and other information from the registry for special studies and analysis consistent with requirements for confidentiality of patient and quality assurance records. The department may require requestors to pay any or all of the reasonable costs associated with such requests that might be approved.

(2) The department must establish a statewide electronic emergency medical services data system and adopt rules requiring licensed ambulance and aid services to report and furnish patient encounter data to the electronic emergency medical services data system. The data system must be used to improve the availability and delivery of prehospital emergency medical services. The department must establish in rule the specific data elements of the data system and secure transport methods for data. The data collected must include data on suspected drug overdoses for the purposes of including, but not limited to, identifying individuals to engage substance use disorder peer professionals, patient navigators, outreach workers, and other professionals as appropriate to

prevent further overdoses and to induct into treatment and provide other needed supports as may be available.

(3) In each emergency medical services and trauma care planning and service region, a regional emergency medical services and trauma care systems quality assurance program shall be established by those facilities authorized to provide levels I, II, and III trauma care services. The systems quality assurance program shall evaluate trauma care delivery, patient care outcomes, and compliance with the requirements of this chapter. The systems quality assurance program may also evaluate emergency cardiac and stroke care delivery. The emergency medical services medical program director and all other health care providers and facilities who provide trauma and emergency cardiac and stroke care services within the region shall be invited to participate in the regional emergency medical services and trauma care quality assurance program.

(4) Data elements related to the identification of individual patient's, provider's and facility's care outcomes shall be confidential, shall be exempt from RCW 42.56.030 through 42.56.570 and *42.17.350 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence.

(5) Patient care quality assurance proceedings, records, and reports developed pursuant to this section are confidential, exempt from chapter 42.56 RCW, and are not subject to discovery by subpoena or admissible as evidence in any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (a) In actions arising out of the department's designation of a hospital or health care facility pursuant to RCW 70.168.070; (b) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under RCW 70.168.070; (c) in actions arising out of the department's licensing or verification of an ambulance or aid service pursuant to RCW 18.73.030 or 70.168.080; (d) in actions arising out of the certification of a medical program director pursuant to RCW 18.71.212; or (e) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent. [2019 c 314 § 19; 2010 c 52 § 5; 2005 c 274 § 344; 1990 c 269 § 11.]

***Reviser's note:** RCW 42.17.350 through 42.17.450 were recodified and repealed by chapter 204, Laws of 2010.

**Declaration—2019 c 314:** See note following RCW 18.22.810.

**Findings—Intent—2010 c 52:** See note following RCW 70.168.015.

**70.168.100 Regional emergency medical services and trauma care councils.** Regional emergency medical services and trauma care councils are established. The councils:

(1) By June 1990, shall begin the development of regional emergency medical services and trauma care plans to:

(a) Assess and analyze regional emergency medical services and trauma care needs;

(b) Identify personnel, agencies, facilities, equipment, training, and education to meet regional and local needs;

(c) Identify specific activities necessary to meet statewide standards and patient care outcomes and develop a plan of implementation for regional compliance;

(d) Establish and review agreements with regional providers necessary to meet state standards;

(e) Establish agreements with providers outside the region to facilitate patient transfer;

(f) Include a regional budget;

(g) Establish the number and level of facilities to be designated which are consistent with state standards and based upon availability of resources and the distribution of trauma within the region;

(h) Identify the need for and recommend distribution and level of care of prehospital services to assure adequate availability and avoid inefficient duplication and lack of coordination of prehospital services within the region;

(i) Identify procedures to allow for the appropriate transport of patients to mental health facilities or chemical dependency programs, as informed by the alternative facility guidelines adopted under RCW 70.168.170; and

(j) Include other specific elements defined by the department;

(2) By June 1991, shall begin the submission of the regional emergency medical services and trauma care plan to the department;

(3) Shall advise the department on matters relating to the delivery of emergency medical services and trauma care within the region;

(4) Shall provide data required by the department to assess the effectiveness of the emergency medical services and trauma care system;

(5) May apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including any activities related to the design, maintenance, or enhancements of the emergency medical services and trauma care system in the region. The councils shall report in the regional budget the amount, source, and purpose of all gifts and payments. [2015 c 157 § 3; 1990 c 269 § 13.]

**70.168.110 Planning and service regions.** The department shall designate at least eight emergency medical services and trauma care planning and service regions so that all parts of the state are within such an area. These regional designations are to be made on the basis of efficiency of delivery of needed emergency medical services and trauma care. [1990 c 269 § 14; 1987 c 214 § 4; 1973 1st ex.s. c 208 § 6. Formerly RCW 18.73.060.]

**70.168.120 Local and regional emergency medical services and trauma care councils—Power and duties.** (1) A county or group of counties may create a local emergency medical services and trauma care council composed of representatives of hospital and prehospital trauma care and emergency medical services providers, local elected officials, consumers, local law enforcement officials, and local government agencies involved in the delivery of emergency medical services and trauma care.

(2) The department shall establish regional emergency medical services and trauma care councils and shall appoint

members to be comprised of a balance of hospital and prehospital trauma care and emergency medical services providers, local elected officials, consumers, local law enforcement representatives, and local government agencies involved in the delivery of trauma care and emergency medical services recommended by the local emergency medical services and trauma care councils within the region.

(3) Local emergency medical services and trauma care councils shall review, evaluate, and provide recommendations to the regional emergency medical services and trauma care council regarding the provision of emergency medical services and trauma care in the region, and provide recommendations to the regional emergency medical services and trauma care councils on the plan for emergency medical services and trauma care. [1990 c 269 § 15; 1987 c 214 § 6; 1983 c 112 § 8. Formerly RCW 18.73.073.]

**70.168.130 Disbursement of funds to regional emergency medical services and trauma care councils—Grants to nonprofit agencies—Purposes.** (1) The department, with the assistance of the emergency medical services and trauma care steering committee, shall adopt a program for the disbursement of funds for the development, implementation, and enhancement of the emergency medical services and trauma care system. Under the program, the department shall disburse funds to each emergency medical services and trauma care regional council, or their chosen fiscal agent or agents, which shall be city or county governments, stipulating the purpose for which the funds shall be expended. The regional emergency medical services and trauma care council shall use such funds to make available matching grants in an amount not to exceed fifty percent of the cost of the proposal for which the grant is made; provided, the department may waive or modify the matching requirement if it determines insufficient local funding exists and the public health and safety would be jeopardized if the proposal were not funded. Grants shall be made to any public or private nonprofit agency which, in the judgment of the regional emergency medical services and trauma care council, will best fulfill the purpose of the grant.

(2) Grants may be awarded for any of the following purposes:

(a) Establishment and initial development of an emergency medical services and trauma care system;

(b) Expansion and improvement of an emergency medical services and trauma care system;

(c) Purchase of equipment for the operation of an emergency medical services and trauma care system;

(d) Training and continuing education of emergency medical and trauma care personnel; and

(e) Department approved research and development activities pertaining to emergency medical services and trauma care.

(3) Any emergency medical services agency or trauma care provider which receives a grant shall stipulate that it will:

(a) Operate in accordance with applicable provisions and standards required under this chapter;

(b) Provide, without prior inquiry as to ability to pay, emergency medical and trauma care to all patients requiring such care; and

(c) Be consistent with applicable provisions of the regional emergency medical services and trauma care plan and the statewide emergency medical services and trauma care system plan. [1990 c 269 § 16; 1987 c 214 § 8; 1979 ex.s. c 261 § 8. Formerly RCW 18.73.085.]

**70.168.135 Grant program for designated trauma care services—Rules.** The department shall establish by rule a grant program for designated trauma care services. The grants shall be made from the emergency medical services and trauma care system trust account and shall require regional matching funds. The trust account funds and regional match shall be in a seventy-five to twenty-five percent ratio. [1997 c 331 § 1.]

Additional notes found at www.leg.wa.gov

**70.168.140 Prehospital provider liability.** (1) No act or omission of any prehospital provider done or omitted in good faith while rendering emergency medical services in accordance with the approved regional plan shall impose any liability upon that provider.

(2) This section does not apply to the commission or omission of an act which is not within the field of the medical expertise of the provider.

(3) This section does not relieve a provider of any duty otherwise imposed by law.

(4) This section does not apply to any act or omission which constitutes gross negligence or willful or wanton misconduct.

(5) This section applies in addition to provisions already established in RCW 18.71.210. [1990 c 269 § 26.]

**70.168.150 Emergency cardiac and stroke care system—Voluntary hospital participation.** (1) By January 1, 2011, the department shall endeavor to enhance and support an emergency cardiac and stroke care system through:

(a) Encouraging hospitals to voluntarily self-identify cardiac and stroke capabilities, indicating which level of cardiac and stroke service the facility provides. Hospital levels must be defined by the previous work of the emergency cardiac and stroke technical advisory committee and must follow the guiding principles and recommendations of the emergency cardiac and stroke work group report;

(b) Giving a hospital "deemed status" and designating it as a primary stroke center if it has received a certification of distinction for primary stroke centers issued by the nonprofit organization known as the joint commission. When available, a hospital shall demonstrate its cardiac or stroke level through external, national certifying organizations, including, but not limited to, primary stroke center certification by the joint commission; and

(c) Within the current authority of the department, adopting cardiac and stroke prehospital patient care protocols, patient care procedures, and triage tools, consistent with the guiding principles and recommendations of the emergency cardiac and stroke work group report.

(2) A hospital that voluntarily participates in the system:

(a) Shall participate in internal, as well as regional, quality improvement activities;

(b) Shall participate in a national, state, or local data collection system that measures cardiac and stroke system per-

formance from patient onset of symptoms to treatment or intervention, and includes, at a minimum, the nationally recognized consensus measures for stroke; and

(c) May advertise participation in the system, but may not claim a verified certification level unless verified by an external, nationally recognized, evidence-based certifying body as provided in subsection (1)(b) of this section. [2010 c 52 § 3.]

**Findings—Intent—2010 c 52:** See note following RCW 70.168.015.

**70.168.160 Report to the legislature.** By December 1, 2012, the department shall share with the legislature the department's report, which was funded by the centers for disease control and prevention, concerning emergency cardiac and stroke care. [2010 c 52 § 4.]

**Findings—Intent—2010 c 52:** See note following RCW 70.168.015.

**70.168.170 Ambulance services—Work group—Patient transportation—Mental health or chemical dependency services.** (1) The department, in consultation with the department of social and health services, shall convene a work group comprised of members of the steering committee and representatives of ambulance services, firefighters, mental health providers, and chemical dependency treatment programs. The work group shall establish alternative facility guidelines for the development of protocols, procedures, and applicable training appropriate to the level of emergency medical service provider for the appropriate transport of patients in need of immediate mental health or chemical dependency services.

(2) The alternative facility guidelines shall consider when transport to a mental health facility or chemical dependency treatment program is necessary as determined by:

(a) The presence of a medical emergency that requires immediate medical care;

(b) The severity of the mental health or substance use disorder needs of the patient;

(c) The training of emergency medical service personnel to respond to a patient experiencing emergency mental health or substance use disorders; and

(d) The risk the patient presents to the patient's self, the public, and the emergency medical service personnel.

(3) By July 1, 2016, the department shall make the guidelines available to all regional emergency medical services and trauma care councils for incorporation into regional emergency medical services and trauma care plans under RCW 70.168.100. [2015 c 157 § 1.]

**70.168.900 Short title.** This chapter shall be known and cited as the "statewide emergency medical services and trauma care system act." [1990 c 269 § 2.]

## Chapter 70.170 RCW
## HEALTH DATA AND CHARITY CARE

Sections



*Hospital financial and patient discharge data: RCW 43.70.052.*

**70.170.010 Intent.** (1) The legislature finds and declares that there is a need for health care information that helps the general public understand health care issues and how they can be better consumers and that is useful to purchasers, payers, and providers in making health care choices and negotiating payments. It is the purpose and intent of this chapter to establish a hospital data collection, storage, and retrieval system which supports these data needs and which also provides public officials and others engaged in the development of state health policy the information necessary for the analysis of health care issues.

(2) The legislature finds that rising health care costs and access to health care services are of vital concern to the people of this state. It is, therefore, essential that strategies be explored that moderate health care costs and promote access to health care services.

(3) The legislature further finds that access to health care is among the state's goals and the provision of such care should be among the purposes of health care providers and facilities. Therefore, the legislature intends that charity care requirements and related enforcement provisions for hospitals be explicitly established.

(4) The lack of reliable statistical information about the delivery of charity care is a particular concern that should be addressed. It is the purpose and intent of this chapter to require hospitals to provide, and report to the state, charity care to persons with acute care needs, and to have a state agency both monitor and report on the relative commitment of hospitals to the delivery of charity care services, as well as the relative commitment of public and private purchasers or payers to charity care funding. [1989 1st ex.s. c 9 § 501.]

**70.170.020 Definitions.** As used in this chapter:

(1) "Department" means department of health.

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

(3) "Secretary" means secretary of health.

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

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

(6) "Third-party coverage" means an obligation on the part of an insurance company, health care service contractor, health maintenance organization, group health plan, government program, tribal health benefits, or health care sharing ministry as defined in 26 U.S.C. Sec. 5000A to pay for the care of covered patients and services, and may include settlements, judgments, or awards actually received related to the

negligent acts of others which have resulted in the medical condition for which the patient has received hospital health care service. The pendency of such settlements, judgments, or awards must not stay hospital obligations to consider an eligible patient for charity care.

(7) "Special studies" means studies which have not been funded through the department's biennial or other legislative appropriations. [2022 c 197 § 1; 2018 c 263 § 1; 1995 c 269 § 2203; 1989 1st ex.s. c 9 § 502.]

**Application—2022 c 197:** "This act applies prospectively only to care provided on or after July 1, 2022. This act does not affect the ability of a patient who received care prior to July 1, 2022, to receive charity care under RCW 70.170.020 and 70.170.060 as the sections existed before that date." [2022 c 197 § 4.]

**Effective date—2018 c 263:** "This act takes effect October 1, 2018." [2018 c 263 § 3.]

Additional notes found at www.leg.wa.gov

**70.170.050 Requested studies—Costs.** The department shall have the authority to respond to requests of others for special studies or analysis. The department may require such sponsors to pay any or all of the reasonable costs associated with such requests that might be approved, but in no event may costs directly associated with any such special study be charged against the funds generated by the assessment authorized under RCW 70.170.080. [1989 1st ex.s. c 9 § 505.]

**70.170.060 Charity care—Prohibited and required hospital practices and policies—Rules—Notice of charity care availability—Department to monitor and report.** (1) No hospital or its medical staff shall adopt or maintain admission practices or policies which result in:

(a) A significant reduction in the proportion of patients who have no third-party coverage and who are unable to pay for hospital services;

(b) A significant reduction in the proportion of individuals admitted for inpatient hospital services for which payment is, or is likely to be, less than the anticipated charges for or costs of such services; or

(c) The refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital.

(2) No hospital shall adopt or maintain practices or policies which would deny access to emergency care based on ability to pay. No hospital which maintains an emergency department shall transfer a patient with an emergency medical condition or who is in active labor unless the transfer is performed at the request of the patient or is due to the limited medical resources of the transferring hospital. Hospitals must follow reasonable procedures in making transfers to other hospitals including confirmation of acceptance of the transfer by the receiving hospital.

(3) The department shall develop definitions by rule, as appropriate, for subsection (1) of this section and, with reference to federal requirements, subsection (2) of this section. The department shall monitor hospital compliance with subsections (1) and (2) of this section. The department shall report individual instances of possible noncompliance to the state attorney general or the appropriate federal agency.

(4) The department shall establish and maintain by rule, consistent with the definition of charity care in RCW 70.170.020, the following:

(a) Uniform procedures, data requirements, and criteria for identifying patients receiving charity care; and

(b) A definition of residual bad debt including reasonable and uniform standards for collection procedures to be used in efforts to collect the unpaid portions of hospital charges that are the patient's responsibility.

(5) For the purpose of providing charity care, each hospital shall develop, implement, and maintain a policy which shall enable indigent persons access to charity care. The policy shall include procedures for identifying patients who may be eligible for health care coverage through medical assistance programs under chapter 74.09 RCW or the Washington health benefit exchange and actively assisting patients to apply for any available coverage. If a hospital determines that a patient or their guarantor is qualified for retroactive health care coverage through the medical assistance programs under chapter 74.09 RCW, a hospital shall assist the patient or guarantor with applying for such coverage. If a hospital determines that a patient or their guarantor qualifies for retroactive health care coverage through the medical assistance programs under chapter 74.09 RCW, a hospital is not obligated to provide charity care under this section to any patient or their guarantor if the patient or their guarantor fails to make reasonable efforts to cooperate with the hospital's efforts to assist them in applying for such coverage. Hospitals may not impose application procedures for charity care or for assistance with retroactive coverage applications which place an unreasonable burden upon the patient or guarantor, taking into account any physical, mental, intellectual, or sensory deficiencies, or language barriers which may hinder the responsible party's capability of complying with application procedures. It is an unreasonable burden to require a patient to apply for any state or federal program where the patient is obviously or categorically ineligible or has been deemed ineligible in the prior 12 months.

(a) At a minimum, a hospital owned or operated by a health system that owns or operates three or more acute hospitals licensed under chapter 70.41 RCW, an acute care hospital with over 300 licensed beds located in the most populous county in Washington, or an acute care hospital with over 200 licensed beds located in a county with at least 450,000 residents and located on Washington's southern border shall grant charity care per the following guidelines:

(i) All patients and their guarantors whose income is not more than 300 percent of the federal poverty level, adjusted for family size, shall be deemed charity care patients for the full amount of the patient responsibility portion of their hospital charges;

(ii) All patients and their guarantors whose income is between 301 and 350 percent of the federal poverty level, adjusted for family size, shall be entitled to a 75 percent discount for the full amount of the patient responsibility portion of their hospital charges, which may be reduced by amounts reasonably related to assets considered pursuant to (c) of this subsection;

(iii) All patients and their guarantors whose income is between 351 and 400 percent of the federal poverty level, adjusted for family size, shall be entitled to a 50 percent dis-

count for the full amount of the patient responsibility portion of their hospital charges, which may be reduced by amounts reasonably related to assets considered pursuant to (c) of this subsection.

(b) At a minimum, a hospital not subject to (a) of this subsection shall grant charity care per the following guidelines:

(i) All patients and their guarantors whose income is not more than 200 percent of the federal poverty level, adjusted for family size, shall be deemed charity care patients for the full amount of the patient responsibility portion of their hospital charges;

(ii) All patients and their guarantors whose income is between 201 and 250 percent of the federal poverty level, adjusted for family size, shall be entitled to a 75 percent discount for the full amount of the patient responsibility portion of their hospital charges, which may be reduced by amounts reasonably related to assets considered pursuant to (c) of this subsection; and

(iii) All patients and their guarantors whose income is between 251 and 300 percent of the federal poverty level, adjusted for family size, shall be entitled to a 50 percent discount for the full amount of the patient responsibility portion of their hospital charges, which may be reduced by amounts reasonably related to assets considered pursuant to (c) of this subsection.

(c)(i) If a hospital considers the existence, availability, and value of assets in order to reduce the discount extended, it must establish and make publicly available a policy on asset considerations and corresponding discount reductions.

(ii) If a hospital considers assets, the following types of assets shall be excluded from consideration:

(A) The first $5,000 of monetary assets for an individual or $8,000 of monetary assets for a family of two, and $1,500 of monetary assets for each additional family member. The value of any asset that has a penalty for early withdrawal shall be the value of the asset after the penalty has been paid;

(B) Any equity in a primary residence;

(C) Retirement plans other than 401(k) plans;

(D) One motor vehicle and a second motor vehicle if it is necessary for employment or medical purposes;

(E) Any prepaid burial contract or burial plot; and

(F) Any life insurance policy with a face value of $10,000 or less.

(iii) In considering assets, a hospital may not impose procedures which place an unreasonable burden on the responsible party. Information requests from the hospital to the responsible party for the verification of assets shall be limited to that which is reasonably necessary and readily available to substantiate the responsible party's qualification for charity sponsorship and may not be used to discourage application for such sponsorship. Only those facts relevant to eligibility may be verified and duplicate forms of verification may not be demanded.

(A) In considering monetary assets, one current account statement shall be considered sufficient for a hospital to verify a patient's assets.

(B) In the event that no documentation for an asset is available, a hospital shall rely upon a written and signed statement from the responsible party.

(iv) Asset information obtained by the hospital in evaluating a patient for charity care eligibility shall not be used for collection activities.

(v) Nothing in this section prevents a hospital from considering assets as required by the centers for medicare and medicaid services related to medicare cost reporting.

(6) Each hospital shall post and prominently display notice of charity care availability. Notice must be posted in all languages spoken by more than ten percent of the population of the hospital service area. Notice must be displayed in at least the following locations:

(a) Areas where patients are admitted or registered;

(b) Emergency departments, if any; and

(c) Financial service or billing areas where accessible to patients.

(7) Current versions of the hospital's charity care policy, a plain language summary of the hospital's charity care policy, and the hospital's charity care application form must be available on the hospital's website. The summary and application form must be available in all languages spoken by more than ten percent of the population of the hospital service area.

(8)(a) All hospital billing statements and other written communications concerning billing or collection of a hospital bill by a hospital must include the following or a substantially similar statement prominently displayed on the first page of the statement in both English and the second most spoken language in the hospital's service area:

> You may qualify for free care or a discount on your hospital bill, whether or not you have insurance. Please contact our financial assistance office at [website] and [phone number].

(b) Nothing in (a) of this subsection requires any hospital to alter any preprinted hospital billing statements existing as of October 1, 2018.

(9) Hospital obligations under federal and state laws to provide meaningful access for limited English proficiency and non-English-speaking patients apply to information regarding billing and charity care. Hospitals shall develop standardized training programs on the hospital's charity care policy and use of interpreter services, and provide regular training for appropriate staff, including the relevant and appropriate staff who perform functions relating to registration, admissions, or billing.

(10) Each hospital shall make every reasonable effort to determine:

(a) The existence or nonexistence of private or public sponsorship which might cover in full or part the charges for care rendered by the hospital to a patient;

(b) The annual family income of the patient as classified under federal poverty income guidelines as of the time the health care services were provided, or at the time of application for charity care if the application is made within two years of the time of service, the patient has been making good faith efforts towards payment of health care services rendered, and the patient demonstrates eligibility for charity care; and

(c) The eligibility of the patient for charity care as defined in this chapter and in accordance with hospital pol-

icy. An initial determination of sponsorship status shall precede collection efforts directed at the patient.

(11) At the hospital's discretion, a hospital may consider applications for charity care at any time, including any time there is a change in a patient's financial circumstances.

(12) The department shall monitor the distribution of charity care among hospitals, with reference to factors such as relative need for charity care in hospital service areas and trends in private and public health coverage. The department shall prepare reports that identify any problems in distribution which are in contradiction of the intent of this chapter. The report shall include an assessment of the effects of the provisions of this chapter on access to hospital and health care services, as well as an evaluation of the contribution of all purchasers of care to hospital charity care.

(13) The department shall issue a report on the subjects addressed in this section at least annually, with the first report due on July 1, 1990. [2022 c 197 § 2; 2018 c 263 § 2; 1998 c 245 § 118; 1989 1st ex.s. c 9 § 506.]

**Application—2022 c 197:** See note following RCW 70.170.020.

**Effective date—2018 c 263:** See note following RCW 70.170.020.

**70.170.070 Penalties.** (1) Every person who shall violate or knowingly aid and abet the violation of RCW *70.170.060 (5) or (6), 70.170.080, or **70.170.100, or any valid orders or rules adopted pursuant to these sections, or who fails to perform any act which it is herein made his or her duty to perform, shall be guilty of a misdemeanor. Following official notice to the accused by the department of the existence of an alleged violation, each day of noncompliance upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of this chapter may be enjoined from continuing such violation. The department has authority to levy civil penalties not exceeding one thousand dollars for violations of this chapter and determined pursuant to this section.

(2) Every person who shall violate or knowingly aid and abet the violation of RCW 70.170.060 (1) or (2), or any valid orders or rules adopted pursuant to such section, or who fails to perform any act which it is herein made his or her duty to perform, shall be subject to the following criminal and civil penalties:

(a) For any initial violations: The violating person shall be guilty of a misdemeanor, and the department may impose a civil penalty not to exceed one thousand dollars as determined pursuant to this section.

(b) For a subsequent violation of RCW 70.170.060 (1) or (2) within five years following a conviction: The violating person shall be guilty of a misdemeanor, and the department may impose a penalty not to exceed three thousand dollars as determined pursuant to this section.

(c) For a subsequent violation with intent to violate RCW 70.170.060 (1) or (2) within five years following a conviction: The criminal and civil penalties enumerated in (a) of this subsection; plus up to a three-year prohibition against the issuance of tax exempt bonds under the authority of the Washington health care facilities authority; and up to a three-year prohibition from applying for and receiving a certificate of need.

(d) For a violation of RCW 70.170.060 (1) or (2) within five years of a conviction under (c) of this subsection: The criminal and civil penalties and prohibition enumerated in (a) and (b) of this subsection; plus up to a one-year prohibition from participation in the state medical assistance or medical care services authorized under chapter 74.09 RCW.

(3) The provisions of chapter 34.05 RCW shall apply to all noncriminal actions undertaken by the department of health, the department of social and health services, and the Washington health care facilities authority pursuant to chapter 9, Laws of 1989 1st ex. sess. [1989 1st ex.s. c 9 § 507.]

**Reviser's note:** *(1) RCW 70.170.060 was amended by 2018 c 263 § 2, changing subsection (6) to subsection (10), effective October 1, 2018.

**(2) RCW 70.170.100 was repealed by 1995 c 265 § 27 and by 1995 c 267 § 12, effective July 1, 1995.

**70.170.080 Assessments—Costs.** The basic expenses for the hospital data collection and reporting activities of this chapter shall be financed by an assessment against hospitals of no more than four one-hundredths of one percent of each hospital's gross operating costs, to be levied and collected from and after that date, upon which the similar assessment levied under *chapter 70.39 RCW is terminated, for the provision of hospital services for its last fiscal year ending on or before June 30th of the preceding calendar year. Budgetary requirements in excess of that limit must be financed by a general fund appropriation by the legislature. All moneys collected under this section shall be deposited by the state treasurer in the hospital data collection account which is hereby created in the state treasury. The department may also charge, receive, and dispense funds or authorize any contractor or outside sponsor to charge for and reimburse the costs associated with special studies as specified in RCW 70.170.050.

During the 1993-1995 fiscal biennium, moneys in the hospital data collection account may be expended, pursuant to appropriation, for hospital data analysis and the administration of the health information program.

Any amounts raised by the collection of assessments from hospitals provided for in this section which are not required to meet appropriations in the budget act for the current fiscal year shall be available to the department in succeeding years. [1993 sp.s. c 24 § 925; 1991 sp.s. c 13 § 71; 1989 1st ex.s. c 9 § 508.]

***Reviser's note:** Chapter 70.39 RCW was repealed by 1982 c 223 § 10, effective June 30, 1990.

Additional notes found at www.leg.wa.gov

**70.170.090 Confidentiality.** The department and any of its contractors or agents shall maintain the confidentiality of any information which may, in any manner, identify individual patients. [1989 1st ex.s. c 9 § 509.]

**70.170.150 Enrollment study—Report to legislature.** ***(Expires January 1, 2027.)*** (1) The office of the insurance commissioner, in consultation with the Washington health benefit exchange, shall study and analyze how increasing eligibility for charity care impacts enrollment in health plans with high deductibles over a four-year time period.

(2) By November 1, 2026, the office of the insurance commissioner shall report to the health care committees of the legislature enrollment trends in health plans with high deductibles from January 1, 2023, through June 30, 2026. The one-time report shall include the number of individuals

enrolled in high deductible plans for each year and by each county.

(3) This section expires January 1, 2027. [2022 c 197 § 3.]

**Application—2022 c 197:** See note following RCW 70.170.020.

## Chapter 70.175 RCW
## RURAL HEALTH SYSTEM PROJECT

Sections



*Rural hospitals: RCW 70.38.105, 70.38.111, 70.41.090.*

*Rural public hospital districts: RCW 70.44.450.*

**70.175.010 Legislative findings.** (1) The legislature declares that availability of health services to rural citizens is an issue on which a state policy is needed.

The legislature finds that changes in the demand for health care, in reimbursement polices [policies] of public and private purchasers, [and] in the economic and demographic conditions in rural areas threaten the availability of care services.

In addition, many factors inhibit needed changes in the delivery of health care services to rural areas which include inappropriate and outdated regulatory laws, aging and inefficient health care facilities, the absence of local planning and coordination of rural health care services, the lack of community understanding of the real costs and benefits of supporting rural hospitals, the lack of regional systems to assure access to care that cannot be provided in every community, and the absence of state health care policy objectives.

The legislature further finds that the creation of effective health care delivery systems that assure access to health care services provided in an affordable manner will depend on active local community involvement. It further finds that it is the duty of the state to create a regulatory environment and health care payment policy that promotes innovation at the local level to provide such care.

It further declares that it is the responsibility of the state to develop policy that provides direction to local communities with regard to such factors as a definition of health care services, identification of statewide health status outcomes, clarification of state, regional, [and] community responsibilities and interrelationships for assuring access to affordable health care and continued assurances that quality health care services are provided.

(2) The legislature further finds that many rural communities do not operate hospitals in a cost-efficient manner. The cost of operating the rural hospital often exceeds the revenues generated. Some of these hospitals face closure, which may result in the loss of health care services for the community. Many communities are struggling to retain health care services by operating a cost-efficient facility located in the community. Current regulatory laws do not provide for the facilities licensure option that is appropriate for rural areas. A major barrier to the development of an appropriate rural licensure model is federal medicare approval to guarantee reimbursement for the costs of providing care and operating the facility. Medicare certification typically elaborates upon state licensure requirements. Medicare approval of reimbursement is more likely if the state has developed legal criteria for a rural-appropriate health facility. Medicare has begun negotiations with other states facing similar problems to develop exceptions with the goal of allowing reimbursement of rural alternative health care facilities. It is in the best interests of rural citizens for Washington state to begin negotiations with the federal government with the objective of designing a medicare eligible rural health care facility structured to meet the health care needs of rural Washington and be eligible for federal and state financial support for its development and operation. [1989 1st ex.s. c 9 § 701.]

**70.175.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrative structure" means a system of contracts or formal agreements between organizations and persons providing health services in an area that establishes the roles and responsibilities each will assume in providing the services of the rural health care facility.

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

(3) "Health care delivery system" means services and personnel involved in providing health care to a population in a geographic area.

(4) "Health care facility" means any land, structure, system, machinery, equipment, or other real or personal property or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with a hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services.

(5) "Health care system strategic plan" means a plan developed by the participant and includes identification of health care service needs of the participant, services and personnel necessary to meet health care service needs, identification of health status outcomes and outcome measures, identification of funding sources, and strategies to meet health care needs including measures of effectiveness.

(6) "Institutions of higher education" means educational institutions as defined in RCW 28B.10.016.

(7) "Local administrator" means an individual or organization representing the participant who may enter into legal agreements on behalf of the participant.

(8) "Participant" means communities, counties, and regions that serve as a health care catchment area where the project site is located.

(9) "Project" means the Washington rural health system project.

(10) "Project site" means a site selected to participate in the project.

(11) "Rural health care facility" means a facility, group, or other formal organization or arrangement of facilities, equipment, and personnel capable of providing or assuring availability of health services in a rural area. The services to be provided by the rural health care facility may be delivered in a single location or may be geographically dispersed in the community health service catchment area so long as they are organized under a common administrative structure or through a mechanism that provides appropriate referral, treatment, and follow-up.

(12) "Secretary" means the secretary of health. [1989 1st ex.s. c 9 § 702.]

**70.175.030 Project established—Implementation.** (1) The department shall establish the Washington rural health system project to provide financial and technical assistance to participants. The goal of the project is to help assure access to affordable health care services to citizens in the rural areas of Washington state.

(2) Administrative costs necessary to implement this project shall be kept at a minimum to insure the maximum availability of funds for participants.

(3) The secretary may contract with third parties for services necessary to carry out activities to implement this chapter where this will promote economy, avoid duplication of effort, and make the best use of available expertise.

(4) The secretary may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects related to the delivery of health care in rural areas.

(5) In designing and implementing the project the secretary shall consider the report of the Washington rural health care commission established under chapter 207, Laws of 1988. Nothing in this chapter requires the secretary to follow any specific recommendation contained in that report except as it may also be included in this chapter. [1994 sp.s. c 9 § 806; 1989 1st ex.s. c 9 § 703.]

Additional notes found at www.leg.wa.gov

**70.175.040 Rules.** The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for participants and should not be complex in nature so as to serve as a barrier or disincentive for prospective participants applying for the project. [1989 1st ex.s. c 9 § 704.]

**70.175.050 Secretary's powers and duties.** The secretary shall have the following powers and duties:

(1) To design the project application and selection process, including a program to advertise the project to rural communities and encourage prospective applicants to apply. Project sites that receive seed grant funding may hire consultants and shall perform other activities necessary to meet participant requirements defined in this chapter. In considering selection of participants eligible for seed grant funding, the secretary should consider project sites where (a) existing access to health care is severely inadequate, (b) where a financially vulnerable health care facility is present, (c) where a financially vulnerable health care facility is present and an adjoining community in the same catchment area has a competing facility, or (d) where improvements in the delivery of primary care services, including preventive care services, is needed.

The department may obtain technical assistance support for project sites that are not selected to be funded sites. The secretary shall select these assisted project sites based upon merit and to the extent possible, based upon the desire to address specific health status outcomes;

(2) To design acceptable outcome measures which are based upon health status outcomes and are to be part of the community plan, to work with communities to set acceptable local outcome targets in the health care delivery system strategic plan, and to serve as a general resource to participants in the planning, administration, and evaluation of project sites;

(3) To assess and approve community strategic plans developed by participants, including an assessment of the technical and financial feasibility of implementing the plan and whether adequate local support for the plan is demonstrated;

(4) To define health care catchment areas, identify financially vulnerable health care facilities, and to identify rural populations which are not receiving adequate health care services;

(5) To identify existing private and public resources which may serve as eligible consultants, identify technical assistance resources for communities in the project, create a register of public and private technical resource services available and provide the register to participants. The secretary shall screen consultants to determine their qualifications prior to including them on the register;

(6) To work with other state agencies, institutions of higher education, and other public and private organizations to coordinate technical assistance services for participants;

(7) To administer available funds for community use while participating in the project and establish procedures to assure accountability in the use of seed grant funds by participants;

(8) To define data and other minimum requirements for adequate evaluation of projects and to develop and implement an overall monitoring and evaluation mechanism for the projects;

(9) To act as facilitator for multiple applicants and entrants to the project;

(10) To report to the appropriate legislative committees and others from time to time on the progress of the projects including the identification of statutory and regulatory barriers to successful completion of rural health care delivery goals and an ongoing evaluation of the project. [1991 c 224 § 1; 1989 1st ex.s. c 9 § 705.]

**70.175.060 Duties and responsibilities of participating communities.** The duties and responsibilities of participating communities shall include:

(1) To involve major health care providers, businesses, public officials, and other community leaders in project design, administration, and oversight;

(2) To identify an individual or organization to serve as the local administrator of the project. The secretary may

require the local administrator to maintain acceptable accountability of seed grant funding;

(3) To coordinate and avoid duplication of public health and other health care services;

(4) To assess and analyze community health care needs;

(5) To identify services and providers necessary to meet needs;

(6) To develop outcome measures to assess the long-term effectiveness of modifications initiated through the project;

(7) To write a health care delivery system strategic plan including to the extent possible, identification of outcome measures needed to achieve health status outcomes identified in the plan. New organizational structures created should integrate existing programs and activities of local health providers so as to maximize the efficient planning and delivery of health care by local providers and promote more accessible and affordable health care services to rural citizens. Participants should create health care delivery system strategic plans which promote health care services which the participant can financially sustain;

(8) To screen and contract with consultants for technical assistance if the project site was selected to receive funding and assistance is needed;

(9) To monitor and evaluate the project in an ongoing manner;

(10) To implement necessary changes as defined in the plans such as converting existing facilities, developing or modifying services, recruiting providers, or obtaining agreements with other communities to provide some or all health care services; and

(11) To provide data and comply with other requirements of the administrator that are intended to evaluate the effectiveness of the projects. [1989 1st ex.s. c 9 § 706.]

**70.175.070 Cooperation of state agencies.** (1) The secretary may call upon other agencies of the state to provide available information to assist the secretary in meeting the responsibilities under this chapter. This information shall be supplied as promptly as circumstances permit.

(2) The secretary may call upon other state agencies including institutions of higher education as authorized under Title 28B RCW to identify and coordinate the delivery of technical assistance services to participants in meeting the responsibilities of this chapter. The state agencies and institutions of higher education shall cooperate and provide technical assistance to the secretary to the extent that current funding for these agencies and institutions of higher education permits. [1989 1st ex.s. c 9 § 707.]

**70.175.080 Powers and duties of secretary—Contracting.** In addition to the powers and duties specified in RCW 70.175.050 the secretary has the power to enter into contracts for the following functions and services:

(1) With public or private agencies, to assist the secretary in the secretary's duties to design or revise the health status outcomes, or to monitor or evaluate the performance of participants.

(2) With public or private agencies, to provide technical or professional assistance to project participants. [1989 1st ex.s. c 9 § 708.]

**70.175.090 Participants authorized to contract—Penalty—Secretary and state exempt from liability.** (1) Participants are authorized to use funding granted to them by the secretary for the purpose of contracting for technical assistance services. Participants shall use only consultants identified by the secretary for consulting services unless the participant can show that an alternative consultant is qualified to provide technical assistance and is approved by the secretary. Adequate records shall be kept by the participant showing project site expenditures from grant moneys. Inappropriate use of grant funding shall be a gross misdemeanor.

(2) In providing a list of qualified consultants the secretary and the state shall not be held responsible for assuring qualifications of consultants and shall be held harmless for the actions of consultants. Furthermore, the secretary and the state shall not be held liable for the failure of participants to meet contractual obligations established in connection with project participation. [1989 1st ex.s. c 9 § 709.]

**70.175.100 Licensure—Rules.** (1) The department shall establish and adopt such standards and rules pertaining to the construction, maintenance, and operation of a rural health care facility and the scope of health care services, and rescind, amend, or modify the rules from time to time as necessary in the public interest. In developing the rules, the department shall consult with representatives of rural hospitals, community mental health centers, public health departments, community and migrant health clinics, and other providers of health care in rural communities. The department shall also consult with third-party payers, consumers, local officials, and others to ensure broad participation in defining regulatory standards and requirements that are appropriate for a rural health care facility.

(2) When developing the rural health care facility licensure rules, the department shall consider the report of the Washington rural health care commission established under chapter 207, Laws of 1988. Nothing in this chapter requires the department to follow any specific recommendation contained in that report except as it may also be included in this chapter.

(3) Upon developing rules, the department shall enter into negotiations with appropriate federal officials to seek medicare approval of the facility and financial participation of medicare and other federal programs in developing and operating the rural health care facility. [1998 c 245 § 119; 1989 1st ex.s. c 9 § 710.]

**70.175.110 Licensure—Rules—Duties of department.** In developing the rural health care facility licensure regulations, the department shall:

(1) Minimize regulatory requirements to permit local flexibility and innovation in providing services;

(2) Promote the cost-efficient delivery of health care and other social services as is appropriate for the particular local community;

(3) Promote the delivery of services in a coordinated and nonduplicative manner;

(4) Maximize the use of existing health care facilities in the community;

(5) Permit regionalization of health care services when appropriate;

(6) Provide for linkages with hospitals, tertiary care centers, and other health care facilities to provide services not available in the facility; and

(7) Achieve health care outcomes defined by the community through a community planning process. [1989 1st ex.s. c 9 § 711.]

**70.175.120 Rural health care facility not a hospital.** The rural health care facility is not considered a hospital for building occupancy purposes. [1989 1st ex.s. c 9 § 712.]

**70.175.130 Rural health care plan.** The department may develop and implement a rural health care plan and may approve hospital and rural health care facility requests to be designated as essential access community hospitals or rural primary care hospitals so that such facilities may form rural health networks to preserve health care services in rural areas and thereby be eligible for federal program funding and enhanced medicare reimbursement. The department may monitor any rural health care plan and designated facilities to assure continued compliance with the rural health care plan. [1992 c 27 § 4; 1990 c 271 § 18.]

**70.175.140 Consultative advice for licensees or applicants.** Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities may contact the department for consultative advice before commencing such alteration, addition, or new construction. [1992 c 27 § 5.]

## Chapter 70.180 RCW
## RURAL HEALTH CARE

Sections



*Rural public hospital districts: RCW 70.44.450.*

**70.180.005 Finding—Health care professionals.** The legislature finds that a health care access problem exists in rural areas of the state because rural health care providers are unable to leave the community for short-term periods of time to attend required continuing education training or for personal matters because their absence would leave the community without adequate medical care coverage. The lack of adequate medical coverage in geographically remote rural communities constitutes a threat to the health and safety of the people in those communities.

The legislature declares that it is in the public interest to recruit and maintain a pool of physicians, physician assistants, pharmacists, and advanced registered nurse practitioners willing and able on short notice to practice in rural communities on a short-term basis to meet the medical needs of the community. [1991 c 332 § 27; 1990 c 271 § 1.]

Additional notes found at www.leg.wa.gov

**70.180.009 Finding—Rural training opportunities.** The legislature finds that a shortage of physicians, nurses, pharmacists, and physician assistants exists in rural areas of the state. In addition, many education programs to train these health care providers do not include options for practical training experience in rural settings. As a result, many health care providers find their current training does not prepare them for the unique demands of rural practice.

The legislature declares that the availability of rural training opportunities as a part of professional medical, nursing, pharmacist, and physician assistant education would provide needed practical experience, serve to attract providers to rural areas, and help address the current shortage of these providers in rural Washington. [1990 c 271 § 14.]

**70.180.011 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

(2) "Rural areas" means a rural area in the state of Washington as identified by the department. [1991 c 332 § 29.]

Additional notes found at www.leg.wa.gov

**70.180.020 Health professional temporary substitute resource pool.** The department shall establish or contract for a health professional temporary substitute resource pool. The purpose of the pool is to provide short-term physician, physician assistant, pharmacist, and advanced registered nurse practitioner personnel to rural communities where these health care providers:

(1) Are unavailable due to provider shortages;

(2) Need time off from practice to attend continuing education and other training programs; and

(3) Need time off from practice to attend to personal matters or recover from illness.

The health professional temporary substitute resource pool is intended to provide short-term assistance and should complement active health provider recruitment efforts by rural communities where shortages exist. [1994 c 103 § 1; 1990 c 271 § 2.]

**70.180.030 Registry of health care professionals available to rural communities—Conditions of participation.** (1) The department, in cooperation with the University of Washington school of medicine, the state's registered nursing programs, the state's pharmacy programs, and other appropriate public and private agencies and associations, shall develop and keep current a register of physicians, physician assistants, pharmacists, and advanced registered nurse practitioners who are available to practice on a short-term basis in rural communities of the state. The department shall list only individuals who have a valid license to practice. The register shall be compiled and made available to all rural hospitals, public health departments and districts, rural pharmacies, and other appropriate public and private agencies and associations.

(2) Eligible health care professionals are those licensed under chapters 18.57, 18.64, 18.71, and 18.71A RCW and advanced registered nurse practitioners licensed under chapter 18.79 RCW.

(3) Participating sites may:

(a) Receive reimbursement for substitute provider travel to and from the rural community and for lodging at a rate determined under RCW 43.03.050 and 43.03.060; and

(b) Receive reimbursement for the cost of malpractice insurance if the services provided are not covered by the substitute provider's or local provider's existing medical malpractice insurance. Reimbursement for malpractice insurance shall only be made available to sites that incur additional costs for substitute provider coverage.

(4) The department may require rural communities to participate in health professional recruitment programs as a condition for providing a temporary substitute health care professional if the community does not have adequate permanent health care personnel. To the extent deemed appropriate and subject to funding, the department may also require communities to participate in other programs or projects, such as the rural health system project authorized in chapter 70.175 RCW, that are designed to assist communities to reorganize the delivery of rural health care services.

(5) A participating site may receive reimbursement for substitute provider assistance as provided for in subsection (3) of this section for up to ninety days during any twelve-month period. The department may modify or waive this limitation should it determine that the health and safety of the community warrants a waiver or modification.

(6) Participating sites shall:

(a) Be responsible for all salary expenses for the temporary substitute provider.

(b) Provide the temporary substitute provider with referral and backup coverage information. [2020 c 80 § 48. Prior: 1994 sp.s. c 9 § 746; 1994 c 103 § 2; 1990 c 271 § 3.]

**Effective date—2020 c 80 §§ 12-59:** See note following RCW 7.68.030.

**Intent—2020 c 80:** See note following RCW 18.71A.010.

Additional notes found at www.leg.wa.gov

**70.180.040 Request procedure—Acceptance of gifts.** (1) Requests for a temporary substitute health care professional may be made to the department by the certified health plan, local rural hospital, public health department or district, community health clinic, local practicing physician, physician assistant, pharmacist, or advanced registered nurse practitioner, or local city or county government.

(2) The department may provide directly or contract for services to:

(a) Establish a manner and form for receiving requests;

(b) Minimize paperwork and compliance requirements for participant health care professionals and entities requesting assistance; and

(c) Respond promptly to all requests for assistance.

(3) The department may apply for, receive, and accept gifts and other payments, including property and services, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts to operate the pool. The department shall make available upon request to the appropriate legislative committees information concerning the source, amount, and use of such gifts or payments. [1994 c 103 § 3; 1990 c 271 § 4.]

**70.180.110 Rural training opportunities—Plan development.** (1) The department, in consultation with at least the student achievement council, the state board for community and technical colleges, the superintendent of public instruction, and state-supported education programs in medicine, pharmacy, and nursing, shall develop a plan for increasing rural training opportunities for students in medicine, pharmacy, and nursing. The plan shall provide for direct exposure to rural health professional practice conditions for students planning careers in medicine, pharmacy, and nursing.

(2) The department and the medical, pharmacy, and nurse education programs shall:

(a) Inventory existing rural-based clinical experience programs, including internships, clerkships, residencies, and other training opportunities available to students pursuing degrees in nursing, pharmacy, and medicine;

(b) Identify where training opportunities do not currently exist and are needed;

(c) Develop recommendations for improving the availability of rural training opportunities;

(d) Develop recommendations on establishing agreements between education programs to assure that all students in medical, pharmacist, and nurse education programs in the state have access to rural training opportunities; and

(e) Review private and public funding sources to finance rural-based training opportunities. [2012 c 229 § 593; 1998 c 245 § 120; 1990 c 271 § 15.]

**Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904:** See note following RCW 28B.77.005.

**70.180.120 Midwifery—Statewide plan.** The department, in consultation with training programs that lead to licensure in midwifery and certification as a certified nurse midwife, and other appropriate private and public groups, shall develop a statewide plan to address access to midwifery services.

The plan shall include at least the following: (1) Identification of maternity service shortage areas in the state where midwives could reduce the shortage of services; (2) an inventory of current training programs and preceptorship activities available to train licensed and certified nurse midwives; (3) identification of gaps in the availability of training due to such factors as geographic or economic conditions that prevent individuals from seeking training; (4) identification of other barriers to utilizing midwives; (5) identification of strategies to train future midwives such as developing training programs at community colleges and universities, using innovative telecommunications for training in rural areas, and establishing preceptorship programs accessible to prospective midwives in shortage areas; (6) development of recruitment strategies; and (7) estimates of expected costs associated in recruitment and training.

The plan shall identify the most expeditious and cost-efficient manner to recruit and train midwives to meet the current shortages. Plan development and implementation shall be coordinated with other state policy efforts directed toward, but not limited to, maternity care access, rural health care system organization, and provider recruitment for shortage and medically underserved areas of the state. [1998 c 245 § 121; 1990 c 271 § 16.]

**70.180.130 Expenditures, funding.** Any additional expenditures incurred by the University of Washington from provisions of chapter 271, Laws of 1990 shall be funded from existing financial resources. [1990 c 271 § 28.]

## Chapter 70.185 RCW
## RURAL AND UNDERSERVED AREAS—HEALTH CARE PROFESSIONAL RECRUITMENT AND RETENTION

Sections



*Rural public hospital districts: RCW 70.44.450.*

**70.185.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

(2) "Health care professional recruitment and retention strategic plan" means a plan developed by the participant and includes identification of health care personnel needs of the community, how these professionals will be recruited and retained in the community following recruitment.

(3) "Institutions of higher education" means educational institutions as defined in RCW 28B.10.016.

(4) "Local administrator" means an individual or organization representing the participant who may enter into legal agreements on behalf of the participant.

(5) "Participant" means communities, counties, and regions that serve as a health care catchment area where the project site is located.

(6) "Project" means the community-based retention and recruitment project.

(7) "Project site" means a site selected to participate in the project.

(8) "Secretary" means the secretary of health. [1991 c 332 § 7.]

**70.185.020 Statewide recruitment and retention clearinghouse.** The department, in consultation with appropriate private and public entities, shall establish a health professional recruitment and retention clearinghouse. The clearinghouse shall:

(1) Inventory and classify the current public and private health professional recruitment and retention efforts;

(2) Identify recruitment and retention program models having the greatest success rates;

(3) Identify recruitment and retention program gaps;

(4) Work with existing recruitment and retention programs to better coordinate statewide activities and to make such services more widely known and broadly available;

(5) Provide general information to communities, health care facilities, and others about existing available programs;

(6) Work in cooperation with private and public entities to develop new recruitment and retention programs;

(7) Identify needed recruitment and retention programming for state institutions, county public health departments and districts, county human service agencies, and other entities serving substantial numbers of public pay and charity care patients, and may provide to these entities when they have been selected as participants necessary recruitment and retention assistance including:

(a) Assistance in establishing or enhancing recruitment of health care professionals;

(b) Recruitment on behalf of sites unable to establish their own recruitment program; and

(c) Assistance with retention activities when practitioners of the health professional loan repayment and scholarship program authorized by *chapter 18.150 RCW are present in the practice setting. [1991 c 332 § 8.]

***Reviser's note:** Chapter 18.150 RCW was recodified as chapter 28B.115 RCW by 1991 c 332 § 36.

**70.185.030 Community-based recruitment and retention projects—Duties of department.** (1) The department may, subject to funding, establish community-based recruitment and retention project sites to provide financial and technical assistance to participating communities. The goal of the project is to help assure the availability of health care providers in rural and underserved urban areas of Washington state.

(2) Administrative costs necessary to implement this project shall be kept at a minimum to insure the maximum availability of funds for participants.

(3) The secretary may contract with third parties for services necessary to carry out activities to implement this chapter where this will promote economy, avoid duplication of effort, and make the best use of available expertise.

(4) The secretary may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects related to the delivery of health care in rural areas.

(5) In designing and implementing the project the secretary shall coordinate and avoid duplication with similar federal programs and with the Washington rural health system project as authorized under chapter 70.175 RCW to consolidate administrative duties and reduce costs. [1993 c 492 § 273; 1991 c 332 § 9.]

**Finding—1993 c 492:** See note following RCW 28B.115.080.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.185.040 Rules.** The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for participants and should not be complex in nature so as to serve as a barrier or disincentive for prospective participants applying for the project. [1991 c 332 § 10.]

**70.185.050 Secretary's powers and duties.** The secretary shall have the following powers and duties:

(1) To design the project application and selection process, including a program to advertise the project to rural communities and encourage prospective applicants to apply. Subject to funding, project sites shall be selected that are eligible to receive funding. Funding shall be used to hire consultants and perform other activities necessary to meet participant requirements under this chapter. The secretary shall require at least fifty percent matching funds or in-kind contributions from participants. In considering selection of participants eligible for seed grant funding, the secretary should consider project sites where (a) existing access to health care is severely inadequate, (b) recruitment and retention problems have been chronic, (c) the community is in need of primary care practitioners, or (d) the community has unmet health care needs for specific target populations;

(2) To design acceptable health care professional recruitment and retention strategic plans, and to serve as a general resource to participants in the planning, administration, and evaluation of project sites;

(3) To assess and approve strategic plans developed by participants, including an assessment of the technical and financial feasibility of implementing the plan and whether adequate local support for the plan is demonstrated;

(4) To identify existing private and public resources that may serve as eligible consultants, identify technical assistance resources for communities in the project, create a register of public and private technical resource services available, and provide the register to participants. The secretary shall screen consultants to determine their qualifications prior to including them on the register;

(5) To work with other state agencies, institutions of higher education, and other public and private organizations to coordinate technical assistance services for participants;

(6) To administer available funds for community use while participating in the project and establish procedures to assure accountability in the use of seed grant funds by participants;

(7) To define data and other minimum requirements for adequate evaluation of projects and to develop and implement an overall monitoring and evaluation mechanism for the projects;

(8) To act as facilitator for multiple applicants and entrants to the project;

(9) To report to the appropriate legislative committees and others from time to time on the progress of the projects including the identification of statutory and regulatory barriers to successful completion of rural health care delivery goals and an ongoing evaluation of the project. [1991 c 332 § 11.]

**70.185.060 Duties and responsibilities of participating communities.** The duties and responsibilities of participating communities shall include:

(1) To involve major health care providers, businesses, public officials, and other community leaders in project design, administration, and oversight;

(2) To identify an individual or organization to serve as the local administrator of the project. The secretary may require the local administrator to maintain acceptable accountability of seed grant funding;

(3) To coordinate and avoid duplication of public health and other health care services;

(4) To assess and analyze community health care professional needs;

(5) To write a health care professional recruitment and retention strategic plan;

(6) To screen and contract with consultants for technical assistance if the project site was selected to receive funding and assistance is needed;

(7) To monitor and evaluate the project in an ongoing manner;

(8) To provide data and comply with other requirements of the administrator that are intended to evaluate the effectiveness of the projects;

(9) To assure that specific populations with unmet health care needs have access to services. [1991 c 332 § 12.]

**70.185.070 Cooperation of state agencies.** (1) The secretary may call upon other agencies of the state to provide available information to assist the secretary in meeting the responsibilities under this chapter. This information shall be supplied as promptly as circumstances permit.

(2) The secretary may call upon other state agencies including institutions of higher education as authorized under Titles 28A and 28B RCW to identify and coordinate the delivery of technical assistance services to participants in meeting the responsibilities of this chapter. The state agencies, vocational-technical institutions, and institutions of higher education shall cooperate and provide technical assistance to the secretary to the extent that current funding for these entities permits. [1991 c 332 § 13.]

**70.185.080 Participants authorized to contract—Penalty—Secretary and state exempt from liability.** (1) Participants are authorized to use funding granted to them by the secretary for the purpose of contracting for technical assistance services. Participants shall use only consultants identified by the secretary for consulting services unless the participant can show that an alternative consultant is qualified to provide technical assistance and is approved by the secretary. Adequate records shall be kept by the participant showing project site expenditures from grant moneys. Inappropriate use of grant funding is a gross misdemeanor and shall incur the penalties under chapter 9A.20 RCW.

(2) In providing a list of qualified consultants the secretary and the state shall not be held responsible for assuring qualifications of consultants and shall be held harmless for the actions of consultants. Furthermore, the secretary and the state shall not be held liable for the failure of participants to meet contractual obligations established in connection with project participation. [1991 c 332 § 14.]

**70.185.090 Community contracted student educational positions.** (1) The department may develop a mechanism for underserved rural or urban communities to contract with education and training programs for student positions above the full time equivalent lids. The goal of this program is to provide additional capacity, educating students who will practice in underserved communities.

(2) Eligible education and training programs are those programs approved by the department that lead to eligibility for a credential as a credentialed health care professional. Eligible professions are those licensed under chapters 18.36A, 18.57, 18.71, and 18.71A RCW and advanced registered nurse practitioners and certified nurse midwives licensed under chapter 18.79 RCW, and may include other providers identified as needed in the health personnel resource plan.

(3) Students participating in the community contracted educational positions shall meet all applicable educational program requirements and provide assurances, acceptable to the community, that they will practice in the sponsoring community following completion of education and necessary licensure.

(4) Participants in the program incur an obligation to repay any contracted funds with interest set by state law, unless they serve at least three years in the sponsoring community.

(5) The department may provide funds to communities for use in contracting. [2020 c 80 § 49; 1993 c 492 § 274.]

**Effective date—2020 c 80 §§ 12-59:** See note following RCW 7.68.030.

**Intent—2020 c 80:** See note following RCW 18.71A.010.

**Finding—1993 c 492:** See note following RCW 28B.115.080.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.185.100 Contracts with area health education centers.** The secretary may establish and contract with area health education centers in the eastern and western parts of the state. Consistent with the recruitment and retention objectives of this chapter, the centers shall provide or facilitate the provision of health professional educational and continuing education programs that strengthen the delivery of primary health care services in rural and medically underserved urban areas of the state. The center shall assist in the development and operation of health personnel recruitment and retention programs that are consistent with activities authorized under this chapter. The centers shall further provide technical expertise in the development of well managed health care delivery systems in rural Washington consistent with the goals and objectives of chapter 492, Laws of 1993. [1993 c 492 § 275.]

**Finding—1993 c 492:** See note following RCW 28B.115.080.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

**70.185.900 Application to scope of practice—Captions not law—1991 c 332.** See notes following RCW 18.130.010.

## Chapter 70.190 RCW
## FAMILY POLICY COUNCIL

Sections



**70.190.030 Proposals to facilitate services at the community level.** The council shall annually solicit from community networks proposals to facilitate greater flexibility, coordination, and responsiveness of services at the community level. The council shall consider such proposals only if:

(1) A comprehensive plan has been prepared by the community networks;

(2) The community network has identified and agreed to contribute matching funds as specified in *RCW 70.190.010;

(3) An interagency agreement has been prepared by the council and the participating local service and support agencies that governs the use of funds, specifies the relationship of the project to the principles listed in RCW 74.14A.025, and identifies specific outcomes and indicators; and

(4) The community network has designed into its comprehensive plan standards for accountability. Accountability standards include, but are not limited to, the public hearing process eliciting public comment about the appropriateness of the proposed comprehensive plan. The community network must submit reports to the council outlining the public response regarding the appropriateness and effectiveness of the comprehensive plan. [1994 sp.s. c 7 § 316; 1992 c 198 § 5.]

***Reviser's note:** RCW 70.190.010 was repealed by 2011 1st sp.s. c 32 § 13, effective June 30, 2012.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.050 Community networks—Outcome evaluation.** (1) The Washington state institute for public policy shall conduct or contract for monitoring and tracking of the implementation of chapter 7, Laws of 1994 sp. sess. to determine whether these efforts result in a measurable reduction of violence. The institute shall also conduct or contract for an evaluation of the effectiveness of the community public health and safety networks in reducing the rate of at-risk youth through reducing risk factors and increasing protective factors. The evaluation plan shall result in statistically valid evaluation at both statewide and community levels.

(2) Starting five years after the initial grant to a community network, if the community network fails to meet the outcome standards and goals in any two consecutive years, the institute shall make recommendations to the legislature concerning whether the funds received by that community network should revert back to the originating agency. In making this determination, the institute shall consider the adequacy of the level of intervention relative to the risk factors in the community and any external events having a significant impact on risk factors or outcomes.

(3) The outcomes required under this chapter and social development standards and measures established by the

department of health under RCW 43.70.555 shall be used in conducting the outcome evaluation of the community networks. [1998 c 245 § 122; 1994 sp.s. c 7 § 207.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.060 Community networks—Legislative intent—Membership—Open meetings.** (1) The legislature authorizes community public health and safety networks to reconnect parents and other citizens with children, youth, families, and community institutions which support health and safety. The networks have only those powers and duties expressly authorized under this chapter. The networks should empower parents and other citizens by being a means of expressing their attitudes, spirit, and perspectives regarding safe and healthy family and community life. The legislature intends that parent and other citizen perspectives exercise a controlling influence over policy and program operations of professional organizations concerned with children and family issues within networks in a manner consistent with the Constitution and state law. It is not the intent of the legislature that health, social service, or educational professionals dominate community public health and safety network processes or programs, but rather that these professionals use their skills to lend support to parents and other citizens in expressing their values as parents and other citizens identify community needs and establish community priorities. To this end, the legislature intends full participation of parents and other citizens in community public health and safety networks. The intent is that local community values are reflected in the operations of the network.

(2) A group of persons described in subsection (3) of this section may apply to be a community public health and safety network.

(3) Each community public health and safety network shall be composed of twenty-three people, thirteen of whom shall be citizens who live within the network boundary with no fiduciary interest. In selecting these members, first priority shall be given to members of community mobilization advisory boards, city or county children's services commissions, human services advisory boards, or other such organizations. The thirteen persons shall be selected as follows: Three by chambers of commerce, three by school board members, three by county legislative authorities, three by city legislative authorities, and one high school student, selected by student organizations. The remaining ten members shall live or work within the network boundary and shall include local representation selected by the following groups and entities: Cities; counties; federally recognized Indian tribes; parks and recreation programs; law enforcement agencies; state children's service workers; employment assistance workers; private social service providers, broad-based nonsecular organizations, or health service providers; and public education.

(4) Each of the twenty-three people who are members of each community public health and safety network must sign an annual declaration under penalty of perjury or a notarized statement that clearly, in plain and understandable language, states whether or not he or she has a fiduciary interest. If a member has a fiduciary interest, the nature of that interest must be made clear, in plain understandable language, on the signed statement.

(5) Members of the network shall serve terms of three years.

The terms of the initial members of each network shall be as follows: (a) One-third shall serve for one year; (b) one-third shall serve for two years; and (c) one-third shall serve for three years. Initial members may agree which shall serve fewer than three years or the decision may be made by lot. Any vacancy occurring during the term may be filled by the chair for the balance of the unexpired term.

(6) Not less than sixty days before the expiration of a network member's term, the chair shall submit the name of a nominee to the network for its approval. The network shall comply with subsection (3) of this section.

(7) Networks are subject to the open public meetings act under chapter 42.30 RCW and the public records provisions of chapter 42.56 RCW. [2005 c 274 § 345; 1998 c 314 § 12; 1996 c 132 § 3; 1994 sp.s. c 7 § 303.]

**Intent—Construction—1996 c 132:** "It is the intent of this act only to make minimal clarifying, technical, and administrative revisions to the laws concerning community public health and safety networks and to the related agencies responsible for implementation of the networks. This act is not intended to change the scope of the duties or responsibilities, nor to undermine the underlying policies, set forth in chapter 7, Laws of 1994 sp. sess." [1996 c 132 § 1.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

**70.190.065 Member's authorization of expenditures—Limitation.** No network member may vote to authorize, or attempt to influence the authorization of, any expenditure in which the member's immediate family has a fiduciary interest. For the purpose of this section "immediate family" means a spouse, parent, grandparent, adult child, brother, or sister. [1996 c 132 § 5.]

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.060.

**70.190.070 Community networks—Duties.** The community public health and safety networks shall:

(1) Review state and local public health data and analysis relating to risk factors, protective factors, and at-risk children and youth;

(2) Prioritize the risk factors and protective factors to reduce the likelihood of their children and youth being at risk. The priorities shall be based upon public health data and assessment and policy development standards provided by the department of health under RCW 43.70.555;

(3) Develop long-term comprehensive plans to reduce the rate of at-risk children and youth; set definitive, measurable goals, based upon the department of health standards; and project their desired outcomes;

(4) Distribute funds to local programs that reflect the locally established priorities and as provided in *RCW 70.190.140;

(5) Comply with outcome-based standards;

(6) Cooperate with the department of health and local boards of health to provide data and determine outcomes; and

(7) Coordinate its efforts with anti-drug use efforts and organizations and maintain a high priority for combatting drug use by at-risk youth. [1994 sp.s. c 7 § 304.]

***Reviser's note:** RCW 70.190.140 expired June 30, 1995.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.075 Lead fiscal agent.** (1) Each network shall contract with a public entity as its lead fiscal agent. The contract shall grant the agent authority to perform fiscal, accounting, contract administration, legal, and other administrative duties, including the provision of liability insurance. Any contract under this subsection shall be submitted to the council by the network for approval prior to its execution. The council shall review the contract to determine whether the administrative costs will be held to no more than ten percent.

(2) The lead agent shall maintain a system of accounting for network funds consistent with the budgeting, accounting, and reporting systems and standards adopted or approved by the state auditor.

(3) The lead agent may contract with another public or private entity to perform duties other than fiscal or accounting duties. [1996 c 132 § 4.]

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.060.

**70.190.080 Community networks—Programs and plans.** (1) The community network's plan may include a program to provide postsecondary scholarships to at-risk students who: (a) Are community role models under criteria established by the community network; (b) successfully complete high school; and (c) maintain at least a 2.5 grade point average throughout high school. Funding for the scholarships may include public and private sources.

(2) The community network's plan may also include funding of community-based home visitor programs which are designed to reduce the incidence of child abuse and neglect within the network. Parents shall sign a voluntary authorization for services, which may be withdrawn at any time. The program may provide parents with education and support either in parents' homes or in other locations comfortable for parents, beginning with the birth of their first baby. The program may make the following services available to the families:

(a) Visits for all expectant or new parents, either at the parent's home or another location with which the parent is comfortable;

(b) Screening before or soon after the birth of a child to assess the family's strengths and goals and define areas of concern in consultation with the family;

(c) Parenting education and skills development;

(d) Parenting and family support information and referral;

(e) Parent support groups; and

(f) Service coordination for individual families, and assistance with accessing services, provided in a manner that ensures that individual families have only one individual or agency to which they look for service coordination. Where appropriate for a family, service coordination may be conducted through interdisciplinary or interagency teams.

These programs are intended to be voluntary for the parents involved.

(3) In developing long-term comprehensive plans to reduce the rate of at-risk children and youth, the community networks shall consider increasing employment and job training opportunities in recognition that they constitute an effective network strategy and strong protective factor. The networks shall consider and may include funding of:

(a) At-risk youth job placement and training programs. The programs shall:

(i) Identify and recruit at-risk youth for local job opportunities;

(ii) Provide skills and needs assessments for each youth recruited;

(iii) Provide career and occupational counseling to each youth recruited;

(iv) Identify businesses willing to provide employment and training opportunities for at-risk youth;

(v) Match each youth recruited with a business that meets his or her skills and training needs;

(vi) Provide employment and training opportunities that prepare the individual for demand occupations; and

(vii) Include, to the extent possible, collaboration of business, labor, education and training, community organizations, and local government;

(b) Employment assistance, including job development, school-to-work placement, employment readiness training, basic skills, apprenticeships, job mentoring, and private sector and community service employment;

(c) Education assistance, including tutoring, mentoring, interactions with role models, entrepreneurial education and projects, violence prevention training, safe school strategies, and employment reentry assistance services.

(4) The community network may include funding of:

(a) Peer-to-peer, group, and individual counseling, including crisis intervention, for at-risk youth and their parents;

(b) Youth coalitions that provide opportunities to develop leadership skills and gain appropriate respect, recognition, and rewards for their positive contribution to their community;

(c) Technical assistance to applicants to increase their organizational capacity and to improve the likelihood of a successful application; and

(d) Technical assistance and training resources to successful applicants. [1996 c 132 § 6; 1994 sp.s. c 7 § 305.]

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.060.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.085 Community networks—Sexual abstinence and activity campaign.** The community network's plan may include funding for a student designed media and community campaign promoting sexual abstinence and addressing the importance of delaying sexual activity and pregnancy or male parenting until individuals are ready to nurture and support their children. Under the campaign, which shall be substantially designed and produced by students, the same messages shall be distributed in schools, through the media, and in the community where the cam-

paign is targeted. The campaign shall require local private sector matching funds equal to state funds. Local private sector funds may include in-kind contributions of technical or other assistance from consultants or firms involved in public relations, advertising, broadcasting, and graphics or video production or other related fields. The campaign shall be evaluated using the outcomes required of community networks under this chapter, in particular reductions in the number or rate of teen pregnancies and teen male parentage over a three to five year period. [1994 c 299 § 5.]

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

**70.190.090 Community networks—Planning grants and contracts—Distribution of funds—Reports.** (1) A network shall, upon application to the council, be eligible to receive planning grants and technical assistance from the council. However, during the 1999-01 fiscal biennium, a network that has not finalized its membership shall be eligible to receive such grants and assistance. Planning grants may be funded through available federal funds for family preservation services. After receiving the planning grant the network has up to one year to submit the long-term comprehensive plan.

(2) The council shall enter into biennial contracts with networks as part of the grant process. The contracts shall be consistent with available resources, and shall be distributed in accordance with the distribution formula developed pursuant to *RCW 43.41.195, subject to the applicable matching fund requirement.

(3) No later than February 1 of each odd-numbered year following the initial contract between the council and a network, the council shall request from the network its plan for the upcoming biennial contract period.

(4) The council shall notify the networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(5) The networks shall, by contract, distribute funds (a) appropriated for plan implementation by the legislature, and (b) obtained from nonstate or federal sources. In distributing funds, the networks shall ensure that administrative costs are held to a maximum of ten percent. However, during the 1999-01 fiscal biennium, administrative costs shall be held to a maximum of ten percent or twenty thousand dollars, whichever is greater, exclusive of costs associated with procurement, payroll processing, personnel functions, management, maintenance and operation of space and property, data processing and computer services, indirect costs, and organizational planning, consultation, coordination, and training.

(6) A network shall not provide services or operate programs.

(7) A network shall file a report with the council by May 1 of each year that includes but is not limited to the following information: Detailed expenditures, programs under way, progress on contracted services and programs, and successes and problems in achieving the outcomes required by **RCW 70.190.130(1)(h) related to reducing the rate of state-funded out-of-home placements and the other three at-risk behaviors covered by the comprehensive plan and approved by the council. [1999 c 309 § 918; 1996 c 132 § 7; 1994 sp.s. c 7 § 306.]

**Reviser's note:** *(1) RCW 43.41.195 was repealed by 2015 3rd sp.s. c 1 § 326.

**(2) RCW 70.190.130 was repealed by 2011 1st sp.s. c 32 § 13, effective June 30, 2012.

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.060.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

Additional notes found at www.leg.wa.gov

**70.190.160 Community networks—Implementation in federal and state plans.** The implementation of community networks shall be included in all federal and state plans affecting the state's children, youth, and families. The plans shall be consistent with the intent and requirements of this chapter. [1994 sp.s. c 7 § 314.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.170 Transfer of funds and programs to state agency.** If a community network is unable or unwilling to assume powers and duties authorized under this chapter by June 30, 1998, or the Washington state institute for public policy makes a recommendation under RCW 70.190.050, the governor may transfer all funds and programs available to a community network to a single state agency whose statutory purpose, mission, goals, and operating philosophy most closely supports the principles and purposes of section 101, chapter 7, Laws of 1994 sp. sess. and RCW 74.14A.020, for the purpose of integrating the programs and services. [1994 sp.s. c 7 § 320.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.180 Community network—Grants for use of school facilities.** A community public health and safety network, based on rules adopted by the department of health, may include in its comprehensive community plans procedures for providing matching grants to school districts to support expanded use of school facilities for after-hours recreational opportunities and day care as authorized under chapter 28A.215 RCW and RCW 28A.620.010. [1994 sp.s. c 7 § 604.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**70.190.190 Network members immune from civil liability—Network assets not subject to attachment or execution.** (1) The network members are immune from all civil liability arising from their actions done in their decision-making capacity as a network member, except for their intentional tortious acts or acts of official misconduct.

(2) The assets of a network are not subject to attachment or execution in satisfaction of a judgment for the tortious acts or official misconduct of any network member or for the acts of any agency or program to which it provides funds. [1996 c 132 § 9.]

**Intent—Construction—Severability—1996 c 132:** See notes following RCW 70.190.060.

**70.190.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** For

the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 156.]

## Chapter 70.198 RCW
## EARLY INTERVENTION SERVICES—HEARING LOSS

Sections



**70.198.010 Findings.** (1) The legislature finds that children who are deaf or hard of hearing and their families have unique needs specific to the hearing loss. These unique needs reflect the challenges children with hearing loss and their families encounter related to their lack of full access to auditory communication.

(2) The legislature further finds that early detection of hearing loss in a child and early intervention and treatment have been demonstrated to be highly effective in facilitating a child's healthy development in a manner consistent with the child's age and cognitive ability.

(3) These combined factors support the need for early intervention services providers with specialized training and expertise, spanning the spectrum of available approaches and educational options, who can address the unique characteristics and needs of each child who is deaf or hard of hearing and that child's family. [2004 c 47 § 1.]

**70.198.020 Advisory council—Membership.** (1) There is established an advisory council in the department of social and health services for the purpose of advancing the development of a comprehensive and effective statewide system to provide prompt and effective early interventions for children in the state who are deaf or hard of hearing and their families.

(2) Members of the advisory council shall have training, experience, or interest in hearing loss in children. Membership shall include, but not be limited to, the following: Pediatricians; audiologists; teachers of the deaf and hard of hearing; parents of children who are deaf or hard of hearing; a representative from the Washington center for deaf and hard of hearing youth; and representatives of the early support for infants and toddlers program in the department of children, youth, and families, the department of health, and the office of the superintendent of public instruction. [2019 c 266 § 27; 2018 c 58 § 12; 2010 c 233 § 2; 2009 c 381 § 33; 2004 c 47 § 2.]

**Effective date—2018 c 58:** See note following RCW 28A.655.080.

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

Additional notes found at www.leg.wa.gov

**70.198.030 Development of early intervention service standards.** (1) The advisory council shall develop statewide standards for early intervention services and early intervention services providers specifically related to children who are deaf or hard of hearing.

(2) The advisory council shall develop these standards by January 1, 2005. [2004 c 47 § 3.]

**70.198.040 Hearing loss pamphlet.** (1) The advisory council shall create a pamphlet to be provided to the parents of a child in the state who is diagnosed with hearing loss by their child's pediatrician or audiologist, as appropriate, upon diagnosis of hearing loss. The pamphlet shall contain, at minimum, information on the following: The variety of interventions and treatments available for children who are deaf or hard of hearing; and resources for parent support, counseling, financing, and education related to hearing loss in children.

(2) The pamphlet shall be available for distribution by July 1, 2005. [2004 c 47 § 4.]

## Chapter 70.200 RCW
## DONATIONS FOR CHILDREN

Sections



**70.200.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Distributing organization" means a charitable nonprofit organization under 26 U.S.C. Sec. 501(c) of the federal internal revenue code, or a public health agency acting on behalf of or in conjunction with a charitable nonprofit organization, which distributes children's items to needy persons free of charge and includes any nonprofit organization that distributes children's items free of charge to other nonprofit organizations or the public. A public health agency shall not otherwise be considered a distributing organization for purposes of this chapter when it is carrying out other functions and responsibilities under Title 70 RCW.

(2) "Donor" means a person, corporation, association, or other organization that donates children's items to a distributing organization or a person, corporation, association, or other organization that repairs or updates such donated items to current standards. Donor also includes any person, corporation, association, or other organization which donates any space in which storage or distribution of children's items takes place.

(3) "Children's items" include, but are not limited to, clothes, diapers, food, baby formula, cribs, playpens, car seat restraints, toys, high chairs, and books. [1997 c 40 § 1; 1994 c 25 § 1.]

**70.200.020 Immunity from liability.** Donors and distributing organizations are not liable for civil damages or

criminal penalties resulting from the nature, age, condition, or packaging of the donated children's items unless a donor or distributing organization acts with gross negligence or intentional misconduct. [1994 c 25 § 2.]

**70.200.030 Construction—Liability, penalty.** Nothing in this chapter may be construed to create any liability of, or penalty against a donor or distributing organization except as provided in RCW 70.200.020. [1994 c 25 § 3.]

## Chapter 70.225 RCW
## PRESCRIPTION MONITORING PROGRAM

Sections



**70.225.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Controlled substance" has the meaning provided in RCW 69.50.101.

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

(3) "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed.

(4) "Dispenser" means a practitioner or pharmacy that delivers a Schedule II, III, IV, or V controlled substance to the ultimate user, but does not include:

(a) A practitioner or other authorized person who administers, as defined in RCW 69.41.010, a controlled substance; or

(b) A licensed wholesale distributor or manufacturer, as defined in chapter 18.64 RCW, of a controlled substance.

(5) "Prescriber" means any person authorized to order or prescribe legend drugs or schedule II, III, IV, or V controlled substances to the ultimate user.

(6) "Requestor" means any person or entity requesting, accessing, or receiving information from the prescription monitoring program under RCW 70.225.040 (3), (4), or (5). [2019 c 314 § 20; 2007 c 259 § 42.]

**Declaration—2019 c 314:** See note following RCW 18.22.810.

**70.225.020 Prescription monitoring program—Subject to funding—Duties of dispensers.** (1) The department shall establish and maintain a prescription monitoring program to monitor the prescribing and dispensing of all Schedules II, III, IV, and V controlled substances and any additional drugs identified by the pharmacy quality assurance commission as demonstrating a potential for abuse by all professionals licensed to prescribe or dispense such substances in this state. The program shall be designed to improve health care quality and effectiveness by reducing abuse of controlled substances, reducing duplicative prescribing and overprescribing of controlled substances, and improving controlled substance prescribing practices with the intent of eventually establishing an electronic database available in real time to dispensers and prescribers of controlled substances. As much as possible, the department should establish a common database with other states. This program's management and operations shall be funded entirely from the funds in the account established under RCW 74.09.215. Nothing in this chapter prohibits voluntary contributions from private individuals and business entities as defined under Title 23, 23B, 24, or 25 RCW to assist in funding the prescription monitoring program.

(2) Except as provided in subsection (4) of this section, each dispenser shall submit to the department by electronic means information regarding each prescription dispensed for a drug included under subsection (1) of this section. Drug prescriptions for more than one day use should be reported. The information submitted for each prescription shall include, but not be limited to:

(a) Patient identifier;

(b) Drug dispensed;

(c) Date of dispensing;

(d) Quantity dispensed;

(e) Prescriber; and

(f) Dispenser.

(3)(a) Until January 1, 2021, each dispenser shall submit the information in accordance with transmission methods established by the department, not later than one business day from the date of dispensing or at the interval required by the department in rule, whichever is sooner.

(b) Beginning January 1, 2021, each dispenser must submit the information as soon as readily available, but no later than one business day from the date of distributing, and in accordance with transmission methods established by the department.

(4) The data submission requirements of subsections (1) through (3) of this section do not apply to:

(a) Medications provided to patients receiving inpatient services provided at hospitals licensed under chapter 70.41 RCW; or patients of such hospitals receiving services at the clinics, day surgery areas, or other settings within the hospital's license where the medications are administered in single doses;

(b) Pharmacies operated by the department of corrections for the purpose of providing medications to offenders in department of corrections institutions who are receiving pharmaceutical services from a department of corrections pharmacy, except that the department of corrections must submit data related to each offender's current prescriptions for controlled substances upon the offender's release from a department of corrections institution; or

(c) Veterinarians licensed under chapter 18.92 RCW. The department, in collaboration with the veterinary board of governors, shall establish alternative data reporting requirements for veterinarians that allow veterinarians to report:

(i) By either electronic or nonelectronic methods;

(ii) Only those data elements that are relevant to veterinary practices and necessary to accomplish the public protection goals of this chapter; and

(iii) No more frequently than once every three months and no less frequently than once every six months.

(5) The department shall continue to seek federal grants to support the activities described in chapter 259, Laws of 2007. The department may not require a practitioner or a pharmacist to pay a fee or tax specifically dedicated to the operation and management of the system. [2019 c 314 § 21. Prior: 2013 c 36 § 2; 2013 c 19 § 126; 2012 c 192 § 1; 2007 c 259 § 43.]

**Declaration—2019 c 314:** See note following RCW 18.22.810.

**Findings—2013 c 36:** "The legislature finds that:

(1) The prescription monitoring program contributes to patient safety and reduction in drug errors for all patients, including medicaid beneficiaries in Washington state. Further, the prescription monitoring program provides the critical function of reducing costs borne by medicaid and provides for the detection of fraud in the medicaid system.

(2) Because of the nexus between medicaid, medicaid fraud, and cost reductions, the funding for the operations and management of the prescription monitoring program should be funded entirely from the medicaid fraud penalty account under RCW 74.09.215, with the option of funding the prescription monitoring program through voluntary contributions from private individuals and corporations as defined under Title 23, 23B, 24, or 25 RCW." [2013 c 36 § 1.]

**70.225.025 Rules.** The department shall adopt rules to implement this chapter. [2007 c 259 § 47.]

**70.225.030 Enhancement of program—Feasibility study.** To the extent that funding is provided for such purpose through federal or private grants, or is appropriated by the legislature, the health care authority shall study the feasibility of enhancing the prescription monitoring program established in RCW 70.225.020 in order to improve the quality of state purchased health services by reducing legend drug abuse, reducing duplicative and overprescribing of legend drugs, and improving legend drug prescribing practices. The study shall address the steps necessary to expand the program to allow those who prescribe or dispense prescription drugs to perform a web-based inquiry and obtain real time information regarding the legend drug utilization history of persons for whom they are providing medical or pharmaceutical care when such persons are receiving health services through state purchased health care programs. [2007 c 259 § 44.]

**70.225.040 Confidentiality and exemption from disclosure of prescription monitoring program information—Procedures—Immunity when acting in good faith.** (1) All information submitted to the prescription monitoring program is confidential, exempt from public inspection, copying, and disclosure under chapter 42.56 RCW, not subject to subpoena or discovery in any civil action, and protected under federal health care information privacy requirements, except as provided in subsections (3) through (6) of this section. Such confidentiality and exemption from disclosure continues whenever information from the prescription monitoring program is provided to a requestor under subsection (3), (4), (5), or (6) of this section except when used in proceedings specifically authorized in subsection (3), (4), or (5) of this section.

(2) The department must maintain procedures to ensure that the privacy and confidentiality of all information collected, recorded, transmitted, and maintained including, but not limited to, the prescriber, requestor, dispenser, patient, and persons who received prescriptions from dispensers, is not disclosed to persons except as in subsections (3) through (6) of this section.

(3) The department may provide data in the prescription monitoring program to the following persons:

(a) Persons authorized to prescribe or dispense controlled substances or legend drugs, for the purpose of providing medical or pharmaceutical care for their patients;

(b) An individual who requests the individual's own prescription monitoring information;

(c) A health professional licensing, certification, or regulatory agency or entity in this or another jurisdiction. Consistent with current practice, the data provided may be used in legal proceedings concerning the license;

(d) Appropriate law enforcement or prosecutorial officials, including local, state, and federal officials and officials of federally recognized tribes, who are engaged in a bona fide specific investigation involving a designated person;

(e) The director or the director's designee within the health care authority regarding medicaid recipients and members of the health care authority self-funded or self-insured health plans;

(f) The director or director's designee within the department of labor and industries regarding workers' compensation claimants;

(g) The director or the director's designee within the department of corrections regarding offenders committed to the department of corrections;

(h) Other entities under grand jury subpoena or court order;

(i) Personnel of the department for purposes of:

(i) Assessing prescribing and treatment practices and morbidity and mortality related to use of controlled substances and developing and implementing initiatives to protect the public health including, but not limited to, initiatives to address opioid use disorder;

(ii) Providing quality improvement feedback to prescribers, including comparison of their respective data to aggregate data for prescribers with the same type of license and same specialty; and

(iii) Administration and enforcement of this chapter or chapter 69.50 RCW;

(j) Personnel of a test site that meet the standards under RCW 70.225.070 pursuant to an agreement between the test site and a person identified in (a) of this subsection to provide assistance in determining which medications are being used by an identified patient who is under the care of that person;

(k) A health care facility or entity for the purpose of providing medical or pharmaceutical care to the patients of the facility or entity, or for quality improvement purposes if the facility or entity is licensed by the department or is licensed or certified under chapter 71.24, 71.34, or 71.05 RCW or is an entity deemed for purposes of chapter 71.24 RCW to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body, or is operated by the federal government or a federally recognized Indian tribe;

(l) A health care provider group of five or more prescribers or dispensers for purposes of providing medical or pharmaceutical care to the patients of the provider group, or for quality improvement purposes if all the prescribers or dispensers in the provider group are licensed by the department or the provider group is operated by the federal government or a federally recognized Indian tribe;

(m) The local health officer of a local health jurisdiction for the purposes of patient follow-up and care coordination following a controlled substance overdose event. For the purposes of this subsection "local health officer" has the same meaning as in RCW 70.05.010; and

(n) The coordinated care electronic tracking program developed in response to section 213, chapter 7, Laws of 2012 2nd sp. sess., commonly referred to as the seven best practices in emergency medicine, for the purposes of providing:

(i) Prescription monitoring program data to emergency department personnel when the patient registers in the emergency department; and

(ii) Notice to local health officers who have made opioid-related overdose a notifiable condition under RCW 70.05.070 as authorized by rules adopted under RCW 43.20.050, providers, appropriate care coordination staff, and prescribers listed in the patient's prescription monitoring program record that the patient has experienced a controlled substance overdose event. The department shall determine the content and format of the notice in consultation with the Washington state hospital association, Washington state medical association, and Washington state health care authority, and the notice may be modified as necessary to reflect current needs and best practices.

(4) The department shall, on at least a quarterly basis, and pursuant to a schedule determined by the department, provide a facility or entity identified under subsection (3)(k) of this section or a provider group identified under subsection (3)(l) of this section with facility or entity and individual prescriber information if the facility, entity, or provider group:

(a) Uses the information only for internal quality improvement and individual prescriber quality improvement feedback purposes and does not use the information as the sole basis for any medical staff sanction or adverse employment action; and

(b) Provides to the department a standardized list of current prescribers of the facility, entity, or provider group. The specific facility, entity, or provider group information provided pursuant to this subsection and the requirements under this subsection must be determined by the department in consultation with the Washington state hospital association, Washington state medical association, and Washington state health care authority, and may be modified as necessary to reflect current needs and best practices.

(5)(a) The department may publish or provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used directly or indirectly to identify individual patients, requestors, dispensers, prescribers, and persons who received prescriptions from dispensers. Direct and indirect patient identifiers may be provided for research that has been approved by the Washington state institutional review board and by the department through a data-sharing agreement.

(b)(i) The department may provide dispenser and prescriber data and data that includes indirect patient identifiers to the Washington state hospital association for use solely in connection with its coordinated quality improvement program maintained under RCW 43.70.510 after entering into a data use agreement as specified in *RCW 43.70.052(8) with the association. The department may provide dispenser and prescriber data and data that includes indirect patient identifiers to the Washington state medical association for use solely in connection with its coordinated quality improvement program maintained under RCW 43.70.510 after entering into a data use agreement with the association.

(ii) The department may provide data including direct and indirect patient identifiers to the department of social and health services office of research and data analysis, the department of labor and industries, and the health care authority for research that has been approved by the Washington state institutional review board and, with a data-sharing agreement approved by the department, for public health purposes to improve the prevention or treatment of substance use disorders.

(iii) The department may provide a prescriber feedback report to the largest health professional association representing each of the prescribing professions. The health professional associations must distribute the feedback report to prescribers engaged in the professions represented by the associations for quality improvement purposes, so long as the reports contain no direct patient identifiers that could be used to identify individual patients, dispensers, and persons who received prescriptions from dispensers, and the association enters into a written data-sharing agreement with the department. However, reports may include indirect patient identifiers as agreed to by the department and the association in a written data-sharing agreement.

(c) For the purposes of this subsection:

(i) "Indirect patient identifiers" means data that may include: Hospital or provider identifiers, a five-digit zip code, county, state, and country of resident; dates that include month and year; age in years; and race and ethnicity; but does not include the patient's first name; middle name; last name; social security number; control or medical record number; zip code plus four digits; dates that include day, month, and year; or admission and discharge date in combination; and

(ii) "Prescribing professions" include:

(A) Allopathic physicians and physician assistants;

(B) Osteopathic physicians;

(C) Podiatric physicians;

(D) Dentists; and

(E) Advanced registered nurse practitioners.

(6) The department may enter into agreements to exchange prescription monitoring program data with established prescription monitoring programs in other jurisdictions. Under these agreements, the department may share prescription monitoring system data containing direct and indirect patient identifiers with other jurisdictions through a clearinghouse or prescription monitoring program data exchange that meets federal health care information privacy requirements. Data the department receives from other jurisdictions must be retained, used, protected, and destroyed as provided by the agreements to the extent consistent with the laws in this state.

(7) Persons authorized in subsections (3) through (6) of this section to receive data in the prescription monitoring program from the department, acting in good faith, are immune from any civil, criminal, disciplinary, or administrative liability that might otherwise be incurred or imposed for acting under this chapter. [2020 c 80 § 50; 2019 c 314 § 23; 2017 c 297 § 9; 2016 c 104 § 1. Prior: 2015 c 259 § 1; 2015 c 49 § 1; 2011 1st sp.s. c 15 § 87; 2007 c 259 § 45.]

***Reviser's note:** RCW 43.70.052 was amended by 2021 c 162 § 1, changing subsection (8) to subsection (10).

**Effective date—2020 c 80 §§ 12-59:** See note following RCW 7.68.030.

**Intent—2020 c 80:** See note following RCW 18.71A.010.

**Declaration—2019 c 314:** See note following RCW 18.22.810.

**Findings—Intent—2017 c 297:** See note following RCW 18.22.800.

**Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15:** See notes following RCW 74.09.010.

**70.225.045 Annual report.** Beginning November 15, 2017, the department shall annually report to the governor and the appropriate committees of the legislature on the number of facilities, entities, or provider groups identified in *RCW 70.225.040(3) (l) and (m) that have integrated their federally certified electronic health records with the prescription monitoring program utilizing the state health information exchange. [2017 c 297 § 10.]

***Reviser's note:** RCW 70.225.040 was amended by 2019 c 314 § 23, changing subsection (3)(l) and (m) to subsection (3)(k) and (l).

**Findings—Intent—2017 c 297:** See note following RCW 18.22.800.

**70.225.050 Department may contract for operation of program.** The department may contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. Any contractor is bound to comply with the provisions regarding confidentiality of prescription information in RCW 70.225.040 and is subject to the penalties specified in RCW 70.225.060 for unlawful acts. [2007 c 259 § 46.]

**70.225.060 Violations—Penalties—Disclosure exemption for health care providers.** (1) A dispenser who knowingly fails to submit prescription monitoring information to the department as required by this chapter or knowingly submits incorrect prescription information is subject to disciplinary action under chapter 18.130 RCW.

(2) A person authorized to have prescription monitoring information under this chapter who knowingly discloses such information in violation of this chapter is subject to civil penalty.

(3) A person authorized to have prescription monitoring information under this chapter who uses such information in a manner or for a purpose in violation of this chapter is subject to civil penalty.

(4) In accordance with chapter 70.02 RCW and federal health care information privacy requirements, any physician or pharmacist authorized to access a patient's prescription monitoring may discuss or release that information to other health care providers involved with the patient in order to provide safe and appropriate care coordination. [2007 c 259 § 48.]

**70.225.070 Requirements for test sites in the prescription monitoring program.** (1) Test sites that may receive access to data in the prescription monitoring program under RCW 70.225.040 must be:

(a) Licensed by the department as a test site under chapter 70.42 RCW; and

(b) Certified as a drug testing laboratory by the United States department of health and human services, substance abuse and mental health services administration.

(2) Test sites may not:

(a) Charge a fee for accessing the prescription monitoring program;

(b) Store data accessed from the prescription drug monitoring program in any form, including, but not limited to, hard copies, electronic copies, or web/digital based copies of any kind. Such data may be used only to transmit to those entities listed in *RCW 70.255.040(3)(a). [2015 c 259 § 2.]

***Reviser's note:** The reference to RCW 70.255.040 appears to be erroneous. RCW 70.225.040 was apparently intended.

**70.225.080 Access to data in the qualifying laboratory.** (1) Access to data in the qualifying laboratory must be under the supervision of the responsible person as designated by the United States department of health and human services, substance abuse and mental health services administration certification program.

(2) Such data cannot be gathered, shared, sold, or used in any manner other than as designated under RCW *70.255.040, RCW 70.225.070, or this section. [2015 c 259 § 3.]

***Reviser's note:** The reference to RCW 70.255.040 appears to be erroneous. RCW 70.225.040 was apparently intended.

**70.225.090 Integration with certified electronic health record technologies.** (1) In order to expand integration of prescription monitoring program data into certified electronic health record technologies, the department must collaborate with health professional and facility associations, vendors, and others to:

(a) Conduct an assessment of the current status of integration;

(b) Provide recommendations for improving integration among small and rural health care facilities, offices, and clinics;

(c) Comply with federal prescription drug monitoring program qualification requirements under 42 U.S.C. Sec. 1396w-3a to facilitate eligibility for federal grants and establish a program to provide financial assistance to small and rural health care facilities and clinics with integration as funding is available, especially under federal programs;

(d) Conduct security assessments of other commonly used platforms for integrating prescription monitoring program data with certified electronic health records for possible use in Washington; and

(e) Assess improvements to the prescription monitoring program to establish a modality to identify patients that do not wish to receive opioid medications in a manner that allows an ordering or prescribing physician to be able to use the prescription monitoring program to identify patients who do not wish to receive opioids or patients that have had an opioid-related overdose.

(2)(a) By January 1, 2021, a facility, entity, office, or provider group identified in RCW 70.225.040 with ten or more prescribers that is not a critical access hospital as defined in RCW 74.60.010 that uses a federally certified electronic health records system must demonstrate that the facility's or entity's federally certified electronic health record is able to fully integrate data to and from the prescription monitoring program using a mechanism approved by the department under subsection (3) of this section.

(b) The department must develop a waiver process for the requirements of (a) of this subsection for facilities, entities, offices, or provider groups due to economic hardship, technological limitations that are not reasonably in the control of the facility, entity, office, or provider group, or other exceptional circumstance demonstrated by the facility, entity, office, or provider group. The waiver must be limited to one year or less, or for any other specified time frame set by the department.

(3) Electronic health record system vendors who are fully integrated with the prescription monitoring program in Washington state may not charge an ongoing fee or a fee based on the number of transactions or providers. Total costs of connection must not impose unreasonable costs on any facility, entity, office, or provider group using the electronic health record and must be consistent with current industry pricing structures. For the purposes of this subsection, "fully integrated" means that the electronic health records system must:

(a) Send information to the prescription monitoring program without provider intervention using a mechanism approved by the department;

(b) Make current information from the prescription monitoring program available to a provider within the workflow of the electronic health records system; and

(c) Make information available in a way that is unlikely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information, in accordance with the information blocking provisions of the federal twenty-first century cures act, P.L. 114-255. [2019 c 314 § 22.]

**Declaration—2019 c 314:** See note following RCW 18.22.810.

**70.225.900 Severability—Subheadings not law—2007 c 259.** See notes following RCW 41.05.033.

## Chapter 70.230 RCW
## AMBULATORY SURGICAL FACILITIES

Sections



**70.230.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

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

(5) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

(6) "Secretary" means the secretary of health.

(7) "Surgical services" means invasive medical procedures that:

(a) Utilize a knife, laser, cautery, cryogenics, or chemicals; and

(b) Remove, correct, or facilitate the diagnosis or cure of a disease, process, or injury through that branch of medicine that treats diseases, injuries, and deformities by manual or operative methods by a practitioner. [2011 c 76 § 1; 2007 c 273 § 1.]

Additional notes found at www.leg.wa.gov

**70.230.020 Duties of secretary—Rules.** The secretary shall:

(1) Issue a license to any ambulatory surgical facility that:

(a) Submits payment of the fee established in RCW 43.70.110 and 43.70.250;

(b) Submits a completed application that demonstrates the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statute and rule. An ambulatory surgical facility shall be deemed to have met the standards if it submits proof of certification as a medicare ambulatory surgical facility or accreditation by an organization that the secretary has determined to have substantially equivalent standards to those of the department; and

(c) Successfully completes the survey requirements established in RCW 70.230.100;

(2) Develop an application form for applicants for a license to operate an ambulatory surgical facility;

(3) Initiate investigations and enforcement actions for complaints or other information regarding failure to comply with this chapter or the standards and rules adopted under this chapter;

(4) Conduct surveys of facilities, including reviews of medical records and documents required to be maintained under this chapter or rules adopted under this chapter;

(5) By March 1, 2008, determine which accreditation organizations have substantially equivalent standards for purposes of deeming specific licensing requirements required in statute and rule as having met the state's standards; and

(6) Adopt any rules necessary to implement this chapter. [2016 c 146 § 2; 2007 c 273 § 2.]

**70.230.030 Operating without a license.** Except as provided in RCW 70.230.040, after June 30, 2009, no person or governmental unit of the state of Washington, acting separately or jointly with any other person or governmental unit, shall establish, maintain, or conduct an ambulatory surgical facility in this state or advertise by using the term "ambulatory surgical facility," "day surgery center," "licensed surgical center," or other words conveying similar meaning without a license issued by the department under this chapter. [2007 c 273 § 3.]

**70.230.040 Exclusions from chapter.** Nothing in this chapter:

(1) Applies to an ambulatory surgical facility that is maintained and operated by a hospital licensed under chapter 70.41 RCW;

(2) Applies to an office maintained for the practice of dentistry;

(3) Applies to outpatient specialty or multispecialty surgical services routinely and customarily performed in the office of a practitioner in an individual or group practice, where the primary purpose of the office is not as set forth in RCW 70.230.010(1), provided that any surgical services in which general anesthesia is a planned event must be performed only in an ambulatory surgical facility as defined in this chapter or in a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW; or

(4) Limits an ambulatory surgical facility to performing only surgical services. [2011 c 76 § 2; 2007 c 273 § 4.]

Additional notes found at www.leg.wa.gov

**70.230.050 Licenses—Applicants—Renewal.** (1) An applicant for a license to operate an ambulatory surgical facility must demonstrate the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statute and rule, including:

(a) Submitting a written application to the department providing all necessary information on a form provided by the department, including a list of surgical specialties offered;

(b) Submitting building plans for review and approval by the department for new construction, alterations other than minor alterations, and additions to existing facilities, prior to obtaining a license and occupying the building;

(c) Demonstrating the ability to comply with this chapter and any rules adopted under this chapter;

(d) Cooperating with the department during on-site surveys prior to obtaining an initial license or renewing an existing license;

(e) Providing such proof as the department may require concerning the ownership and management of the ambulatory surgical facility, including information about the organization and governance of the facility and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(f) Submitting proof of operation of a coordinated quality improvement program in accordance with RCW 70.230.080;

(g) Submitting a copy of the facility safety and emergency training program established under RCW 70.230.060;

(h) Paying any fees established by the secretary under RCW 43.70.110 and 43.70.250; and

(i) Providing any other information that the department may reasonably require.

(2) A license is valid for three years, after which an ambulatory surgical facility must submit an application for renewal of license upon forms provided by the department and the renewal fee as established in RCW 43.70.110 and 43.70.250. The applicant must demonstrate the ability to comply with the standards established for operating and maintaining an ambulatory surgical facility in statutes, standards, and rules. The applicant must submit the license renewal document no later than thirty days prior to the date of expiration of the license.

(3) The applicant may demonstrate compliance with any of the requirements of subsection (1) of this section by providing satisfactory documentation to the secretary that it has met the standards of an accreditation organization or federal agency that the secretary has determined to have substantially equivalent standards as the statutes and rules of this state. [2016 c 146 § 3; 2007 c 273 § 5.]

**70.230.060 Facility safety and emergency training.** An ambulatory surgical facility shall have a facility safety and emergency training program. The program shall include:

(1) On-site equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate the management of any medical emergency that may arise in connection with services sought or provided;

(2) Written transfer agreements with local hospitals licensed under chapter 70.41 RCW, approved by the ambulatory surgical facility's medical staff; and

(3) A procedural plan for handling medical emergencies that shall be available for review during surveys and inspections. [2007 c 273 § 6.]

**70.230.070 Denial, suspension, or revocation of license—Investigating complaints—Penalties.** (1) The secretary may deny, suspend, or revoke the license of any ambulatory surgical facility in any case in which he or she finds the applicant or registered entity knowingly made a false statement of material fact in the application for the license or any supporting data in any record required by this chapter or matter under investigation by the department.

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

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

(4) Pursuant to chapter 34.05 RCW, the secretary may assess monetary penalties of a civil nature not to exceed one thousand dollars per violation. [2007 c 273 § 8.]

**70.230.080 Coordinated quality improvement—Rules.** (1) Every ambulatory surgical facility shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of one or more quality improvement committees with the responsibility to review the services rendered in the ambulatory surgical facility, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. Different quality improvement committees may be established as a part of the quality improvement program to review different health care services. Such committees shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise the policies and procedures of the ambulatory surgical facility;

(b) A process, including a medical staff privileges sanction procedure which must be conducted substantially in accordance with medical staff bylaws and applicable rules, regulations, or policies of the medical staff through which credentials, physical and mental capacity, professional conduct, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the ambulatory surgical facility;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the ambulatory surgical facility's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the ambulatory surgical facility for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual practitioners within the practitioner's personnel or credential file maintained by the ambulatory surgical facility;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee is not subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any

civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence of information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the management of the ambulatory surgical facility, as identified in the facility's application, in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The Washington medical commission, the board of osteopathic medicine and surgery, or the podiatric medical board, as appropriate, may review and audit the records of committee decisions in which a practitioner's privileges are terminated or restricted. Each ambulatory surgical facility shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained is not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of an ambulatory surgical facility to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department and any accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of the ambulatory surgical facility. Information so obtained is not subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each ambulatory surgical facility shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510 or 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents are not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 70.41.200(3), 74.42.640 (7) and (9), and 4.24.250.

(9) An ambulatory surgical facility that participates in a coordinated quality improvement program under RCW 43.70.510 shall be deemed to have met the requirements of this section.

(10) Violation of this section shall not be considered negligence per se. [2019 c 55 § 16; 2013 c 301 § 4; 2007 c 273 § 9.]

**70.230.090 Ambulatory surgical facilities—Construction, maintenance, and operation—Minimum standards and rules.** The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of ambulatory surgical facilities and rescind, amend, or modify such rules, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of patient care required for the safe and adequate care and treatment of patients. In establishing the format and content of these standards and rules, the department shall give consideration to maintaining consistency with such minimum standards and rules applicable to ambulatory surgical facilities in the survey standards of accrediting organizations or federal agencies that the secretary has determined to have substantially equivalent standards as the statutes and rules of this state. [2007 c 273 § 10.]

**70.230.100 Ambulatory surgical facilities—Surveys.** (1) The department shall make or cause to be made a survey of all ambulatory surgical facilities according to the following frequency:

(a) Except as provided in (b) of this subsection, an ambulatory surgical facility must be surveyed by the department no more than once every eighteen months.

(b) An ambulatory surgical facility must be surveyed by the department no more than once every thirty-six months if the ambulatory surgical facility:

(i) Has had, within eighteen months of a department survey, a survey in connection with its certification by the centers for medicare and medicaid services or accreditation by an accreditation organization approved by the department under RCW 70.230.020(5);

(ii) Has maintained certification by the centers for medicare and medicaid services or accreditation by an accreditation organization approved by the department under RCW

70.230.020(5) since the survey in connection with its certification or accreditation pursuant to (b)(i) of this subsection; and

(iii) As soon as practicable after a survey in connection with its certification or accreditation pursuant to (b)(i) of this subsection, provides the department with documentary evidence that the ambulatory surgical facility is certified or accredited and that the survey has occurred, including the date that the survey occurred.

(2) Every survey of an ambulatory surgical facility may include an inspection of every part of the surgical facility. The department may make an examination of all phases of the ambulatory surgical facility operation necessary to determine compliance with all applicable statutes, rules, and regulations. In the event that the department is unable to make a survey or cause a survey to be made during the three years of the term of the license, the license of the ambulatory surgical facility shall remain in effect until the state conducts a survey or a substitute survey is performed if the ambulatory surgical facility is in compliance with all other licensing requirements.

(3) Ambulatory surgical facilities shall make the written reports of surveys conducted pursuant to medicare certification procedures or by an approved accrediting organization available to department surveyors during any department surveys or upon request. [2016 c 146 § 4; 2007 c 273 § 11.]

**70.230.110 Ambulatory surgical facilities—Submission of data related to the quality of patient care.** The department shall require ambulatory surgical facilities to submit data related to the quality of patient care for review by the department. The data shall be submitted every eighteen months. The department shall consider the reporting standards of other public and private organizations that measure quality in order to maintain consistency in reporting and minimize the burden on the ambulatory surgical facility. The department shall review the data to determine the maintenance of quality patient care at the facility. If the department determines that the care offered at the facility may present a risk to the health and safety of patients, the department may conduct an inspection of the facility and initiate appropriate actions to protect the public. Information submitted to the department pursuant to this section shall be exempt from disclosure under chapter 42.56 RCW. [2007 c 273 § 12.]

**70.230.120 Reports—Discipline of a health care provider for unprofessional conduct—Penalties.** (1) The chief administrator or executive officer of an ambulatory surgical facility shall report to the department when the practice of a health care provider licensed by a disciplining authority under RCW 18.130.040 is restricted, suspended, limited, or terminated based upon a conviction, determination, or finding by the ambulatory surgical facility that the provider has committed an action defined as unprofessional conduct under RCW 18.130.180. The chief administrator or executive officer shall also report any voluntary restriction or termination of the practice of a health care provider licensed by a disciplining authority under RCW 18.130.040 while the provider is under investigation or the subject of a proceeding by the ambulatory surgical facility regarding unprofessional conduct, or in return for the ambulatory surgical facility not conducting such an investigation or proceeding or not taking action. The department shall forward the report to the appropriate disciplining authority.

(2) Reports made under subsection (1) of this section must be made within fifteen days of the date of: (a) A conviction, determination, or finding by the ambulatory surgical facility that the health care provider has committed an action defined as unprofessional conduct under RCW 18.130.180; or (b) acceptance by the ambulatory surgical facility of the voluntary restriction or termination of the practice of a health care provider, including his or her voluntary resignation, while under investigation or the subject of proceedings regarding unprofessional conduct under RCW 18.130.180.

(3) Failure of an ambulatory surgical facility to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars.

(4) An ambulatory surgical facility, its chief administrator, or its executive officer who files a report under this section is immune from suit, whether direct or derivative, in any civil action related to the filing or contents of the report, unless the conviction, determination, or finding on which the report and its content are based is proven to not have been made in good faith. The prevailing party in any action brought alleging that the conviction, determination, finding, or report was not made in good faith is entitled to recover the costs of litigation, including reasonable attorneys' fees.

(5) The department shall forward reports made under subsection (1) of this section to the appropriate disciplining authority designated under Title 18 RCW within fifteen days of the date the report is received by the department. The department shall notify an ambulatory surgical facility that has made a report under subsection (1) of this section of the results of the disciplining authority's case disposition decision within fifteen days after the case disposition. Case disposition is the decision whether to issue a statement of charges, take informal action, or close the complaint without action against a provider. In its biennial report to the legislature under RCW 18.130.310, the department shall specifically identify the case dispositions of reports made by ambulatory surgical facilities under subsection (1) of this section. [2007 c 273 § 13.]

**70.230.130 Written records—Decisions to restrict or terminate privileges of practitioners—Penalties.** Each ambulatory surgical facility shall keep written records of decisions to restrict or terminate privileges of practitioners. Copies of such records shall be made available to the Washington medical commission, the board of osteopathic medicine and surgery, or the podiatric medical board, within thirty days of a request, and all information so gained remains confidential in accordance with RCW 70.230.080 and 70.230.120 and is protected from the discovery process. Failure of an ambulatory surgical facility to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars. [2019 c 55 § 17; 2007 c 273 § 14.]

**70.230.140 Information concerning practitioners—Disclosure.** (1) Prior to granting or renewing clinical privileges or association of any practitioner or hiring a practitioner, an ambulatory surgical facility approved pursuant to

this chapter shall request from the practitioner and the practitioner shall provide the following information:

(a) The name of any hospital, ambulatory surgical facility, or other facility with or at which the practitioner had or has any association, employment, privileges, or practice during the prior five years: PROVIDED, That the ambulatory surgical facility may request additional information going back further than five years, and the physician shall use his or her best efforts to comply with such a request for additional information;

(b) Whether the physician has ever been or is in the process of being denied, revoked, terminated, suspended, restricted, reduced, limited, sanctioned, placed on probation, monitored, or not renewed for any professional activity listed in (b)(i) through (x) of this subsection, or has ever voluntarily or involuntarily relinquished, withdrawn, or failed to proceed with an application for any professional activity listed in (b)(i) through (x) of this subsection in order to avoid an adverse action or to preclude an investigation or while under investigation relating to professional competence or conduct:

(i) License to practice any profession in any jurisdiction;

(ii) Other professional registration or certification in any jurisdiction;

(iii) Specialty or subspecialty board certification;

(iv) Membership on any hospital medical staff;

(v) Clinical privileges at any facility, including hospitals, ambulatory surgical centers, or skilled nursing facilities;

(vi) Medicare, medicaid, the food and drug administration, the national institute of health (office of human research protection), governmental, national, or international regulatory agency, or any public program;

(vii) Professional society membership or fellowship;

(viii) Participation or membership in a health maintenance organization, preferred provider organization, independent practice association, physician-hospital organization, or other entity;

(ix) Academic appointment;

(x) Authority to prescribe controlled substances (drug enforcement agency or other authority);

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the practitioner deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the practitioner deems appropriate;

(e) A waiver by the practitioner of any confidentiality provisions concerning the information required to be provided to ambulatory surgical facilities pursuant to this subsection; and

(f) A verification by the practitioner that the information provided by the practitioner is accurate and complete.

(2) Prior to granting privileges or association to any practitioner or hiring a practitioner, an ambulatory surgical facility approved under this chapter shall request from any hospital or ambulatory surgical facility with or at which the practitioner had or has privileges, was associated, or was employed, during the preceding five years, the following information concerning the practitioner:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals or ambulatory surgical facilities pursuant to RCW 18.130.070.

(3) The Washington medical commission, board of osteopathic medicine and surgery, podiatric medical board, or dental quality assurance commission, as appropriate, shall be advised within thirty days of the name of any practitioner denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital, ambulatory surgical facility, or other facility that receives a request for information from another hospital, ambulatory surgical facility, or other facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital, ambulatory surgical facility, or other facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital, ambulatory surgical facility, or facility. A hospital, ambulatory surgical facility, other facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(6) Ambulatory surgical facilities shall be granted access to information held by the Washington medical commission, board of osteopathic medicine and surgery, or podiatric medical board pertinent to decisions of the ambulatory surgical

facility regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se. [2019 c 55 § 18; 2013 c 301 § 5; 2007 c 273 § 15.]

**70.230.150 Unanticipated outcomes—Notification.** Ambulatory surgical facilities shall have in place policies to assure that, when appropriate, information about unanticipated outcomes is provided to patients or their families or any surrogate decision makers identified pursuant to RCW 7.70.065. Notifications of unanticipated outcomes under this section do not constitute an acknowledgment or admission of liability, nor may the fact of notification, the content disclosed, or any and all statements, affirmations, gestures, or conduct expressing apology be introduced as evidence in a civil action. [2007 c 273 § 16.]

**70.230.160 Complaint toll-free telephone number—Notice.** Every ambulatory surgical facility shall post in conspicuous locations a notice of the department's ambulatory surgical facility complaint toll-free telephone number. The form of the notice shall be approved by the department. [2007 c 273 § 17.]

**70.230.170 Information received by department—Disclosure.** Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter may be disclosed publicly, as permitted under chapter 42.56 RCW, subject to the following provisions:

(1) Licensing inspections, or complaint investigations regardless of findings, shall, as requested, be disclosed no sooner than three business days after the ambulatory surgical facility has received the resulting assessment report;

(2) Information regarding administrative action against the license [licensee] shall, as requested, be disclosed after the ambulatory surgical facility has received the documents initiating the administrative action;

(3) Information about complaints that did not warrant an investigation shall not be disclosed except to notify the ambulatory surgical facility and the complainant that the complaint did not warrant an investigation; and

(4) Information disclosed under this section shall not disclose individual names. [2007 c 273 § 18.]

**70.230.190 Certain ambulatory surgical facilities deemed to have complied with survey requirements of RCW 70.230.100.** Any entity that meets the definition of an ambulatory surgical facility in RCW 70.230.010 that had been issued a license on or after July 1, 2009, that was later declared void by a department determination that the entity did not meet the definition of an ambulatory surgical facility shall be deemed to have complied with the survey requirements of RCW 70.230.100 for its initial license application. [2011 c 76 § 3.]

Additional notes found at www.leg.wa.gov

**70.230.210 Pattern of balance billing protection act violations by ambulatory surgical facility—Fines and disciplinary action.** If the insurance commissioner reports to the department that he or she has cause to believe that an ambulatory surgical facility has engaged in a pattern of violations of RCW 48.49.020 or 48.49.030, and the report is substantiated after investigation, the department may levy a fine upon the ambulatory surgical facility in an amount not to exceed one thousand dollars per violation and take other formal or informal disciplinary action as permitted under the authority of the department. [2019 c 427 § 19.]

**Findings—Intent—Effective date—2019 c 427:** See RCW 48.49.003 and 48.49.900.

**70.230.900 Effective date—2007 c 273.** Except for section 7 of this act, this act takes effect July 1, 2009. [2007 c 273 § 29.]

**70.230.901 Implementation—2007 c 273.** The secretary of health may take the necessary steps to ensure that this act is implemented on its effective date. [2007 c 273 § 30.]

## Chapter 70.245 RCW
## THE WASHINGTON DEATH WITH DIGNITY ACT

Sections



**70.245.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Competent" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate an informed decision to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is competent and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(6) "Health care provider" means a person licensed, certified, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession, and includes a health care facility.

(7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

(a) His or her medical diagnosis;

(b) His or her prognosis;

(c) The potential risks associated with taking the medication to be prescribed;

(d) The probable result of taking the medication to be prescribed; and

(e) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control.

(8) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

(9) "Patient" means a person who is under the care of a physician.

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine in the state of Washington.

(11) "Qualified patient" means a competent adult who is a resident of Washington state and has satisfied the requirements of this chapter in order to obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner.

(12) "Self-administer" means a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner.

(13) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months. [2009 c 1 § 1 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.020 Written request for medication.** (1) An adult who is competent, is a resident of Washington state, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication that the patient may self-administer to end his or her life in a humane and dignified manner in accordance with this chapter.

(2) A person does not qualify under this chapter solely because of age or disability. [2009 c 1 § 2 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.030 Form of the written request.** (1) A valid request for medication under this chapter shall be in substantially the form described in RCW 70.245.220, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is competent, acting voluntarily, and is not being coerced to sign the request.

(2) One of the witnesses shall be a person who is not:

(a) A relative of the patient by blood, marriage, or adoption;

(b) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or

(c) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(3) The patient's attending physician at the time the request is signed shall not be a witness.

(4) If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility and having the qualifications specified by the department of health by rule. [2009 c 1 § 3 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.040 Attending physician responsibilities.** (1) The attending physician shall:

(a) Make the initial determination of whether a patient has a terminal disease, is competent, and has made the request voluntarily;

(b) Request that the patient demonstrate Washington state residency under RCW 70.245.130;

(c) To ensure that the patient is making an informed decision, inform the patient of:

(i) His or her medical diagnosis;

(ii) His or her prognosis;

(iii) The potential risks associated with taking the medication to be prescribed;

(iv) The probable result of taking the medication to be prescribed; and

(v) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control;

(d) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is competent and acting voluntarily;

(e) Refer the patient for counseling if appropriate under RCW 70.245.060;

(f) Recommend that the patient notify next of kin;

(g) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed under this chapter and of not taking the medication in a public place;

(h) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the fifteen-day waiting period under RCW 70.245.090;

(i) Verify, immediately before writing the prescription for medication under this chapter, that the patient is making an informed decision;

(j) Fulfill the medical record documentation requirements of RCW 70.245.120;

(k) Ensure that all appropriate steps are carried out in accordance with this chapter before writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

(l)(i) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, if the attending physician is authorized under statute and rule to dispense and has a current drug enforcement administration certificate; or

(ii) With the patient's written consent:

(A) Contact a pharmacist and inform the pharmacist of the prescription; and

(B) Deliver the written prescription personally, by mail or facsimile to the pharmacist, who will dispense the medications directly to either the patient, the attending physician, or an expressly identified agent of the patient. Medications dispensed pursuant to this subsection shall not be dispensed by mail or other form of courier.

(2) The attending physician may sign the patient's death certificate which shall list the underlying terminal disease as the cause of death. [2009 c 1 § 4 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.050 Consulting physician confirmation.** Before a patient is qualified under this chapter, a consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is competent, is acting voluntarily, and has made an informed decision. [2009 c 1 § 5 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.060 Counseling referral.** If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. Medication to end a patient's life in a humane and dignified manner shall not be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment. [2009 c 1 § 6 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.070 Informed decision.** A person shall not receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision. Immediately before writing a prescription for medication under this chapter, the attending physician shall verify that the qualified patient is making an informed decision. [2009 c 1 § 7 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.080 Notification of next of kin.** The attending physician shall recommend that the patient notify the next of kin of his or her request for medication under this chapter. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason. [2009 c 1 § 8 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.090 Written and oral requests.** To receive a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to his or her attending physician at least fifteen days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the qualified patient an opportunity to rescind the request. [2009 c 1 § 9 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.100 Right to rescind request.** A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication under this chapter may be written without the attending physician offering the qualified patient an opportunity to rescind the request. [2009 c 1 § 10 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.110 Waiting periods.** (1) At least fifteen days shall elapse between the patient's initial oral request and the writing of a prescription under this chapter.

(2) At least forty-eight hours shall elapse between the date the patient signs the written request and the writing of a prescription under this chapter. [2009 c 1 § 11 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.120 Medical record documentation requirements.** The following shall be documented or filed in the patient's medical record:

(1) All oral requests by a patient for medication to end his or her life in a humane and dignified manner;

(2) All written requests by a patient for medication to end his or her life in a humane and dignified manner;

(3) The attending physician's diagnosis and prognosis, and determination that the patient is competent, is acting voluntarily, and has made an informed decision;

(4) The consulting physician's diagnosis and prognosis, and verification that the patient is competent, is acting voluntarily, and has made an informed decision;

(5) A report of the outcome and determinations made during counseling, if performed;

(6) The attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request under RCW 70.245.090; and

(7) A note by the attending physician indicating that all requirements under this chapter have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed. [2009 c 1 § 12 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.130 Residency requirement.** Only requests made by Washington state residents under this chapter may be granted. Factors demonstrating Washington state residency include but are not limited to:

(1) Possession of a Washington state driver's license;

(2) Registration to vote in Washington state; or

(3) Evidence that the person owns or leases property in Washington state. [2009 c 1 § 13 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.140 Disposal of unused medications.** Any medication dispensed under this chapter that was not self-administered shall be disposed of by lawful means. [2009 c 1 § 14 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.150 Reporting of information to the department of health—Adoption of rules—Information collected not a public record—Annual statistical report.** (1)(a) The department of health shall annually review all records maintained under this chapter.

(b) The department of health shall require any health care provider upon writing a prescription or dispensing medication under this chapter to file a copy of the dispensing record and such other administratively required documentation with the department. All administratively required documentation shall be mailed or otherwise transmitted as allowed by department of health rule to the department no later than thirty calendar days after the writing of a prescription and dispensing of medication under this chapter, except that all documents required to be filed with the department by the prescribing physician after the death of the patient shall be mailed no later than thirty calendar days after the date of death of the patient. In the event that anyone required under this chapter to report information to the department of health provides an inadequate or incomplete report, the department shall contact the person to request a complete report.

(2) The department of health shall adopt rules to facilitate the collection of information regarding compliance with this chapter. Except as otherwise required by law, the information collected is not a public record and may not be made available for inspection by the public.

(3) The department of health shall generate and make available to the public an annual statistical report of information collected under subsection (2) of this section. [2009 c 1 § 15 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.160 Effect on construction of wills, contracts, and statutes.** (1) Any provision in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified manner, is not valid.

(2) Any obligation owing under any currently existing contract shall not be conditioned or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. [2009 c 1 § 16 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.170 Insurance or annuity policies.** The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication that the patient may self-administer to end his or her life in a humane and dignified manner. A qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner shall not have an effect upon a life, health, or accident insurance or annuity policy. [2009 c 1 § 17 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.180 Authority of chapter—References to practices under this chapter—Applicable standard of care.** (1) Nothing in this chapter authorizes a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter do not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide, under the law. State reports shall not refer to practice under this chapter as "suicide" or "assisted suicide." Consistent with RCW 70.245.010 (7), (11), and (12), 70.245.020(1), 70.245.040(1)(k), 70.245.060, 70.245.070, 70.245.090, 70.245.120 (1) and (2), 70.245.160 (1) and (2), 70.245.170, 70.245.190(1) (a) and (d), and 70.245.200(2), state reports shall refer to practice under this chapter as obtaining and self-administering life-ending medication.

(2) Nothing contained in this chapter shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist or psychologist, or other health care provider participating under this chapter. [2009 c 1 § 18 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.190 Immunities—Basis for prohibiting health care provider from participation—Notification—Permissible sanctions.** (1) Except as provided in RCW 70.245.200 and subsection (2) of this section:

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this chapter. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner;

(b) A professional organization or association, or health care provider, may not subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with this chapter;

(c) A patient's request for or provision by an attending physician of medication in good faith compliance with this chapter does not constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator; and

(d) Only willing health care providers shall participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under this chapter, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(2)(a) A health care provider may prohibit another health care provider from participating under chapter 1, Laws of 2009 on the premises of the prohibiting provider if the prohibiting provider has given notice to all health care providers with privileges to practice on the premises and to the general public of the prohibiting provider's policy regarding participating under chapter 1, Laws of 2009. This subsection does not prevent a health care provider from providing health care services to a patient that do not constitute participation under chapter 1, Laws of 2009.

(b) A health care provider may subject another health care provider to the sanctions stated in this subsection if the

sanctioning health care provider has notified the sanctioned provider before participation in chapter 1, Laws of 2009 that it prohibits participation in chapter 1, Laws of 2009:

(i) Loss of privileges, loss of membership, or other sanctions provided under the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in chapter 1, Laws of 2009 while on the health care facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(ii) Termination of a lease or other property contract or other nonmonetary remedies provided by a lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in chapter 1, Laws of 2009 while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

(iii) Termination of a contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in chapter 1, Laws of 2009 while acting in the course and scope of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this subsection (2)(b)(iii) prevents:

(A) A health care provider from participating in chapter 1, Laws of 2009 while acting outside the course and scope of the provider's capacity as an employee or independent contractor; or

(B) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(c) A health care provider that imposes sanctions under (b) of this subsection shall follow all due process and other procedures the sanctioning health care provider may have that are related to the imposition of sanctions on another health care provider.

(d) For the purposes of this subsection:

(i) "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider before the provider's participation in chapter 1, Laws of 2009 of the sanctioning health care provider's policy about participation in activities covered by this chapter.

(ii) "Participate in chapter 1, Laws of 2009" means to perform the duties of an attending physician under RCW 70.245.040, the consulting physician function under RCW 70.245.050, or the counseling function under RCW 70.245.060. "Participate in chapter 1, Laws of 2009" does not include:

(A) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;

(B) Providing information about the Washington death with dignity act to a patient upon the request of the patient;

(C) Providing a patient, upon the request of the patient, with a referral to another physician; or

(D) A patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(3) Suspension or termination of staff membership or privileges under subsection (2) of this section is not reportable under RCW 18.130.070. Action taken under RCW 70.245.030, 70.245.040, 70.245.050, or 70.245.060 may not be the sole basis for a report of unprofessional conduct under RCW 18.130.180.

(4) References to "good faith" in subsection (1)(a), (b), and (c) of this section do not allow a lower standard of care for health care providers in the state of Washington. [2009 c 1 § 19 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.200 Willful alteration/forgery—Coercion or undue influence—Penalties—Civil damages—Other penalties not precluded.** (1) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death is guilty of a class A felony.

(2) A person who coerces or exerts undue influence on a patient to request medication to end the patient's life, or to destroy a rescission of a request, is guilty of a class A felony.

(3) This chapter does not limit further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

(4) The penalties in this chapter do not preclude criminal penalties applicable under other law for conduct that is inconsistent with this chapter. [2009 c 1 § 20 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.210 Claims by governmental entity for costs incurred.** Any governmental entity that incurs costs resulting from a person terminating his or her life under this chapter in a public place has a claim against the estate of the person to recover such costs and reasonable attorneys' fees related to enforcing the claim. [2009 c 1 § 21 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.220 Form of the request.** A request for a medication as authorized by this chapter shall be in substantially the following form:

REQUEST FOR MEDICATION TO END MY LIFE IN A HUMAN [HUMANE] AND DIGNIFIED MANNER

I, . . . . . ., am an adult of sound mind.

I am suffering from . . . . . ., which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, and pain control.

I request that my attending physician prescribe medication that I may self-administer to end my life in a humane and dignified manner and to contact any pharmacist to fill the prescription.

INITIAL ONE:

. . . . . I have informed my family of my decision and taken their opinions into consideration.

. . . . . I have decided not to inform my family of my decision.

. . . . . I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: . . . . . .

Dated: . . . . . .

DECLARATION OF WITNESSES

By initialing and signing below on or after the date the person named above signs, we declare that the person making and signing the above request:

| Witness 1 Initials | Witness 2 Initials | |
|---|---|---|
| . . . . . | . . . . . | 1. Is personally known to us or has provided proof of identity; |
| . . . . . | . . . . . | 2. Signed this request in our presence on the date of the person's signature; |
| . . . . . | . . . . . | 3. Appears to be of sound mind and not under duress, fraud, or undue influence; |
| . . . . . | . . . . . | 4. Is not a patient for whom either of us is the attending physician. |

Printed Name of Witness 1: . . . . . .

Signature of Witness 1/Date: . . . . . .

Printed Name of Witness 2: . . . . . .

Signature of Witness 2/Date: . . . . . .

NOTE: One witness shall not be a relative by blood, marriage, or adoption of the person signing this request, shall not be entitled to any portion of the person's estate upon death, and shall not own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility. [2009 c 1 § 22 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.901 Short title—2009 c 1 (Initiative Measure No. 1000).** This act may be known and cited as the Washington death with dignity act. [2009 c 1 § 26 (Initiative Measure No. 1000, approved November 4, 2008).]

**70.245.903 Effective dates—2009 c 1 (Initiative Measure No. 1000).** This act takes effect one hundred twenty days after the election at which it is approved [March 5, 2009], except for section 24 of this act which takes effect July 1, 2009. [2009 c 1 § 28 (Initiative Measure No. 1000, approved November 4, 2008).]

## Chapter 70.250 RCW
## ROBERT BREE COLLABORATIVE
(Formerly: Advanced Diagnostic Imaging Work Group)

Sections



**70.250.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced diagnostic imaging services" means magnetic resonance imaging services, computed tomography services, positron emission tomography services, cardiac nuclear medicine services, and similar new imaging services.

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

(3) "Collaborative" means the Robert Bree collaborative established in RCW 70.250.050.

(4) "Payor" means carriers licensed under chapters 48.21, 48.41, 48.44, 48.46, and 48.62 RCW.

(5) "Self-funded health plan" means an employer-sponsored health plan or Taft-Hartley plan that is not provided through a fully insured health carrier.

(6) "State purchased health care" has the same meaning as in RCW 41.05.011. [2011 c 313 § 2; 2009 c 258 § 1.]

**Findings—Intent—2011 c 313:** See note following RCW 70.250.050.

**70.250.030 Implementation of evidence-based best practice guidelines or protocols.** (1) No later than September 1, 2009, all state purchased health care programs shall, except for state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005, implement evidence-based best practice guidelines or protocols applicable to advanced diagnostic imaging services, and the decision support tools to implement the guidelines or protocols, identified under RCW 70.250.050.

(2) By January 1, 2012, and every January 1st thereafter, all state purchased health care programs must implement the evidence-based best practice guidelines or protocols and strategies identified under RCW 70.250.050, after the administrator, in consultation with participating agencies, has affirmatively reviewed and endorsed the recommendations. This requirement applies to health carriers, as defined in RCW 48.43.005 and to entities acting as third-party administrators that contract with state purchased health care programs to provide or administer health benefits for enrollees of those programs. If the collaborative fails to reach consensus within the time frames identified in this section and RCW 70.250.050, state purchased health care programs may pursue

implementation of evidence-based strategies on their own initiative. [2011 c 313 § 4; 2009 c 258 § 3.]

**Findings—Intent—2011 c 313:** See note following RCW 70.250.050.

**70.250.040 Application of section 135(a) of the medicare improvements for patients and providers act of 2008.** Any current or future time frames, procedures, rules, regulations, or guidance regarding accreditation requirements for advanced diagnostic imaging services established in, or promulgated pursuant to, section 135(a) of the medicare improvements for patients and providers act of 2008, shall also be applicable to any person or entity in this state not already subject to its provisions that receives payment for the furnishing of the technical component of advanced diagnostic imaging services as defined under that act. [2009 c 258 § 4.]

**70.250.050 Robert Bree collaborative—Duties—Membership.** (1) Consistent with the authority granted in RCW 41.05.013, the authority shall convene a collaborative, to be known as the Robert Bree collaborative. The collaborative shall identify health care services for which there are substantial variation in practice patterns or high utilization trends in Washington state, without producing better care outcomes for patients, that are indicators of poor quality and potential waste in the health care system. On an annual basis, the collaborative shall identify up to three health care services it will address.

(2) For each health care service identified, the collaborative shall:

(a) Analyze and identify evidence-based best practice approaches to improve quality and reduce variation in use of the service, including identification of guidelines or protocols applicable to the health care service. In evaluating guidelines, the collaborative should identify the highest quality guidelines based upon the most rigorous and transparent methods for identification, rating, and translation of evidence into practice recommendations.

(b) Identify data collection and reporting necessary to develop baseline health service utilization rates and to measure the impact of strategies adopted under this section. Methods for data collection and reporting should strive to minimize cost and administrative effort related to data collection and reporting wherever possible, including the use of existing data resources and nonfee-based tools for reporting.

(c) Identify strategies to increase use of the evidence-based best practice approaches identified under (a) of this subsection in both state purchased and privately purchased health care plans. Strategies considered should include, but are not limited to: Identifying goals for appropriate utilization rates and reduction in practice variation among providers; peer-to-peer consultation or second opinions; provider feedback reports; use of patient decision aids; incentives for appropriate use of health care services; centers of excellence or other provider qualification standards; quality improvement systems; and service utilization and outcomes reporting, including public reporting. In developing strategies, the collaborative should strongly consider related efforts of organizations such as the Puget Sound health alliance, the Washington state hospital association, the national quality forum, the joint commission on accreditation of health care organizations, the national committee for quality assurance, the foundation for health care quality, and, where appropriate, more focused quality improvement efforts, such as the Washington state perinatal advisory committee and the Washington state surgical care and outcomes assessment program. The collaborative shall provide an opportunity for public comment on the strategies chosen before finalizing their recommendations.

(3) If the collaborative chooses a health care service for which there is substantial variation in practice patterns or a high or low utilization trend in Washington state, and a lack of evidence-based best practice approaches, it should consider strategies that will promote improved care outcomes, such as patient decision aids, provider feedback reports, centers of excellence or other provider qualification standards, and research to improve care quality and outcomes.

(4) The governor shall appoint twenty members of the collaborative, who must include:

(a) Two members, selected from health carriers or third-party administrators that have the most fully insured and self-funded covered lives in Washington state. The count of total covered lives includes enrollment in all companies included in their holding company system. Each health carrier or third-party administrator is entitled to no more than a single position on the collaborative to represent all entities under common ownership or control;

(b) One member, selected from the health maintenance organization having the most fully insured and self-insured covered lives in Washington state. The count of total lives includes enrollment in all companies included in its holding company system. Each health maintenance organization is entitled to no more than a single position on the collaborative to represent all entities under common ownership or control;

(c) One member, chosen from among three nominees submitted by the association of Washington health plans, representing national health carriers that operate in multiple states outside of the Pacific Northwest;

(d) Four physicians, selected from lists of nominees submitted by the Washington state medical association, as follows:

(i) Two physicians, one of whom must be a practicing primary care physician, representing large multispecialty clinics with fifty or more physicians, selected from a list of five nominees. The primary care physician must be either a family physician, an internal medicine physician, or a general pediatrician; and

(ii) Two physicians, one of whom must be a practicing primary care physician, representing clinics with less than fifty physicians, selected from a list of five nominees. The primary care physician must be either a family physician, an internal medicine physician, or a general pediatrician;

(e) One osteopathic physician, selected from a list of five nominees submitted by the Washington state osteopathic medical association;

(f) Two physicians representing the largest hospital-based physician systems in the state, selected from a list of five nominees submitted jointly by the Washington state medical association and the Washington state hospital association;

(g) Three members representing hospital systems, at least one of whom is responsible for quality, submitted from

a list of six nominees from the Washington state hospital association;

(h) Three members, representing self-funded purchasers of health care services for employees;

(i) Two members, representing state purchased health care programs; and

(j) One member, representing the Puget Sound health alliance.

(5) The governor shall appoint the chair of the collaborative.

(6) The collaborative shall add members to its membership or establish clinical committees for each therapy under review by the collaborative for the purpose of acquiring clinical expertise needed to accomplish its responsibilities under this section and RCW 70.250.010 and 70.250.030. Membership of clinical committees should reflect clinical expertise in the area of health care services being addressed by the collaborative, including clinicians involved in related quality improvement or comparative effectiveness efforts, as well as nonphysician practitioners. Each clinical committee shall include at least two members of the specialty or subspecialty society most experienced with the health service identified for review.

(7) Permanent and ad hoc members of the collaborative or any of its committees may not have personal financial conflicts of interest that could substantially influence or bias their participation. If a collaborative or committee member has a personal financial conflict of interest with respect to a particular health care service being addressed by the collaborative, he or she shall disclose such an interest. The collaborative must determine whether the member should be recused from any deliberations or decisions related to that service.

(8) A person serving on the collaborative or any of its clinical committees shall be immune from civil liability, whether direct or derivative, for any decisions made in good faith while pursuing activities associated with the work of collaborative or any of its clinical committees.

(9) The guidelines or protocols identified under this section shall not be construed to establish the standard of care or duty of care owed by health care providers in any cause of action occurring as a result of health care.

(10) The collaborative shall actively solicit federal or private funds and in-kind contributions necessary to complete its work in a timely fashion. The collaborative shall not accept private funds if receipt of such funding could present a potential conflict of interest or bias in the collaborative's deliberations. Available state funds may be used to support the work of the collaborative when the collaborative has selected a health care service that is a high utilization or high-cost service in state purchased health care programs or the health care service is undergoing evaluation in one or more state purchased health care programs and coordination will reduce duplication of efforts. The collaborative shall not begin the work described in this section unless sufficient funds are received from private or federal resources, or available state funds.

(11) No member of the collaborative or its committees may be compensated for his or her service.

(12) The proceedings of the collaborative shall be open to the public and notice of meetings shall be provided at least twenty days prior to a meeting.

(13) All meetings of the collaborative, including those of a subcommittee, are subject to the open public meetings act.

(14) The collaborative shall report to the administrator of the authority regarding the health services areas it has chosen and strategies proposed. The administrator shall review the strategies recommended in the report, giving strong consideration to the direction provided in section 1, chapter 313, Laws of 2011 and this section. The administrator's review shall describe the outcomes of the review and any decisions related to adoption of the recommended strategies by state purchased health care programs. Following the administrator's review, the collaborative shall report to the legislature and the governor regarding chosen health services, proposed strategies, the results of the administrator's review, and available information related to the impact of strategies adopted in the previous three years on the cost and quality of care provided in Washington state. The initial report must be submitted by November 15, 2011, with annual reports thereafter. [2015 c 21 § 1; 2011 c 313 § 3.]

**Findings—Intent—2011 c 313:** "(1) The legislature finds that:

(a) Efforts are needed across the health care system to improve the quality and cost-effectiveness of health care services provided in Washington state and to improve care outcomes for patients.

(b) Some health care services currently provided in Washington state present significant safety, efficacy, or cost-effectiveness concerns. Substantial variation in practice patterns or high utilization trends can be indicators of poor quality and potential waste in the health care system, without producing better care outcomes for patients.

(c) State purchased health care programs should partner with private health carriers, third-party purchasers, and health care providers in shared efforts to improve quality, health outcomes, and cost-effectiveness of care.

(2) The legislature declares that collaboration among state purchased health care programs, private health carriers, third-party purchasers, and health care providers to identify appropriate strategies that will increase the effectiveness of health care delivered in Washington state is in the best interest of the public. The legislature therefore intends to exempt from state antitrust laws, and to provide immunity from federal antitrust laws through the state action doctrine, for activities undertaken pursuant to efforts designed and implemented under this act that might otherwise be constrained by such laws. The legislature does not intend and does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state and federal antitrust laws including, but not limited to, agreements among competing health care providers or health carriers as to the price or specific level of reimbursement for health care services.

(3) The legislature intends that the Robert Bree collaborative established in section 3 of this act provide a mechanism through which public and private health care purchasers, health carriers, and providers can work together to identify effective means to improve quality health outcomes and cost-effectiveness of care. It is not the intent of the legislature to mandate payment or coverage decisions by private health care purchasers or carriers." [2011 c 313 § 1.]

**70.250.060 Sexual and reproductive health services—Review and recommendations for improvement—Report to legislature and governor.** (1) No later than January 1, 2020, the collaborative shall begin a review to identify, define, and endorse guidelines for the provision of high quality sexual and reproductive health services in clinical settings throughout Washington. This shall include the development of specific clinical recommendations to improve sexual and reproductive health care for:

(a) People of color;

(b) Immigrants and refugees;

(c) Victims and survivors of violence; and

(d) People with disabilities.

(2) The collaborative shall conduct its review consistent with the activities, processes, and reporting standards specified in RCW 70.250.050. In conducting its review, the collaborative shall apply a whole-person framework to develop evidence-based, culturally sensitive recommendations to improve standards of care and health equity.

(3) By December 15, 2020, the collaborative, through the authority, shall provide a status report to the committees of the legislature with jurisdiction over matters related to health care and to the governor. [2019 c 399 § 6.]

**Findings—Short title—2019 c 399:** See notes following RCW 74.09.875.

**Recommendations—Preexposure and postexposure prophylaxis financial support awareness—2019 c 399:** See note following RCW 48.43.072.

**70.250.900 Effective date—2009 c 258.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 28, 2009]. [2009 c 258 § 5.]

## Chapter 70.255 RCW
## NOVELTY LIGHTERS

Sections



**70.255.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority having jurisdiction" means the local organization, office, or individual responsible for enforcing the requirements of the state fire code.

(2) "Director" means the director of fire protection appointed under RCW 43.43.938.

(3) "Distribute" means to do any of the following:

(a) Sell novelty lighters or deliver novelty lighters for sale by another person to consumers;

(b) Sell or accept orders for novelty lighters that are to be transported from a point outside this state to a consumer within this state;

(c) Buy novelty lighters directly from a manufacturer or wholesale dealer for resale in this state;

(d) Give novelty lighters as a sample, prize, gift, or other promotion.

(4) "Manufacturer" means:

(a) An entity that produces, or causes the production of, novelty lighters for sale in this state;

(b) An importer or first purchaser of novelty lighters that intends to resell within this state novelty lighters that were produced for sale outside this state; or

(c) A successor to an entity, importer, or first purchaser described in (a) or (b) of this subsection.

(5)(a) "Novelty lighter" means a lighter that can operate on any fuel, including butane or liquid fuel. Novelty lighters have features that are attractive to children, including but not limited to visual effects, flashing lights, musical sounds, and toylike designs. The term considers the shape of the lighter to be the most important characteristic when determining whether a lighter can be considered a novelty lighter.

(b) "Novelty lighter" does not include disposable cigarette lighters or lighters that are printed or decorated with logos, decals, artwork, or heat shrinkable sleeves.

(6) "Retail dealer" means an entity at one location, other than a manufacturer or wholesale dealer, that engages in distributing novelty lighters.

(7) "Sell" means to transfer, or agree to transfer, title or possession for a monetary or nonmonetary consideration.

(8) "Wholesale dealer" means an entity that distributes novelty lighters to a retail dealer or other person for resale. [2009 c 273 § 1.]

**70.255.020 Prohibition on the distribution or offer to sell novelty lighters.** (1) A person may not distribute or offer to sell a novelty lighter within this state if the director determines the novelty lighter is prohibited for sale or distribution under this chapter.

(2) This section does not apply if the novelty lighters are in interstate commerce and not intended for distribution in this state.

(3) The authority having jurisdiction shall enforce the provisions of this chapter. [2009 c 273 § 2.]

**70.255.030 Civil penalty—Jurisdiction.** (1) The authority having jurisdiction may impose a civil penalty for a violation of this chapter. The civil penalty may not exceed:

(a) For a wholesale dealer that distributes or offers to sell novelty lighters to retail dealers or consumers, a written warning for the first violation and a monetary penalty of five hundred dollars for each subsequent violation.

(b) For a retail dealer that distributes or offers to sell novelty lighters to consumers, a written warning for the first violation and a monetary penalty of two hundred fifty dollars for each subsequent violation.

(2) The authority having jurisdiction may bring an action seeking:

(a) Injunctive relief to prevent or end a violation of this chapter;

(b) To recover civil penalties imposed under subsection (1) of this section; or

(c) To recover attorneys' fees and other enforcement costs and disbursements.

(3) Penalties under this section must be deposited in an account designated by the authority having jurisdiction.

(4) A district court has jurisdiction over all proceedings brought under this section. [2009 c 273 § 3.]

**70.255.040 Manufacturers must cease sale or distribution.** (1) On July 26, 2009, manufacturers must immediately cease the sale or distribution of novelty lighters in this state.

(2) On July 26, 2009, wholesalers and retail dealers have a maximum of ninety days to reduce their current inventory of novelty lighters. In no instance may wholesalers and retail dealers sell or distribute a novelty lighter in this state after ninety days from July 26, 2009. [2009 c 273 § 4.]

# Chapter 70.265 RCW
# PUBLIC HOSPITAL CAPITAL FACILITY AREAS

Sections



**70.265.010 Finding.** The legislature finds that it is in the interests of the people of the state of Washington to be able to establish public hospital capital facility areas as quasi-municipal corporations and independent taxing units existing within the boundaries of counties composed entirely of islands that receive medical services from an existing public hospital district but are not annexed to an existing public hospital district for the purpose of financing the construction, additions, or betterments of capital hospital facilities or other capital health care facilities. [2009 c 481 § 1.]

**70.265.020 Definitions.** (1) "Hospital capital facilities" include both real and personal property including land, buildings, site improvements, equipment, furnishings, collections, and all necessary costs related to acquisition, financing, design, construction, equipping, and remodeling.

(2) "Other capital health care facilities" means nursing home, extended care, long-term care, outpatient and rehabilitative facilities, ambulances, and such other facilities as are appropriate to the health needs of the population served.

(3) "Public hospital capital facility area" means a quasi-municipal corporation and independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, created by a county legislative authority of a county composed entirely of islands that receives medical services from a hospital district, but is prevented by geography and the absence of contiguous boundaries from annexing to that district. A public hospital capital facility area may include all or a portion of a city or town. [2009 c 481 § 2.]

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**70.265.030 Establishing a public hospital capital facility area—Process.** (1)(a) Upon receipt of a completed petition to both establish a public hospital capital facility area and submit a ballot proposition under RCW 70.265.070 to finance public hospital capital facilities and other capital health care facilities, the legislative authority of the county in which a proposed public hospital capital facility area is to be established shall submit separate ballot propositions to voters to authorize establishing the proposed public hospital capital facility area and authorizing the public hospital capital facility area, if established, to finance public hospital capital facilities or other capital health care facilities by issuing general indebtedness and imposing excess levies to retire the indebtedness. A petition submitted under this section must be accompanied by a written request to establish a public hospital capital facility area that is signed by a majority of the commissioners of the public hospital district serving the proposed area.

(b) The ballot propositions must be submitted to voters of the proposed public hospital capital facility area at a general or special election. If the proposed election date is not a general election, the county legislative authority is encouraged to request an election when another unit of local government with territory located in the proposed public hospital capital facility area is already holding a special election under RCW 29A.04.330. Approval of the ballot proposition to create a public hospital capital facility area requires a simple majority vote by the voters participating in the election.

(2) A completed petition submitted under this section must include:

(a) A description of the boundaries of the public hospital capital facility area; and

(b) A copy of a resolution of the legislative authority of each city, town, and hospital district with territory in the proposed public hospital capital facility area indicating both: (i) Approval of the creation of the proposed public hospital capital facility area; and (ii) agreement on how election costs will be paid for ballot propositions to voters that authorize the public hospital capital facility area to incur general indebtedness and impose excess levies to retire the general indebtedness. [2009 c 481 § 3.]

**70.265.040 Petition for formation of a public hospital capital facility area less than the entire county—Process.** Any petition for the formation of a public hospital capital facility area may describe an area less than the entire county in which the petition is filed, the boundaries of which must follow the then existing precinct boundaries and not divide any voting precinct; and in the event that a petition is filed containing not less than ten percent of the voters of the proposed public hospital capital facility area who voted at the last general election, certified by the auditor in like manner as for a countywide district, the board of county commissioners shall fix a date for a hearing on the petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when the petition will be heard. Publications required by this chapter must be in a newspaper published in the proposed public hospital capital facility area, or, if there be no such newspaper, then in a newspaper published in the county in which the public hospital capital facility area is situated, and of general circulation in that county. The hearing on the petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the board of county commissioners finds that any lands have been unjustly or improperly included within the proposed public hospital capital facility area the board shall change and fix the boundary lines in such manner as it deems reasonable and just and conducive to the welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public hospital capital facility area: PROVIDED, That no lands may be included within the boundaries so fixed lying outside the

boundaries described in the petition, except upon the written request of the owners of those lands. [2009 c 481 § 4.]

**70.265.050 Governing body.** The governing body of the public hospital capital facility area must consist of three members of the county legislative authority from each county in which the public hospital capital facility area is located. In counties that have more than three members of their legislative body, the three members who serve on the governing body of the public hospital capital facility area must be chosen by the full membership of the county legislative authority. [2009 c 481 § 5.]

**70.265.060 Authority to construct, acquire, purchase, maintain, add to, and remodel facilities—Interlocal agreements—Legal title.** A public hospital capital facility area may construct, acquire, purchase, maintain, add to, and remodel public hospital capital facilities, and the governing body of the public hospital capital facility area may, by interlocal agreement or otherwise, contract with a county, city, town, or public hospital district to design, administer the construction of, operate, or maintain a public hospital capital facility or other capital health care facility financed pursuant to this chapter. Legal title to public hospital capital facilities or other capital health care facilities acquired or constructed pursuant to this chapter may be transferred, acquired, or held by the public hospital capital facility area or by a county, city, town, or public hospital district in which the facility is located and receives service. [2009 c 481 § 6.]

**70.265.070 Financing—Bonds authorized.** (1) A public hospital capital facility area may contract indebtedness or borrow money to finance public hospital capital facilities and other capital health care facilities and may issue general obligation bonds for such purpose not exceeding an amount, together with any existing indebtedness of the public hospital capital facility area, equal to one and one-quarter percent of the value of the taxable property in the public hospital capital facility area and impose excess property tax levies to retire the general indebtedness as provided in RCW 39.36.050 if a ballot proposition authorizing both the indebtedness and excess levies is approved by at least three-fifths of the voters of the public hospital capital facility area voting on the proposition, and the total number of voters voting on the proposition constitutes not less than forty percent of the total number of voters in the public hospital capital facility area voting at the last preceding general election. The term "value of the taxable property" has the meaning set forth in RCW 39.36.015. The proposition must be submitted to voters at a general or special election and may be submitted to voters at the same election as the election when the ballot proposition authorizing the establishing of the public hospital capital facility area is submitted. If the proposed election date is not a general election, the county legislative authority is encouraged to request an election when another unit of local government with territory located in the proposed public hospital capital facility area is already holding a special election under RCW 29A.04.330.

(2) A public hospital capital facility area may accept gifts or grants of money or property of any kind for the same purposes for which it is authorized to borrow money in subsection (1) of this section. [2009 c 481 § 7.]

**70.265.080 Dissolution of public hospital capital facility area.** (1) A public hospital capital facility area may be dissolved by a majority vote of the governing body when all obligations under any general obligation bonds issued by the public hospital capital facility area have been discharged and any other contractual obligations of the public hospital capital facility area have either been discharged or assumed by another governmental entity.

(2) A public hospital capital facility area must be dissolved by the governing body if the first two ballot propositions under RCW 70.265.070 that are submitted to voters are not approved. [2009 c 481 § 8.]

**70.265.090 Limitations on legal challenges.** Unless commenced within thirty days after the date of the filing of the certificate of the canvass of an election on the proposition of creating a new public hospital capital facility area pursuant to this chapter, no lawsuit whatever may be maintained challenging in any way the legal existence of the public hospital capital facility area or the validity of the proceedings had for the organization and creation thereof. If the creation of a public hospital capital facility area is not challenged within the period specified in this section, the public hospital capital facility area conclusively must be deemed duly and regularly organized under the laws of this state. [2009 c 481 § 9.]

**70.265.100 Treasurer—Duties—Funds—Surety bonds.** (1) The treasurer of the county in which a public hospital capital facility area is located shall be treasurer of the public hospital capital facility area, except that the commission of the public hospital district in which the facility area is located by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the public hospital capital facility area. If the treasurer is not the county treasurer, the commission shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the public hospital capital facility area against loss. The premium on any such bond must be paid by the public hospital capital facility area.

(2) All public hospital capital facility area funds must be paid to the treasurer and must be disbursed by him or her only on warrants issued by an auditor appointed by the commission, upon orders or vouchers approved by it. The treasurer shall establish a public hospital capital facility area fund, into which all public hospital capital facility area funds must be paid, and he or she shall maintain such special funds as may be created by the commission, into which he or she shall place all money as the commission may, by resolution, direct.

(3) If the treasurer of the district is the treasurer of the county all public hospital capital facility area funds must be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries. If the treasurer of the public hospital capital facility area is some other person, all funds must be deposited in a bank or banks authorized to do business in this state as the commission by resolution designates, and with surety bond to

the public hospital capital facility area or securities in lieu thereof of the kind, no less in amount, for deposit of county funds. The surety bond or securities in lieu thereof must be filed or deposited with the treasurer of the public hospital capital facility area, and approved by resolution of the commission.

(4) All interest collected on public hospital capital facility area funds belong to the public hospital capital facility area and [must] be deposited to its credit in the proper public hospital capital facility area funds.

(5) A public hospital capital facility area may provide and require a reasonable bond of any other person handling moneys or securities of the public hospital capital facility area. The public hospital capital facility area may pay the premium on the bond. [2009 c 481 § 10.]

**70.265.110 Contracting with other entities to provide hospital facilities or hospital services.** Any public hospital capital facility area may contract or join with any public hospital district, publicly owned hospital, nonprofit hospital, legal entity, or individual to acquire, own, operate, manage, or provide any hospital or other health care facilities or hospital services or other health care services to be used by individuals, districts, hospitals, or others, including providing health maintenance services. If a public hospital capital facility area chooses to contract or join with another party or parties pursuant to the provisions of this chapter, it may do so through establishing a nonprofit corporation, partnership, limited liability company, or other legal entity of its choosing in which the public hospital capital facility area and the other party or parties participate. The governing body of the legal entity must include representatives of the public hospital capital facility area, which representatives may include members of the public hospital district's board of commissioners. A public hospital capital facility area contracting or joining with another party pursuant to the provisions of this chapter may appropriate funds and may sell, lease, or otherwise provide property, personnel, and services to the legal entity established to carry out the contract or joint activity. [2009 c 481 § 11.]

## Chapter 70.290 RCW
## WASHINGTON VACCINE ASSOCIATION

Sections



**70.290.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Association" means the Washington vaccine association.

(2) "Covered lives" means all persons under the age of nineteen in Washington state who are:

(a) Covered under an individual or group health benefit plan issued or delivered in Washington state or an individual or group health benefit plan that otherwise provides benefits to Washington residents; or

(b) Enrolled in a group health benefit plan administered by a third-party administrator. Persons under the age of nineteen for whom federal funding is used to purchase vaccines or who are enrolled in state purchased health care programs covering low-income children including, but not limited to, apple health for kids under RCW 74.09.470 and the basic health plan under chapter 70.47 RCW are not considered "covered lives" under this chapter.

(3) "Estimated vaccine cost" means the estimated cost to the state over the course of a state fiscal year for the purchase and distribution of vaccines purchased at the federal discount rate by the department of health.

(4) "Health benefit plan" has the same meaning as defined in RCW 48.43.005 and also includes health benefit plans administered by a third-party administrator.

(5) "Health carrier" has the same meaning as defined in RCW 48.43.005.

(6) "Secretary" means the secretary of the department of health.

(7) "State supplied vaccine" means vaccine purchased by the state department of health for covered lives for whom the state is purchasing vaccine using state funds raised via assessments on health carriers and third-party administrators as provided in this chapter.

(8) "Third-party administrator" means any person or entity who, on behalf of a health insurer or health care purchaser, receives or collects charges, contributions, or premiums for, or adjusts or settles claims on or for, residents of Washington state or Washington health care providers and facilities.

(9) "Total nonfederal program cost" means the estimated vaccine cost less the amount of federal revenue available to the state for the purchase and distribution of vaccines.

(10) "Vaccine" means a preparation of killed or attenuated living microorganisms, or fraction thereof, that upon administration stimulates immunity that protects against disease and is approved by the federal food and drug administration as safe and effective and recommended by the advisory committee on immunization practices of the centers for disease control and prevention for administration to children under the age of nineteen years. [2010 c 174 § 1.]

**70.290.020 Washington vaccine association—Creation.** There is created a nonprofit corporation to be known as the Washington vaccine association. The association is formed for the purpose of collecting and remitting adequate funds from health carriers and third-party administrators for the cost of vaccines provided to certain children in Washington state. [2010 c 174 § 2.]

**70.290.030 Composition of association—Board of directors—Duties.** (1) The association is comprised of all health carriers issuing or renewing health benefit plans in Washington state and all third-party administrators conducting business on behalf of residents of Washington state or Washington health care providers and facilities. Third-party administrators are subject to registration under RCW 70.290.075.

(2) The association is a nonprofit corporation under chapter 24.03A RCW and has the powers granted under that chapter.

(3) The board of directors includes the following voting members:

(a) Four members, selected from health carriers or third-party administrators, excluding health maintenance organizations, that have the most fully insured and self-funded covered lives in Washington state. The count of total covered lives includes enrollment in all companies included in their holding company system. Each health carrier or third-party administrator is entitled to no more than a single position on the board to represent all entities under common ownership or control.

(b) One member selected from the health maintenance organization having the most fully insured and self-insured covered lives in Washington state. The count of total lives includes enrollment in all companies included in its holding company system. Each health maintenance organization is entitled to no more than a single position on the board to represent all entities under common ownership or control.

(c) One member, representing health carriers not otherwise represented on the board under (a) or (b) of this subsection, who is elected from among the health carrier members not designated under (a) or (b) of this subsection.

(d) One member, representing Taft Hartley plans, appointed by the secretary from a list of nominees submitted by the Northwest administrators association.

(e) One member representing Washington state employers offering self-funded health coverage, appointed by the secretary from a list of nominees submitted by the Puget Sound health alliance.

(f) Two physician members appointed by the secretary, including at least one board certified pediatrician.

(g) The secretary, or a designee of the secretary with expertise in childhood immunization purchasing and distribution.

(4) The directors' terms and appointments must be specified in the plan of operation adopted by the association.

(5) The board of directors of the association must:

(a) Prepare and adopt articles of association and bylaws;

(b) Prepare and adopt a plan of operation. The plan of operation must include a dispute mechanism through which a carrier or third-party administrator can challenge an assessment determination by the board under RCW 70.290.040. The board must include a means to bring unresolved disputes to an impartial decision maker as a component of the dispute mechanism;

(c) Submit the plan of operation to the secretary for approval;

(d) Conduct all activities in accordance with the approved plan of operation;

(e) Enter into contracts as necessary or proper to collect and disburse the assessment;

(f) Enter into contracts as necessary or proper to administer the plan of operation;

(g) Sue or be sued, including taking any legal action necessary or proper for the recovery of any assessment for, on behalf of, or against members of the association or other participating person;

(h) Appoint, from among its directors, committees as necessary to provide technical assistance in the operation of the association, including the hiring of independent consultants as necessary;

(i) Obtain such liability and other insurance coverage for the benefit of the association, its directors, officers, employees, and agents as may in the judgment of the board of directors be helpful or necessary for the operation of the association;

(j) On an annual basis, beginning no later than November 1, 2010, and by November 1st of each year thereafter, establish the estimated amount of the assessment;

(k) Notify, in writing, each health carrier and third-party administrator of the health carrier's or third-party administrator's estimated total assessment by November 15th of each year;

(l) Submit a periodic report to the secretary listing those health carriers or third-party administrators that failed to remit their assessments and audit health carrier and third-party administrator books and records for accuracy of assessment payment submission;

(m) Allow each health carrier or third-party administrator no more than ninety days after the notification required by (k) of this subsection to remit any amounts in arrears or submit a payment plan, subject to approval by the association and initial payment under an approved payment plan;

(n) Deposit annual assessments collected by the association, less the association's administrative costs, with the state treasurer to the credit of the universal vaccine purchase account established in RCW 43.70.720;

(o) Borrow and repay such working capital, reserve, or other funds as, in the judgment of the board of directors, may be helpful or necessary for the operation of the association; and

(p) Perform any other functions as may be necessary or proper to carry out the plan of operation and to affect any or all of the purposes for which the association is organized.

(6) The secretary must convene the initial meeting of the association board of directors. [2021 c 176 § 5238; 2013 c 144 § 48; 2010 c 174 § 3.]

**Effective date—2021 c 176:** See note following RCW 24.03A.005.

**70.290.040 Estimate of program cost for upcoming year—Assessment collection—Surplus assessments—Start-up funding.** (1) The secretary shall estimate the total nonfederal program cost for the upcoming calendar year by October 1, 2010, and October 1st of each year thereafter. Additionally, the secretary shall subtract any amounts needed to serve children enrolled in state purchased health care programs covering low-income children for whom federal vaccine funding is not available, and report the final amount to the association. In addition, the secretary shall perform such calculation for the period of May 1st through December 31st,

2010, as soon as feasible but in no event later than April 1, 2010. The estimates shall be timely communicated to the association.

(2) The board of directors of the association shall determine the method and timing of assessment collection in consultation with the department of health. The board shall use a formula designed by the board to ensure the total anticipated nonfederal program cost, minus costs for other children served through state purchased health care programs covering low-income children, calculated under subsection (1) of this section, is collected and transmitted to the universal vaccine purchase account created in RCW 43.70.720 in order to ensure adequacy of state funds to order state-supplied vaccine from federal centers for disease control and prevention.

(3) Each licensed health carrier and each third-party administrator on behalf of its clients' health benefit plans must be assessed and is required to timely remit payment for its share of the total amount needed to fund nonfederal program costs calculated by the department of health. Such an assessment includes additional funds as determined necessary by the board to cover the reasonable costs for the association's administration. The board shall determine the assessment methodology, with the intent of ensuring that the nonfederal costs are based on actual usage of vaccine for a health carrier or third-party administrator's covered lives. State and local governments and school districts must pay their portion of vaccine expense for covered lives under this chapter.

(4) The board of the association shall develop a mechanism through which the number and cost of doses of vaccine purchased under this chapter that have been administered to children covered by each health carrier, and each third-party administrator's clients health benefit plans, are attributed to each such health carrier and third-party administrator. Except as otherwise permitted by the board, this mechanism must include at least the following: Date of service; patient name; vaccine received; and health benefit plan eligibility. The data must be collected and maintained in a manner consistent with applicable state and federal health information privacy laws. Beginning November 1, 2011, and each November 1st thereafter, the board shall factor the results of this mechanism for the previous year into the determination of the appropriate assessment amount for each health carrier and third-party administrator for the upcoming year.

(5) For any year in which the total calculated cost to be received from association members through assessments is less than the total nonfederal program cost, the association must pay the difference to the state for deposit into the universal vaccine purchase account established in RCW 43.70.720. The board may assess, and the health carrier and third-party administrators are obligated to pay, their proportionate share of such costs and appropriate reserves as determined by the board.

(6) The aggregate amount to be raised by the association in any year may be reduced by any surpluses remaining from prior years.

(7) In order to generate sufficient start-up funding, the association may accept prepayment from member health carriers and third-party administrators, subject to offset of future amounts otherwise owing or other repayment method as determined by the board. The initial deposit of start-up funding must be deposited into the universal vaccine purchase account on or before April 30, 2010. [2010 c 174 § 4.]

**70.290.050 Selection of vaccines to be purchased—Committee.** (1) The board of the association shall establish a committee for the purposes of developing recommendations to the board regarding selection of vaccines to be purchased in each upcoming year by the department. The committee must be composed of at least five voting board members, including at least three health carrier or third-party administrator members, one physician, and the secretary or the secretary's designee. The committee must also include a representative of vaccine manufacturers, who is a nonvoting member of the committee. The representative of vaccine manufacturers must be chosen by the secretary from a list of three nominees submitted collectively by vaccine manufacturers on an annual basis.

(2) In selecting vaccines to purchase, the following factors should be strongly considered by the committee: Patient safety and clinical efficacy, public health and purchaser value, compliance with RCW 70A.230.120, patient and provider choice, and stability of vaccine supply. [2021 c 65 § 68; 2010 c 174 § 5.]

**Explanatory statement—2021 c 65:** See note following RCW 53.54.030.

**70.290.060 Additional duties and powers of the association and secretary—Penalty—Rules.** In addition to the duties and powers enumerated elsewhere in this chapter:

(1) The association may, pursuant to either vote of its board of directors or request of the secretary, audit compliance with reporting obligations established under the association's plan of operation. Upon failure of any entity that has been audited to reimburse the costs of such audit as certified by vote of the association's board of directors within forty-five days of notice of such vote, the secretary shall assess a civil penalty of one hundred fifty percent of the amount of such costs.

(2) The association may establish an interest charge for late payment of any assessment under this chapter. The secretary shall assess a civil penalty against any health carrier or third-party administrator that fails to pay an assessment within three months of notification under RCW 70.290.030. The civil penalty under this subsection is one hundred fifty percent of such assessment.

(3) The secretary and the association are authorized to file liens and seek judgment to recover amounts in arrears and civil penalties, and recover reasonable collection costs, including reasonable attorneys' fees and costs. Civil penalties so levied must be deposited in the universal vaccine purchase account created in RCW 43.70.720.

(4) The secretary may adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this section.

(5) Upon request of the health care authority, the secretary and the association must provide the health care authority with any available information maintained by the association needed to calculate the proportional share of program costs under RCW 71.24.064. [2020 c 291 § 8; 2010 c 174 § 6.]

**70.290.070 Board shall submit financial report to the secretary.** The board of directors of the association shall submit to the secretary, no later than one hundred twenty days after the close of the association's fiscal year, a financial report in a form approved by the secretary. [2010 c 174 § 7.]

**70.290.075 Third-party administrators—Registration and reporting.** (1) A third-party administrator must register with the association. Registrants must report a change of legal name, business name, business address, or business telephone number to the association within ten days after the change.

(2) The association must establish data elements and procedures for the registration of third-party administrators necessary to implement this section in its plan of operation. [2013 c 144 § 47.]

**70.290.080 Limitation of liability.** No liability on the part of, and no cause of action of any nature, shall arise against any member of the board of the association, against an employee or agent of the association, or against any health care provider for any lawful action taken by them in the performance of their duties or required activities under this chapter. [2010 c 174 § 8.]

**70.290.090 Vote to recommend termination of the association—Disposition of funds.** (1) The association board may, on or after June 30, 2015, vote to recommend termination of the association if it finds that the original intent of its formation and operation, which is to ensure more cost-effective purchase and distribution of vaccine than if provided through uncoordinated purchase by health care providers, has not been achieved. The association board shall provide notice of the recommendation to the relevant policy and fiscal committees of the legislature within thirty days of the vote being taken by the association board. If the legislature has not acted by the last day of the next regular legislative session to reject the board's recommendation, the board may vote to permanently dissolve the association.

(2) In the event of a voluntary or involuntary dissolution of the association, funds remaining in the universal purchase vaccine account created in RCW 43.70.720 that were collected under this chapter must be returned to the member health carrier and third-party administrators in proportion to their previous year's contribution, from any balance remaining following the repayment of any prepayments for start-up funding not previously recouped by such member. [2010 c 174 § 12.]

**70.290.100 Physicians and clinics ordering state supplied vaccine—Tracking of vaccine delivered—Documentation.** Physicians and clinics ordering state supplied vaccine must ensure they have billing mechanisms and practices in place that enable the association to accurately track vaccine delivered to association members' covered lives and must submit documentation in such a form as may be prescribed by the board in consultation with state physician organizations. Physicians and other persons providing childhood immunization are strongly encouraged to use state supplied vaccine whenever possible. Nothing in this chapter prohibits health carriers and third-party administrators from denying claims for vaccine serum costs when the serum or serums providing similar protection are provided or available via state supplied vaccine. [2010 c 174 § 13.]

**70.290.110 Judicial invalidation of program's funding—Termination of program.** If the requirement that any segment of health carriers, third-party administrators, or state or local governmental entities provide funding for the program established in this chapter is invalidated by a court of competent jurisdiction, the board of the association may terminate the program one hundred twenty days following a final judicial determination on the matter. [2010 c 174 § 14.]

**70.290.900 Effective date—2010 c 174.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2010]. [2010 c 174 § 17.]

## Chapter 70.305 RCW
## ADVERSE CHILDHOOD EXPERIENCES

Sections



**70.305.005 Finding—Purpose.** The legislature finds that adverse childhood experiences are a powerful common determinant of a child's ability to be successful at school and, as an adult, to be successful at work, to avoid behavioral and chronic physical health conditions, and to build healthy relationships. The purpose of this chapter is to identify the primary causes of adverse childhood experiences in communities and to mobilize broad public and private support to prevent harm to young children and reduce the accumulated harm of adverse experiences throughout childhood. A focused effort is needed to: (1) Identify and promote the use of innovative strategies based on evidence-based and research-based approaches and practices; and (2) align public and private policies and funding with approaches and strategies which have demonstrated effectiveness.

The legislature recognizes that many community public health and safety networks across the state have knowledge and expertise regarding the reduction of adverse childhood experiences and can provide leadership on this initiative in their communities. In addition, a broad range of community coalitions involved with early learning, child abuse prevention, and community mobilization have coalesced in many communities. The adverse childhood experiences initiative should coordinate and assemble the strongest components of these networks and coalitions to effectively respond to the challenge of reducing and preventing adverse childhood experiences while providing flexibility for communities to design responses that are appropriate for their community. [2011 1st sp.s. c 32 § 1.]

***Reviser's note:** The department of early learning was abolished and its powers, duties, and functions were transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

Additional notes found at www.leg.wa.gov

**70.305.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adverse childhood experiences" means the following indicators of severe childhood stressors and family dysfunction that, when experienced in the first eighteen years of life and taken together, are proven by public health research to be powerful determinants of physical, mental, social, and behavioral health across the life span: Child physical abuse; child sexual abuse; child emotional abuse; child emotional or physical neglect; alcohol or other substance abuse in the home; mental illness, depression, or suicidal behaviors in the home; incarceration of a family member; witnessing intimate partner violence; and parental divorce or separation. Adverse childhood experiences have been demonstrated to affect the development of the brain and other major body systems.

(2) "Community public health and safety networks" or "networks" means the organizations authorized under RCW 70.190.060.

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

(4) "Evidence-based" has the same meaning as in RCW 43.216.157.

(5) "Research-based" has the same meaning as in RCW 43.216.157.

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

(7) "Secretary of children, youth, and families" means the secretary of the department of children, youth, and families. [2019 c 64 § 24; 2018 c 58 § 11; 2011 1st sp.s. c 32 § 2.]

**Explanatory statement—2019 c 64:** See note following RCW 1.20.110.

**Effective date—2018 c 58:** See note following RCW 28A.655.080.

Additional notes found at www.leg.wa.gov

**70.305.020 Preventing and mitigating the effects of adverse childhood experiences—Planning group—Report to the legislature—Secretary's authority.** (1)(a) The secretary of the department of social and health services and the secretary of the department of children, youth, and families shall actively participate in the development of a nongovernmental private-public initiative focused on coordinating government and philanthropic organizations' investments in the positive development of children and preventing and mitigating the effects of adverse childhood experiences. The secretaries shall convene a planning group to work with interested private partners to: (i) Develop a process by which the goals identified in RCW 70.305.005 shall be met; and (ii) develop recommendations for inclusive and diverse governance to advance the adverse childhood experiences initiative.

(b) The secretaries shall select no more than twelve to fifteen persons as members of the planning group. The members selected must represent a diversity of interests including: Early learning coalitions, community public health and safety networks, organizations that work to prevent and address child abuse and neglect, tribes, representatives of public agency agencies involved with interventions in or prevention of adverse childhood experiences, philanthropic organizations, and organizations focused on community mobilization.

(c) The secretaries shall cochair the planning group meetings and shall convene the first meeting.

(2) In addition to other powers granted to the secretary of the department of social and health services, the secretary of the department of social and health services may:

(a) Enter into contracts on behalf of the department of social and health services to carry out the purposes of this chapter;

(b) Provide funding to communities or any governance entity that is created as a result of the partnership; and

(c) Accept gifts, grants, or other funds for the purposes of this chapter. [2018 c 58 § 10; 2011 1st sp.s. c 32 § 3.]

**Effective date—2018 c 58:** See note following RCW 28A.655.080.

Additional notes found at www.leg.wa.gov

## Chapter 70.320 RCW
## SERVICE COORDINATION ORGANIZATIONS—ACCOUNTABILITY MEASURES

Sections



**70.320.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the health care authority.

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

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

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

(5) "Research-based" means a program or practice that has been tested with a single randomized, or statistically controlled evaluation, or both, demonstrating sustained desirable outcomes; or where the weight of the evidence from a systemic review supports sustained outcomes as described in this subsection but does not meet the full criteria for evidence-based.

(6) "Service coordination organization" or "service contracting entity" means the authority and department, or an entity that may contract with the state to provide, directly or

through subcontracts, a comprehensive delivery system of medical, behavioral, long-term care, or social support services, including entities such as managed care organizations that provide medical services to clients under chapter 74.09 RCW and RCW 71.24.380, and area agencies on aging providing case management services under chapter 74.39A RCW. [2019 c 325 § 5023; 2014 c 225 § 73; 2013 c 320 § 1.]

**Effective date—2019 c 325:** See note following RCW 71.24.011.

**Effective date—2014 c 225:** See note following RCW 71.24.016.

**70.320.020 Contract performance measures developed under RCW 70.320.030 based on outcomes—Integration.** (1) The authority and the department shall base contract performance measures developed under RCW 70.320.030 on the following outcomes when contracting with service contracting entities: Improvements in client health status and wellness; increases in client participation in meaningful activities; reductions in client involvement with criminal justice systems; reductions in avoidable costs in hospitals, emergency rooms, crisis services, and jails and prisons; increases in stable housing in the community; improvements in client satisfaction with quality of life; and reductions in population-level health disparities.

(2) The performance measures must demonstrate the manner in which the following principles are achieved within each of the outcomes under subsection (1) of this section:

(a) Maximization of the use of evidence-based practices will be given priority over the use of research-based and promising practices, and research-based practices will be given priority over the use of promising practices. The agencies will develop strategies to identify programs that are effective with ethnically diverse clients and to consult with tribal governments, experts within ethnically diverse communities and community organizations that serve diverse communities;

(b) The maximization of the client's independence, recovery, and employment;

(c) The maximization of the client's participation in treatment decisions; and

(d) The collaboration between consumer-based support programs in providing services to the client.

(3) In developing performance measures under RCW 70.320.030, the authority and the department shall consider expected outcomes relevant to the general populations that each agency serves. The authority and the department may adapt the outcomes to account for the unique needs and characteristics of discrete subcategories of populations receiving services, including ethnically diverse communities.

(4) The authority and the department shall coordinate the establishment of the expected outcomes and the performance measures between each agency as well as each program to identify expected outcomes and performance measures that are common to the clients enrolled in multiple programs and to eliminate conflicting standards among the agencies and programs.

(5)(a) The authority and the department shall establish timelines and mechanisms for service contracting entities to report data related to performance measures and outcomes, including phased implementation of public reporting of outcome and performance measures in a form that allows for comparison of performance measures and levels of improvement between geographic regions of Washington.

(b) The authority and the department may not release any public reports of client outcomes unless the data has been deidentified and aggregated in such a way that the identity of individual clients cannot be determined through directly identifiable data or the combination of multiple data elements.

(6)(a) The performance measures coordinating committee must establish: (i) A performance measure to be integrated into the statewide common measure set which tracks effective integration practices of behavioral health services in primary care settings; (ii) performance measures which track rates of criminal justice system involvement among medical assistance clients with an identified behavioral health need including, but not limited to, rates of arrest and incarceration; and (iii) performance measures which track rates of homelessness and housing instability among medical assistance clients. The authority must set improvement targets related to these measures.

(b) The performance measures coordinating committee must report to the governor and appropriate committees of the legislature regarding the implementation of this subsection by July 1, 2022.

(c) For purposes of establishing performance measures as specified in (a)(ii) of this subsection, the performance measures coordinating committee shall convene a work group of stakeholders including the authority, medicaid managed care organizations, the department of corrections, and others with expertise in criminal justice and behavioral health. The work group shall review current performance measures that have been adopted in other states or nationally to inform this effort.

(d) For purposes of establishing performance measures as specified in (a)(iii) of this subsection, the performance measures coordinating committee shall convene a work group of stakeholders including the authority, medicaid managed care organizations, and others with expertise in housing for low-income populations and with experience understanding the impacts of homelessness and housing instability on health. The work group shall review current performance measures that have been adopted in other states or nationally from organizations with experience in similar measures to inform this effort.

(7) The authority must report to the governor and appropriate committees of the legislature:

(a) By October 1, 2022, regarding options and recommendations for integrating value-based purchasing terms and a performance improvement project into managed health care contracts relating to the criminal justice outcomes specified under subsection (1) of this section;

(b) By July 1, 2024, regarding options and recommendations for integrating value-based purchasing terms and to integrate a collective performance improvement project into managed health care contracts related to increasing stable housing in the community outcomes specified under subsection (1) of this section. The authority shall review the performance measures and information from the work group established in subsection (6)(d) of this section. [2022 c 215 § 2; 2021 c 267 § 2; 2017 c 226 § 8; 2014 c 225 § 107; 2013 c 320 § 2.]

**Finding—Intent—2022 c 215:** "(1) The legislature finds that social determinants of health, particularly housing, are highly correlated with long-term recovery from behavioral health conditions. Seeking inpatient treatment for a mental health or substance use challenge is an act of valor. Upon discharge from care, these individuals deserve a safe, stable place from which to launch their recovery. It is far easier and more cost-effective to help maintain a person's recovery after treatment than to discharge them into homelessness and begin the process anew amid another crisis. Sometimes, there may not be another chance.

(2) Therefore, it is the intent of the legislature to seize the incredible opportunity presented by a person seeking inpatient behavioral health care by ensuring that these courageous individuals are discharged to appropriate housing." [2022 c 215 § 1.]

**Findings—Purpose—2021 c 267:** "The legislature finds that in 2013 the legislature adopted outcome expectations for entities that contract with the state to provide health services in order to guide purchasing strategies by the health care authority and department of social and health services. Since then, the health care authority has established a performance measures coordinating committee and implemented performance terms in managed care contracts including, but not limited to, performance measurement requirements, mandatory performance improvement projects, and value-based purchasing terms.

The legislature finds that two outcomes established by chapter 320, Laws of 2013 (Engrossed Substitute House Bill No. 1519) and chapter 338, Laws of 2013 (Second Substitute Senate Bill No. 5732) which are key to the integration of behavioral health into primary health networks are (1) reduction in client involvement with the criminal justice system; and (2) reduction in avoidable costs in jails and prisons. These outcomes reflect Washington's priorities to incentivize cross-system collaboration between health networks, government entities, and the criminal justice system; to emphasize prevention over crisis response; and to remove individuals whose offending is driven primarily by health status instead of criminality from the criminal justice system.

The legislature further finds that indicators since 2013 show worsening trends for interaction between persons with behavioral health disorders and the criminal justice system. According to data presented in October 2018 by the research and data administration of the department of social and health services, arrests of persons enrolled in public health with an identified mental health or substance use disorder condition increased by 67 percent during this five-year period, while the overall rate of arrest declined by 11 percent. According to the same data source, referrals for state mental health services related to competency to stand trial have increased by 64 percent, incurring substantial liability for the state in the case of Trueblood v. Department of Social and Health Services. The purpose of this act is to focus the health care authority's purchasing efforts on providing incentives to its contractors to reverse these trends and achieve the outcome of reduced criminal justice system involvement for public health system clients with behavioral health disorders." [2021 c 267 § 1.]

**Sustainable solutions for the integration of behavioral and physical health—2017 c 226:** See note following RCW 74.09.497.

**70.320.030 Adoption of performance measures.** (1) The authority shall adopt performance measures to determine whether service contracting entities are achieving the outcomes described in RCW 70.320.020 and 41.05.690 for clients enrolled in medical managed care programs operated according to Title XIX or XXI of the federal social security act.

(2) The authority shall adopt performance measures to determine whether service contracting entities are achieving the outcomes described in RCW 70.320.020 for clients receiving mental health, long-term care, or chemical dependency services. [2021 c 267 § 3; 2015 c 209 § 1; 2013 c 320 § 3.]

**Findings—Purpose—2021 c 267:** See note following RCW 70.320.020.

**70.320.040 Contract requirements.** By July 1, 2015, the authority and the department shall require that contracts with service coordination organizations include provisions requiring:

(1) The adoption of the outcomes and performance measures developed under this chapter and RCW 41.05.690 and mechanisms for reporting data to support each of the outcomes and performance measures; and

(2) That an initial health screen be conducted for new enrollees pursuant to the terms and conditions of the contract. [2015 c 209 § 2; 2013 c 320 § 4.]

**70.320.050 Report to the legislature.** (1) By December 1, 2014, the department and the authority shall report jointly to the legislature on the expected outcomes and the performance measures. The report must identify the performance measures and the expected outcomes established for each program, the relationship between the performance measures and expected improvements in client outcomes, mechanisms for reporting outcomes and measuring performance, and options for applying the performance measures and expected outcomes development process to other health and social service programs.

(2) By December 1, 2016, and annually thereafter, the department and the authority shall report to the legislature on the incorporation of the performance measures into contracts with service coordination organizations and progress toward achieving the identified outcomes. The report shall include:

(a) The number of medicaid clients enrolled over the previous year;

(b) The number of enrollees who received a baseline health assessment over the previous year;

(c) An analysis of trends in health improvement for medicaid enrollees in accordance with the measure set established under *RCW 41.05.065; and

(d) Recommendations for improving the health of medicaid enrollees. [2015 c 209 § 3; 2013 c 320 § 5.]

***Reviser's note:** The reference to RCW 41.05.065 appears to be erroneous. A reference to RCW 41.05.690 was apparently intended.

**70.320.060 Civil actions—Outcomes and performance measures do not establish a standard of care.** The outcomes and performance measures established pursuant to this chapter do not establish a standard of care in any civil action brought by a recipient of services. The failure of a service coordination organization to meet the outcomes and performance measures established pursuant to this chapter does not create civil liability on the part of the service coordination organization in a claim brought by a recipient of services. [2013 c 320 § 6.]

**70.320.070 Record retention—Requirements.** The authority, the department, and service contracting entities shall establish record retention schedules for maintaining data reported by service contracting entities under RCW 70.320.020. For data elements related to the identity of individual clients, the schedules may not allow the retention of data for longer than required by law unless the authority, the department, or service contracting entities require the data for purposes contemplated by RCW 70.320.020 or to meet other service requirements. Regardless of how long data reported by service contracting entities under RCW 70.320.020 is kept, it must be protected in a way that prevents improper use

or disclosure of confidential client information. [2014 c 225 § 109.]

## Chapter 70.330 RCW

## DIABETES—PLANNING AND REPORTS

Sections



**70.330.010 Identification of goals and benchmarks—Agency plans.** The health care authority, department of social and health services, and department of health shall collaborate to identify goals and benchmarks while also developing individual agency plans to reduce the incidence of diabetes in Washington, improve diabetes care, and control complications associated with diabetes. [2016 c 56 § 1.]

**70.330.020 Reports to governor and legislature.** The health care authority, department of social and health services, and department of health shall each submit a report to the governor and the legislature by December 31, 2019, and every second year thereafter, on the following:

(1) The financial impact and reach diabetes of all types is having on programs administered by each agency and individuals enrolled in those programs. Items included in this assessment must include the number of lives with diabetes impacted or covered by programs administered by the agency, the number of lives with diabetes and family members impacted by prevention and diabetes control programs implemented by the agency, the financial toll or impact diabetes and its complications places on these programs, and the financial toll or impact diabetes and its complications places on these programs in comparison to other chronic diseases and conditions;

(2) An assessment of the benefits of implemented programs and activities aimed at controlling diabetes and preventing the disease. This assessment must also document the amount and source for any funding directed to the agency for programs and activities aimed at reaching those with diabetes;

(3) A description of the level of coordination existing between the agencies on activities, programmatic activities, and messaging on managing, treating, or preventing all forms of diabetes and its complications;

(4) A development or revision of detailed action plans for battling diabetes with a range of actionable items for consideration by the legislature. The plans must identify proposed action steps to reduce the impact of diabetes, prediabetes, and related diabetes complications. The plan must also identify expected outcomes of the action steps proposed in the following biennium while also establishing benchmarks for controlling and preventing relevant forms of diabetes; and

(5) An estimate of costs and resources required to implement the plan identified in subsection (4) of this section. [2016 c 56 § 2.]

## Chapter 70.335 RCW

## BLOOD ESTABLISHMENTS

Sections



**70.335.010 Findings—Intent.** The legislature finds that maintaining public trust and confidence in the safety of the community blood supply is important to the health care system. Patients in Washington needing lifesaving transfusions rightly expect safe blood and blood donors in Washington rightly expect their contributions will be managed with diligent care and compliance with all regulatory standards and expectations so their donation will benefit patients in need. The United States food and drug administration establishes regulations, good manufacturing practices, and guidance that defines the minimum standards for blood establishments and, in cases of repeated violations and noncompliance by licensed blood establishments, may impose measures that include fines, judicial consent decrees, and suspension or revocation of licensure. It is therefore the intent of the legislature that blood-collecting or distributing establishments be registered with the department of health to help ensure public transparency. [2016 c 47 § 1.]

**70.335.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Blood-collecting or distributing establishment" or "establishment" means any organization that collects or distributes blood for allogeneic transfusion in Washington. This chapter does not apply to a hospital licensed under chapter 70.41 or 71.12 RCW unless the hospital collects blood directly from donors for the purpose of allogeneic transfusions. For the purposes of this chapter, "blood-collecting or distributing establishment" or "establishment" does not include organizations that collect source plasma for the production of plasma derivatives by fractionation.

(2) "Change in standing" means that a blood-collecting or distributing establishment is the subject of titled letters, fines, suspensions, or revocations of its United States food and drug administration license, or judicial consent decrees.

(3) "Department" means the Washington state department of health. [2016 c 47 § 2.]

**70.335.030 Registration required—Applications for registration—Criteria—Suspension—Expiration—Fees.** (1) A blood-collecting or distributing establishment may not collect or distribute blood for transfusion in Washington, unless it is registered by the department.

(2) A blood-collecting or distributing establishment shall submit an application for registration to the department on a form prescribed by the department. The application must, at a minimum, contain the following information:

(a) The name, address, and telephone number of the blood-collecting or distributing establishment;

(b) A copy of the establishment's United States food and drug administration license, unless the applicant is a hospital that meets the criteria in RCW 70.335.020(1);

(c) A list of the establishment's clients in Washington;

(d) Any of the following issued upon, or active against, the establishment in the two years prior to the application:

(i) Titled letters, fines, or license suspensions or revocations issued by the United States food and drug administration; or

(ii) Judicial consent decrees; and

(e) Any other information required by the department.

(3) The department shall register a blood-collecting or distributing establishment if it holds a license issued by the United States food and drug administration, or if the applicant is a hospital that meets the criteria in RCW 70.335.020(1), and submits an application and fees as required by this section.

(4) The department shall deny or revoke the registration of an establishment upon a determination that it no longer holds a license issued by the United States food and drug administration.

(5) The department shall issue a summary suspension of the registration if the blood-collecting or distributing establishment no longer holds a license issued by the United States food and drug administration. The summary suspension remains in effect until proceedings under RCW 43.70.115 have been completed by the department. The issue in the proceedings is limited to whether the blood-collecting or distributing establishment is qualified to hold a registration under this section.

(6) A registration expires annually on the date specified on the registration. The department shall establish the administrative procedures and requirements for registration renewals, including a requirement that the establishment update the information provided under subsection (2) of this section both annually and within fourteen days of a change in standing of the establishment's United States food and drug administration license.

(7) An establishment applying for or renewing a registration under this section shall pay a fee in an amount set by the department in rule. In no case may the fee exceed the amount necessary to defray the costs of administering this chapter.

(8) This section does not apply in the case of individual patient medical need, as determined by a qualified provider. [2016 c 47 § 3.]

**70.335.040 Public registry—Notification of changes.** (1) The department shall create and maintain an online public registry of all registered blood-collecting or distributing establishments that supply blood products for transfusion in Washington.

(2) The department shall, within fourteen days of receipt, publish in the public registry the information received from each registered blood-collecting or distributing establishment under RCW 70.335.030, including changes in the standing of the establishment's United States food and drug administration license.

(3) The department shall notify all of a blood-collecting or distributing establishment's Washington clients within fourteen days of receiving notice under RCW 70.335.030 that the establishment has experienced a change in standing in its United States food and drug administration license or no longer holds a license issued by the United States food and drug administration. [2016 c 47 § 4.]

**70.335.050 Enforcement.** The department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any blood-collecting or distributing establishment to restrain or prevent the operation of the establishment without a registration issued under this chapter. [2016 c 47 § 5.]

## Chapter 70.345 RCW
## VAPOR PRODUCTS

Sections



**70.345.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the Washington state liquor and cannabis board.

(2) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing vapor products in this state.

(3) "Child care facility" has the same meaning as provided in RCW 70A.320.020.

(4) "Closed system nicotine container" means a sealed, prefilled, and disposable container of nicotine in a solution or other form in which such container is inserted directly into an electronic cigarette, electronic nicotine delivery system, or other similar product, if the nicotine in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

(5) "Delivery sale" means any sale of a vapor product to a purchaser in this state where either:

(a) The purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the internet or other online service; or

(b) The vapor product is delivered by use of the mails or of a delivery service. The foregoing sales of vapor products constitute a delivery sale regardless of whether the seller is located within or without this state. "Delivery sale" does not include a sale of any vapor product not for personal consumption to a retailer.

(6) "Delivery seller" means a person who makes delivery sales.

(7) "Distributor" has the same meaning as in RCW 82.25.005.

(8) "Liquid nicotine container" means a package from which nicotine in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold soluble nicotine in any concentration. "Liquid nicotine container" does not include closed system nicotine containers.

(9) "Manufacturer" means a person who manufactures and sells vapor products.

(10) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(11) "Place of business" means any place where vapor products are sold or where vapor products are manufactured, stored, or kept for the purpose of sale.

(12) "Playground" means any public improved area designed, equipped, and set aside for play of six or more children which is not intended for use as an athletic playing field or athletic court, including but not limited to any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures.

(13) "Retail outlet" means each place of business from which vapor products are sold to consumers.

(14) "Retailer" means any person engaged in the business of selling vapor products to ultimate consumers.

(15)(a) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

(b) The term "sale" includes a gift by a person engaged in the business of selling vapor products, for advertising, promoting, or as a means of evading the provisions of this chapter.

(16) "School" has the same meaning as provided in RCW 70A.320.020.

(17) "Self-service display" means a display that contains vapor products and is located in an area that is openly accessible to customers and from which customers can readily access such products without the assistance of a salesperson. A display case that holds vapor products behind locked doors does not constitute a self-service display.

(18) "Vapor product" means any noncombustible product that may contain nicotine and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor or aerosol from a solution or other substance.

(a) "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

(b) "Vapor product" does not include any product that meets the definition of cannabis, useable cannabis, cannabis concentrates, cannabis-infused products, cigarette, or tobacco products.

(c) For purposes of this subsection (18), "cannabis," "useable cannabis," "cannabis concentrates," and "cannabis-infused products" have the same meaning as provided in RCW 69.50.101. [2022 c 16 § 135; 2021 c 65 § 69. Prior: 2019 c 445 § 210; 2019 c 15 § 4; 2016 sp.s. c 38 § 4.]

**Intent—Finding—2022 c 16:** See note following RCW 69.50.101.

**Explanatory statement—2021 c 65:** See note following RCW 53.54.030.

**Conflict with federal requirements—Effective date—2019 c 445:** See RCW 82.25.900 and 82.25.901.

**Automatic expiration date and tax preference performance statement exemption—2019 c 445:** See note following RCW 82.08.0318.

**Effective date—2019 c 15:** See note following RCW 26.28.080.

*Raising the minimum legal age of sale in certain compacts, consultations with federally recognized Indian tribes: RCW 43.06.468.*

**70.345.020 Types of licenses—Applications—License expiration and display.** (1) The licenses issuable by the board under this chapter are as follows:

(a) A vapor product retailer's license;

(b) A vapor product distributor's license; and

(c) A vapor product delivery sale license.

(2) Application for the licenses must be made through the business licensing system under chapter 19.02 RCW. The board may adopt rules regarding the regulation of the licenses. The board may refuse to issue any license under this chapter if the board has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a distributor's license, retailer's license, or delivery seller's license, and for considering the denial, suspension, or revocation of any such license, the board may consider criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board may, in its discretion, issue or refuse to issue the retailer's license, distributor's license, and delivery sale license subject to the provisions of RCW 70.155.100.

(3) The application processes for the retailer license and the distributor license, and any forms used for such processes, must allow the applicant to simultaneously apply for a delivery sale license without requiring the applicant to undergo a separate licensing application process in order to be licensed to conduct delivery sales. However, a delivery sale license obtained in conjunction with a retailer or distributor license under this subsection remains a separate license subject to the delivery sale licensing fee established under this chapter.

(4) No person may qualify for a retailer's license, distributor's license, or delivery sale license under this section without first undergoing a criminal background check. The background check must be performed by the board and must disclose any criminal conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. If the applicant or licensee also has a license issued under chapter 66.24, 69.50, 82.24, or 82.26 RCW, the background check done under the authority of chapter 66.24, 69.50, 82.24, or 82.26 RCW satisfies the requirements of this subsection.

(5) Each license issued under this chapter expires on the business license expiration date. The license must be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the board adopted pursuant to this chapter.

(6) Each license and any other evidence of the license required under this chapter must be exhibited in each place of business for which it is issued and in the manner required for the display of a business license. [2016 sp.s. c 38 § 5.]

**Contingent effective date—2016 sp.s. c 38 §§ 5-10 and 28:** "(1) Sections 5 through 10 and 28 of this act take effect thirty days after the Washington state liquor and cannabis board prescribes the form for an application for a license required under section 6 of this act.

(2) The Washington state liquor and cannabis board must provide written notice of the effective date of sections 5 through 10 and 28 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department." [2016 sp.s. c 38 § 32.] Written notice of the effective date, August 1, 2016, for sections 5 through 10 and 28, chapter 38, Laws of 2016 sp.s. required by section 32, chapter 38, Laws of 2016 sp.s. was provided by the liquor and cannabis board to the office of the code reviser on June 27, 2016.

**70.345.030 License required—Must allow inspections—Sale of certain substances prohibited—Penalties.** (1)(a) No person may engage in or conduct business as a retailer, distributor, or delivery seller in this state without a valid license issued under this chapter, except as otherwise provided by law. Any person who sells vapor products to ultimate consumers by a means other than delivery sales must obtain a retailer's license under this chapter. Any person who meets the definition of distributor under this chapter must obtain a distributor's license under this chapter. Any person who conducts delivery sales of vapor products must obtain a delivery sale license.

(b) A violation of this subsection is punishable as a class C felony according to chapter 9A.20 RCW.

(2) No person engaged in or conducting business as a retailer, distributor, or delivery seller in this state may refuse to allow the enforcement officers of the board, on demand, to make full inspection of any place of business or vehicle where any of the vapor products regulated under this chapter are sold, stored, transported, or handled, or otherwise hinder or prevent such inspection. A person who violates this subsection is guilty of a gross misdemeanor.

(3) Any person licensed under this chapter as a distributor, any person licensed under this chapter as a retailer, and any person licensed under this chapter as a delivery seller may not operate in any other capacity unless the additional appropriate license is first secured, except as otherwise provided by law. A violation of this subsection is a misdemeanor.

(4) No person engaged in or conducting business as a retailer, distributor, or delivery seller in this state may sell or give, or permit to sell or give, a product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law. A violation of this subsection (4) is punishable according to RCW 69.50.401.

(5) The penalties provided in this section are in addition to any other penalties provided by law for violating the provisions of this chapter or the rules adopted under this chapter. [2019 c 445 § 211; 2016 sp.s. c 38 § 6.]

**Conflict with federal requirements—Effective date—2019 c 445:** See RCW 82.25.900 and 82.25.901.

**Automatic expiration date and tax preference performance statement exemption—2019 c 445:** See note following RCW 82.08.0318.

**Contingent effective date—2016 sp.s. c 38 §§ 5-10 and 28:** See note following RCW 70.345.020.

**70.345.040 Licensing fee—Distributors.** A fee of one hundred fifty dollars must accompany each vapor product distributor's license application or license renewal application under RCW 70.345.020. If a distributor sells or intends to sell vapor products at two or more places of business, whether established or temporary, a separate license with a license fee of one hundred dollars is required for each additional place of business. [2016 sp.s. c 38 § 7.]

**Contingent effective date—2016 sp.s. c 38 §§ 5-10 and 28:** See note following RCW 70.345.020.

**70.345.050 Licensing fee—Retailers.** (1) A fee of one hundred seventy-five dollars must accompany each vapor product retailer's license application or license renewal application under RCW 70.345.020. A separate license is required for each separate location at which the retailer operates.

(2) A retailer applying for, or renewing, both a vapor products retailer's license under RCW 70.345.020 and retailer's license under RCW 82.24.510 may pay a combined application fee of two hundred fifty dollars for both licenses. [2016 sp.s. c 38 § 8.]

**Contingent effective date—2016 sp.s. c 38 §§ 5-10 and 28:** See note following RCW 70.345.020.

**70.345.060 Licensing fee—Delivery sales.** A fee of two hundred fifty dollars must accompany each vapor product delivery sale license application or license renewal application under RCW 70.345.020. [2016 sp.s. c 38 § 10.]

**Contingent effective date—2016 sp.s. c 38 §§ 5-10 and 28:** See note following RCW 70.345.020.

**70.345.070 Retail signage.** (1) Except as provided in subsection (2) of this section, a person who holds a retailer's license issued under this chapter must display a sign concern-

ing the prohibition of vapor product sales to persons under the age of twenty-one. Such sign must:

(a) Be posted so that it is clearly visible to anyone purchasing vapor products from the licensee;

(b) Be designed and produced by the department of health to read: "The sale of vapor products to persons under age twenty-one is strictly prohibited by state law. Photo id required upon request;" and

(c) Be provided free of charge by the department of health.

(2) For persons also licensed under RCW 82.24.510 or 82.26.150, the board may issue a sign to read: "The sale of tobacco or vapor products to persons under age twenty-one is strictly prohibited by state law. Photo id required upon request." The sign must be provided free of charge by the board.

(3) A person who holds a license issued under this chapter must display the license or a copy in a prominent location at the outlet for which the license is issued. [2019 c 15 § 6; 2016 sp.s. c 38 § 12.]

**Effective date—2019 c 15:** See note following RCW 26.28.080.

*Raising the minimum legal age of sale in certain compacts, consultations with federally recognized Indian tribes: RCW 43.06.468.*

**70.345.075 Product labeling.** ***(Contingent expiration date.)*** (1) A manufacturer or distributor that sells, offers for sale, or distributes liquid nicotine containers shall label the vapor product with a: (a) Warning regarding the harmful effects of nicotine; (b) warning to keep the vapor product away from children; (c) warning that vaping is illegal for those under the legal age to use the product; and (d) except as provided in subsection (2) of this section, the amount of nicotine in milligrams per milliliter of liquid along with the total volume of the liquid contents of the product expressed in milliliters.

(2) For closed system nicotine containers as defined in RCW 70.345.010, a manufacturer that sells, offers for sale, or distributes vapor products in this state must annually provide the department of health with a disclosure of the nicotine content of such vapor product based on measurement standards to be established by the department of health.

(3)(a) This section expires on the effective date of the final regulations issued by the United States food and drug administration or by any other federal agency, when such regulations mandate warning or advertisement requirements for vapor products.

(b) The board must provide notice of the expiration date of this section to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the board. [2016 sp.s. c 38 § 13.]

**Reviser's note:** On May 5, 2016, the United States food and drug administration issued final regulations regarding certain vapor products, including requirements for product labeling. 81 Fed. Reg. 28973. The final regulation's product labeling requirements take effect May 10, 2018, but apply only to vapor products containing nicotine.

**70.345.080 Vendor assistance required for sales—Exception.** (1) No person may offer a vapor product for sale in an open, unsecured display that is accessible to the public without the intervention of a store employee.

(2) It is unlawful to sell or distribute vapor products from self-service displays.

(3) Retail establishments are exempt from subsections (1) and (2) of this section if persons under the age of twenty-one are not allowed in the store and such prohibition is posted clearly on all entrances. [2019 c 15 § 9; 2017 c 210 § 1; 2016 sp.s. c 38 § 16.]

**Effective date—2019 c 15:** See note following RCW 26.28.080.

*Raising the minimum legal age of sale in certain compacts, consultations with federally recognized Indian tribes: RCW 43.06.468.*

**70.345.090 Mail and internet sales—License required—Age and identity verification—Penalties—Enforcement—Application of consumer protection act—Rules.** (1) No person may conduct a delivery sale or otherwise ship or transport, or cause to be shipped or transported, any vapor product ordered or purchased by mail or through the internet to any person unless such seller has a valid delivery sale license as required under this chapter.

(2) No person may conduct a delivery sale or otherwise ship or transport, or cause to be shipped or transported, any vapor product ordered or purchased by mail or through the internet to any person under the minimum age required for the legal sale of vapor products as provided under RCW 70.345.140.

(3) A delivery sale licensee must provide notice on its mail order or internet sales forms of the minimum age required for the legal sale of vapor products in Washington state as provided by RCW 70.345.140.

(4) A delivery sale licensee must not accept a purchase or order from any person without first obtaining the full name, birthdate, and residential address of that person and verifying this information through an independently operated third-party database or aggregate of databases, which includes data from government sources, that are regularly used by government and businesses for the purpose of age and identity verification and authentication.

(5) A delivery sale licensee must accept payment only through a credit or debit card issued in the purchaser's own name. The licensee must verify that the card is issued to the same person identified through identity and age verification procedures in subsection (4) of this section.

(6) Before a delivery sale licensee delivers an initial purchase to any person, the licensee must verify the identity and delivery address of the purchaser by mailing or shipping to the purchaser a notice of sale and certification form confirming that the addressee is in fact the person placing the order. The purchaser must return the signed certification form to the licensee before the initial shipment of product. Certification forms are not required for repeat customers. In the alternative, before a seller delivers an initial purchase to any person, the seller must first obtain from the prospective customer an electronic certification, such as by email, that includes a declaration that, at a minimum, the prospective customer is over the minimum age required for the legal sale of a vapor product, and the credit or debit card used for payment has been issued in the purchaser's name.

(7) A delivery sale licensee must include on shipping documents a clear and conspicuous statement which includes, at a minimum, that the package contains vapor products, Washington law prohibits sales to those under the

minimum age established by this chapter, and violations may result in sanctions to both the licensee and the purchaser.

(8) For purposes of this subsection (8) [this section], "vapor products" has the same meaning as provided in RCW 82.25.005.

(9) A person who knowingly violates this section is guilty of a class C felony, except that the maximum fine that may be imposed is five thousand dollars.

(10) In addition to or in lieu of any other civil or criminal remedy provided by law, a person who has violated this section is subject to a civil penalty of up to five thousand dollars for each violation. The attorney general, acting in the name of the state, may seek recovery of the penalty in a civil action in superior court.

(11) The attorney general may seek an injunction in superior court to restrain a threatened or actual violation of this section and to compel compliance with this section.

(12) Any violation of this section is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for violation of this section lies solely with the attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

(13)(a) In any action brought under this section, the state is entitled to recover, in addition to other relief, the costs of investigation, expert witness fees, costs of the action, and reasonable attorneys' fees.

(b) If a court determines that a person has violated this section, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the general fund.

(14) Unless otherwise expressly provided, the penalties or remedies, or both, under this section are in addition to any other penalties and remedies available under any other law of this state.

(15) A licensee who violates this section is subject to license suspension or revocation by the board.

(16) The board may adopt by rule additional requirements for mail or internet sales.

(17) The board must not adopt rules prohibiting internet sales. [2019 c 445 § 212; 2016 sp.s. c 38 § 17.]

**Conflict with federal requirements—Effective date—2019 c 445:** See RCW 82.25.900 and 82.25.901.

**Automatic expiration date and tax preference performance statement exemption—2019 c 445:** See note following RCW 82.08.0318.

**70.345.100 Product tastings—Requirements—Penalty.** (1) No person may offer a tasting of vapor products to the general public unless:

(a) The person is a licensed retailer under RCW 70.345.020;

(b) The tastings are offered only within the licensed premises operated by the licensee and the products tasted are not removed from within the licensed premises by the customer;

(c) Entry into the licensed premises is restricted to persons twenty-one years of age or older;

(d) The vapor product being offered for tasting contains zero milligrams per milliliter of nicotine or the customer explicitly consents to a tasting of a vapor product that contains nicotine; and

(e) If the customer is tasting from a vapor device owned and maintained by the retailer, a disposable mouthpiece tip is attached to the vapor product being used by the customer for tasting or the vapor device is disposed of after each tasting.

(2) A violation of this section is a misdemeanor. [2019 c 15 § 7; 2016 sp.s. c 38 § 19.]

**Effective date—2019 c 15:** See note following RCW 26.28.080.

*Raising the minimum legal age of sale in certain compacts, consultations with federally recognized Indian tribes: RCW 43.06.468.*

**70.345.110 Coupons for free of charge products.** (1) No person may give or distribute vapor products to a person free of charge by coupon, unless the vapor product was provided to the person as a contingency of prior or the same purchase as part of an in-person transaction or delivery sale.

(2) This section does not prohibit the use of coupons to receive a discount on a vapor product as part of an in-person transaction or delivery sale. [2016 sp.s. c 38 § 20.]

**70.345.120 Verification of age—Permitted forms of identification—Defense.** (1) When there may be a question of a person's right to purchase or obtain vapor products by reason of age, the retailer or agent thereof, must require the purchaser to present any one of the following officially issued forms of identification that shows the purchaser's age and bears his or her signature and photograph: (a) Liquor control authority card of identification of a state or province of Canada; (b) driver's license, instruction permit, or identification card of a state or province of Canada; (c) "identicard" issued by the Washington state department of licensing under chapter 46.20 RCW; (d) United States military identification; (e) passport; (f) enrollment card, issued by the governing authority of a federally recognized Indian tribe located in Washington, that incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ninety days prior to implementation of an enrollment card under this subsection, the appropriate tribal authority must give notice to the board. The board must publish and communicate to licensees regarding the implementation of each new enrollment card; or (g) merchant marine identification card issued by the United States coast guard.

(2) It is a defense to a prosecution under RCW 26.28.080 that the person making a sale reasonably relied on any of the officially issued identification as defined in subsection (1) of this section. The board must waive the suspension or revocation of a license if the licensee clearly establishes that he or she acted in good faith to prevent violations and a violation occurred despite the licensee's exercise of due diligence. [2016 sp.s. c 38 § 15.]

**70.345.130 Child-resistant packaging required—Penalty.** (1) Any liquid nicotine container that is sold at retail shall be packaged in accordance with the child-resistant effectiveness standards set forth in 16 C.F.R. Sec. 1700.15, as in effect on June 28, 2016, as determined through testing in accordance with the method described in 16 C.F.R. Sec. 1700.20, as in effect on June 28, 2016.

(2) Any person that engages in retail sales of liquid nicotine containers in violation of this section is guilty of a gross misdemeanor. [2016 sp.s. c 38 § 18.]

**70.345.140 Purchase or possession by persons under eighteen—Penalty—Jurisdiction.** (1) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain vapor products commits a class 3 civil infraction under chapter 7.80 RCW and is subject to a fine as set out in chapter 7.80 RCW or participation in up to four hours of community restitution, or both. The court may also require participation in a smoking cessation program. This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a board, law enforcement, or local health department activity.

(2) Municipal and district courts within the state have jurisdiction for enforcement of this section. [2016 sp.s. c 38 § 14.]

**70.345.150 Use of products in public places—When prohibited.** (1) Indoor areas.

(a) The use of vapor products is prohibited in the following indoor areas:

(i) Inside a child care facility, provided that a child care facility that is home-based is excluded from this paragraph when children enrolled in such child care facility are not present;

(ii) Schools;

(iii) Within five hundred feet of schools;

(iv) Schools buses; and

(v) Elevators.

(b) The use of vapor products is permitted for tasting and sampling in indoor areas of retail outlets.

(2) Outdoor areas. The use of vapor products is prohibited in the following outdoor areas:

(a) Real property that is under the control of a child care facility and upon which the child care facility is located, provided that a child care facility that is home-based is excluded from this paragraph when children enrolled in such child care facility are not present;

(b) Real property that is under the control of a school and upon which the school is located; and

(c) Playgrounds, during the hours between sunrise and sunset, when one or more persons under twelve years of age are present at such playground. [2016 sp.s. c 38 § 21.]

**70.345.160 Enforcement—Authority of liquor and cannabis board—Detention to determine identity and age—Inspections—Products injurious to health.** (1) The board must have, in addition to the board's other powers and authorities, the authority to enforce the provisions of this chapter.

(2) The board and the board's authorized agents or employees have full power and authority to enter any place of business where vapor products are sold for the purpose of enforcing the provisions of this chapter.

(3) For the purpose of enforcing the provisions of this chapter, a peace officer or enforcement officer of the board who has reasonable grounds to believe a person observed by the officer purchasing, attempting to purchase, or in possession of vapor products is under eighteen years of age, may detain such person for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth. Further, vapor products possessed by persons under eighteen years of age are considered contraband and may be seized by a peace officer or enforcement officer of the board.

(4) The board may work with local county health departments or districts and local law enforcement agencies to conduct random, unannounced, inspections to assure compliance.

(5) Upon a determination by the secretary of health or a local health jurisdiction that a vapor product may be injurious to human health or poses a significant risk to public health:

(a) The board, in consultation with the department of health and local county health jurisdictions, may cause a vapor product substance or solution sample, purchased or obtained from any vapor product retailer, distributor, or delivery sale licensee, to be analyzed by an analyst appointed or designated by the board;

(b) If the analyzed vapor product contains an ingredient, substance, or solution present in quantities injurious to human health or posing a significant risk to public health, as determined by the secretary of health or a local health jurisdiction, the board may suspend the license of the retailer or delivery sale licensee unless the retailer or delivery sale licensee agrees to remove the product from sales; and

(c) If upon a finding from the secretary of health or local health jurisdiction that the vapor product poses an injurious risk to public health or significant public health risk, the retailer or delivery sale licensee does not remove the product from sale, the secretary of health or local health officer may file for an injunction in superior court prohibiting the sale or distribution of that specific vapor product substance or solution.

(6) Nothing in subsection (5) of this section permits a total ban on the sale or use of vapor products. [2016 sp.s. c 38 § 24.]

**70.345.170 Enforcement—License suspension and revocation—Appeal.** (1) The board, or its enforcement officers, has the authority to enforce provisions of this chapter.

(2) The board may revoke or suspend a retailer's, distributor's, or delivery seller's license issued under this chapter upon sufficient cause showing a violation of this chapter.

(3) A license may not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the board.

(4) Any retailer's licenses issued under chapter 82.24 or 82.26 RCW to a person whose vapor product retailer's license or licenses have been suspended or revoked for violating RCW 26.28.080 must also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may reapply to the board at the expiration of two years of the license or licenses, unless the license was revoked pursuant to RCW 70.345.180(2)(e). The license or licenses may be approved by the board if it appears to the satisfaction of the board that the licensee will comply with the provisions of this chapter.

(6) A person whose license has been suspended or revoked may not sell vapor products or permit vapor products to be sold during the period of suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form.

(7) Any determination and order by the board, and any order of suspension or revocation by the board of the license or licenses issued under this chapter, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal to the superior court of Thurston county. The superior court must review the order or ruling of the board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the board.

(8) If the board makes an initial decision to deny a license or renewal, or suspend or revoke a license, the applicant may request a hearing subject to the applicable provisions under Title 34 RCW. [2016 sp.s. c 38 § 11.]

**70.345.180 Enforcement—Penalties, sanctions, and actions against licensees.** (1) The board may impose a monetary penalty as set forth in subsection (2) of this section, if the board finds that the licensee has violated RCW 26.28.080 or any other provision of this chapter.

(2) Subject to subsection (3) of this section, the sanctions that the board may impose against a person licensed under this chapter based upon one or more findings under subsection (1) of this section may not exceed the following:

(a) A monetary penalty of two hundred dollars for the first violation within any three-year period;

(b) A monetary penalty of six hundred dollars for the second violation within any three-year period;

(c) A monetary penalty of two thousand dollars for the third violation within any three-year period and suspension of the license for a period of six months for the third violation of RCW 26.28.080 within any three-year period;

(d) A monetary penalty of three thousand dollars for the fourth or subsequent violation within any three-year period and suspension of the license for a period of twelve months for the fourth violation of RCW 26.28.080 within any three-year period;

(e) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any three-year period.

(3) If the board finds that a person licensed under this chapter and chapter 82.24 or 82.26 RCW has violated RCW 26.28.080, each subsequent violation of either of the person's licenses counts as an additional violation within that three-year period.

(4) Any retailer's licenses issued under chapter 82.24 or 82.26 RCW to a person whose vapor product retailer's license or licenses have been suspended or revoked for violating RCW 26.28.080 must also be suspended or revoked during the period of suspension or revocation under this section.

(5) The board may impose a monetary penalty upon any person other than a licensed retailer if the board finds that the person has violated RCW 26.28.080.

(6) The monetary penalty that the board may impose based upon one or more findings under subsection (5) of this section may not exceed fifty dollars for the first violation and one hundred dollars for each subsequent violation.

(7) The board may develop and offer a class for retail clerks and use this class in lieu of a monetary penalty for the clerk's first violation.

(8) The board may issue a cease and desist order to any person who is found by the board to have violated or intending [intends] to violate the provisions of this chapter or RCW 26.28.080, requiring such person to cease specified conduct that is in violation. The issuance of a cease and desist order does not preclude the imposition of other sanctions authorized by this statute or any other provision of law.

(9) The board may seek injunctive relief to enforce the provisions of RCW 26.28.080 or this chapter. The board may initiate legal action to collect civil penalties imposed under this chapter if the same have not been paid within thirty days after imposition of such penalties. In any action filed by the board under this chapter, the court may, in addition to any other relief, award the board reasonable attorneys' fees and costs.

(10) All proceedings under subsections (1) through (8) of this section must be conducted in accordance with chapter 34.05 RCW.

(11) The board may reduce or waive either the penalties or the suspension or revocation of a license, or both, as set forth in this chapter where the elements of proof are inadequate or where there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a retailer. Further, the board may exceed penalties set forth in this chapter based on aggravating circumstances. [2016 sp.s. c 38 § 22.]

**70.345.190 Disposition of license fees and monetary penalties.** All license fees collected and funds collected by the board from the imposition of monetary penalties pursuant to this chapter must be deposited into the youth tobacco and vapor products prevention account created in RCW 70.155.120. [2016 sp.s. c 38 § 25.]

**70.345.200 Exemptions.** This chapter does not apply to a motor carrier or a freight forwarder as defined in 49 U.S.C. Sec. 13102 or an air carrier as defined in 49 U.S.C. Sec. 40102. [2016 sp.s. c 38 § 26.]

**70.345.210 State preemption—Exceptions.** (1) This chapter preempts political subdivisions from adopting or enforcing requirements for the licensure and regulation of vapor product promotions and sales at retail. No political subdivision may impose fees or license requirements on retail outlets for possessing or selling vapor products, other than general business taxes or license fees not primarily levied on such products.

(2) No political subdivision may regulate the use of vapor products in outdoor public places, unless the public place is an area where children congregate, such as schools, playgrounds, and parks.

(3) Subject to RCW 70.345.150, political subdivisions may regulate the use of vapor products in indoor public places. [2016 sp.s. c 38 § 3.]

## Chapter 70.350 RCW
## DENTAL HEALTH AIDE THERAPISTS

Sections



**70.350.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Dental health aide therapist" means a person who has met the training and education requirements, and satisfies other conditions, to be certified as a dental health aide therapist by a federal community health aide program certification board or by a federally recognized Indian tribe that has adopted certification standards that meet or exceed the requirements of a federal community health aide program certification board.

(2) "Federal community health aide program" means a program operated by the Indian health service under the applicable provisions of the Indian health care improvement act, 25 U.S.C. Sec. 1616l.

(3) "Indian health program" has the same meaning as the definition provided in the Indian health care improvement act, 25 U.S.C. Sec. 1603, as that definition existed on July 23, 2017. [2017 c 5 § 3.]

**Findings—2017 c 5:** "(1) The legislature finds that American Indians and Alaska Natives have very limited access to health care services and are disproportionately affected by oral health disparities. These disparities are directly attributed to the lack of dental health professionals in Indian communities. This has caused a serious access issue and backlog of dental treatment among American Indians and Alaska Natives. The legislature also finds that tribal leaders face a significant challenge in recruiting dental health professionals to work in Indian communities that results in further challenges in ensuring oral health care for tribal members.

(2) The legislature finds further that there is a strong history of government-to-government efforts with tribes in Washington to improve oral health among tribal members and to reduce the disproportionate number of American Indians and Alaska Natives affected by oral disease. One of the goals in the 2010-2013 American Indian health care delivery plan developed jointly by the department of health and the American Indian health commission is to improve the oral health of tribal members and the ability of tribes to provide comprehensive dental services in their communities. A critical objective to achieving that goal is "to explore options for the use of trained/certified expanded function personnel in order to increase oral health care services in tribal communities."

(3) The legislature finds further that sovereign tribal governments are in the best position to determine which strategies can effectively extend the ability of dental health professionals to provide care for children and others at risk of oral disease and increase access to oral health care for tribal members. The legislature does not intend to prescribe the general practice of dental health aide therapists in the state." [2017 c 5 § 1.]

**70.350.020 Authorization—Conditions.** (1) Dental health aide therapist services are authorized by this chapter under the following conditions:

(a) The person providing services is certified as a dental health aide therapist by:

(i) A federal community health aide program certification board; or

(ii) A federally recognized Indian tribe that has adopted certification standards that meet or exceed the requirements of a federal community health aide program certification board;

(b) All services are performed:

(i) In a practice setting within the exterior boundaries of a tribal reservation and operated by an Indian health program;

(ii) In accordance with the standards adopted by the certifying body in (a) of this subsection, including scope of practice, training, supervision, and continuing education;

(iii) Pursuant to any applicable written standing orders by a supervising dentist; and

(iv) On persons who are members of a federally recognized tribe or otherwise eligible for services under Indian health service criteria, pursuant to the Indian health care improvement act, 25 U.S.C. Sec. 1601 et seq.

(2) The performance of dental health aide therapist services is authorized for a person when working within the scope, supervision, and direction of a dental health aide therapy training program that is certified by an entity described in subsection (1) of this section.

(3) All services performed within the scope of subsection (1) or (2) of this section, including the employment or supervision of such services, are exempt from licensing requirements under chapters 18.29, 18.32, 18.260, and 18.350 RCW. [2017 c 5 § 2.]

**Findings—2017 c 5:** See note following RCW 70.350.010.

## Chapter 70.352 RCW
## DENTAL LABORATORIES

Sections



**70.352.010 Definitions.** For the purposes of this chapter:

(1) "Certified dental technician" means a person certified by the national board for certification in dental laboratory technology.

(2) "Dental laboratory" means a facility that engages in the making, repairing, altering, or supplying of artificial restorations, substitutions, appliances, or materials for the correction of disease, loss, deformity, malposition, dislocation, fracture, injury to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts.

(3) "Dentist" means an individual licensed to practice dentistry pursuant to chapter 18.32 RCW.

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

(5) "Material content disclosure" means a notice that contains the name, physical address, and registration number of the laboratory that received the dentist's work order and the city, state, and country of origin where the technological work was performed in whole or in part or laboratories that manufactured or repaired the dental prosthesis, either directly or indirectly, and the complete material content information of all patient contact materials used in a dental prosthetic appliance, including whether the United States food and drug administration compliant materials were used. The notice must be provided in a manner that can be easily entered into a patient record.

(6) "Work authorization" means a written instrument by which a dental laboratory subcontracts to another dental lab-

oratory all or part of the manufacture or repair of a dental prosthetic appliance authorized by a work order from a licensed dentist.

(7) "Work order" means a written instrument prescribed by a licensed dentist directing a dental laboratory to manufacture or repair a dental prosthetic appliance for an individual patient. [2019 c 68 § 1.]

**70.352.020 Registration—When required.** (1) Each dental laboratory operating, doing business, or intending to operate or do business in this state must register with the department and pay the fee established pursuant to RCW 70.352.030 and 70.352.060.

(2) A dental laboratory is considered operating or doing business within this state if its work product is prepared pursuant to a work order or work authorization originating within this state.

(3) This chapter does not apply to a dental laboratory operating under the supervision of a practicing dentist licensed under chapter 18.32 RCW in a dental office or as a part of a dental practice, provided that the laboratory does not perform work pursuant to prescriptions or work orders originating from outside of the dental practice or supervising dentist's office, or in an educational institution as part of the institution's educational program provided that the laboratory does not routinely perform work pursuant to prescriptions or work orders originating from outside of the educational institution. [2019 c 68 § 2.]

**70.352.030 Application for registration or renewal—Requirements—Fee.** (1) Each dental laboratory operating, doing business, or intending to operate or do business within this state must submit an application for registration of dental laboratory or renewal of registration of dental laboratory to the department on a form provided by the department accompanied with the registration or renewal fee required. The application must include:

(a) The name, mailing address, phone number, and email address of the dental laboratory;

(b) The physical address of the dental laboratory if different from the mailing address;

(c) The name, mailing address, phone number, and email address of the responsible person or the name and license number of the supervising dentist who is licensed under chapter 18.32 RCW;

(d) A statement that the dental laboratory meets the infectious control requirements under the occupational safety and health administration and the centers for disease control and prevention of the United States public health service;

(e) An acknowledgment by the responsible person or the supervising dentist that the laboratory will provide material disclosure to the prescribing dentist that contains the manufacturer and brand name or the United States food and drug administration registration number of all patient contact materials contained in the prescribed restoration in order that the dentist may include those numbers in the patient's record; and

(f) An acknowledgment by the responsible person or the supervising dentist who is licensed in this state that he or she will disclose to the prescribing dentist the point of origin of the manufacture of the prescribed restoration. If the restoration was partially or entirely manufactured by a third-party provider, the point of origin disclosure must identify the portion manufactured by a third-party provider and the city, state, and country of the provider.

(2) Each dental laboratory shall pay a registration fee annually as determined by the secretary as provided in RCW 43.70.250. [2019 c 68 § 3.]

**70.352.040 Dental laboratory registration number—Required uses.** (1) Upon granting a registration for a dental laboratory, the department shall assign the dental laboratory a dental registration number. The dental laboratory registration number must appear on all invoices or other correspondence of the dental laboratory.

(2) A dentist shall include the registration number of the dental laboratory on the dentist's work order. [2019 c 68 § 4.]

**70.352.050 Eligibility for dental laboratory registration—Qualifications—Requirements.** (1) Effective January 31, 2021, to be eligible for dental laboratory registration the applicant must document that the applicant or one of the applicant's employees who works at least thirty hours per week in the applicant's dental laboratory:

(a) Has successfully completed at least twelve hours of continuing education in dental laboratory technology approved by the national board for certification in dental laboratory technology during the twelve months immediately preceding their application for registration; or

(b) Is certified by the national board for certification in dental laboratory technology as a certified dental technician in good standing.

(2)(a) Effective January 31, 2025, the department may not issue a registration to a dental laboratory unless the applying dental laboratory documents that it employs a certified dental technician in good standing with the national board for certification in dental laboratory technology who works at least thirty hours per week in the applying dental laboratory or that the dental laboratory is operated under the supervision of a dentist licensed under chapter 18.32 RCW.

(b) Subsection (2)(a) of this section does not apply to a dental laboratory that provides the department with documentation that the dental laboratory has been continuously owned and operated by the same individual since January 1, 1996.

(3) A dental laboratory must maintain a qualified owner or employee identified in subsections (1) and (2) of this section. [2019 c 68 § 5.]

**70.352.060 Annual renewal of registration.** Each dental laboratory registered with the department must renew its registration before July 31st each year by completing and submitting a renewal of registration of dental laboratory form and paying a fee determined by the secretary as provided in RCW 43.70.280. [2019 c 68 § 6.]

**70.352.070 Violation of chapter—Legal action authorized.** If a dental laboratory violates any provision of this chapter, the department may, in the manner provided by law and upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process

against any dental laboratory to restrain or prevent the operation of the establishment without a registration issued under this chapter. [2019 c 68 § 7.]

**70.352.900 Application of RCW 70.352.010 through 70.352.070.** RCW 70.352.010 through 70.352.070 do not apply to activities authorized under chapter 18.30 RCW. [2019 c 68 § 8.]

## Chapter 70.385 RCW
## PEER SUPPORT SERVICES

Sections



**70.385.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Peer support services" means services authorized under RCW 71.24.385 which are delivered by individuals who have common life experiences with the people they are serving. [2019 c 446 § 48.]

**70.385.020 Peer counselor certification program—Education and training for substance use disorder peers—Reimbursement for services.** (1) The authority shall administer a peer counselor certification program to support the delivery of peer support services in Washington state.

(2) By July 1, 2019, the authority shall incorporate education and training for substance use disorder peers in its peer counselor certification program.

(3) By July 1, 2019, the authority must include reimbursement for peer support services by substance use disorder peers in its behavioral health capitation rates and allow for federal matching funds, consistent with the directive enacted in section 213(5)(ss), chapter 299, Laws of 2018 (ESSB 6032). [2019 c 446 § 49.]

**70.385.030 Specialized peer training for peer counselor certification.** To ensure an adequate workforce of peer counselors, the authority must approve entities to perform specialized peer training for peer counselor certification using the state curriculum upon request if the entity meets qualifications to perform the training as determined by the authority. [2019 c 446 § 50.]

**70.385.900 Effective date—2019 c 446 §§ 48-53.** Sections 48 through 53 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2019. [2019 c 446 § 54.]

## Chapter 70.390 RCW
## HEALTH CARE COST TRANSPARENCY BOARD

Sections



**70.390.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the health care authority.

(2) "Board" means the health care cost transparency board.

(3) "Health care" means items, services, and supplies intended to improve or maintain human function or treat or ameliorate pain, disease, condition, or injury including, but not limited to, the following types of services:

(a) Medical;

(b) Behavioral;

(c) Substance use disorder;

(d) Mental health;

(e) Surgical;

(f) Optometric;

(g) Dental;

(h) Podiatric;

(i) Chiropractic;

(j) Psychiatric;

(k) Pharmaceutical;

(l) Therapeutic;

(m) Preventive;

(n) Rehabilitative;

(o) Supportive;

(p) Geriatric; or

(q) Long-term care.

(4) "Health care cost growth" means the annual percentage change in total health care expenditures in the state.

(5) "Health care cost growth benchmark" means the target percentage for health care cost growth.

(6) "Health care coverage" means policies, contracts, certificates, and agreements issued or offered by a payer.

(7) "Health care provider" means a person or entity that is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(8) "Net cost of private health care coverage" means the difference in premiums received by a payer and the claims for the cost of health care paid by the payer under a policy or certificate of health care coverage.

(9) "Payer" means:

(a) A health carrier as defined in RCW 48.43.005;

(b) A publicly funded health care program, including medicaid, medicare, the state children's health insurance program, and public and school employee benefit programs administered under chapter 41.05 RCW;

(c) A third-party administrator; and

(d) Any other public or private entity, other than an individual, that pays or reimburses the cost for the provision of health care.

(10) "Total health care expenditures" means all health care expenditures in this state by public and private sources, including:

(a) All payments on health care providers' claims for reimbursement for the cost of health care provided;

(b) All payments to health care providers other than payments described in (a) of this subsection;

(c) All cost-sharing paid by residents of this state, including copayments, deductibles, and coinsurance; and

(d) The net cost of private health care coverage. [2020 c 340 § 1.]

**70.390.020 Health care cost transparency board—Duties.** The authority shall establish a board to be known as the health care cost transparency board. The board is responsible for the analysis of total health care expenditures in Washington, identifying trends in health care cost growth, and establishing a health care cost growth benchmark. The board shall provide analysis of the factors impacting these trends in health care cost growth and, after review and consultation with identified entities, shall identify those health care providers and payers that are exceeding the health care cost growth benchmark. [2020 c 340 § 2.]

**70.390.030 Health care cost transparency board—Appointment—Terms—Conflicts—Reimbursement—Liability.** (1) The board shall consist of fourteen members who shall be appointed as follows:

(a) The insurance commissioner, or the commissioner's designee;

(b) The administrator [director] of the health care authority, or the administrator's [director's] designee;

(c) The director of labor and industries, or the director's designee;

(d) The chief executive officer of the health benefit exchange, or the chief executive officer's designee;

(e) One member representing local governments that purchase health care for their employees;

(f) Two members representing consumers;

(g) One member representing Taft-Hartley health benefit plans;

(h) Two members representing large employers, at least one of which is a self-funded group health plan;

(i) One member representing small businesses;

(j) One member who is an actuary or an expert in health care economics;

(k) One member who is an expert in health care financing; and

(l) One nonvoting member who is a member of the advisory committee of health care providers and carriers and has operational experience in health care delivery.

(2) The governor:

(a) Shall appoint the members of the board. Each of the two largest caucuses in both the house of representatives and the senate shall submit to the governor a list of five nominees. The nominees must be for members of the board identified in subsection (1)(f) through (k) of this section, may not be legislators, and, except for the members of the board identified in subsection (1)(j) and (k) of this section, the nominees may not be employees of the state or its political subdivisions. No caucus may submit the same nominee. The caucus nominations must reflect diversity in geography, gender, and ethnicity;

(b) May reject a nominee and request a new submission from a caucus if a nominee does not meet the requirements of this section; and

(c) Must choose at least one nominee from each caucus.

(3) The governor shall appoint the chair of the board.

(4)(a) Initial members of the board shall serve staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms.

(b) A member of the board whose term has expired or who otherwise leaves the board shall be replaced by gubernatorial appointment. Upon the expiration of a member's term, the member shall continue to serve until a successor has been appointed and has assumed office. When the person leaving was nominated by one of the caucuses of the house of representatives or the senate, his or her replacement shall be appointed from a list of five nominees submitted by that caucus within thirty days after the person leaves. If the member to be replaced is the chair, the governor shall appoint a new chair within thirty days after the vacancy occurs. A person appointed to replace a member who leaves the board prior to the expiration of his or her term shall serve only the duration of the unexpired term. Members of the board may be reappointed to multiple terms.

(5) No member of the board may be appointed if the member's participation in the decisions of the board could benefit the member's own financial interests or the financial interests of an entity the member represents. A board member who develops such a conflict of interest shall resign or be removed from the board.

(6) Members of the board must be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. Meetings of the board are subject to the call of the chair.

(7) The board and its subcommittees are subject to the provisions of chapter 42.30 RCW, the open public meetings act, and chapter 42.56 RCW, the public records act. The board and its subcommittees may not disclose any health care information that identifies or could reasonably identify the patient or consumer who is the subject of the health care information.

(8) Members of the board are not civilly or criminally liable and may not have any penalty or cause of action of any nature arise against them for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under this chapter. [2020 c 340 § 3.]

**70.390.040 Advisory committees—Appointment.** (1) The board shall establish an advisory committee on data issues and an advisory committee of health care providers and carriers. The board may establish other advisory committees as it finds necessary.

(2) Appointments to the advisory committee on data issues shall be made by the board. Members of the committee

must have expertise in health data collection and reporting, health care claims data analysis, health care economic analysis, and actuarial analysis.

(3) Appointments to the advisory committee of health care providers and carriers shall be made by the board and must include the following membership:

(a) One member representing hospitals and hospital systems, selected from a list of three nominees submitted by the Washington state hospital association;

(b) One member representing federally qualified health centers, selected from a list of three nominees submitted by the Washington association for community health;

(c) One physician, selected from a list of three nominees submitted by the Washington state medical association;

(d) One primary care physician, selected from a list of three nominees submitted by the Washington academy of family physicians;

(e) One member representing behavioral health providers, selected from a list of three nominees submitted by the Washington council for behavioral health;

(f) One member representing pharmacists and pharmacies, selected from a list of three nominees submitted by the Washington state pharmacy association;

(g) One member representing advanced registered nurse practitioners, selected from a list of three nominees submitted by ARNPs united of Washington state;

(h) One member representing tribal health providers, selected from a list of three nominees submitted by the American Indian health commission;

(i) One member representing a health maintenance organization, selected from a list of three nominees submitted by the association of Washington health care plans;

(j) One member representing a managed care organization that contracts with the authority to serve medical assistance enrollees, selected from a list of three nominees submitted by the association of Washington health care plans;

(k) One member representing a health care service contractor, selected from a list of three nominees submitted by the association of Washington health care plans;

(l) One member representing an ambulatory surgery center selected from a list of three nominees submitted by the ambulatory surgery center association; and

(m) Three members, at least one of whom represents a disability insurer, selected from a list of six nominees submitted by America's health insurance plans. [2020 c 340 § 4.]

**70.390.050 Authority to establish advisory committees—Duties.** (1) The board has the authority to establish and appoint advisory committees, in accordance with the requirements of RCW 70.390.040, and seek input and recommendations from the advisory committees on topics relevant to the work of the board.

(2) The board shall:

(a) Determine the types and sources of data necessary to annually calculate total health care expenditures and health care cost growth, and to establish the health care cost growth benchmark, including execution of any necessary access and data security agreements with the custodians of the data. The board shall first identify existing data sources, such as the statewide health care claims database established in chapter 43.371 RCW and prescription drug data collected under chapter 43.71C RCW, and primarily rely on these sources when possible in order to minimize the creation of new reporting requirements;

(b) Determine the means and methods for gathering data to annually calculate total health care expenditures and health care cost growth, and to establish the health care cost growth benchmark. The board must select an appropriate economic indicator to use when establishing the health care cost growth benchmark. The activities may include selecting methodologies and determining sources of data. The board shall accept recommendations from the advisory committee on data issues and the advisory committee of health care providers and carriers regarding the value and feasibility of reporting various categories of information under (c) of this subsection, such as urban and rural, public sector and private sector, and major categories of health services, including prescription drugs, inpatient treatment, and outpatient treatment;

(c) Annually calculate total health care expenditures and health care cost growth:

(i) Statewide and by geographic rating area;

(ii) For each health care provider or provider system and each payer, taking into account the health status of the patients of the health care provider or the enrollees of the payer, utilization by the patients of the health care provider or the enrollees of the payer, intensity of services provided to the patients of the health care provider or the enrollees of the payer, and regional differences in input prices. The board must develop an implementation plan for reporting information about health care providers, provider systems, and payers;

(iii) By market segment;

(iv) Per capita; and

(v) For other categories, as recommended by the advisory committees in (b) of this subsection, and approved by the board;

(d) Annually establish the health care cost growth benchmark for increases in total health expenditures. The board, in determining the health care cost growth benchmark, shall begin with an initial implementation that applies to the highest cost drivers in the health care system and develop a phased plan to include other components of the health system for subsequent years;

(e) Beginning in 2023, analyze the impacts of cost drivers to health care and incorporate this analysis into determining the annual total health care expenditures and establishing the annual health care cost growth benchmark. The cost drivers may include, to the extent such data is available:

(i) Labor, including but not limited to, wages, benefits, and salaries;

(ii) Capital costs, including but not limited to new technology;

(iii) Supply costs, including but not limited to prescription drug costs;

(iv) Uncompensated care;

(v) Administrative and compliance costs;

(vi) Federal, state, and local taxes;

(vii) Capacity, funding, and access to postacute care, long-term services and supports, and housing; and

(viii) Regional differences in input prices; and

(f) Release reports in accordance with RCW 70.390.070. [2020 c 340 § 5.]

**70.390.060 Contracting for administration—Funding.** (1) The authority may contract with a private nonprofit entity to administer the board and provide support to the board to carry out its responsibilities under this chapter. The authority may not contract with a private nonprofit entity that has a financial interest that may create a potential conflict of interest or introduce bias into the board's deliberations.

(2) The authority or the contracted entity shall actively solicit federal and private funding and in-kind contributions necessary to complete its work in a timely fashion. The contracted entity shall not accept private funds if receipt of such funding could present a potential conflict of interest or introduce bias into the board's deliberations. [2020 c 340 § 6.]

**70.390.070 Reporting.** (1) By August 1, 2021, the board shall submit a preliminary report to the governor and each chamber of the legislature. The preliminary report shall address the progress toward establishment of the board and advisory committees and the establishment of total health care expenditures, health care cost growth, and the health care cost growth benchmark for the state, including proposed methodologies for determining each of these calculations. The preliminary report shall include a discussion of any obstacles related to conducting the board's work including any deficiencies in data necessary to perform its responsibilities under RCW 70.390.050 and any supplemental data needs.

(2) Beginning August 1, 2022, the board shall submit annual reports to the governor and each chamber of the legislature. The first annual report shall determine the total health care expenditures for the most recent year for which data is available and shall establish the health care cost growth benchmark for the following year. The annual reports may include policy recommendations applicable to the board's activities and analysis of its work, including any recommendations related to lowering health care costs, focusing on private sector purchasers, and the establishment of a rating system of health care providers and payers. [2020 c 340 § 7.]

**70.390.080 Primary care expenditures—Measurement—Reporting.** (1) The board shall measure and report on primary care expenditures in Washington and the progress towards increasing it to 12 percent of total health care expenditures.

(2) By December 1, 2022, the board shall submit a preliminary report to the governor and relevant committees of the legislature addressing primary care expenditures in Washington. The report must include:

(a) How to define "primary care" for purposes of calculating primary care expenditures as a proportion of total health care expenditures, and how the definition aligns with existing definitions already implemented in Washington, including the previous report from the office of financial management and the Bree collaborative's recommendations;

(b) Barriers to the access and use of the data needed to calculate primary care expenditures, and how to overcome them;

(c) The annual progress needed for primary care expenditures to reach 12 percent of total health care expenditures in a reasonable amount of time;

(d) How and by whom it should annually be determined whether desired levels of primary care expenditures are being achieved;

(e) Methods to incentivize the achievement of desired levels of primary care expenditures;

(f)(i) Specific practices and methods of reimbursement to achieve and sustain desired levels of primary care expenditures while achieving improvements in health outcomes, experience of health care, and value from the health care system, including but not limited to: Supporting advanced, integrated primary care involving a multidisciplinary team of health and social service professionals; addressing social determinants of health within the primary care setting; leveraging innovative uses of efficient, interoperable health information technology; increasing the primary care and behavioral health workforce; and reinforcing to patients the value of primary care, and eliminating any barriers to access.

(ii) As much as possible, the practices and methods specified must hold primary care providers accountable for improved health outcomes, not increase the administrative burden on primary care providers or overall health care expenditures in the state, strive for alignment across payers, and take into account differences in urban and rural delivery settings; and

(g) The ongoing role of the board in guiding and overseeing the development and application of primary care expenditure targets, and the implementation and evaluation of strategies to achieve them.

(3) Beginning August 1, 2023, the board shall annually submit reports to the governor and relevant committees of the legislature. To the extent possible, the reports must:

(a) Include annual primary care expenditures for the most recent year for which data is available by insurance carrier, by market or payer, in total and as a percentage of total health care expenditure;

(b) Break down annual primary care expenditures by relevant characteristics such as whether expenditures were for physical or behavioral health, by type of provider and by payment mechanism; and

(c) If necessary, identify any barriers to the reporting requirements and propose recommendations for how to overcome them.

(4) In developing the measures and reporting, the board shall consult with primary care providers and organizations representing primary care providers and review existing work in this and other states regarding primary care, including but not limited to the December 2019 report by the office of financial management, the work of the Bree collaborative, the work of the advancing integrated mental health center and the center for health workforce studies at the University of Washington, the work of the Milbank memorial fund, the work of the national academy of sciences, engineering, and medicine, and the work of the authority to strengthen primary care within state purchased health care. [2022 c 155 § 1.]

## Chapter 70.395 RCW
## PRIVATE DETENTION FACILITIES

Sections

**70.395.010 Findings—Intent.** (1) The legislature finds that all people confined in prisons and detention facilities in Washington deserve basic health care, nutrition, and safety. As held in *United States v. California*, 921 F.3d 865, 886 (9th Cir. 2019), states possess "the general authority to ensure the health and welfare of inmates and detainees in facilities within its borders."

(2) The legislature finds that profit motives lead private prisons and detention facilities to cut operational costs, including the provision of food, health care, and rehabilitative services, because their primary fiduciary duty is to maximize shareholder profits. This is in stark contrast to the interests of the state to ensure the health, safety, and welfare of Washingtonians, including all inmates and detainees within Washington's borders.

(3) The legislature finds that people confined in for-profit prisons and detention facilities have experienced abuses and have been confined in dangerous and unsanitary conditions. Safety risks and abuses in private prisons and detention facilities at the local, state, and federal level have been consistently and repeatedly documented. The United States department of justice office of the inspector general found in 2016 that privately operated prisons "incurred more safety and security incidents per capita than comparable BOP [federal bureau of prisons] institutions." The office of inspector general additionally found that privately operated prisons had "higher rates of inmate-on-inmate and inmate-on-staff assaults, as well as higher rates of staff uses of force."

(4) The legislature finds that private prison operators have cut costs by reducing essential security and health care staffing. The sentencing project, a national research and advocacy organization, found in 2012 that private prison staff earn an average of five thousand dollars less than staff at publicly run facilities and receive almost 60 hours less training. The office of inspector general also found that people confined in private facilities often failed to receive necessary medical care and that one private prison went without a full-time physician for eight months.

(5) The legislature finds that private prisons and detention centers are less accountable for what happens inside those facilities than state-run facilities, as they are not subject to the freedom of information act under 5 U.S.C. Sec. 552 or the Washington public records act under chapter 42.56 RCW.

(6) The legislature finds that at least 22 other states have stopped confining people in private for-profit facilities.

(7) Therefore, it is the intent of the legislature to prohibit the use of private, for-profit prisons and detention facilities in the state. [2021 c 30 § 1.]

**70.395.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Detention facility" means any facility in which persons are incarcerated or otherwise involuntarily confined for purposes including prior to trial or sentencing, fulfilling the terms of a sentence imposed by a court, or for other judicial or administrative processes or proceedings.

(2) "Private detention facility" means a detention facility that is operated by a private, nongovernmental for-profit entity and operating pursuant to a contract or agreement with a federal, state, or local governmental entity. [2021 c 30 § 2.]

**70.395.030 Prohibition on private incarceration.** (1) Except as provided in subsections (2) and (3) of this section, no person, business, or state or local governmental entity shall operate a private detention facility within the state or utilize a contract with a private detention facility within the state. No state or local governmental entity shall utilize a contract with a private detention facility outside of Washington state, except as provided in RCW 72.68.010(2).

(2) A private detention facility that is operating pursuant to a valid contract with a governmental entity that was in effect prior to January 1, 2021, may remain in operation for the duration of that contract, not to include any extensions or modifications made to, or authorized by, that contract.

(3) In accordance with the legislative findings in RCW 70.395.010, this section does not apply if the involuntary confinement is at:

(a) A facility providing rehabilitative, counseling, treatment, mental health, educational, or medical services to juveniles who are subject to Title 13 RCW, or similarly applicable federal law;

(b) A facility providing evaluation and treatment or forensic services to a person who has been civilly detained or is subject to an order of commitment by a court pursuant to chapter 10.77, 71.05, 71.09, or 71.34 RCW, or similarly applicable federal law;

(c) A facility used for the quarantine or isolation of persons for public health reasons pursuant to RCW 43.20.050, or similarly applicable federal law;

(d) A facility used for work release under chapter 72.65 RCW, or similarly applicable federal law;

(e) A facility used for extraordinary medical placement;

(f) A facility used for residential substance use disorder treatment;

(g) A facility used to house persons pursuant to 18 U.S.C. Sec. 4013; or

(h) A facility owned and operated by federally recognized tribes and contracting with a government. [2021 c 30 § 3.]

**70.395.900 Construction—2021 c 30.** Chapter 30, Laws of 2021 shall be construed liberally for the accomplishment of the purposes thereof. [2021 c 30 § 4.]

**70.395.901 Effective date—2021 c 30.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 14, 2021]. [2021 c 30 § 5.]

## Chapter 70.400 RCW
## HEALTH CARE ENTITIES—PREGNANCY COMPLICATIONS

Sections

**70.400.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Health care entity" means an entity that supervises, controls, grants privileges to, directs the practice of, or directly or indirectly restricts the practice of, a health care provider.

(3) "Health care provider" has the same meaning as in RCW 70.02.010. [2021 c 235 § 1.]

**70.400.020 Provision of care for complications of pregnancy—Retaliatory action prohibited.** (1) Except as provided in subsection (2) of this section, if a health care provider is acting in good faith, within the provider's scope of practice, education, training, and experience and within the accepted standard of care, a health care entity may not prohibit the health care provider from providing health care services related to complications of pregnancy, including but not limited to health services related to miscarriage management and treatment for ectopic pregnancies, in cases in which failure to provide the service would violate the accepted standard of care or when the patient presents a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of medical attention could reasonably be expected to pose a risk:

(a) To the patient's life; or

(b) Of irreversible complications or impairment to the patient's bodily functions or any bodily organ or part.

(2) Nothing in this section prohibits a health care entity from limiting a health care provider's practice for purposes of:

(a) Complying with the network or utilization review requirements of any program or entity authorized by state or federal law to provide insurance coverage for health care services to enrollees; or

(b) Quality control and patient safety, including when quality control or patient safety issues are identified pursuant to peer review.

(3) A health care entity may not discharge, demote, suspend, discipline, or otherwise discriminate against a health care provider for providing services in compliance with this section. [2021 c 235 § 2.]

**70.400.030 Retaliatory action—Civil action.** A patient, a health care provider, or an individual, who is aggrieved by a violation of RCW 70.400.020, may bring a civil action against a health care entity to enjoin further violations, to recover damages, or both. The prevailing party in such action may in the discretion of the court recover costs of litigation and reasonable attorneys' fees. [2021 c 235 § 3.]

**70.400.040 Distribution of informational resources.** Beginning March 1, 2022, a health care entity shall provide the information prepared by the department under RCW 43.70.619 at the time of hiring, contracting with, or privileging health care providers and staff, and on a yearly basis thereafter. [2021 c 235 § 4.]

**70.400.900 Conflict with federal requirements—2021 c 235.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2021 c 235 § 6.]

## Chapter 70.405 RCW
## PRESCRIPTION DRUG AFFORDABILITY BOARD

Sections



**70.405.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the health care authority.

(2) "Biological product" has the same meaning as in 42 U.S.C. Sec. 262(i)(1).

(3) "Biosimilar" has the same meaning as in 42 U.S.C. Sec. 262(i)(2).

(4) "Board" means the prescription drug affordability board.

(5) "Excess costs" means:

(a) Costs of appropriate utilization of a prescription drug that exceed the therapeutic benefit relative to other alternative treatments; or

(b) Costs of appropriate utilization of a prescription drug that are not sustainable to public and private health care systems over a 10-year time frame.

(6) "Generic drug" has the same meaning as in RCW 69.48.020.

(7) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

(8) "Manufacturer" means a person, corporation, or other entity engaged in the manufacture of prescription drugs sold in or into Washington state. "Manufacturer" does not include a private label distributor or retail pharmacy that sells a drug under the retail pharmacy's store, or a prescription drug repackager.

(9) "Prescription drug" means a drug regulated under chapter 69.41 or 69.50 RCW, including generic, brand name, specialty drugs, and biological products. [2022 c 153 § 1.]

**70.405.020 Prescription drug affordability board.** (1) The prescription drug affordability board is established, to

include five members who have expertise in health care economics or clinical medicine appointed by the governor.

(2) Board members shall serve for a term of five years and members may be reappointed by the governor for additional terms.

(3) No board member or advisory group member may be an employee of, a board member of, or consultant to a prescription drug manufacturer, pharmacy benefit manager, health carrier, prescription drug wholesale distributor, or related trade association, except that a representative from the prescription drug industry serving on an advisory group may be an employee, consultant, or board member of a prescription drug manufacturer or related trade association and shall not be deemed to have a conflict of interest pursuant to subsection (4) of this section.

(4)(a) Board members, advisory group members, staff members, and contractors providing services on behalf of the board shall recuse themselves from any board activity in any case in which they have a conflict of interest.

(b) For the purposes of this section, a conflict of interest means an association, including a financial or personal association, that has the potential to bias or appear to bias an individual's decisions in matters related to the board or the activities of the board.

(5) The board shall establish advisory groups consisting of relevant stakeholders, including but not limited to patients and patient advocates for the condition treated by the drug and one member who is a representative of the prescription drug industry, for each drug affordability review conducted by the board pursuant to RCW 70.405.040. Advisory group members are immune from civil liability for any official act performed in good faith as a member of the group.

(6) The authority shall provide administrative support to the board and any advisory group of the board and shall adopt rules governing their operation that shall include how and when the board will use and discuss confidential information that is exempt from public disclosure. The rules adopted under this subsection may not go into effect until at least 90 days after the next regular legislative session.

(7) Board members shall be compensated for participation in the work of the board in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the board.

(8) A simple majority of the board's membership constitutes a quorum for the purpose of conducting business.

(9) All meetings of the board must be open and public, except that the board may hold executive sessions to the extent permitted by chapter 42.30 RCW.

(10) The board may not hold its first meeting until at least one year after the authority publishes its first report on the impact that drug costs, rebates, and other discounts have on health care premiums pursuant to RCW 43.71C.100.

(11) The board must coordinate and collaborate with the authority, other boards, work groups, and commissions related to prescription drug costs and emerging therapies, including but not limited to the health care cost transparency board established in chapter 70.390 RCW, and the universal health care commission established in RCW 41.05.840. All coordination and collaboration by the board pursuant to this subsection must comply with chapter 42.30 RCW, the open public meetings act.

(12) The board may collaborate with prescription drug affordability boards established in other states. [2022 c 153 § 2.]

**70.405.030 Authority to review drug prices.** By June 30, 2023, and annually thereafter, utilizing data collected pursuant to chapter 43.71C RCW, the all-payer health care claims database, or other data deemed relevant by the board, the board must identify prescription drugs that have been on the market for at least seven years, are dispensed at a retail, specialty, or mail-order pharmacy, are not designated by the United States food and drug administration under 21 U.S.C. Sec. 360bb as a drug solely for the treatment of a rare disease or condition, and meet the following thresholds:

(1) Brand name prescription drugs and biologic products that:

(a) Have a wholesale acquisition cost of $60,000 or more per year or course of treatment lasting less than one year; or

(b) Have a price increase of 15 percent or more in any 12-month period or for a course of treatment lasting less than 12 months, or a 50 percent cumulative increase over three years;

(2) A biosimilar product with an initial wholesale acquisition cost that is not at least 15 percent lower than the reference biological product; and

(3) Generic drugs with a wholesale acquisition cost of $100 or more for a 30-day supply or less that has increased in price by 200 percent or more in the preceding 12 months. [2022 c 153 § 3.]

**70.405.040 Affordability reviews.** (1) The board may choose to conduct an affordability review of up to 24 prescription drugs per year identified pursuant to RCW 70.405.030. When deciding whether to conduct a review, the board shall consider:

(a) The class of the prescription drug and whether any therapeutically equivalent prescription drugs are available for sale;

(b) Input from relevant advisory groups established pursuant to RCW 70.405.020; and

(c) The average patient's out-of-pocket cost for the drug.

(2) For prescription drugs chosen for an affordability review, the board must determine whether the prescription drug has led or will lead to excess costs to patients. The board may examine publicly available information as well as collect confidential and proprietary information from the prescription drug manufacturer and other relevant sources.

(3) A manufacturer must submit all requested information to the board within 30 days of the request.

(4) The authority may assess a fine of up to $100,000 against a manufacturer for each failure to comply with an information request from the board. The process for the assessment of a fine under this subsection shall be established by the authority in rule and is subject to review under the administrative procedure act, chapter 34.05 RCW. The rules adopted under this subsection may not go into effect until at least 90 days after the next regular legislative session.

(5) When conducting a review, the board shall consider:

(a) The relevant factors contributing to the price paid for the prescription drug, including the wholesale acquisition cost, discounts, rebates, or other price concessions;

(b) The average patient copay or other cost sharing for the drug;

(c) The effect of the price on consumers' access to the drug in the state;

(d) Orphan drug status;

(e) The dollar value and accessibility of patient assistance programs offered by the manufacturer for the drug;

(f) The price and availability of therapeutic alternatives;

(g) Input from:

(i) Patients affected by the condition or disease treated by the drug; and

(ii) Individuals with medical or scientific expertise related to the condition or disease treated by the drug;

(h) Any other information the drug manufacturer or other relevant entity chooses to provide;

(i) The impact of pharmacy benefit manager policies on the price consumers pay for the drug; and

(j) Any other relevant factors as determined by the board.

(6) In performing an affordability review of a drug the board may consider the following factors:

(a) Life-cycle management;

(b) The average cost of the drug in the state;

(c) Market competition and context;

(d) Projected revenue;

(e) Off-label usage of the drug; and

(f) Any additional factors identified by the board.

(7) All information collected by the board pursuant to this section is confidential and not subject to public disclosure under chapter 42.56 RCW.

(8) The board shall publicize which prescription drugs are subject to an affordability review before the review begins. [2022 c 153 § 4.]

**70.405.050 Upper payment limits.** (1) The authority must adopt rules setting forth a methodology established by the board for setting upper payment limits for prescription drugs the board has determined have led or will lead to excess costs based on its affordability review. The rules adopted under this subsection may not go into effect until at least 90 days after the next regular legislative session. Each year, the board may set an upper payment limit for up to 12 prescription drugs.

(2) The methodology must take into consideration:

(a) The cost of administering the drug;

(b) The cost of delivering the drug to patients;

(c) The status of the drug on the drug shortage list published by the United States food and drug administration; and

(d) Other relevant administrative costs related to the production and delivery of the drug.

(3) The methodology determined by the board must not use quality-adjusted life years that take into account a patient's age or severity of illness or disability to identify subpopulations for which a prescription drug would be less cost-effective. For any prescription drug that extends life, the board's analysis of cost-effectiveness may not employ a measure or metric which assigns a reduced value to the life extension provided by a treatment based on a preexisting disability or chronic health condition of the individuals whom the treatment would benefit.

(4) Before setting an upper payment limit for a drug, the board must post notice of the proposed upper payment limit on the authority's website, including an explanation of the factors considered when setting the proposed limit and instructions to submit written comment. The board must provide 30 days to submit public comment.

(5) The board must monitor the supply of drugs for which it sets an upper payment limit and may suspend that limit if there is a shortage of the drug in the state.

(6) An upper payment limit for a prescription drug established by the board applies to all purchases of the drug by any entity and reimbursements for a claim for the drug by a health carrier, or a health plan offered under chapter 41.05 RCW, when the drug is dispensed or administered to an individual in the state in person, by mail, or by other means.

(7) An employer-sponsored self-funded plan may elect to be subject to the upper payment limits as established by the board.

(8) The board must establish an effective date for each upper payment limit, provided that the upper payment limit may not go into effect until at least 90 days after the next regular legislative session and that the date is at least six months after the adoption of the upper payment limit and applies only to purchases, contracts, and plans that are issued on or renewed after the effective date.

(9) Any entity affected by a decision of the board may request an appeal within 30 days of the board's decision, and the board must rule on the appeal within 60 days. Board rulings are subject to judicial review pursuant to chapter 34.05 RCW.

(10) For any upper payment limit set by the board, the board must notify the manufacturer of the drug and the manufacturer must inform the board if it is able to make the drug available for sale in the state and include a rationale for its decision. The board must annually report to the relevant committees of the legislature detailing the manufacturers' responses.

(11) The board may reassess the upper payment limit for any drug annually based on current economic factors.

(12) The board may not establish an upper payment limit for any prescription drug before January 1, 2027.

(13)(a) Any individual denied coverage by a health carrier for a prescription drug because the drug was unavailable due to an upper payment limit established by the board, may seek review of the denial pursuant to RCW 48.43.530 and 48.43.535.

(b) If it is determined that the prescription drug should be covered based on medical necessity, the carrier may disregard the upper payment limit and must provide coverage for the drug. [2022 c 153 § 5.]

**70.405.060 Use of savings.** (1) Any savings generated for a health plan, as defined in RCW 48.43.005, or a health plan offered under chapter 41.05 RCW that are attributable to the establishment of an upper payment limit established by the board must be used to reduce costs to consumers, prioritizing the reduction of out-of-pocket costs for prescription drugs.

(2) By January 1, 2024, the board must establish a formula for calculating savings for the purpose of complying with this section.

(3) By March 1st of the year following the effective date of the first upper payment limit, and annually thereafter, each

state agency and health carrier issuing a health plan in the state must submit a report to the board describing the savings in the previous calendar year that were attributable to upper payment limits set by the board and how the savings were used to satisfy the requirements of subsection (1) of this section. [2022 c 153 § 6.]

**70.405.070 Manufacturer withdrawal from the market.** (1) Any manufacturer that intends to withdraw a prescription drug from sale or distribution within the state because the board has established an upper payment limit for that drug shall provide a notice of withdrawal in writing indicating the drug will be withdrawn because of the establishment of the upper payment limit at least 180 days before the withdrawal to the office of the insurance commissioner, the authority, and any entity in the state with which the manufacturer has a contract for the sale or distribution of the drug.

(2) If a manufacturer chooses to withdraw the prescription drug from the state, it shall be prohibited from selling that drug in the state for a period of three years.

(3) A manufacturer that has withdrawn a drug from the market may petition the authority, in a form and manner determined by the authority in rule, to reenter the market before the expiration of the three-year ban if it agrees to make the drug available for sale in compliance with the upper payment limit.

(4) The rules adopted under this section may not go into effect until at least 90 days after the next regular legislative session. [2022 c 153 § 7.]

**70.405.080 Reporting.** By December 15, 2022, and annually thereafter, the board shall provide a comprehensive report to the legislature detailing all actions the board has taken in the past year, including any rules adopted by the authority pursuant to chapter 153, Laws of 2022, establishing any processes, such as the methodology for the upper payment limit, the list of drugs identified in RCW 70.405.030, the drugs the board completed an affordability review of and any determinations of whether the drug had led or will lead to excess costs, and the establishment of any upper payment limits. [2022 c 153 § 8.]

**70.405.090 Rule making.** The authority may adopt any rules necessary to implement this chapter. The rules adopted under this section may not go into effect until at least 90 days after the next regular legislative session. [2022 c 153 § 9.]