

"I am returning herewith without my approval as to part of Substitute Senate Bill No. 3207 entitled:

"AN ACT Relating to superior court judges."

Substitute Senate Bill No. 3207 creates five additional superior court judgeships in King County which have been made dependent upon county approval. I have no problem with the creation of the judgeships or the county approval conditions. However, the last five lines of the bill, added as a House amendment to the original Senate bill, provide an elective procedure for the selection of judges to the newly created positions. I cannot support this provision for the reason that such procedure destroys the Governor's historic right to appoint judges to the newly created positions.

The State Supreme Court in Fain v Chapman 89 Wn.2d 48, 569 P.2d 1135 (1977) said the following about new judgeships:

"The provisions of Article 4, Section 5 of the constitution provide the framework within which newly created judgeships must be filled. The applicable provision provides:

If a vacancy occurs in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of the judge to fill the vacancy, which election shall be at the next succeeding general election."

Since the governor has had this power in the past I am bound by the commands of my office to protect this historic authority so that it may remain a viable power for this and subsequent administrations.

I have given due consideration to the technical issue involved with this veto and am satisfied that the veto is within my authority. The issue that I mention is of course veto of less than a physical section. During the 1979 legislative session, a similar bill creating new judgeships was passed. It also provided for election procedures but the procedures were set out in a separate section. There was no question, at that time that I could separately veto the election procedures without invalidating the whole bill. There is no substantive change in the circumstances this time. Although the election procedures and judgeships creation have been placed together within one physical section, the subject matters remain separable. The State Supreme Court in Apartment Ass'ns v Evans 88 Wn.2d 563, 564 P.2d 788 (1977) indicates that as long as the subject matter is separable, a veto may affect one part without the other.

For these reasons, I have determined to veto the last five lines of Substitute Senate Bill No. 3207."

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## CHAPTER 184

[Engrossed Substitute Senate Bill No. 3636]

### NURSING HOME STANDARDS—APPROPRIATION

AN ACT Relating to nursing homes; amending section 63, chapter 211, Laws of 1979, 1st ex. sess. and RCW 18.51.091; amending section 6, chapter 99, Laws of 1975 1st ex. sess. and RCW 18.51.210; amending section 9, chapter 99, Laws of 1975 1st ex. sess. and RCW 18.51.290; amending section 1, chapter 244, Laws of 1977 ex. sess. as amended by section 67, chapter 211, Laws of 1979 ex. sess. and RCW 18.51.310; amending section 4, chapter 260, Laws of 1977 ex. sess. and RCW 74.09.580; amending section 2, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.020; amending section 15, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.150; amending section 20, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.200; amending section 22, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.220; amending section 31, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.310; amending section 34, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.340; amending section 43, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.430; amending section 49, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.490; amending section 57, chapter

211, Laws of 1979 ex. sess. and RCW 74.42.570; amending section 58, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.580; amending section 59, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.590; amending section 60, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.600; amending section 72, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.920; adding new sections to chapter 74.42 RCW; making an appropriation; providing effective dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

**\*Section 1. Section 4, chapter 260, Laws of 1977 ex. sess. and RCW 74.09.580 are each amended to read as follows:**

*The nursing home payment system under this chapter shall provide for individually-based or class-based rates which shall be the maximum reimbursement for each nursing home for the period for which the rates are assigned. Operators of nursing homes shall refund all portions of payments received which exceed actual audited costs, except in the cost centers of administration and operations and property, and all portions of payments received which are attributable to unreasonable or nonallowable costs as determined by federal or state regulations.*

\*Section 1 was vetoed, see message at end of chapter.

**\*Sec. 2. Section 63, chapter 211, Laws of 1979 ex. sess. and RCW 18.51.091 are each amended to read as follows:**

*The department shall make or cause to be made at least a yearly inspection of all nursing homes. Every inspection may include an inspection of every part of the premises and an examination of all records, methods of administration, the general and special dietary and the stores and methods of supply: PROVIDED, That private patients or the patient's guardian may execute a written denial of access to their person, their comprehensive plan of care, and their medical records for the purposes of such inspection: PROVIDED FURTHER, That such written denial shall not prohibit access in those instances where the department is investigating an alleged violation of chapter 18.51, 74.09, or 74.42 RCW: PROVIDED FURTHER, That no health care facility shall make such objection as a condition for admittance. Following such inspection or inspections, written notice of any violation of this law or the rules and regulations promulgated hereunder, shall be given the applicant or licensee and the department. The department may prescribe by regulations that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, submit its plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized.*

\*Sec. 2 was vetoed, see message at end of chapter.

**\*Sec. 3. Section 6, chapter 99, Laws of 1975 1st ex. sess. and RCW 18.51.210 are each amended to read as follows:**

***(1) Any duly authorized officer, employee, or agent of the department may enter and inspect any nursing home, including, but not limited to, interviewing residents and reviewing records, at any time to enforce any provision of this chapter: PROVIDED, That private patients or the patient's guardian may execute a written denial of access to their person, their comprehensive plan of care, and their medical records for the purpose of such inspection: PROVIDED FURTHER, That such written denial shall not prohibit access in those instances where the department is investigating an alleged violation of chapter 18.51, 74.09, or 74.42 RCW. Inspections conducted pursuant to complaints filed with the department shall be conducted in such a manner as to ensure maximum effectiveness. No advance notice shall be given of any inspection conducted pursuant to this chapter unless previously and specifically authorized by the secretary or required by federal law.***

***(2) Any public employee giving such advance notice 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.***

***(3) In any hearing held pursuant to this chapter it shall be a defense to a violation relating to the standard of care to be afforded public patients to show that the department ~~((does not provide sufficient funds to meet the cost of reimbursement standard allegedly violated))~~ has not reasonably implemented its cost-related reimbursement system for public patients.***

\*Sec. 3 was vetoed, see message at end of chapter.

Sec. 4. Section 9, chapter 99, Laws of 1975 1st ex. sess. and RCW 18.51.290 are each amended to read as follows:

Any writing received, owned, used, or retained by the department in connection with the provisions of this chapter is a public record and, as such, is open to public inspection. ~~((However, the names of any persons contained in such records, except the names of duly authorized officers, employees, or agents of the department conducting an investigation or inspection in response to a complaint filed pursuant to this chapter, shall not be open to public inspection and))~~ Copies of such records provided for public inspection shall ~~((have such names deleted))~~ comply with RCW 42.17.260(1). The names of duly authorized officers, employees, or agents of the department shall be included.

Sec. 5. Section 1, chapter 244, Laws of 1977 ex. sess. as amended by section 67, chapter 211, Laws of 1979 ex. sess. and RCW 18.51.310 are each amended to read as follows:

***(1) No later than September 30, 1977, the secretary shall implement and operate a patient assessment system whereby the characteristics of patients supported by the department under RCW 74.09.120, as now or hereafter amended, shall be computerized for the purpose of assisting in the setting ~~((appropriate levels of staffing and))~~ of reimbursement for nursing homes in accordance with the documented needs of the client population in***

each home and for the provision of statistical and summary information for use by the department and the legislature.

(2) No later than December 31, 1980, the department shall adopt revised licensing standards for nursing homes. The licensing standards shall be suitable for implementing the civil penalty system authorized under this chapter, chapter 74.42 RCW, and chapter ... (Senate Bill No. (~~(2335) Laws of 1979~~)) 3250, Laws of 1980, if enacted.

(3) The department, the board of health, the school of medicine, the University of Washington, and the schools of nursing within the state shall jointly submit to the legislature, not later than December 20, 1980, alternative methods of identifying and measuring the results of services delivered by the nursing home.

(4) No later than July 1, (~~(1980)~~) 1981, the department shall adopt all those regulations which meet all conditions necessary to fully implement the civil penalty system authorized by this chapter, chapter 74.42 RCW, and chapter ... (Senate Bill No. (~~(2335) Laws of 1979~~)) 3250, Laws of 1980, if enacted.

Sec. 6. Section 2, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.020 are each amended to read as follows:

The standards in RCW 74.42.030 through 74.42.570 are the minimum standards for facilities receiving reimbursement under chapter ... (Senate Bill No. (~~(2335) Laws of 1979~~)) 3250, Laws of 1980, or if not enacted, facilities receiving reimbursement under chapter 74.09 RCW: PROVIDED, HOWEVER, That RCW 74.42.040, 74.42.140 through 74.42.280, 74.42.300, 74.42.360, 74.42.370, 74.42.380, 74.42.420(2), (4), (5), (6) and (7), 74.42.430(3), 74.42.450(2) and (3), 74.42.520, 74.42.530, 74.42.540, 74.42.570, and 74.42.580 shall not apply to Christian Science sanatoria facilities operated and listed or certified by The First Church of Christ, Scientist, in Boston, Massachusetts.

Sec. 7. Section 15, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.150 are each amended to read as follows:

(1) Under the attending physician's instructions, qualified facility staff will establish and maintain a comprehensive plan of care for each resident which shall be kept on file by the facility and be (~~(approved)~~) evaluated through review and assessment by the department. The comprehensive plan contains:

- (a) Goals for each resident to accomplish;
  - (b) An integrated program of treatment, therapies and activities to help each resident achieve those goals; and
  - (c) The persons responsible for carrying out the programs in the plan.
- (2) Qualified facility staff shall review the comprehensive plan of care at least quarterly.

Sec. 8. Section 20, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.200 are each amended to read as follows:

The health care of each resident shall be under the continuing supervision of a physician: **PROVIDED, That a resident of a facility licensed pursuant to Chapter 18.51 RCW but not certified by the federal government under Title XVIII or Title XIX of the Social Security Act as now or hereafter amended shall not be required to receive the continuing supervision of a health care practitioner licensed pursuant to Chapter 18.22, 18.25, 18.32, 18.57, 18.71, and 18.83 RCW, nor shall the state of Washington require such continuing supervision as a condition of licensing.** The physician(~~;~~ physician's assistant, or nurse practitioner) shall see the resident whenever necessary, (~~but not less than once every sixty days, unless the physician decides that it is not necessary to see the resident once every sixty days and a written report of the decision signed by the physician is included in the resident's record~~) and as required and/or consistent with state and federal regulations.

Sec. 9. Section 22, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.220 are each amended to read as follows:

(1) If the facility does not employ a qualified professional to furnish required services, the facility shall have a written contract with a qualified professional or agency outside the facility to furnish the required services. The terms of the contract, including terms about responsibilities, functions, and objectives, shall be specified. The contract shall be signed by the administrator, or the administrator's representative, and the qualified professional.

(2) (~~Programs of self-administration of medications are to be implemented for all residents unless contraindicated in writing in the resident's records:~~

~~(3))~~ All contracts for these services shall require the standards in RCW 74.42.010 through 74.42.570 to be met.

Sec. 10. Section 31, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.310 are each amended to read as follows:

(1) A facility (~~for the developmentally disabled~~) shall have sufficient personnel (~~in the dining rooms~~) to supervise the residents, direct self-help dining skills, and to insure that each resident receives enough food.

(2) A facility (~~for the developmentally disabled~~) shall provide table service for all residents, including residents in wheelchairs, who are capable and willing to eat at tables.

Sec. 11. Section 34, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.340 are each amended to read as follows:

(1) The facility shall provide adequate(~~modern~~) administrative support to efficiently meet the needs of residents and facilitate attainment of the facility's goals and objectives.

- (2) The facility shall:
- (a) Document the purchasing process;
  - (b) Adequately operate the inventory control system and stockroom;
  - (c) Have appropriate storage facilities for all supplies and surplus equipment; and
  - (d) (~~Have enough trained and experienced~~) Train and assist personnel to do purchase, supply, and property control functions.

Sec. 12. Section 43, chapter 211, Laws of 1979 ex. sess. and RCW 74-42.430 are each amended to read as follows:

The facility shall develop written guidelines governing:

- (1) All services provided by the facility;
- (2) Admission, transfer or discharge;
- (3) The use of chemical and physical restraints, the personnel authorized to administer restraints in an emergency, and procedures for monitoring and controlling the use of the restraints;
- (4) Procedures for receiving and responding to residents' complaints and recommendations;
- (5) Access to, duplication of, and dissemination of information from the resident's record;
- (6) Residents' rights, privileges, and duties;
- (7) Procedures if the resident is adjudicated incompetent or incapable of understanding his or her rights and responsibilities;
- (8) When to recommend initiation of guardianship proceedings (~~to the department~~) under chapter 11.88 RCW; and
- (9) Emergencies;
- (10) Procedures for isolation of residents with infectious diseases;
- (11) Procedures for residents to refuse treatment and for the facility to document informed refusal.

The written guidelines shall be made available to the staff, residents, members of residents' families, and the public.

Sec. 13. Section 49, chapter 211, Laws of 1979 ex. sess. and RCW 74-42.490 are each amended to read as follows:

Each resident's room shall:

- (1) Be equipped with or conveniently located near toilet and bathing facilities;
- (2) Be at or above grade level;
- (3) Contain a suitable bed for each resident and other appropriate furniture;
- (4) Have closet space that provides security and privacy for clothing and personal belongings;
- (5) Contain no more than four beds;
- (6) Have adequate space for each resident; and
- (7) Be equipped with a device for calling the staff member on duty.

The department may waive the space ~~((and))~~, occupancy, and certain equipment requirements of this section for an existing building constructed prior to January 1, 1980, or space and certain equipment for new intermediate care facilities for the mentally retarded for as long as the department considers appropriate if the department finds that the requirements would result in unreasonable hardship on the facility, the waiver serves the particular needs of the residents, and the waiver does not adversely affect the health and safety of the residents.

Sec. 14. Section 57, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.570 are each amended to read as follows:

The facility shall meet ~~((all federal))~~ state~~(;)~~ and local laws, rules, regulations, and codes pertaining to health and safety.

Sec. 15. Section 58, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.580 are each amended to read as follows:

The department may deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature pursuant to the provisions of chapter 34.04 RCW not to exceed one thousand dollars for such violations when the department finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee:

(1) Failed or refused to comply with the requirements of RCW 74.42.010 through 74.42.570 or the standards and rules established by the department under RCW 74.42.010 through 74.42.570;

(2) Was the holder of a license issued under chapter 18.51 RCW, which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(3) Has knowingly or with reason to know made a false statement of a material fact in any records required under RCW 74.42.010 through 74.42.570;

(4) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained under RCW 74.42.010 through 74.42.570 or any portion of the premises of the facility;

(5) Wilfully prevented, interfered with, or attempted to impede in any way the work of any authorized representative of the department and the lawful enforcement of any provision of RCW 74.42.010 through 74.42.570;  
or

(6) Wilfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of RCW 74.42.010 through 74.42.570 or the standards and rules adopted pursuant to RCW 74.42.010 through 74.42.570.

The department shall adopt rules to implement and administer this section not later than January 15, 1981.

Sec. 16. Section 59, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.590 are each amended to read as follows:

(1) The department shall ~~((approve))~~ evaluate through review and assessment, within thirty days after each resident's admission to the facility, each resident's comprehensive plan of care.

(2) The department shall review the comprehensive plan of care for each resident at least annually ~~((thereafter))~~ or upon any change in the resident's classification pursuant to RCW 74.42.610, as now or hereafter amended.

(3) The facility shall submit any request to modify a resident's classification to the department for the department's approval. The approval shall not be given until the department has reviewed the resident.

Sec. 17. Section 60, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.600 are each amended to read as follows:

(1) In addition to the inspection required by chapter 18.51 RCW, the department shall inspect the facility for compliance with the standards in RCW 74.42.010 through 74.42.570.

(2) If the facility has not complied with any of the standards in RCW 74.42.010 through 74.42.570, the department shall notify the facility in writing that the facility is in noncompliance and describe the reasons for the facility's noncompliance. The notice shall inform the facility that, except for life-threatening situations or situations which substantially limit the provider's capacity to render adequate care which may be for a shorter period of time, the facility ~~((has three months))~~ shall comply within a specified time, not to exceed sixty days from the date ((of notification to comply)) the plan of correction is approved by the department. The penalties in RCW 74.42.580 may be imposed if, upon inspection after the ~~((three-month))~~ specified period, the department determines that the facility has not complied.

NEW SECTION. Sec. 18. There is added to chapter 74.42 RCW a new section to read as follows:

The department shall develop an educational program for attending and staff physicians and patients on self-medication. The department shall actively encourage the implementation of such self-medication programs for residents.

Sec. 19. Section 72, chapter 211, Laws of 1979 ex. sess. and RCW 74.42.920 are each amended to read as follows:

~~((Except for section 64 of this 1979 act, this 1979 act))~~ Chapter 74.42 RCW shall be suspended immediately, and its effective date delayed so that it shall take effect on January 1, ((1980)) 1981.

NEW SECTION. Sec. 20. There is hereby appropriated from the general fund a sum of ninety thousand dollars, forty-five thousand of which



shall be from federal sources, to the department of social and health services. Such appropriation is intended for the purposes specified in RCW 74.42.590 as now or hereafter amended.

**NEW SECTION.** Sec. 21. If any part of this act shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict, and such finding or determination shall not affect the operation of the remainder of this act; the rules and regulations under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state.

**NEW SECTION.** Sec. 22. Section 19 of this 1980 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 13, 1980.

Passed the House March 13, 1980.

Approved by the Governor April 4, 1980, with the exception of Sections 1, 2, and 3 which are vetoed.

Filed in Office of Secretary of State April 4, 1980.

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

"I am returning herewith without my approval as to three sections of Substitute Senate Bill No. 3636 entitled:

"AN ACT Relating to nursing homes".

This bill makes some necessary revisions in the nursing care standards which were passed during the 1979 legislative session. Several of these items were found to be in conflict with federal regulations or proved to be difficult to administer. However, several amendments to the bill made during the waning hours of the session will, I believe, produce certain unintended effects.

Section 1 was considered earlier in committee but withdrawn for the very reasons I have vetoed it. Although it may have been intended as a positive incentive to permit the retention of savings from management efficiencies, the inadvertent effect would be to allow operators to retain overpayments or to unconscionably retain funds intended as wage increases for support personnel. This would undoubtedly create legal disputes between the Department of Social and Health Services and the federal government as well as nursing home operators.

Sections 2 and 3 permit private patients or their guardians to deny access of state inspectors . . . "to their person, their comprehensive plans of care and their medical records . . ." Although this may have been intended to preserve the privacy of private patients, it would undermine the ability of the Department of Social and Health Services to assure quality of care for all nursing home residents - both those who are publicly and privately supported. Denying access to the state inspectors would only serve to increase the vulnerability of frail elderly and disabled nursing home residents. It also might jeopardize the ability of the department to certify compliance of facilities with federal regulations necessary for participation in the Medicare and Medicaid programs.

For the foregoing reasons, I have vetoed Sections 1, 2, and 3. The remainder of the bill is approved."